

105TH CONGRESS
2D SESSION

S. 2590

To enhance competition in financial services.

IN THE SENATE OF THE UNITED STATES

OCTOBER 8 (legislative day, OCTOBER 2), 1998

Mr. FAIRCLOTH (for himself, Mr. GRAMS, and Mr. GORTON) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To enhance competition in financial services.

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; PURPOSES; TABLE OF CON-**
4 **TENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Financial Services Act of 1998”.

7 (b) PURPOSES.—The purposes of this Act are as fol-
8 lows:

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

1 (2) To ensure the continued safety and sound-
2 ness of depository institutions.

3 (3) To provide necessary and appropriate pro-
4 tections for investors and ensure fair and honest
5 markets in the delivery of financial services.

6 (4) To avoid duplicative, potentially conflicting,
7 and overly burdensome regulatory requirements
8 through the creation of a regulatory framework for
9 financial holding companies that respects the diver-
10 gent requirements of each of the component busi-
11 nesses of the holding company, and that is based
12 upon principles of strong functional regulation and
13 enhanced regulatory coordination.

14 (5) To reduce and, to the maximum extent
15 practicable, to eliminate the legal barriers preventing
16 affiliation among depository institutions, securities
17 firms, insurance companies, and other financial serv-
18 ice providers and to provide a prudential framework
19 for achieving that result.

20 (6) To enhance the availability of financial serv-
21 ices to citizens of all economic circumstances and in
22 all geographic areas.

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

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

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

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

Subtitle A—Affiliations

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

Subtitle B—Streamlining Supervision of Financial Holding Companies

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

Subtitle C—Subsidiaries of National Banks

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

Subtitle E—Preservation of FTC Authority

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

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

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

Subtitle G—Federal Home Loan Bank System Modernization

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

Subtitle H—Direct Activities of Banks

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

Subtitle I—Deposit Insurance Funds

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

Subtitle J—Effective Date of Title

- Sec. 191. Effective date.

TITLE II—FUNCTIONAL REGULATION

Subtitle A—Brokers and Dealers

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

Subtitle B—Bank Investment Company Activities

- Sec. 211. Custody of investment company assets by affiliated bank.
- Sec. 212. Lending to an affiliated investment company.
- Sec. 213. Independent directors.
- Sec. 214. Additional SEC disclosure authority.
- Sec. 215. Definition of broker under the Investment Company Act of 1940.
- Sec. 216. Definition of dealer under the Investment Company Act of 1940.
- Sec. 217. Removal of the exclusion from the definition of investment adviser for banks that advise investment companies.
- Sec. 218. Definition of broker under the Investment Advisers Act of 1940.
- Sec. 219. Definition of dealer under the Investment Advisers Act of 1940.
- Sec. 220. Interagency consultation.

- Sec. 221. Treatment of bank common trust funds.
- Sec. 222. Investment advisers prohibited from having controlling interest in registered investment company.
- Sec. 223. Conforming change in definition.
- Sec. 224. Conforming amendment.
- Sec. 225. Effective date.

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

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

Subtitle D—Studies

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

TITLE III—INSURANCE

Subtitle A—State Regulation of Insurance

- Sec. 301. State regulation of the business of insurance.
- Sec. 302. Mandatory insurance licensing requirements.
- Sec. 303. Functional regulation of insurance.
- Sec. 304. Insurance underwriting in national banks.
- Sec. 305. Title insurance activities of national banks and their affiliates.
- Sec. 306. Expedited and equalized dispute resolution for financial regulators.
- Sec. 307. Consumer protection regulations.
- Sec. 308. Certain State affiliation laws preempted for insurance companies and affiliates.

Subtitle B—National Association of Registered Agents and Brokers

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

TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES

- Sec. 401. Prevention of creation of new savings and loan holding companies with commercial affiliates.

- Sec. 402. Optional conversion of Federal savings associations to national banks.
 Sec. 403. Retention of “Federal” in name of converted Federal savings association.

TITLE V—FINANCIAL INFORMATION PRIVACY

- Sec. 501. Financial information privacy.
 Sec. 502. Report to Congress on financial privacy.

TITLE VI—MISCELLANEOUS

- Sec. 601. Grand jury proceedings.
 Sec. 602. Sense of the Committee on Banking, Housing, and Urban Affairs of the Senate.
 Sec. 603. Investments in Government sponsored enterprises.
 Sec. 604. Repeal of savings bank provisions in the Bank Holding Company Act of 1956.

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

6 **Subtitle A—Affiliations**

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

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

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

13 **SEC. 102. ACTIVITY RESTRICTIONS APPLICABLE TO BANK**
 14 **HOLDING COMPANIES WHICH ARE NOT FI-**
 15 **NANCIAL HOLDING COMPANIES.**

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

1 “(8) shares of any company the activities of
 2 which had been determined by the Board by regula-
 3 tion under this paragraph as of the day before the
 4 date of the enactment of the Financial Services Act
 5 of 1998, to be so closely related to banking as to be
 6 a proper incident thereto (subject to such terms and
 7 conditions contained in such regulation, unless modi-
 8 fied by the Board);”.

9 (b) CONFORMING CHANGES TO OTHER STATUTES.—

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

16 (2) AMENDMENT TO THE BANK SERVICE COM-
 17 PANY ACT.—Section 4(f) of the Bank Service Com-
 18 pany Act (12 U.S.C. 1864(f)) is amended by strik-
 19 ing the period and adding at the end the following:
 20 “as of the day before the date of enactment of the
 21 Financial Services Act of 1998.”.

22 **SEC. 103. FINANCIAL HOLDING COMPANIES.**

23 The Bank Holding Company Act of 1956 is amended
 24 by inserting after section 5 (12 U.S.C. 1844) the following
 25 new section:

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

2 “(a) FINANCIAL HOLDING COMPANY DEFINED.—

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

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

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

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

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

19 “(C) The company has filed with the
20 Board a declaration that the company elects to
21 be a financial holding company and certifying
22 that the company meets the requirements of
23 subparagraphs (A) and (B).

24 “(2) FOREIGN BANKS AND COMPANIES.—For
25 purposes of paragraph (1), the Board shall establish
26 and apply comparable capital and other operating

1 standards to a foreign bank that operates a branch
 2 or agency or owns or controls a bank or commercial
 3 lending company in the United States, and any com-
 4 pany that owns or controls such foreign bank, giving
 5 due regard to the principle of national treatment
 6 and equality of competitive opportunity.

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

9 “(1) FINANCIAL ACTIVITIES.—

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

17 “(B) COORDINATION BETWEEN THE
 18 BOARD AND THE DEPARTMENT OF THE TREAS-
 19 URY.—

20 “(i) PROPOSALS RAISED BEFORE THE
 21 BOARD.—

22 “(I) CONSULTATION.—The
 23 Board shall notify the Secretary of
 24 the Treasury of, and consult with the
 25 Secretary of the Treasury concerning,

1 any request, proposal, or application
2 under this subsection for a determina-
3 tion of whether an activity is financial
4 in nature or incidental to such a fi-
5 nancial activity.

6 “(II) TREASURY VIEW.—The
7 Board shall not determine that any
8 activity is financial in nature or inci-
9 dental to a financial activity under
10 this subsection if the Secretary of the
11 Treasury notifies the Board in writ-
12 ing, not later than 30 days after the
13 date of receipt of the notice described
14 in subclause (I) (or such longer period
15 as the Board determines to be appro-
16 priate in light of the circumstances)
17 that the Secretary of the Treasury be-
18 lieves that the activity is not financial
19 in nature or incidental to a financial
20 activity.

21 “(ii) PROPOSALS RAISED BY THE
22 TREASURY.—

23 “(I) TREASURY RECOMMENDA-
24 TION.—The Secretary of the Treasury
25 may, at any time, recommend in writ-

1 ing that the Board find an activity to
2 be financial in nature or incidental to
3 a financial activity.

4 “(II) TIME PERIOD FOR BOARD
5 ACTION.—Not later than 30 days
6 after the date of receipt of a written
7 recommendation from the Secretary of
8 the Treasury under subclause (I) (or
9 such longer period as the Secretary of
10 the Treasury and the Board deter-
11 mine to be appropriate in light of the
12 circumstances), the Board shall
13 determine whether to initiate a public
14 rulemaking proposing that the subject
15 recommended activity be found to be
16 financial in nature or incidental to a
17 financial activity under this sub-
18 section, and shall notify the Secretary
19 of the Treasury in writing of the de-
20 termination of the Board and, in the
21 event that the Board determines not
22 to seek public comment on the pro-
23 posal, the reasons for that determina-
24 tion.

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

5 “(A) the purposes of this Act and the Fi-
6 nancial Services Act of 1998;

7 “(B) changes or reasonably expected
8 changes in the marketplace in which bank hold-
9 ing companies compete;

10 “(C) changes or reasonably expected
11 changes in the technology for delivering finan-
12 cial services; and

13 “(D) whether such activity is necessary or
14 appropriate to allow a bank holding company
15 and the affiliates of a bank holding company
16 to—

17 “(i) compete effectively with any com-
18 pany seeking to provide financial services
19 in the United States;

20 “(ii) use any available or emerging
21 technological means, including any applica-
22 tion necessary to protect the security or ef-
23 ficacy of systems for the transmission of
24 data or financial transactions, in providing
25 financial services; and

1 “(iii) offer customers any available or
2 emerging technological means for using fi-
3 nancial services.

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

7 “(A) Lending, exchanging, transferring, in-
8 vesting for others, or safeguarding money or se-
9 curities.

10 “(B) Insuring, guaranteeing, or indemnify-
11 ing against loss, harm, damage, illness, disabil-
12 ity, or death, or providing and issuing annu-
13 ities, and acting as principal, agent, or broker
14 for purposes of the foregoing.

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

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

22 “(E) Underwriting, dealing in, or making
23 a market in securities.

24 “(F) Engaging in any activity that the
25 Board has determined, by order or regulation

1 that is in effect on the date of enactment of the
2 Financial Services Act of 1998, to be so closely
3 related to banking or managing or controlling
4 banks as to be a proper incident thereto (sub-
5 ject to the same terms and conditions contained
6 in such order or regulation, unless modified by
7 the Board).

8 “(G) Engaging, in the United States, in
9 any activity that—

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

12 “(ii) the Board has determined, under
13 regulations issued pursuant to section
14 4(c)(13) of this Act (as in effect on the
15 day before the date of enactment of the Fi-
16 nancial Services Act of 1998) to be usual
17 in connection with the transaction of bank-
18 ing or other financial operations abroad.

19 “(H) Directly or indirectly acquiring or
20 controlling, whether as principal, on behalf of 1
21 or more entities (including entities, other than
22 a depository institution or subsidiary of a de-
23 pository institution, that the bank holding com-
24 pany controls) or otherwise, shares, assets, or
25 ownership interests (including without limita-

1 tion debt or equity securities, partnership inter-
2 ests, trust certificates or other instruments rep-
3 resenting ownership) of a company or other en-
4 tity, whether or not constituting control of such
5 company or entity, engaged in any activity not
6 authorized pursuant to this section if—

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

11 “(ii) such shares, assets, or ownership
12 interests are acquired and held by a securi-
13 ties affiliate or an affiliate thereof as part
14 of a bona fide underwriting or merchant
15 banking activity, including investment ac-
16 tivities engaged in for the purpose of ap-
17 preciation and ultimate resale or disposi-
18 tion of the investment;

19 “(iii) such shares, assets, or owner-
20 ship interests, are held only for such a pe-
21 riod of time as will permit the sale or dis-
22 position thereof on a reasonable basis con-
23 sistent with the nature of the activities de-
24 scribed in clause (ii); and

1 “(iv) during the period such shares,
2 assets, or ownership interests are held, the
3 bank holding company does not actively
4 participate in the day to day management
5 or operation of such company or entity, ex-
6 cept insofar as necessary to achieve the ob-
7 jectives of clause (ii).

8 “(I) Directly or indirectly acquiring or con-
9 trolling, whether as principal, on behalf of 1 or
10 more entities (including entities, other than a
11 depository institution or subsidiary of a deposi-
12 tory institution, that the bank holding company
13 controls) or otherwise, shares, assets, or owner-
14 ship interests (including without limitation debt
15 or equity securities, partnership interests, trust
16 certificates or other instruments representing
17 ownership) of a company or other entity, wheth-
18 er or not constituting control of such company
19 or entity, engaged in any activity not authorized
20 pursuant to this section if—

21 “(i) the shares, assets, or ownership
22 interests are not acquired or held by a de-
23 pository institution or a subsidiary of a de-
24 pository institution;

1 “(ii) such shares, assets, or ownership
2 interests are acquired and held by an in-
3 surance company that is predominantly en-
4 gaged in underwriting life, accident and
5 health, or property and casualty insurance
6 (other than credit-related insurance);

7 “(iii) such shares, assets, or owner-
8 ship interests represent an investment
9 made in the ordinary course of business of
10 such insurance company in accordance
11 with relevant State law governing such in-
12 vestments; and

13 “(iv) during the period such shares,
14 assets, or ownership interests are held, the
15 bank holding company does not directly or
16 indirectly participate in the day-to-day
17 management or operation of the company
18 or entity except insofar as necessary to
19 achieve the objectives of clauses (ii) and
20 (iii).

21 “(4) ACTIONS REQUIRED.—The Board shall, by
22 regulation or order, define, consistent with the pur-
23 poses of this Act, the following activities as, and the
24 extent to which such activities are, financial in na-

1 ture or incidental to activities which are financial in
2 nature:

3 “(A) Lending, exchanging, transferring, in-
4 vesting for others, or safeguarding financial as-
5 sets other than money or securities.

6 “(B) Providing any device or other instru-
7 mentality for transferring money or other finan-
8 cial assets.

9 “(C) Arranging, effecting, or facilitating fi-
10 nancial transactions for the account of third
11 parties.

12 “(5) POST-CONSUMMATION NOTIFICATION.—

13 “(A) IN GENERAL.—A financial holding
14 company that acquires any company, or com-
15 mences any activity, pursuant to this subsection
16 shall provide written notice to the Board de-
17 scribing the activity commenced or conducted
18 by the company acquired no later than 30 cal-
19 endar days after commencing the activity or
20 consummating the acquisition.

21 “(B) APPROVAL NOT REQUIRED FOR CER-
22 TAIN FINANCIAL ACTIVITIES.—Except as pro-
23 vided in section 4(j) with regard to the acquisi-
24 tion of a savings association or in paragraph
25 (6) of this subsection, a financial holding com-

1 pany may commence any activity, or acquire
2 any company, pursuant to paragraph (3) or any
3 regulation prescribed or order issued under
4 paragraph (4), without prior approval of the
5 Board.

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

8 “(A) IN GENERAL.—No financial holding
9 company shall directly or indirectly acquire, and
10 no company that becomes a financial holding
11 company shall directly or indirectly acquire con-
12 trol of, any company in the United States, in-
13 cluding through merger, consolidation, or other
14 type of business combination, that—

15 “(i) is engaged in activities permitted
16 under this subsection or subsection (g);
17 and

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

20 unless such holding company has provided no-
21 tice to the Board, not later than 60 days prior
22 to such proposed acquisition or prior to becom-
23 ing a financial holding company, and during
24 that time period, or such longer time period not
25 exceeding an additional 60 days, as established

1 by the Board, the Board has not issued a notice
2 disapproving the proposed acquisition or reten-
3 tion.

4 “(B) FACTORS FOR CONSIDERATION.—In
5 reviewing any prior notice filed under this para-
6 graph, the Board shall take into
7 consideration—

8 “(i) whether the company is in com-
9 pliance with all applicable criteria set forth
10 in subsection (b) and the provisions of sub-
11 section (d);

12 “(ii) whether the proposed combina-
13 tion represents an undue aggregation of
14 resources;

15 “(iii) whether the proposed combina-
16 tion poses a risk to the deposit insurance
17 system;

18 “(iv) whether the proposed combina-
19 tion poses a risk to State insurance guar-
20 anty funds;

21 “(v) whether the proposed combina-
22 tion can reasonably be expected to be in
23 the best interests of depositors or policy-
24 holders of the respective entities; and

1 “(vi) whether the proposed trans-
2 action can reasonably be expected to
3 produce benefits to the public.

4 “(C) REQUIRED INFORMATION.—The
5 Board may disapprove any prior notice filed
6 under this paragraph if the company submitting
7 such notice neglects, fails, or refuses to furnish
8 to the Board all relevant information required
9 by the Board.

10 “(D) SOLICITATION OF VIEWS OF OTHER
11 SUPERVISORY AGENCIES.—

12 “(i) IN GENERAL.—Upon receiving a
13 prior notice under this paragraph, in order
14 to provide for the submission of their views
15 and recommendations, the Board shall give
16 notice of the proposal to—

17 “(I) the appropriate Federal
18 banking agency of any bank involved;

19 “(II) the appropriate functional
20 regulator of any functionally regulated
21 nondepository institution (as defined
22 in section 5(c)(1)(C)) involved; and

23 “(III) the Secretary of the Treas-
24 ury, the Department of Justice, and
25 the Federal Trade Commission.

1 “(ii) TIMING.—The views and rec-
2 ommendations of any agency provided no-
3 tice under this paragraph shall be submit-
4 ted to the Board not later than 30 cal-
5 endar days after the date on which notice
6 to the agency was given, unless the Board
7 determines that another shorter time pe-
8 riod is appropriate.

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

11 “(1) IN GENERAL.—If the Board finds that a
12 financial holding company is not in compliance with
13 the requirements of subparagraph (A), (B), (C) of
14 subsection (b)(1), the Board shall give notice of such
15 finding to the company.

16 “(2) AGREEMENT TO CORRECT CONDITIONS RE-
17 QUIRED.—

18 “(A) IN GENERAL.—Not later than 45
19 days after receipt by a financial holding com-
20 pany of a notice given under paragraph (1) (or
21 such additional period as the Board may per-
22 mit), the company shall execute an agreement
23 acceptable to the Board to comply with the re-
24 quirements applicable to a financial holding
25 company.

1 “(3) BOARD MAY IMPOSE LIMITATIONS.—Until
2 the conditions described in a notice to a financial
3 holding company under paragraph (1) are corrected,
4 the Board may impose such limitations on the con-
5 duct or activities of the company or any affiliate of
6 the company as the Board determines to be appro-
7 priate under the circumstances.

8 “(4) FAILURE TO CORRECT.—If, after receiving
9 a notice under paragraph (1), a financial holding
10 company does not—

11 “(A) execute and implement an agreement
12 in accordance with paragraph (2);

13 “(B) comply with any limitations imposed
14 under paragraph (3);

15 “(C) in the case of a notice of failure to
16 comply with subsection (b)(1)(A), restore each
17 depository institution subsidiary to well capital-
18 ized status before the end of the 180-day period
19 beginning on the date such notice is received by
20 the company (or such other period permitted by
21 the Board); or

22 “(D) in the case of a notice of failure to
23 comply with subparagraph (B) or (C) of sub-
24 section (b)(1), restore compliance with any such
25 subparagraph on or before the date on which

1 the next examination of the depository institu-
2 tion subsidiary is completed or by the end of
3 such other period as the Board determines to
4 be appropriate,

5 the Board may require such company, under such
6 terms and conditions as may be imposed by the
7 Board and subject to such extension of time as may
8 be granted in the Board's discretion, to divest con-
9 trol of any depository institution subsidiary or, at
10 the election of the financial holding company, in-
11 stead to cease to engage in any activity conducted by
12 such company or its subsidiaries pursuant to this
13 section.

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

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

19 “(1) the procedures of the holding company for
20 identifying and managing financial and operational
21 risks within the company, and the subsidiaries of
22 such company, adequately protect the subsidiaries of
23 such company which are insured depository institu-
24 tions from such risks;

1 “(2) the holding company has reasonable poli-
2 cies and procedures to preserve the separate cor-
3 porate identity and limited liability of such company
4 and the subsidiaries of such company, for the pro-
5 tection of the company’s subsidiary insured deposi-
6 tory institutions; and

7 “(3) the holding company complies with this
8 section.

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

11 “(1) IN GENERAL.—Notwithstanding section
12 4(a), a company that is not a bank holding company
13 or a foreign bank (as defined in section 1(b)(7) of
14 the International Banking Act of 1978) and becomes
15 a financial holding company after the date of the en-
16 actment of the Financial Services Act of 1998 may
17 continue to engage in any activity and retain direct
18 or indirect ownership or control of shares of a com-
19 pany engaged in any activity if—

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

23 “(B) the holding company is predomi-
24 nantly engaged in financial activities as defined
25 in paragraph (2); and

1 “(C) the company engaged in such activity
2 continues to engage only in the same activities
3 that such company conducted on September 30,
4 1997, and other activities permissible under
5 this Act.

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

17 “(3) NO EXPANSION OF GRANDFATHERED COM-
18 Mercial Activities Through Merger or Con-
19 solidation.—A financial holding company that en-
20 engages in activities or holds shares pursuant to this
21 subsection, or a subsidiary of such financial holding
22 company, may not acquire, in any merger, consolida-
23 tion, or other type of business combination, assets of
24 any other company which is engaged in any activity
25 which the Board has not determined to be financial

1 in nature or incidental to activities that are financial
2 in nature under subsection (c).

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

14 “(5) CROSS MARKETING RESTRICTIONS APPLI-
15 CABLE TO COMMERCIAL ACTIVITIES.—A depository
16 institution controlled by a financial holding company
17 shall not—

18 “(A) offer or market, directly or through
19 any arrangement, any product or service of a
20 company whose activities are conducted or
21 whose shares are owned or controlled by the fi-
22 nancial holding company pursuant to this sub-
23 section or subparagraph (H) or (I) of sub-
24 section (c)(3); or

1 “(B) permit any of its products or services
2 to be offered or marketed, directly or through
3 any arrangement, by or through any company
4 described in subparagraph (A).

5 “(6) TRANSACTIONS WITH NONFINANCIAL AF-
6 FILIATES.—An insured depository institution con-
7 trolled by a financial holding company may not en-
8 gage in a covered transaction (as defined by section
9 23A(b)(7) of the Federal Reserve Act) with any af-
10 filiate controlled by the company pursuant to section
11 10(c), this subsection, or subparagraph (H) or (I) of
12 subsection (c)(3).

13 “(7) SUNSET OF GRANDFATHER.—A financial
14 holding company engaged in any activity, or retain-
15 ing direct or indirect ownership or control of shares
16 of a company, pursuant to this subsection, shall ter-
17 minate such activity and divest ownership or control
18 of the shares of such company before the end of the
19 10-year period beginning on the date of the enact-
20 ment of the Financial Services Act of 1998. The
21 Board may, upon application by a financial holding
22 company, extend such 10-year period by not to ex-
23 ceed an additional 5 years if such extension would
24 not be detrimental to the public interest.

1 “(g) DEVELOPING ACTIVITIES.—A financial holding
2 company may engage directly or indirectly, or acquire
3 shares of any company engaged, in any activity that the
4 Board has not determined to be financial in nature or inci-
5 dental to financial activities under subsection (c) if—

6 “(1) the holding company reasonably concludes
7 that the activity is financial in nature or incidental
8 to financial activities;

9 “(2) the gross revenues from all activities con-
10 ducted under this subsection represent less than 5
11 percent of the consolidated gross revenues of the
12 holding company;

13 “(3) the aggregate total assets of all companies
14 the shares of which are held under this subsection
15 do not exceed 5 percent of the holding company’s
16 consolidated total assets;

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

21 “(5) the Board has not determined that the ac-
22 tivity is not financial in nature or incidental to fi-
23 nancial activities under subsection (c);

1 “(6) the holding company is not required to
2 provide prior written notice of the transaction to the
3 Board under subsection (c)(6); and

4 “(7) the holding company provides written noti-
5 fication to the Board describing the activity com-
6 menced or conducted by the company acquired no
7 later than 10 business days after commencing the
8 activity or consummating the acquisition.”.

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

10 (a) AFFILIATIONS.—

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

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

1 (A) requiring any person or entity that
2 proposes to acquire control of an entity that is
3 engaged in the business of insurance and domi-
4 ciled in that State (hereafter in this subpara-
5 graph referred to as the “insurer”) to furnish
6 to the insurance regulatory authority of that
7 State, on or before the date on which notifica-
8 tion is given under section 7(a) of the Clayton
9 Act (15 U.S.C. 18(a))—

10 (i) the name and address of each per-
11 son by whom, or on whose behalf, the af-
12 filiation referred to in this subparagraph is
13 to be effected (hereafter in this subpara-
14 graph referred to as the “acquiring
15 party”);

16 (ii) if the acquiring party is an indi-
17 vidual, his or her principal occupation and
18 all offices and positions held during the 5
19 years preceding the date of notification,
20 and any conviction of crimes other than
21 minor traffic violations during the 10 years
22 preceding the date of notification;

23 (iii) if the acquiring party is not an
24 individual—

1 (I) a report of the nature of its
2 business operations during the 5 years
3 preceding the date of notification, or
4 for such shorter period as such person
5 and any predecessors thereof shall
6 have been in existence;

7 (II) an informative description of
8 the business intended to be done by
9 the acquiring party and any subsidi-
10 ary thereof; and

11 (III) a list of all individuals who
12 are, or who have been selected to be-
13 come, directors or executive officers of
14 the acquiring party or who perform,
15 or will perform, functions appropriate
16 to such positions, including, for each
17 such individual, the information re-
18 quired by clause (ii);

19 (iv) the source, nature, and amount of
20 the consideration used, or to be used, in ef-
21 fecting the merger or other acquisition of
22 control, a description of any transaction
23 wherein funds were, or are to be, obtained
24 for any such purpose, and the identity of
25 persons furnishing such consideration, ex-

1 cept that, if a source of such consideration
2 is a loan made in the lender's ordinary
3 course of business, the identity of the lend-
4 er shall remain confidential if the person
5 filing such statement so requests;

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

23 (vi) any plans or proposals that each
24 acquiring party may have to liquidate such
25 insurer, to sell its assets, or to merge or

1 consolidate it with any person or to make
2 any other material change in its business
3 or corporate structure or management;

4 (vii) the number of shares of any se-
5 curity of the insurer that each acquiring
6 party proposes to acquire, the terms of any
7 offer, request, invitation, agreement, or ac-
8 quisition, and a statement as to the meth-
9 od by which the fairness of the proposal
10 was arrived at;

11 (viii) the amount of each class of any
12 security of the insurer that is beneficially
13 owned or concerning which there is a right
14 to acquire beneficial ownership by each ac-
15 quiring party;

16 (ix) a full description of any contracts,
17 arrangements, or understandings with re-
18 spect to any security of the insurer in
19 which any acquiring party is involved, in-
20 cluding transfer of any of the securities,
21 joint ventures, loan or option arrange-
22 ments, puts or calls, guarantees of loans,
23 guarantees against loss or guarantees of
24 profits, division of losses or profits, or the
25 giving or withholding of proxies, and iden-

1 tification of the persons with whom such
2 contracts, arrangements, or understand-
3 ings have been entered into;

4 (x) a description of the purchase of
5 any security of the insurer during the 12-
6 month period preceding the date of notifi-
7 cation by any acquiring party, including
8 the dates of purchase, names of the pur-
9 chasers, and consideration paid, or agreed
10 to be paid, therefor;

11 (xi) a description of any recommenda-
12 tions to purchase any security of the in-
13 surer made during the 12-month period
14 preceding the date of notification by any
15 acquiring party or by any person based
16 upon interviews or at the suggestion of
17 such acquiring party;

18 (xii) copies of all tender offers for, re-
19 quests or invitations for tenders of, ex-
20 change offers for and agreements to ac-
21 quire or exchange any securities of the in-
22 surer and, if distributed, of additional so-
23 liciting material relating thereto; and

24 (xiii) the terms of any agreement,
25 contract, or understanding made with any

1 broker-dealer as to solicitation of securities
2 of the insurer for tender and the amount
3 of any fees, commissions, or other com-
4 pensation to be paid to broker-dealers with
5 regard thereto;

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

20 (C) taking actions with respect to the re-
21 ceivership or conservatorship of any insurance
22 company.

23 (b) ACTIVITIES.—

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

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

11 (2) INSURANCE SALES.—

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

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

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

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

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

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

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

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

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

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

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

21 (vi) restrictions prohibiting the release
22 of the insurance information of a customer
23 (defined as information concerning the pre-
24 miums, terms, and conditions of insurance
25 coverage, including expiration dates and

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

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

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

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

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

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

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

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

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

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

18 (I) is not a deposit;

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

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

1 or selling insurance on the premises
2 thereof; and

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

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

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

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

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

12 (C) LIMITATIONS.—

13 (i) OCC DEFERENCE.—Section 307(e)
14 does not apply with respect to any State
15 statute, regulation, order, interpretation,
16 or other action regarding insurance sales,
17 solicitation, or cross marketing activities
18 described in subparagraph (A) that was
19 issued, adopted, or enacted before Septem-
20 ber 3, 1998, and that is not described in
21 subparagraph (B).

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

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

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

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

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

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

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

4 (B) apply only to entities that are not in-
5 sured depository institutions or wholesale finan-
6 cial institutions, but that are directly engaged
7 in the business of insurance (except that they
8 may apply to depository institutions engaged in
9 providing savings bank life insurance as prin-
10 cipal to the extent of regulating such insur-
11 ance);

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

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

17 (c) NONDISCRIMINATION.—Except as provided in any
18 restrictions described in subsection (b)(2)(B), no State
19 may, by statute, regulation, order, interpretation, or other
20 action, regulate the insurance activities authorized or per-
21 mitted under this Act or any other provision of Federal
22 law of an insured depository institution or wholesale finan-
23 cial institution, or subsidiary or affiliate thereof, to the
24 extent that such statute, regulation, order, interpretation,
25 or other action—

1 (1) distinguishes by its terms between insured
2 depository institutions or wholesale financial institu-
3 tions, or subsidiaries or affiliates thereof, and other
4 persons or entities engaged in such activities, in a
5 manner that is in any way adverse to any such in-
6 sured depository institution or wholesale financial in-
7 stitution, or subsidiary or affiliate thereof;

8 (2) as interpreted or applied, has or will have
9 an impact on depository institutions or wholesale fi-
10 nancial institutions, or subsidiaries or affiliates
11 thereof, that is substantially more adverse than its
12 impact on other persons or entities providing the
13 same products or services or engaged in the same
14 activities that are not insured depository institu-
15 tions, wholesale financial institutions, or subsidiaries
16 or affiliates thereof, or persons or entities affiliated
17 therewith;

18 (3) effectively prevents a depository institution
19 or wholesale financial institution, or subsidiary or af-
20 filiate thereof, from engaging in insurance activities
21 authorized or permitted by this Act or any other
22 provision of Federal law; or

23 (4) conflicts with the intent of this Act gen-
24 erally to permit affiliations that are authorized or
25 permitted by Federal law between insured depository

1 institutions or wholesale financial institutions, or
2 subsidiaries or affiliates thereof, and persons and en-
3 tities engaged in the business of insurance.

4 (d) DEFINITION.—For purposes of this section, the
5 term “State” means any State of the United States, the
6 District of Columbia, any territory of the United States,
7 Puerto Rico, Guam, American Samoa, the Trust Territory
8 of the Pacific Islands, the Virgin Islands, and the North-
9 ern Mariana Islands.

10 **SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHOR-**
11 **IZED.**

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

15 “(2) REGULATIONS.—A bank holding company
16 organized as a mutual holding company shall be reg-
17 ulated on terms, and shall be subject to limitations,
18 comparable to those applicable to any other bank
19 holding company.”.

20 **SEC. 106. PROHIBITION ON DEPOSIT PRODUCTION OF-**
21 **FICES.**

22 (a) IN GENERAL.—Section 109(d) of the Riegle-Neal
23 Interstate Banking and Branching Efficiency Act of 1994
24 (12 U.S.C. 1835a(d)) is amended—

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

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

5 “(XI) assets that are derived
6 from, or incidental to, consumer lend-
7 ing activities in which institutions de-
8 scribed in section 2(c)(2)(F) or sec-
9 tion 2(c)(2)(H) are permitted to en-
10 gage;”.

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

13 “(B) any bank subsidiary of such company
14 engages in any activity in which the bank was
15 not lawfully engaged as of March 5, 1987, un-
16 less the bank is well managed and well capital-
17 ized;

18 “(C) any bank subsidiary of such company
19 both—

20 “(i) accepts demand deposits or de-
21 posits that the depositor may withdraw by
22 check or similar means for payment to
23 third parties; and

24 “(ii) engages in the business of mak-
25 ing commercial loans (and, for purposes of

1 this clause, loans made in the ordinary
2 course of a credit card operation shall not
3 be treated as commercial loans); or

4 “(D) after the date of the enactment of the
5 Competitive Equality Amendments of 1987, any
6 bank subsidiary of such company permits any
7 overdraft (including any intraday overdraft), or
8 incurs any such overdraft in such bank’s ac-
9 count at a Federal reserve bank, on behalf of
10 an affiliate, other than an overdraft described
11 in paragraph (3).”; and

12 (3) by striking paragraphs (3) and (4) and in-
13 serting the following new paragraphs:

14 “(3) PERMISSIBLE OVERDRAFTS DESCRIBED.—
15 For purposes of paragraph (2)(D), an overdraft is
16 described in this paragraph if—

17 “(A) such overdraft results from an inad-
18 vertent computer or accounting error that is be-
19 yond the control of both the bank and the affili-
20 ate; or

21 “(B) such overdraft—

22 “(i) is permitted or incurred on behalf
23 of an affiliate which is monitored by, re-
24 ports to, and is recognized as a primary

1 dealer by the Federal Reserve Bank of
2 New York; and

3 “(ii) is fully secured, as required by
4 the Board, by bonds, notes, or other obli-
5 gations which are direct obligations of the
6 United States or on which the principal
7 and interest are fully guaranteed by the
8 United States or by securities and obliga-
9 tions eligible for settlement on the Federal
10 Reserve book entry system.

11 “(C) such overdraft—

12 “(i) is permitted or incurred by, or on
13 behalf of an affiliate that is engaged pre-
14 dominantly in activities that are financial
15 in nature and is incurred solely in connec-
16 tion with an activity that is financial in na-
17 ture as defined in section 6(c) of the Bank
18 Holding Company Act; and

19 “(ii) does not cause the bank to vio-
20 late any provision of section 23A or 23B of
21 the Federal Reserve Act, either directly, in
22 the case of a bank that is a member of the
23 Federal Reserve System, or by virtue of
24 section 18(j) of the Federal Deposit Insur-

1 ance Act, in the case of a bank that is not
2 a member of the Federal Reserve System.

3 “(4) DIVESTITURE IN CASE OF LOSS OF EX-
4 EMPTION.—If any company described in paragraph
5 (1) fails to qualify for the exemption provided under
6 such paragraph by operation of paragraph (2), such
7 exemption shall cease to apply to such company and
8 such company shall divest control of each bank it
9 controls before the end of the 180-day period begin-
10 ning on the date that the company receives notice
11 from the Board that the company has failed to con-
12 tinue to qualify for such exemption, unless before
13 the end of such 180-day period, the company has—

14 “(A) corrected the condition or ceased the
15 activity that caused the company to fail to con-
16 tinue to qualify for the exemption; and

17 “(B) implemented procedures that are rea-
18 sonably adapted to avoid the reoccurrence of
19 such condition or activity.”.

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

1 **SEC. 109. REPORTS ON ONGOING FTC STUDY OF CON-**
2 **SUMER PRIVACY ISSUES.**

3 With respect to the ongoing multistage study being
4 conducted by the Federal Trade Commission on consumer
5 privacy issues, the Commission shall submit to the Con-
6 gress an interim report on the findings and conclusions
7 of the Commission, together with such recommendations
8 for legislative and administrative action as the Commis-
9 sion determines to be appropriate, at the conclusion of
10 each stage of such study and a final report at the conclu-
11 sion of the study.

12 **SEC. 110. GAO STUDY OF ECONOMIC IMPACT ON COMMU-**
13 **NITY BANKS AND OTHER SMALL FINANCIAL**
14 **INSTITUTIONS.**

15 (a) **STUDY REQUIRED.**—The Comptroller General of
16 the United States shall conduct a study of the projected
17 economic impact that the enactment of this Act will have
18 on financial institutions which have total assets of
19 \$100,000,000 or less.

20 (b) **REPORT TO THE CONGRESS.**—The Comptroller
21 General of the United States shall submit a report to the
22 Congress before the end of the 6-month period beginning
23 on the date of the date of the enactment of this Act con-
24 taining the findings and conclusions of the Comptroller
25 General with regard to the study required under sub-
26 section (a) and such recommendations for legislative or

1 administrative action as the Comptroller General may de-
 2 termine to be appropriate.

3 **Subtitle B—Streamlining Super-**
 4 **vision of Financial Holding**
 5 **Companies**

6 **SEC. 111. STREAMLINING FINANCIAL HOLDING COMPANY**
 7 **SUPERVISION.**

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

10 “(c) REPORTS AND EXAMINATIONS.—

11 “(1) REPORTS.—

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

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

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

25 “(B) USE OF EXISTING REPORTS.—

1 “(i) IN GENERAL.—The Board shall,
2 to the fullest extent possible, accept re-
3 ports in fulfillment of the Board’s report-
4 ing requirements under this paragraph
5 that a bank holding company or any sub-
6 sidiary of such company has provided or
7 been required to provide to other Federal
8 and State supervisors or to appropriate
9 self-regulatory organizations.

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

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

23 “(iv) REPORTS FILED WITH OTHER
24 AGENCIES.—In the event the Board re-
25 quires a report from a functionally regu-

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

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

18 “(i) a broker or dealer registered
19 under the Securities Exchange Act of
20 1934;

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

1 investment adviser and activities incidental
2 to such investment advisory activities;

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

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

11 “(2) EXAMINATIONS.—

12 “(A) EXAMINATION AUTHORITY.—

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

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

24 “(I) the Board has reasonable
25 cause to believe that such subsidiary

1 is engaged in activities that pose a
2 material risk to an affiliated deposi-
3 tory institution, or

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

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

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

24 “(ii) inform the Board of—

1 “(I) the financial and operational
2 risks within the holding company sys-
3 tem that may pose a threat to the
4 safety and soundness of any subsidi-
5 ary depository institution of such
6 holding company; and

7 “(II) the systems for monitoring
8 and controlling such risks; and

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

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

18 “(i) the bank holding company; and

19 “(ii) any subsidiary of the holding
20 company that, because of—

21 “(I) the size, condition, or activi-
22 ties of the subsidiary;

23 “(II) the nature or size of trans-
24 actions between such subsidiary and
25 any depository institution which is

1 also a subsidiary of such holding com-
2 pany; or

3 “(III) the centralization of func-
4 tions within the holding company sys-
5 tem,

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

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

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

23 “(i) any registered broker or dealer by
24 or on behalf of the Securities and Ex-
25 change Commission;

1 “(ii) any registered investment adviser
2 properly registered by or on behalf of ei-
3 ther the Securities and Exchange Commis-
4 sion or any State;

5 “(iii) any licensed insurance company
6 by or on behalf of any state regulatory au-
7 thority responsible for the supervision of
8 insurance companies; and

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

12 “(3) CAPITAL.—

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

19 “(i) is in compliance with applicable
20 capital requirements of another Federal
21 regulatory authority (including the Securi-
22 ties and Exchange Commission) or State
23 insurance authority; or

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

4 “(B) RULE OF CONSTRUCTION.—Subpara-
5 graph (A) shall not be construed as preventing
6 the Board from imposing capital or capital ade-
7 quacy rules, guidelines, standards, or require-
8 ments with respect to activities of a registered
9 investment adviser other than investment advi-
10 sory activities or activities incidental to invest-
11 ment advisory activities.

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

21 “(i) a bank holding company; or

22 “(ii) controlled by a bank holding
23 company by reason of ownership by the
24 bank holding company (including through
25 all of its affiliates) of 25 percent or more

1 of the shares of the investment company,
2 where the shares owned by the bank hold-
3 ing company have a market value equal to
4 more than \$1,000,000.

5 “(4) TRANSFER OF BOARD AUTHORITY TO AP-
6 PROPRIATE FEDERAL BANKING AGENCY.—

7 “(A) IN GENERAL.—In the case of any
8 bank holding company which is not significantly
9 engaged in nonbanking activities, the Board, in
10 consultation with the appropriate Federal bank-
11 ing agency, may designate the appropriate Fed-
12 eral banking agency of the lead insured deposi-
13 tory institution subsidiary of such holding com-
14 pany as the appropriate Federal banking agen-
15 cy for the bank holding company.

16 “(B) AUTHORITY TRANSFERRED.—An
17 agency designated by the Board under subpara-
18 graph (A) shall have the same authority as the
19 Board under this Act to—

20 “(i) examine and require reports from
21 the bank holding company and any affiliate
22 of such company (other than a depository
23 institution) under section 5;

24 “(ii) approve or disapprove applica-
25 tions or transactions under section 3;

1 “(iii) take actions and impose pen-
2 alties under subsections (e) and (f) of sec-
3 tion 5 and section 8; and

4 “(iv) take actions regarding the hold-
5 ing company, any affiliate of the holding
6 company (other than a depository institu-
7 tion), or any institution-affiliated party of
8 such company or affiliate under the Fed-
9 eral Deposit Insurance Act and any other
10 statute which the Board may designate.

11 “(C) AGENCY ORDERS.—Section 9 (of this
12 Act) and section 105 of the Bank Holding
13 Company Act Amendments of 1970 shall apply
14 to orders issued by an agency designated under
15 subparagraph (A) in the same manner such sec-
16 tions apply to orders issued by the Board.

17 “(5) FUNCTIONAL REGULATION OF SECURITIES
18 AND INSURANCE ACTIVITIES.—The Board shall defer
19 to—

20 “(A) the Securities and Exchange Commis-
21 sion with regard to all interpretations of, and
22 the enforcement of, applicable Federal securi-
23 ties laws (and rules, regulations, orders, and
24 other directives issued thereunder) relating to
25 the activities, conduct, and operations of reg-

1 istered brokers, dealers, investment advisers,
2 and investment companies;

3 “(B) the relevant State securities authori-
4 ties with regard to all interpretations of, and
5 the enforcement of, applicable State securities
6 laws (and rules, regulations, orders, and other
7 directives issued thereunder) relating to the ac-
8 tivities, conduct, and operations of registered
9 brokers, dealers, and investment advisers; and

10 “(C) the relevant State insurance authori-
11 ties with regard to all interpretations of, and
12 the enforcement of, applicable State insurance
13 laws (and rules, regulations, orders, and other
14 directives issued thereunder) relating to the ac-
15 tivities, conduct, and operations of insurance
16 companies and insurance agents.”.

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

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

1 holding company but not any requirement to file an appli-
2 cation to acquire a bank pursuant to section 3.”.

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

6 (1) by striking “Financial Institutions Super-
7 visory Act of 1966, order” and inserting “Financial
8 Institutions Supervisory Act of 1966, at the election
9 of the bank holding company—

10 “(A) order”; and

11 (2) by striking “shareholders of the bank hold-
12 ing company. Such distribution” and inserting
13 “shareholders of the bank holding company; or

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

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

1 **SEC. 113. AUTHORITY OF STATE INSURANCE REGULATOR**
2 **AND SECURITIES AND EXCHANGE COMMIS-**
3 **SION.**

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

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

9 “(1) **IN GENERAL.—**Notwithstanding any other
10 provision of law, any regulation, order, or other ac-
11 tion of the Board which requires a bank holding
12 company to provide funds or other assets to a sub-
13 sidiary insured depository institution shall not be ef-
14 fective nor enforceable if—

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

17 “(i) a bank holding company that is
18 an insurance company or is a broker or
19 dealer registered under the Securities Ex-
20 change Act of 1934; or

21 “(ii) an affiliate of the depository in-
22 stitution which is an insurance company or
23 a broker or dealer registered under such
24 Act; and

25 “(B) the State insurance authority for the
26 insurance company or the Securities and Ex-

1 change Commission for the registered broker or
2 dealer, as the case may be, determines in writ-
3 ing sent to the holding company and the Board
4 that the holding company shall not provide such
5 funds or assets because such action would have
6 a material adverse effect on the financial condi-
7 tion of the insurance company or the broker or
8 dealer, as the case may be.

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

22 “(3) DIVESTITURE IN LIEU OF OTHER AC-
23 TION.—If the Board receives a notice described in
24 paragraph (1)(B) from a State insurance authority
25 or the Securities and Exchange Commission with re-

1 gard to a bank holding company or affiliate referred
2 to in that paragraph, the Board may order the bank
3 holding company to divest the insured depository in-
4 stitution not later than 180 days after receiving the
5 notice, or such longer period as the Board deter-
6 mines consistent with the safe and sound operation
7 of the insured depository institution.

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

19 **SEC. 114. PRUDENTIAL SAFEGUARDS.**

20 Section 5 of the Bank Holding Company Act of 1956
21 (12 U.S.C. 1844) is amended by inserting after subsection
22 (g) (as added by section 113 of this subtitle) the following
23 new subsection:

24 “(h) PRUDENTIAL SAFEGUARDS.—

1 “(1) IN GENERAL.—The Board may, by regula-
2 tion or order, impose restrictions or requirements on
3 relationships or transactions between a depository
4 institution subsidiary of a bank holding company
5 and any affiliate of such depository institution (other
6 than a subsidiary of such institution) which the
7 Board finds is consistent with the public interest,
8 the purposes of this Act, the Financial Services Act
9 of 1998, the Federal Reserve Act, and other Federal
10 law applicable to depository institution subsidiaries
11 of bank holding companies and the standards in
12 paragraph (2).

13 “(2) STANDARDS.—The Board may exercise au-
14 thority under paragraph (1) if the Board finds that
15 such action would—

16 “(A) avoid any significant risk to the safe-
17 ty and soundness of depository institutions or
18 any Federal deposit insurance fund;

19 “(B) enhance the financial stability of
20 bank holding companies;

21 “(C) avoid conflicts of interest or other
22 abuses;

23 “(D) enhance the privacy of customers of
24 depository institutions; or

1 “(E) promote the application of national
2 treatment and equality of competitive oppor-
3 tunity between nonbank affiliates owned or con-
4 trolled by domestic bank holding companies and
5 nonbank affiliates owned or controlled by for-
6 eign banks operating in the United States.

7 “(3) REVIEW.—The Board shall regularly—

8 “(A) review all restrictions or requirements
9 established pursuant to paragraph (1) to deter-
10 mine whether there is a continuing need for any
11 such restriction or requirement to carry out the
12 purposes of the Act, including any purpose de-
13 scribed in paragraph (2); and

14 “(B) modify or eliminate any restriction or
15 requirement the Board finds is no longer re-
16 quired for such purposes.

17 “(4) FOREIGN BANKS.—The Board may, by
18 regulation or order, impose restrictions or require-
19 ments on relationships or transactions between a
20 foreign bank and any affiliate in the United States
21 of such foreign bank that the Board finds are con-
22 sistent with the public interest, the purposes of this
23 Act, the Financial Services Act of 1998, the Federal
24 Reserve Act, and other Federal law applicable to for-

1 eign banks and their affiliates in the United States,
2 and the standards in paragraphs (2) and (3).”.

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

4 (a) EXCLUSIVE COMMISSION AUTHORITY.—

5 (1) IN GENERAL.—The Commission shall be the
6 sole Federal agency with authority to inspect and ex-
7 amine any registered investment company that is not
8 a bank holding company.

9 (2) PROHIBITION ON BANKING AGENCIES.—A

10 Federal banking agency may not inspect or examine
11 any registered investment company that is not a
12 bank holding company.

13 (b) EXAMINATION RESULTS AND OTHER INFORMA-

14 TION.—The Commission shall provide to any Federal
15 banking agency, upon request, the results of any examina-
16 tion, reports, records, or other information with respect
17 to any registered investment company to the extent nec-
18 essary for the agency to carry out its statutory responsibil-
19 ities.

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

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

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

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

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

10 **SEC. 116. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-**
11 **PERVISORY, AND ENFORCEMENT AUTHORITY**
12 **OF THE BOARD.**

13 The Bank Holding Company Act of 1956 (12 U.S.C.
14 1841 et seq.) is amended by inserting after section 10 the
15 following new section:

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

19 “(a) LIMITATION ON DIRECT ACTION.—

20 “(1) IN GENERAL.—The Board may not pre-
21 scribe regulations, issue or seek entry of orders, im-
22 pose restraints, restrictions, guidelines, require-
23 ments, safeguards, or standards, or otherwise take
24 any action under or pursuant to any provision of
25 this Act or section 8 of the Federal Deposit Insur-

1 ance Act against or with respect to a regulated sub-
2 sidiary of a bank holding company unless the action
3 is necessary to prevent or redress an unsafe or un-
4 sound practice or breach of fiduciary duty by such
5 subsidiary that poses a material risk to—

6 “(A) the financial safety, soundness, or
7 stability of an affiliated depository institution;
8 or

9 “(B) the domestic or international pay-
10 ment system.

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

18 “(b) LIMITATION ON INDIRECT ACTION.—The Board
19 may not prescribe regulations, issue or seek entry of or-
20 ders, impose restraints, restrictions, guidelines, require-
21 ments, safeguards, or standards, or otherwise take any ac-
22 tion under or pursuant to any provision of this Act or sec-
23 tion 8 of the Federal Deposit Insurance Act against or
24 with respect to a financial holding company or a wholesale
25 financial holding company where the purpose or effect of

1 doing so would be to take action indirectly against or with
2 respect to a regulated subsidiary that may not be taken
3 directly against or with respect to such subsidiary in ac-
4 cordance with subsection (a).

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

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

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

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

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

1 “(4) an insurance company or an insurance
2 agency subject to supervision by a State insurance
3 commission, agency, or similar authority; or

4 “(5) an entity subject to regulation by the Com-
5 modity Futures Trading Commission, with respect
6 to the commodities activities of such entity and ac-
7 tivities incidental to such commodities activities.”.

8 **SEC. 117. INTERAGENCY CONSULTATION.**

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

1 institutions should also share, on a confidential basis, in-
2 formation with the relevant State insurance regulators re-
3 garding transactions and relationships between depository
4 institutions and affiliated companies engaged in insurance
5 activities. The purpose of this section is to encourage this
6 coordination and confidential sharing of information, and
7 to thereby improve both the efficiency and the quality of
8 the supervision of financial holding companies and their
9 affiliated depository institutions and companies engaged
10 in insurance activities.

11 (b) EXAMINATION RESULTS AND OTHER INFORMA-
12 TION.—

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

1 the State insurance regulator to administer and en-
2 force applicable State insurance laws.

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

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

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

1 (B) is an affiliate of an insured depository
2 institution, wholesale financial institution, or fi-
3 nancial holding company.

4 (c) CONSULTATION.—Before making any determina-
5 tion relating to the initial affiliation of, or the continuing
6 affiliation of, an insured depository institution, wholesale
7 financial institution, or financial holding company with a
8 company engaged in insurance activities, the appropriate
9 Federal banking agency shall consult with the appropriate
10 State insurance regulator of such company and take the
11 views of such insurance regulator into account in making
12 such determination.

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

19 (e) CONFIDENTIALITY AND PRIVILEGE.—

20 (1) CONFIDENTIALITY.—The appropriate Fed-
21 eral banking agency shall not provide any informa-
22 tion or material that is entitled to confidential treat-
23 ment under applicable Federal banking agency regu-
24 lations, or other applicable law, to a State insurance
25 regulator unless such regulator agrees to maintain

1 the information or material in confidence and to
2 take all reasonable steps to oppose any effort to se-
3 cure disclosure of the information or material by the
4 regulator. The appropriate Federal banking agency
5 shall treat as confidential any information or mate-
6 rial obtained from a State insurance regulator that
7 is entitled to confidential treatment under applicable
8 State regulations, or other applicable law, and take
9 all reasonable steps to oppose any effort to secure
10 disclosure of the information or material by the Fed-
11 eral banking agency.

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

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

20 (1) APPROPRIATE FEDERAL BANKING AGENCY;
21 INSURED DEPOSITORY INSTITUTION.—The terms
22 “appropriate Federal banking agency” and “insured
23 depository institution” have the same meanings as
24 in section 3 of the Federal Deposit Insurance Act.

1 (2) BOARD; FINANCIAL HOLDING COMPANY;
2 AND WHOLESALE FINANCIAL INSTITUTION.—The
3 terms “Board”, “financial holding company”, and
4 “wholesale financial institution” have the same
5 meanings as in section 2 of the Bank Holding Com-
6 pany Act of 1956.

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

8 Notwithstanding any other provision of law, the pro-
9 visions of—

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

17 (2) section 10A of the Bank Holding Company
18 Act of 1956 (as added by this Act) that limit what-
19 ever authority the Board might otherwise have to
20 take direct or indirect action with respect to bank
21 holding companies and their nonbank subsidiaries,
22 shall also limit whatever authority that the Comptroller
23 of the Currency and the Director of the Office of Thrift
24 Supervision might otherwise have under any statute to re-
25 quire reports, make examinations, impose capital require-

1 ments or take any other direct or indirect action with re-
 2 spect to bank holding companies and their nonbank sub-
 3 sidiaries (including nonbank subsidiaries of depository in-
 4 stitutions), subject to the same standards and require-
 5 ments as are applicable to the Board under such provi-
 6 sions.

7 **SEC. 119. PROHIBITION ON FDIC ASSISTANCE TO AFFILI-**
 8 **ATES AND SUBSIDIARIES.**

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

15 **Subtitle C—Subsidiaries of**
 16 **National Banks**

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

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

22 (1) by redesignating section 5136A as section
 23 5136C; and

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

1 **“SEC. 5136A. FINANCIAL SUBSIDIARIES OF NATIONAL**
2 **BANKS.**

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

5 “(1) IN GENERAL.—A subsidiary of a national
6 bank may engage in an activity that is not permis-
7 sible for a national bank to engage in directly, or is
8 not expressly authorized by other Federal law for a
9 subsidiary of a national bank, but only if—

10 “(A) the activity is a financial activity (as
11 defined in paragraph (4));

12 “(B) the national bank is well capitalized,
13 well managed, during the most recent examina-
14 tion of the bank by the appropriate Federal
15 Banking agency;

16 “(C) all depository institution affiliates of
17 the national bank are well capitalized, well
18 managed, during the most recent examination
19 of each such institution by the appropriate Fed-
20 eral banking agency; and

21 “(D) the bank has received the approval of
22 the Comptroller of the Currency to engage in
23 that activity.

24 “(2) NO EFFECT ON EDGE ACT OR AGREEMENT
25 CORPORATIONS.—Paragraph (1) shall not apply with
26 respect to any subsidiary that is a corporation orga-

1 nized under section 25A of the Federal Reserve Act
2 or a corporation operating under section 25 of the
3 Federal Reserve Act.

4 “(3) OTHER SUBSIDIARIES PROHIBITED.—A
5 national bank may not control any subsidiary other
6 than—

7 “(A) a financial subsidiary;

8 “(B) a subsidiary that engages in activities
9 that are permissible for a national bank to en-
10 gage in directly; or

11 “(C) a subsidiary that a national bank
12 may control pursuant to section 25 or 25A of
13 the Federal Reserve Act, the Bank Service
14 Company Act, or any other provision of Federal
15 law that expressly, by its terms, authorizes na-
16 tional banks to control subsidiaries.

17 “(4) FINANCIAL ACTIVITY DEFINED.—For pur-
18 poses of this section and subject to paragraph (5),
19 the term ‘financial activity’ means any 1 or more of
20 the following:

21 “(A) Receiving money subject to a deposit
22 or other repayment obligation.

23 “(B) Lending, exchanging, transferring,
24 investing, or safeguarding money or other fi-
25 nancial assets.

1 “(C) Acting as agent or broker in the
2 placement of annuities contracts or contracts
3 insuring, guaranteeing, or indemnifying against
4 loss, harm, damage, illness, disability, or death.

5 “(D) Providing financial, investment, or
6 economic advisory or information services, in-
7 cluding advising an investment company (as de-
8 fined in section 3 of the Investment Company
9 Act of 1940).

10 “(E) Issuing or selling instruments rep-
11 resenting interests in pools of assets permissible
12 for a bank to hold directly.

13 “(F) Underwriting, dealing in, or making a
14 market in securities.

15 “(G) Engaging in any activity that was, by
16 regulation or order, permissible for a bank hold-
17 ing company pursuant to section 4(c)(8) of the
18 Bank Holding Company Act of 1956 (as in ef-
19 fect on the day before the date of enactment of
20 the Financial Services Act of 1998).

21 “(H) Engaging, in the United States, in
22 any activity that—

23 “(i) a bank holding company may en-
24 gage in outside of the United States; and

1 “(ii) the Board of Governors of the
2 Federal Reserve System determined, under
3 regulations issued pursuant to section
4 4(c)(13) of the Bank Holding Company
5 Act of 1956 (as in effect on the day before
6 the date of enactment of the Financial
7 Services Act of 1998) to be used in connec-
8 tion with the transaction of banking or
9 other financial operations abroad.

10 “(I) Owning shares of a company to the
11 extent permissible under section 4(e)(7) of the
12 Bank Holding Company Act of 1956 (as in ef-
13 fect on the day before the date of enactment of
14 the Financial Services Act of 1998).

15 “(J) Directly or indirectly acquiring or
16 controlling, whether as principal, on behalf of 1
17 or more entities (including entities other than a
18 depository institution or subsidiary of a deposi-
19 tory institution, that the bank holding company
20 controls) or otherwise, shares, assets, or owner-
21 ship interests (including without limitation debt
22 or equity securities, partnership interests, trust
23 certificates or other instruments representing
24 ownership) of a company or other entity, wheth-
25 er or not constituting control of such company

1 or entity, engaged in any activity not authorized
2 pursuant to this section if—

3 “(i) the shares, assets, or ownership
4 interests are not acquired or held by a de-
5 pository institution or subsidiary of a de-
6 pository institution;

7 “(ii) such shares, assets, or ownership
8 interests are acquired and held by a securi-
9 ties affiliate or an affiliate thereof as part
10 of a bona fide underwriting or merchant
11 banking activity, including investment ac-
12 tivities engaged in for the purpose of ap-
13 preciation and ultimate resale or disposi-
14 tion of the investment;

15 “(iii) such shares, assets, or owner-
16 ship interests, are held only for such a pe-
17 riod of time as will permit the sale or dis-
18 position thereof on a reasonable basis con-
19 sistent with the nature of the activities de-
20 scribed in clause (ii); and

21 “(iv) during the period such shares,
22 assets, or ownership interests are held, the
23 bank holding company does not actively
24 participate in the day to day management
25 or operation of such company or entity, ex-

1 cept insofar as necessary to achieve the ob-
2 jectives of clause (ii).

3 “(K) Engaging in any activity determined
4 by regulation or order to be financial in nature,
5 or related to a financial activity pursuant to
6 section 6(c)(1) of the Bank Holding Company
7 Act of 1956.

8 “(L) To the same extent to which the
9 Board has, by regulation or order, defined the
10 activities described in clauses (i) through (iii) to
11 be financial in nature pursuant to section
12 6(c)(4) of the Bank Holding Company Act of
13 1956 with respect to bank holding companies—

14 “(i) lending, exchanging, transferring,
15 investing for others, or safeguarding finan-
16 cial assets, other than money or securities;

17 “(ii) providing any device or other in-
18 strumentality for transferring money or
19 other financial assets; or

20 “(iii) arranging, effecting, or facilitat-
21 ing any financial transaction for the ac-
22 count of a third party.

23 “(5) OTHER DEFINITIONS.—For purposes of
24 this section, the following definitions shall apply:

1 “(A) FINANCIAL SUBSIDIARY.—The term
2 ‘financial subsidiary’ means a company that is
3 a subsidiary of a national bank that engages,
4 directly or indirectly, in financial activities, as
5 defined in paragraph (4), in addition to any
6 other activities that may be engaged in by a
7 subsidiary of a national bank in accordance
8 with subparagraphs (B) and (C) of paragraph
9 (3).

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

13 “(C) WELL CAPITALIZED.—The term ‘well
14 capitalized’ has the same meaning as in section
15 38 of the Federal Deposit Insurance Act, except
16 that, for purposes of this section, the Comptrol-
17 ler of the Currency shall have exclusive jurisdic-
18 tion to determine whether a national bank is
19 well capitalized.

20 “(D) WELL MANAGED.—The term ‘well
21 managed’ means—

22 “(i) in the case of a bank that has
23 been examined, unless otherwise deter-
24 mined in writing by the Comptroller of the
25 Currency, the achievement of—

1 “(I) a composite rating of 1 or 2
2 under the Uniform Financial Institu-
3 tions Rating System (or an equivalent
4 rating under an equivalent rating sys-
5 tem) in connection with the most re-
6 cent examination or subsequent review
7 of the bank; and

8 “(II) at least a rating of 2 for
9 management, if that rating is given;
10 or

11 “(ii) in the case of a national bank
12 that has not been examined, the existence
13 and use of managerial resources that the
14 Comptroller determines are satisfactory.

15 “(6) INSURANCE UNDERWRITING AND DIRECT
16 INVESTMENT.—Except as provided in sections 304
17 and 306 of the Financial Services Act of 1998, no
18 subsidiary of a national bank (other than a corpora-
19 tion organized under section 25A of the Federal Re-
20 serve Act or a corporation operating under section
21 25 of the Federal Reserve Act) may underwrite non-
22 credit-related insurance, engage in real estate invest-
23 ment or development activities (except to the extent
24 that a national bank is specifically authorized by
25 statute to engage in any such activity directly).

1 “(7) DEFINITION.—For purposes of this sub-
2 section, references to a ‘bank holding company’ in
3 section 6(b)(3)(B)(i) of the Bank Holding Company
4 Act of 1956 shall be construed to be references to
5 a national bank.

6 “(b) CAPITAL DEDUCTION REQUIRED.—

7 “(1) IN GENERAL.—In determining compliance
8 with applicable capital standards, if a subsidiary is
9 engaged as principal in any financial activities that
10 are not otherwise permissible for a subsidiary of a
11 national bank under subparagraph (B) or (C) of
12 subsection (a)(3)—

13 “(A) the amount of the equity investment
14 of a national bank in a financial subsidiary
15 shall be deducted from the assets and tangible
16 equity of the national bank and the national
17 bank shall remain well capitalized after such
18 deduction; and

19 “(B) the assets and liabilities of the finan-
20 cial subsidiary shall not be consolidated with
21 those of the national bank.

22 “(2) REGULATIONS REQUIRED.—The Comptrol-
23 ler of the Currency shall prescribe regulations imple-
24 menting this subsection.

1 “(c) TREATMENT OF CERTAIN OBLIGATIONS.—Not-
2 withstanding any other provision of law (including any law
3 relating to insurance), no obligation of a financial subsidi-
4 ary of a national bank arising more than 270 days after
5 the date of enactment of the Financial Services Act of
6 1998, may be charged against such bank by reason of any
7 ruling, determination, or judgment disregarding the sepa-
8 rate corporate identity or limited liability of the national
9 bank or the financial subsidiary.

10 “(d) SAFEGUARDS FOR THE BANK.—A national bank
11 that establishes or maintains a financial subsidiary shall
12 assure that—

13 “(1) the procedures of the bank for identifying
14 and managing financial and operational risks within
15 the bank and financial subsidiaries of the bank ade-
16 quately protect the bank from such risks;

17 “(2) the bank has, for the protection of the
18 bank, reasonable policies and procedures to preserve
19 the separate corporate identity and limited liability
20 of the bank and the subsidiaries of the bank; and

21 “(3) the bank complies with this section.

22 “(e) NATIONAL BANKS THAT DO NOT COMPLY
23 WITH THIS SECTION.—

24 “(1) NOTICE.—If the Comptroller of the Cur-
25 rency determines that a national bank that controls

1 a financial subsidiary, or a depository institution af-
2 filiate of such national bank, does not continue to
3 meet the requirements of subsection (a), the Comp-
4 troller shall give notice to the bank to that effect,
5 describing the conditions giving rise to the notice.

6 “(2) AGREEMENT TO CORRECT CONDITIONS RE-
7 QUIRED.—

8 “(A) CONTENT OF AGREEMENT.—Not
9 later than 45 days after the date of the receipt
10 by a depository institution of a notice given
11 under paragraph (1) (or such additional period
12 as the Comptroller may permit), the depository
13 institution failing to meet the requirements of
14 subsection (a) shall execute an agreement with
15 the appropriate Federal banking agency for
16 such institution to correct the conditions de-
17 scribed in the notice.

18 “(B) COMPTROLLER MAY IMPOSE LIMITA-
19 TIONS.—Until the conditions giving rise to a
20 notice under paragraph (1) are corrected, the
21 Comptroller may impose such limitations on the
22 conduct of the business of the national bank or
23 subsidiary of the bank as the Comptroller deter-
24 mines to be appropriate under the cir-
25 cumstances.

1 “(3) FAILURE TO CORRECT.—If the conditions
2 described in a notice under paragraph (1) are not
3 corrected within 180 days after the date on which
4 the bank receives the notice, the Comptroller may
5 require, under such terms and conditions as may be
6 imposed by the Comptroller and subject to such ex-
7 tensions of time as may be granted in the discretion
8 of the Comptroller—

9 “(A) the national bank to divest control of
10 each subsidiary engaged in an activity that is
11 not permissible for the bank to engage in
12 directly; or

13 “(B) each subsidiary of the national bank
14 to cease any activity that is not permissible for
15 the bank to engage in directly.

16 “(f) COMPARABLE AUTHORITY.—

17 “(1) IN GENERAL.—A national bank may hold
18 an interest in a company which is wholly-owned by
19 insured depository institutions or subsidiaries there-
20 of and which engages in those agency activities per-
21 mitted to financial subsidiaries of national banks
22 pursuant to this section, subject to the conditions set
23 forth in subsections (a) and (e); and

24 “(2) LIMITATION ON INFERENCES.—Nothing in
25 this subsection shall be construed to create any in-

1 ference regarding any authority of a national bank
 2 exercised pursuant to any other provision of federal
 3 law.”.

4 **SEC. 122. MISREPRESENTATIONS REGARDING DEPOSITORY**
 5 **INSTITUTION LIABILITY FOR OBLIGATIONS**
 6 **OF AFFILIATES.**

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

10 **“§ 1008. Misrepresentations regarding financial insti-**
 11 **tution liability for obligations of affiliates**

12 “(a) IN GENERAL.—No institution-affiliated party of
 13 an insured depository institution or institution-affiliated
 14 party of a subsidiary or affiliate of an insured depository
 15 institution shall fraudulently represent that the institution
 16 is or will be liable for any obligation of a subsidiary or
 17 other affiliate of the institution.

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

21 “(c) INSTITUTION-AFFILIATED PARTY DEFINED.—
 22 For purposes of this section, the term ‘institution-affili-
 23 ated party’ with respect to a subsidiary or affiliate has
 24 the same meaning as in section 3 of the Federal Deposit
 25 Insurance Act, except that references to an insured depository

1 tory institution shall be deemed to be references to a sub-
 2 sidiary or affiliate of an insured depository institution.

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

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

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

11 **SEC. 123. REPEAL OF STOCK LOAN LIMIT IN FEDERAL RE-**
 12 **SERVE ACT.**

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

16 **SEC. 124. RULES APPLICABLE TO FINANCIAL SUBSIDI-**
 17 **ARIES.**

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

21 (1) by redesignating subsection (e) as sub-
 22 section (f); and

23 (2) by inserting after subsection (d), the follow-
 24 ing new subsection:

1 “(e) RULES RELATING TO BANKS WITH FINANCIAL
2 SUBSIDIARIES.—

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

6 “(A) is a subsidiary of a bank (other than
7 a corporation organized under section 25A or a
8 corporation operating under section 25); and

9 “(B) is engaged in a financial activity (as
10 defined in section 5136A(a)(4) of the Revised
11 Statutes of the United States) that is not other-
12 wise a permissible activity for a subsidiary of a
13 national bank under subparagraph (B) or (C)
14 of section 5136A(a)(3) of the Revised Statutes
15 of the United States.

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

1 “(A) shall be an affiliate of the bank and
2 any other subsidiary of the bank that is not a
3 financial subsidiary; and

4 “(B) shall not be treated as a subsidiary of
5 the bank.

6 “(3) APPLICATION TO TRANSACTIONS BETWEEN
7 FINANCIAL SUBSIDIARY AND NONBANK AFFILI-
8 ATES.—

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

15 “(B) CERTAIN AFFILIATES EXCLUDED.—
16 For purposes of subparagraph (A) of this para-
17 graph, and notwithstanding paragraph (4), the
18 term ‘affiliate’ does not include a bank, or a
19 subsidiary of a bank, that is engaged exclusively
20 in activities permissible for a national bank to
21 engage in directly.

22 “(4) EQUITY INVESTMENTS EXCLUDED SUB-
23 JECT TO THE APPROVAL OF THE BANKING AGEN-
24 CY.—Subsection (a)(1) shall not apply so as to limit
25 the equity investment of a bank in a financial sub-

1 subsidiary of that bank, except that any investment that
2 exceeds the amount of a dividend that the bank
3 could pay at the time of the investment without ob-
4 taining the prior approval of the appropriate Federal
5 banking agency (as defined in section 3 of the Fed-
6 eral Deposit Insurance Act) and is in excess of the
7 limitation that would apply under subsection (a)(1),
8 but for this paragraph, may be made only with the
9 approval of that appropriate Federal banking agency
10 with respect to that bank.”.

11 (b) TREATMENT OF FINANCIAL SUBSIDIARIES
12 UNDER OTHER PROVISIONS OF LAW.—

13 (1) BANK HOLDING COMPANY ACT AMEND-
14 MENTS OF 1970.—Section 106(a) of the Bank Hold-
15 ing Company Act Amendments of 1970 (12 U.S.C.
16 1971) is amended by adding at the end the follow-
17 ing: “For purposes of this section, a financial sub-
18 sidiary (as defined in section 5136A(a)(5)(A) of the
19 Revised Statutes of the United States or referenced
20 in the 20th undesignated paragraph of section 9 of
21 the Federal Reserve Act or section 24(d)(3)(A) of
22 the Federal Deposit Insurance Act) shall be deemed
23 to be a subsidiary of a bank holding company, and
24 not a subsidiary of a bank.”; and

1 pany, or wholesale financial holding company (as
2 those terms are defined in section 6).”.

3 **Subtitle E—Preservation of FTC**
4 **Authority**

5 **SEC. 141. AMENDMENT TO THE BANK HOLDING COMPANY**
6 **ACT OF 1956 TO MODIFY NOTIFICATION AND**
7 **POST-APPROVAL WAITING PERIOD FOR SEC-**
8 **TION 3 TRANSACTIONS.**

9 Section 11(b)(1) of the Bank Holding Company Act
10 of 1956 (12 U.S.C. 1849(b)(1)) is amended by inserting
11 “and, if the transaction also involves an acquisition under
12 section 4 or section 6, the Board shall also notify the Fed-
13 eral Trade Commission of such approval” before the pe-
14 riod at the end of the first sentence.

15 **SEC. 142. INTERAGENCY DATA SHARING.**

16 To the extent not prohibited by other law, the Comp-
17 troller of the Currency, the Director of the Office of Thrift
18 Supervision, the Federal Deposit Insurance Corporation,
19 and the Board of Governors of the Federal Reserve Sys-
20 tem shall make available to the Attorney General and the
21 Federal Trade Commission any data in the possession of
22 any such banking agency that the antitrust agency deems
23 necessary for antitrust review of any transaction requiring
24 notice to any such antitrust agency or the approval of such
25 agency under section 3, 4, or 6 of the Bank Holding Com-

1 pany Act of 1956, section 18(e) of the Federal Deposit
2 Insurance Act, the National Bank Consolidation and
3 Merger Act, section 10 of the Home Owners' Loan Act,
4 or the antitrust laws.

5 **SEC. 143. CLARIFICATION OF STATUS OF SUBSIDIARIES**
6 **AND AFFILIATES.**

7 (a) CLARIFICATION OF FEDERAL TRADE COMMIS-
8 SION JURISDICTION.—Any person which directly or indi-
9 rectly controls, is controlled directly or indirectly by, or
10 is directly or indirectly under common control with, any
11 bank or savings association (as such terms are defined in
12 section 3 of the Federal Deposit Insurance Act) and is
13 not itself a bank or savings association shall not be
14 deemed to be a bank or savings association for purposes
15 of the Federal Trade Commission Act or any other law
16 enforced by the Federal Trade Commission.

17 (b) SAVINGS PROVISION.—No provision of this sec-
18 tion shall be construed as restricting the authority of any
19 Federal banking agency (as defined in section 3 of the
20 Federal Deposit Insurance Act) under any Federal bank-
21 ing law, including section 8 of the Federal Deposit Insur-
22 ance Act.

23 (c) HART-SCOTT-RODINO AMENDMENT.—Section
24 7A(e)(7) of the Clayton Act (15 U.S.C. 18a(e)(7)) is
25 amended by inserting before the semicolon at the end

1 thereof the following: “, except that a portion of a trans-
2 action is not exempt under this paragraph if such portion
3 of the transaction (A) requires notice under section 6 of
4 the Bank Holding Company Act of 1956; and (B) does
5 not require approval under section 3 or 4 of the Bank
6 Holding Company Act of 1956”.

7 **SEC. 144. ANNUAL GAO REPORT.**

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

14 (b) ANALYSIS.—Each report submitted under sub-
15 section (a) shall contain an analysis of—

16 (1) the positive and negative effects of affili-
17 ations between various types of financial companies,
18 and of acquisitions pursuant to this Act and the
19 amendments made by this Act to other provisions of
20 law, including any positive or negative effects on
21 consumers, area markets, and submarkets thereof or
22 on registered securities brokers and dealers which
23 have been purchased by depository institutions or
24 depository institution holding companies;

1 (2) the changes in business practices and the
 2 effects of any such changes on the availability of
 3 venture capital, consumer credit, and other financial
 4 services or products and the availability of capital
 5 and credit for small businesses; and

6 (3) the acquisition patterns among depository
 7 institutions, depository institution holding compa-
 8 nies, securities firms, and insurance companies in-
 9 cluding acquisitions among the largest 20 percent of
 10 firms and acquisitions within regions or other lim-
 11 ited geographical areas.

12 **Subtitle F—Applying the Principles**
 13 **of National Treatment and**
 14 **Equality of Competitive Oppor-**
 15 **tunity to Foreign Banks and**
 16 **Foreign Financial Institutions**

17 **SEC. 151. APPLYING THE PRINCIPLES OF NATIONAL TREAT-**
 18 **MENT AND EQUALITY OF COMPETITIVE OP-**
 19 **PORTUNITY TO FOREIGN BANKS THAT ARE**
 20 **FINANCIAL HOLDING COMPANIES.**

21 Section 8(c) of the International Banking Act of
 22 1978 (12 U.S.C. 3106(e)) is amended by adding at the
 23 end the following new paragraph:

24 “(3) TERMINATION OF GRANDFATHERED
 25 RIGHTS.—

1 “(A) IN GENERAL.—If any foreign bank or
2 foreign company files a declaration under sec-
3 tion 6(b)(1)(E) or which receives a determina-
4 tion under section 10(d)(1) of the Bank Hold-
5 ing Company Act of 1956, any authority con-
6 ferred by this subsection on any foreign bank or
7 company to engage in any activity which the
8 Board has determined to be permissible for fi-
9 nancial holding companies under section 6 of
10 such Act shall terminate immediately.

11 “(B) RESTRICTIONS AND REQUIREMENTS
12 AUTHORIZED.—If a foreign bank or company
13 that engages, directly or through an affiliate
14 pursuant to paragraph (1), in an activity which
15 the Board has determined to be permissible for
16 financial holding companies under section 6 of
17 the Bank Holding Company Act of 1956 has
18 not filed a declaration with the Board of its sta-
19 tus as a financial holding company under such
20 section or received a determination under sec-
21 tion 10(d)(1) by the end of the 2-year period
22 beginning on the date of enactment of the Fi-
23 nancial Services Act of 1998, the Board, giving
24 due regard to the principle of national treat-
25 ment and equality of competitive opportunity,

1 may impose such restrictions and requirements
 2 on the conduct of such activities by such foreign
 3 bank or company as are comparable to those
 4 imposed on a financial holding company orga-
 5 nized under the laws of the United States, in-
 6 cluding a requirement to conduct such activities
 7 in compliance with any prudential safeguards
 8 established under section 5(h) of the Bank
 9 Holding Company Act of 1956.”.

10 **SEC. 152. APPLYING THE PRINCIPLES OF NATIONAL TREAT-**
 11 **MENT AND EQUALITY OF COMPETITIVE OP-**
 12 **PORTUNITY TO FOREIGN BANKS AND FOR-**
 13 **EIGN FINANCIAL INSTITUTIONS THAT ARE**
 14 **WHOLESALE FINANCIAL INSTITUTIONS.**

15 Section 8A of the Federal Deposit Insurance Act (as
 16 added by section 136(c)(2) of this Act) is amended by add-
 17 ing at the end the following new subsection:

18 “(i) **VOLUNTARY TERMINATION OF DEPOSIT INSUR-**
 19 **ANCE.**—The provisions on voluntary termination of insur-
 20 ance in this section shall apply to an insured branch of
 21 a foreign bank (including a Federal branch) in the same
 22 manner and to the same extent as they apply to an insured
 23 State bank or a national bank.”.

1 **SEC. 153. REPRESENTATIVE OFFICES.**

2 (a) DEFINITION OF “REPRESENTATIVE OFFICE”.—
 3 Section 1(b)(15) of the International Banking Act of 1978
 4 (12 U.S.C. 3101(15)) is amended by striking “State agen-
 5 cy, or subsidiary of a foreign bank” and inserting “or
 6 State agency”.

7 (b) EXAMINATIONS.—Section 10(c) of the Inter-
 8 national Banking Act of 1978 (12 U.S.C. 3107(c)) is
 9 amended by adding at the end the following: “The Board
 10 may also make examinations of any affiliate of a foreign
 11 bank conducting business in any State in which the Board
 12 deems it necessary to determine and enforce compliance
 13 with this Act, the Bank Holding Company Act of 1956
 14 (12 U.S.C. 1841 et seq.), or other applicable Federal
 15 banking law.”.

16 **Subtitle G—Federal Home Loan**
 17 **Bank System Modernization**

18 **SEC. 161. SHORT TITLE.**

19 This subtitle may be cited as the “Federal Home
 20 Loan Bank System Modernization Act of 1998”.

21 **SEC. 162. DEFINITIONS.**

22 Section 2 of the Federal Home Loan Bank Act (12
 23 U.S.C. 1422) is amended—

24 (1) in paragraph (1), by striking “term ‘Board’
 25 means” and inserting “terms ‘Finance Board’ and
 26 ‘Board’ mean”;

1 (2) by striking paragraph (3) and inserting the
2 following:

3 “(3) STATE.—The term ‘State’, in addition to
4 the States of the United States, includes the District
5 of Columbia, Guam, Puerto Rico, the United States
6 Virgin Islands, American Samoa, and the Common-
7 wealth of the Northern Mariana Islands.”; and

8 (3) by adding at the end the following new
9 paragraph:

10 “(13) COMMUNITY FINANCIAL INSTITUTION.—

11 “(A) IN GENERAL.—The term ‘community
12 financial institution’ means a member—

13 “(i) the deposits of which are insured
14 under the Federal Deposit Insurance Act;
15 and

16 “(ii) that has, as of the date of the
17 transaction at issue, less than
18 \$500,000,000 in average total assets,
19 based on an average of total assets over
20 the 3 years preceding that date.

21 “(B) ADJUSTMENTS.—The \$500,000,000
22 limit referred to in subparagraph (A)(ii) shall
23 be adjusted annually by the Finance Board,
24 based on the annual percentage increase, if any,
25 in the Consumer Price Index for all urban con-

1 sumers, as published by the Department of
2 Labor.”.

3 **SEC. 163. SAVINGS ASSOCIATION MEMBERSHIP.**

4 (a) FEDERAL HOME LOAN BANK MEMBERSHIP.—
5 Section 5(f) of the Home Owners’ Loan Act (12 U.S.C.
6 1464(f)) is amended to read as follows:

7 “(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—
8 On and after January 1, 1999, a Federal savings associa-
9 tion may become a member of the Federal Home Loan
10 Bank System, and shall qualify for such membership in
11 the manner provided by the Federal Home Loan Bank
12 Act.”.

13 (b) WITHDRAWAL.—Section 6(e) of the Federal
14 Home Loan Bank Act (12 U.S.C. 1426(e)) is amended
15 by striking “Any member other than a Federal savings
16 and loan association may withdraw” and inserting “Any
17 member may withdraw”.

18 **SEC. 164. ADVANCES TO MEMBERS; COLLATERAL.**

19 (a) IN GENERAL.—Section 10(a) of the Federal
20 Home Loan Bank Act (12 U.S.C. 1430(a)) is amended—

21 (1) by redesignating paragraphs (1) through
22 (4) as subparagraphs (A) through (D), respectively,
23 and indenting appropriately;

24 (2) by striking “(a) Each” and inserting the
25 following:

1 “(a) IN GENERAL.—

2 “(1) ALL ADVANCES.—Each”;

3 (3) by striking the second sentence and insert-
4 ing the following:

5 “(2) PURPOSES OF ADVANCES.—A long-term
6 advance may only be made for the purposes of—

7 “(A) providing funds to any member for
8 residential housing finance; and

9 “(B) providing funds to any community fi-
10 nancial institution for small businesses, agricul-
11 tural, rural development, or low-income commu-
12 nity development lending.”;

13 (4) by striking “A Bank” and inserting the fol-
14 lowing:

15 “(3) COLLATERAL.—A Bank”;

16 (5) in paragraph (3) (as so designated by para-
17 graph (4) of this subsection)—

18 (A) in subparagraph (C) (as so redesign-
19 ated by paragraph (1) of this subsection) by
20 striking “Deposits” and inserting “Cash or de-
21 posits”;

22 (B) in subparagraph (D) (as so redesign-
23 ated by paragraph (1) of this subsection), by
24 striking the second sentence; and

1 (C) by inserting after subparagraph (D)
2 (as so redesignated by paragraph (1) of this
3 subsection) the following new subparagraph:

4 “(E) Secured loans for small business, ag-
5 riculture, rural development, or low-income
6 community development, or securities represent-
7 ing a whole interest in such secured loans, in
8 the case of any community financial institu-
9 tion.”;

10 (6) in paragraph (5)—

11 (A) in the second sentence, by striking
12 “and the Board”;

13 (B) in the third sentence, by striking
14 “Board” and inserting “Federal home loan
15 bank”; and

16 (C) by striking “(5) Paragraphs (1)
17 through (4)” and inserting the following:

18 “(4) ADDITIONAL BANK AUTHORITY.—Subpara-
19 graphs (A) through (E) of paragraph (3)”;

20 (7) by adding at the end the following:

21 “(5) REVIEW OF CERTAIN COLLATERAL STAND-
22 ARDS.—The Board may review the collateral stand-
23 ards applicable to each Federal home loan bank for
24 the classes of collateral described in subparagraphs
25 (D) and (E) of paragraph (3), and may, if necessary

1 for safety and soundness purposes, require an in-
2 crease in the collateral standards for any or all of
3 those classes of collateral.

4 “(6) DEFINITIONS.—For purposes of this sub-
5 section, the terms ‘small business’, ‘agriculture’,
6 ‘rural development’, and ‘low-income community de-
7 velopment’ shall have the meanings given those
8 terms by rule or regulation of the Finance Board.”.

9 (b) CLERICAL AMENDMENT.—The section heading
10 for section 10 of the Federal Home Loan Bank Act (12
11 U.S.C. 1430) is amended to read as follows:

12 **“SEC. 10. ADVANCES TO MEMBERS.”.**

13 **SEC. 165. ELIGIBILITY CRITERIA.**

14 Section 4(a) of the Federal Home Loan Bank Act
15 (12 U.S.C. 1424(a)) is amended—

16 (1) in paragraph (2)(A), by inserting, “(other
17 than a community financial institution)” after “in-
18 stitution”; and

19 (2) by adding at the end the following new
20 paragraph:

21 “(3) LIMITED EXEMPTION FOR COMMUNITY FI-
22 NANCIAL INSTITUTIONS.—A community financial in-
23 stitution that otherwise meets the requirements of
24 paragraph (2) may become a member without regard
25 to the percentage of its total assets that is rep-

1 resented by residential mortgage loans, as described
2 in subparagraph (A) of paragraph (2).”.

3 **SEC. 166. MANAGEMENT OF BANKS.**

4 (a) **BOARD OF DIRECTORS.**—Section 7(d) of the Fed-
5 eral Home Loan Bank Act (12 U.S.C. 1427(d)) is
6 amended—

7 (1) by striking “(d) The term” and inserting
8 the following:

9 “(d) **TERMS OF OFFICE.**—The term”; and

10 (2) by striking “shall be two years”.

11 (b) **COMPENSATION.**—Section 7(i) of the Federal
12 Home Loan Bank Act (12 U.S.C. 1427(i)) is amended by
13 striking “, subject to the approval of the board”.

14 (c) **REPEAL OF SECTIONS 22A AND 27.**—The Fed-
15 eral Home Loan Bank Act (12 U.S.C. 1421 et seq.) is
16 amended by striking sections 22A (12 U.S.C. 1442a) and
17 27 (12 U.S.C. 1447).

18 (d) **SECTION 12.**—Section 12 of the Federal Home
19 Loan Bank Act (12 U.S.C. 1432) is amended—

20 (1) in subsection (a)—

21 (A) by striking “, but, except” and all that
22 follows through “ten years”;

23 (B) by striking “, subject to the approval
24 of the Board” each place that term appears;

1 (C) by striking “and, by its Board of direc-
2 tors,” and all that follows through “agent of
3 such bank,” and inserting “and, by the board
4 of directors of the bank, to prescribe, amend,
5 and repeal by-laws governing the manner in
6 which its affairs may be administered, consist-
7 ent with applicable laws and regulations, as ad-
8 ministered by the Finance Board. No officer,
9 employee, attorney, or agent of a Federal home
10 loan bank”; and

11 (D) by striking “Board of directors” each
12 place that term appears and inserting “board of
13 directors”; and

14 (2) in subsection (b), by striking “loans banks”
15 and inserting “loan banks”.

16 (e) POWERS AND DUTIES OF FEDERAL HOUSING FI-
17 NANCE BOARD.—

18 (1) ISSUANCE OF NOTICES OF VIOLATIONS.—
19 Section 2B(a) of the Federal Home Loan Bank Act
20 (12 U.S.C. 1422b(a)) is amended by adding at the
21 end the following new paragraphs:

22 “(5) To issue and serve a notice of charges
23 upon a Federal home loan bank or upon any execu-
24 tive officer or director of a Federal home loan bank
25 if, in the determination of the Finance Board, the

1 bank, executive officer, or director is engaging or
2 has engaged in, or the Finance Board has reason-
3 able cause to believe that the bank, executive officer,
4 or director is about to engage in, any conduct that
5 violates any provision of this Act or any law, order,
6 rule, or regulation or any condition imposed in writ-
7 ing by the Finance Board in connection with the
8 granting of any application or other request by the
9 bank, or any written agreement entered into by the
10 bank with the agency, in accordance with the proce-
11 dures provided in section 1371(c) of the Federal
12 Housing Enterprises Financial Safety and Sound-
13 ness Act of 1992. Such authority includes the same
14 authority to take affirmative action to correct condi-
15 tions resulting from violations or practices or to
16 limit activities of a bank or any executive officer or
17 director of a bank as appropriate Federal banking
18 agencies have to take with respect to insured deposi-
19 tory institutions under paragraphs (6) and (7) of
20 section 8(b) of the Federal Deposit Insurance Act,
21 and to have all other powers, rights, and duties to
22 enforce this Act with respect to the Federal home
23 loan banks and their executive officers and directors
24 as the Office of Federal Housing Enterprise Over-
25 sight has to enforce the Federal Housing Enter-

1 prises Financial Safety and Soundness Act of 1992,
2 the Federal National Mortgage Association Charter
3 Act, or the Federal Home Loan Mortgage Corpora-
4 tion Act with respect to the Federal housing enter-
5 prises under the Federal Housing Enterprises Fi-
6 nancial Safety and Soundness Act of 1992.

7 “(6) To address any insufficiencies in capital
8 levels resulting from the application of section 5(f)
9 of the Home Owners’ Loan Act.

10 “(7) To sue and be sued, by and through its
11 own attorneys.”.

12 (2) TECHNICAL AMENDMENT.—Section 111 of
13 Public Law 93–495 (12 U.S.C. 250) is amended by
14 inserting “Federal Housing Finance Board,” after
15 “Director of the Office of Thrift Supervision,”.

16 (f) ELIGIBILITY TO SECURE ADVANCES.—

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

20 (A) in the second sentence, by striking

21 “with the approval of the Board”; and

22 (B) in the third sentence, by striking “,
23 subject to the approval of the Board,”.

1 (2) SECTION 10.—Section 10 of the Federal
2 Home Loan Bank Act (12 U.S.C. 1430) is
3 amended—

4 (A) in subsection (c)—

5 (i) in the first sentence, by striking
6 “Board” and inserting “Federal home loan
7 bank”; and

8 (ii) in the second sentence, by striking
9 “held by” and all that follows before the
10 period;

11 (B) in subsection (d)—

12 (i) in the first sentence, by striking
13 “and the approval of the Board”; and

14 (ii) by striking “Subject to the ap-
15 proval of the Board, any” and inserting
16 “Any”; and

17 (C) in subsection (j)(1)—

18 (i) by striking “to subsidize the inter-
19 est rate on advances” and inserting “to
20 provide subsidies, including subsidized in-
21 terest rates on advances”;

22 (ii) by striking “Pursuant” and in-
23 sserting the following:

24 “(A) ESTABLISHMENT.—Pursuant”; and

1 (iii) by adding at the end the follow-
2 ing new subparagraph:

3 “(B) NONDELEGATION OF APPROVAL AU-
4 THORITY.—Subject to such regulations as the
5 Finance Board may prescribe, the board of di-
6 rectors of each Federal home loan bank may
7 approve or disapprove requests from members
8 for Affordable Housing Program subsidies, and
9 may not delegate such authority.”.

10 (g) SECTION 16.—Section 16(a) of the Federal Home
11 Loan Bank Act (12 U.S.C. 1436(a)) is amended—

12 (1) in the third sentence—

13 (A) by striking “net earnings” and insert-
14 ing “previously retained earnings or current net
15 earnings”; and

16 (B) by striking “, and then only with the
17 approval of the Federal Housing Finance
18 Board”; and

19 (2) by striking the fourth sentence.

20 (h) SECTION 18.—Section 18(b) of the Federal Home
21 Loan Bank Act (12 U.S.C. 1438(b)) is amended by strik-
22 ing paragraph (4).

1 **SEC. 167. RESOLUTION FUNDING CORPORATION.**

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

5 “(C) PAYMENTS BY FEDERAL HOME LOAN
6 BANKS.—

7 “(i) IN GENERAL.—To the extent that
8 the amounts available pursuant to sub-
9 paragraphs (A) and (B) are insufficient to
10 cover the amount of interest payments,
11 each Federal home loan bank shall pay to
12 the Funding Corporation in each calendar
13 year, 20.75 percent of the net earnings of
14 that bank (after deducting expenses relat-
15 ing to section 10(j) and operating ex-
16 penses).

17 “(ii) ANNUAL DETERMINATION.—The
18 Board annually shall determine the extent
19 to which the value of the aggregate
20 amounts paid by the Federal home loan
21 banks exceeds or falls short of the value of
22 an annuity of \$300,000,000 per year that
23 commences on the issuance date and ends
24 on the final scheduled maturity date of the
25 obligations, and shall select appropriate

1 present value factors for making such de-
2 terminations.

3 “(iii) PAYMENT TERM ALTER-
4 ATIONS.—The Board shall extend or short-
5 en the term of the payment obligations of
6 a Federal home loan bank under this sub-
7 paragraph as necessary to ensure that the
8 value of all payments made by the banks
9 is equivalent to the value of an annuity re-
10 ferred to in clause (ii).

11 “(iv) TERM BEYOND MATURITY.—If
12 the Board extends the term of payments
13 beyond the final scheduled maturity date
14 for the obligations, each Federal home loan
15 bank shall continue to pay 20.75 percent
16 of its net earnings (after deducting ex-
17 penses relating to section 10(j) and operat-
18 ing expenses) to the Treasury of the
19 United States until the value of all such
20 payments by the Federal home loan banks
21 is equivalent to the value of an annuity re-
22 ferred to in clause (ii). In the final year in
23 which the Federal home loan banks are re-
24 quired to make any payment to the Treas-
25 ury under this subparagraph, if the dollar

1 amount represented by 20.75 percent of
2 the net earnings of the Federal home loan
3 banks exceeds the remaining obligation of
4 the banks to the Treasury, the Finance
5 Board shall reduce the percentage pro rata
6 to a level sufficient to pay the remaining
7 obligation.”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 subsection (a) shall become effective on January 1, 1999.
10 Payments made by a Federal home loan bank before that
11 effective date shall be counted toward the total obligation
12 of that bank under section 21B(f)(2)(C) of the Federal
13 Home Loan Bank Act, as amended by this section.

14 **Subtitle H—Direct Activities of**
15 **Banks**

16 **SEC. 181. AUTHORITY OF NATIONAL BANKS TO UNDER-**
17 **WRITE CERTAIN MUNICIPAL BONDS.**

18 The paragraph designated the Seventh of section
19 5136 of the Revised Statutes of the United States (12
20 U.S.C. 24(7)) is amended by adding at the end the follow-
21 ing new sentence: “In addition to the provisions in this
22 paragraph for dealing in, underwriting or purchasing secu-
23 rities, the limitations and restrictions contained in this
24 paragraph as to dealing in, underwriting, and purchasing
25 investment securities for the national bank’s own account

1 shall not apply to obligations (including limited obligation
 2 bonds, revenue bonds, and obligations that satisfy the re-
 3 quirements of section 142(b)(1) of the Internal Revenue
 4 Code of 1986) issued by or on behalf of any state or politi-
 5 cal subdivision of a state, including any municipal cor-
 6 porate instrumentality of 1 or more states, or any public
 7 agency or authority of any state or political subdivision
 8 of a state, if the national banking association is well cap-
 9 italized (as defined in section 38 of the Federal Deposit
 10 Insurance Act).”.

11 **Subtitle I—Deposit Insurance** 12 **Funds**

13 **SEC. 186. STUDY OF SAFETY AND SOUNDNESS OF FUNDS.**

14 (a) **STUDY REQUIRED.**—The Board of Directors of
 15 the Federal Deposit Insurance Corporation shall conduct
 16 a study of the following issues with regard to the Bank
 17 Insurance Fund and the Savings Association Insurance
 18 Fund:

19 (1) **SAFETY AND SOUNDNESS.**—The safety and
 20 soundness of the funds and the adequacy of the re-
 21 serve requirements applicable to the funds in light
 22 of—

23 (A) the size of the insured depository insti-
 24 tutions which are resulting from mergers and
 25 consolidations since the effective date of the

1 Riegle-Neal Interstate Banking and Branching
2 Efficiency Act of 1994; and

3 (B) the affiliation of insured depository in-
4 stitutions with other financial institutions pur-
5 suant to this Act and the amendments made by
6 this Act.

7 (2) CONCENTRATION LEVELS.—The concentra-
8 tion levels of the funds, taking into account the
9 number of members of each fund and the geographic
10 distribution of such members, and the extent to
11 which either fund is exposed to higher risks due to
12 a regional concentration of members or an insuffi-
13 cient membership base relative to the size of member
14 institutions.

15 (3) MERGER ISSUES.—Issues relating to the
16 planned merger of the funds, including the cost of
17 merging the funds and the manner in which such
18 costs will be distributed among the members of the
19 respective funds.

20 (b) REPORT REQUIRED.—

21 (1) IN GENERAL.—Before the end of the 9-
22 month period beginning on the date of the enact-
23 ment of this Act, the Board of Directors of the Fed-
24 eral Deposit Insurance Corporation shall submit a

1 report to the Congress on the study conducted pur-
2 suant to subsection (a).

3 (2) CONTENTS OF REPORT.—The report shall
4 include—

5 (A) detailed findings of the Board of Di-
6 rectors with regard to the issues described in
7 subsection (a);

8 (B) a description of the plans developed by
9 the Board of Directors for merging the Bank
10 Insurance Fund and the Savings Association
11 Insurance Fund, including an estimate of the
12 amount of the cost of such merger which would
13 be borne by Savings Association Insurance
14 Fund members; and

15 (C) such recommendations for legislative
16 and administrative action as the Board of Di-
17 rectors determines to be necessary or appro-
18 priate to preserve the safety and soundness of
19 the deposit insurance funds, reduce the risks to
20 such funds, provide for an efficient merger of
21 such funds, and for other purposes.

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

24 (1) INSURED DEPOSITORY INSTITUTION.—The
25 term “insured depository institution” has the same

1 meaning as in section 3(c) of the Federal Deposit
2 Insurance Act.

3 (2) BIF AND SAIF MEMBERS.—The terms
4 “Bank Insurance Fund member” and “Savings As-
5 sociation Insurance Fund member” have the same
6 meanings as in section 7(l) of the Federal Deposit
7 Insurance Act.

8 **Subtitle J—Effective Date of Title**

9 **SEC. 191. EFFECTIVE DATE.**

10 Except with regard to any subtitle or other provision
11 of this title for which a specific effective date is provided,
12 this title and the amendments made by this title shall take
13 effect at the end of the 270-day period beginning on the
14 date of the enactment of this Act.

15 **TITLE II—FUNCTIONAL** 16 **REGULATION**

17 **Subtitle A—Brokers and Dealers**

18 **SEC. 201. DEFINITION OF BROKER.**

19 Section 3(a)(4) of the Securities Exchange Act of
20 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

21 “(4) BROKER.—

22 “(A) IN GENERAL.—The term ‘broker’
23 means any person engaged in the business of
24 effecting transactions in securities for the ac-
25 count of others.

1 “(B) EXCEPTION FOR CERTAIN BANK AC-
2 TIVITIES.—A bank shall not be considered to be
3 a broker because the bank engages in any of
4 the following activities under the conditions de-
5 scribed:

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

13 “(I) such broker or dealer is
14 clearly identified as the person per-
15 forming the brokerage services;

16 “(II) the broker or dealer per-
17 forms brokerage services in an area
18 that is clearly marked and, to the ex-
19 tent practicable, physically separate
20 from the routine deposit-taking activi-
21 ties of the bank;

22 “(III) any materials used by the
23 bank to advertise or promote generally
24 the availability of brokerage services
25 under the contractual or other ar-

1 rangement clearly indicate that the
2 brokerage services are being provided
3 by the broker or dealer and not by the
4 bank;

5 “(IV) any materials used by the
6 bank to advertise or promote generally
7 the availability of brokerage services
8 under the contractual or other ar-
9 rangement are in compliance with the
10 Federal securities laws before dis-
11 tribution;

12 “(V) bank employees (other than
13 associated persons of a broker or deal-
14 er who are qualified pursuant to the
15 rules of a self-regulatory organization)
16 perform only clerical or ministerial
17 functions in connection with broker-
18 age transactions including scheduling
19 appointments with the associated per-
20 sons of a broker or dealer, except that
21 bank employees may forward cus-
22 tomer funds or securities and may de-
23 scribe in general terms the range of
24 investment vehicles available from the

1 bank and the broker or dealer under
2 the contractual or other arrangement;

3 “(VI) bank employees do not di-
4 rectly receive incentive compensation
5 for any brokerage transaction unless
6 such employees are associated persons
7 of a broker or dealer and are qualified
8 pursuant to the rules of a self-regu-
9 latory organization, except that the
10 bank employees may receive com-
11 pensation for the referral of any cus-
12 tomer if the compensation is a nomi-
13 nal one-time cash fee of a fixed dollar
14 amount and the payment of the fee is
15 not contingent on whether the referral
16 results in a transaction;

17 “(VII) such services are provided
18 by the broker or dealer on a basis in
19 which all customers which receive any
20 services are fully disclosed to the
21 broker or dealer;

22 “(VIII) the bank does not carry
23 a securities account of the customer
24 except in a customary custodian or
25 trustee capacity; and

1 “(IX) the bank, broker, or dealer
2 informs each customer that the bro-
3 kerage services are provided by the
4 broker or dealer and not by the bank
5 and that the securities are not depos-
6 its or other obligations of the bank,
7 are not guaranteed by the bank, and
8 are not insured by the Federal De-
9 posit Insurance Corporation.

10 “(ii) TRUST ACTIVITIES.—The bank
11 effects transactions in a trustee capacity,
12 or effects transactions in a fiduciary capac-
13 ity in its trust department or other depart-
14 ment that is regularly examined by bank
15 examiners for compliance with fiduciary
16 principles and standards, and (in either
17 case)—

18 “(I) is primarily compensated for
19 such transactions on the basis of an
20 administration or annual fee (payable
21 on a monthly, quarterly, or other
22 basis), a percentage of assets under
23 management, or a flat or capped per
24 order processing fee equal to not more
25 than the cost incurred by the bank in

1 connection with executing securities
2 transactions for trustee and fiduciary
3 customers, or any combination of such
4 fees, consistent with fiduciary prin-
5 ciples and standards; and

6 “(II) does not publicly solicit bro-
7 kerage business, other than by adver-
8 tising that it effects transactions in
9 securities in conjunction with advertis-
10 ing its other trust activities.

11 “(iii) PERMISSIBLE SECURITIES
12 TRANSACTIONS.—The bank effects trans-
13 actions in—

14 “(I) commercial paper, bankers
15 acceptances, or commercial bills;

16 “(II) exempted securities;

17 “(III) qualified Canadian govern-
18 ment obligations as defined in section
19 5136 of the Revised Statutes, in con-
20 formity with section 15C of this title
21 and the rules and regulations there-
22 under, or obligations of the North
23 American Development Bank; or

24 “(IV) any standardized, credit
25 enhanced debt security issued by a

1 foreign government pursuant to the
2 March 1989 plan of then Secretary of
3 the Treasury Brady, used by such for-
4 eign government to retire outstanding
5 commercial bank loans.

6 “(iv) CERTAIN STOCK PURCHASE
7 PLANS.—

8 “(I) EMPLOYEE BENEFIT
9 PLANS.—The bank effects trans-
10 actions, as part of its transfer agency
11 activities, in the securities of an issuer
12 as part of any pension, retirement,
13 profit-sharing, bonus, thrift, savings,
14 incentive, or other similar benefit plan
15 for the employees of that issuer or its
16 subsidiaries, if—

17 (aa) the bank does not so-
18 licit transactions or provide in-
19 vestment advice with respect to
20 the purchase or sale of securities
21 in connection with the plan; and

22 “(bb) the bank’s compensa-
23 tion for such plan or program
24 consists primarily of administra-

1 tion fees, or flat or capped per
2 order processing fees, or both.

3 “(II) DIVIDEND REINVESTMENT
4 PLANS.—The bank effects trans-
5 actions, as part of its transfer agency
6 activities, in the securities of an issuer
7 as part of that issuer’s dividend rein-
8 vestment plan, if—

9 “(aa) the bank does not so-
10 licit transactions or provide in-
11 vestment advice with respect to
12 the purchase or sale of securities
13 in connection with the plan;

14 “(bb) the bank does not net
15 shareholders’ buy and sell orders,
16 other than for programs for odd-
17 lot holders or plans registered
18 with the Commission; and

19 “(cc) the bank’s compensa-
20 tion for such plan or program
21 consists primarily of administra-
22 tion fees, or flat or capped per
23 order processing fees, or both.

24 “(III) ISSUER PLANS.—The bank
25 effects transactions, as part of its

1 transfer agency activities, in the secu-
2 rities of an issuer as part of a plan or
3 program for the purchase or sale of
4 that issuer's shares, if—

5 “(aa) the bank does not so-
6 licit transactions or provide in-
7 vestment advice with respect to
8 the purchase or sale of securities
9 in connection with the plan or
10 program;

11 “(bb) the bank does not net
12 shareholders' buy and sell orders,
13 other than for programs for odd-
14 lot holders or plans registered
15 with the Commission; and

16 “(cc) the bank's compensa-
17 tion for such plan or program
18 consists primarily of administra-
19 tion fees, or flat or capped per
20 order processing fees, or both.

21 “(IV) PERMISSIBLE DELIVERY
22 OF MATERIALS.—The exception to
23 being considered a broker for a bank
24 engaged in activities described in sub-
25 clauses (I), (II), and (III) will not be

1 affected by a bank's delivery of writ-
2 ten or electronic plan materials to em-
3 ployees of the issuer, shareholders of
4 the issuer, or members of affinity
5 groups of the issuer, so long as such
6 materials are—

7 “(aa) comparable in scope or
8 nature to that permitted by the
9 Commission as of the date of the
10 enactment of the Financial Serv-
11 ices Act of 1998; or

12 “(bb) otherwise permitted by
13 the Commission.

14 “(v) SWEEP ACCOUNTS.—The bank
15 effects transactions as part of a program
16 for the investment or reinvestment of bank
17 deposit funds into any no-load, open-end
18 management investment company reg-
19 istered under the Investment Company Act
20 of 1940 that holds itself out as a money
21 market fund.

22 “(vi) AFFILIATE TRANSACTIONS.—
23 The bank effects transactions for the ac-
24 count of any affiliate of the bank (as de-

1 fined in section 2 of the Bank Holding
2 Company Act of 1956) other than—

3 “(I) a registered broker or deal-
4 er; or

5 “(II) an affiliate that is engaged
6 in merchant banking, as described in
7 section 6(c)(3)(H) of the Bank Hold-
8 ing Company Act of 1956.

9 “(vii) PRIVATE SECURITIES OFFER-
10 INGS.—The bank—

11 “(I) effects sales as part of a pri-
12 mary offering of securities not involv-
13 ing a public offering, pursuant to sec-
14 tion 3(b), 4(2), or 4(6) of the Securi-
15 ties Act of 1933 or the rules and reg-
16 ulations issued thereunder; and

17 “(II) effects transactions exclu-
18 sively with qualified investors.

19 “(viii) SAFEKEEPING AND CUSTODY
20 ACTIVITIES.—

21 “(I) IN GENERAL.—The bank, as
22 part of customary banking activities—

23 “(aa) provides safekeeping
24 or custody services with respect
25 to securities, including the exer-

1 cise of warrants and other rights
2 on behalf of customers;

3 “(bb) facilitates the transfer
4 of funds or securities, as a custo-
5 dian or a clearing agency, in con-
6 nection with the clearance and
7 settlement of its customers’
8 transactions in securities;

9 “(cc) effects securities lend-
10 ing or borrowing transactions
11 with or on behalf of customers as
12 part of services provided to cus-
13 tomers pursuant to division (aa)
14 or (bb) or invests cash collateral
15 pledged in connection with such
16 transactions; or

17 “(dd) holds securities
18 pledged by a customer to another
19 person or securities subject to
20 purchase or resale agreements in-
21 volving a customer, or facilitates
22 the pledging or transfer of such
23 securities by book entry or as
24 otherwise provided under applica-
25 ble law.

1 “(II) EXCEPTION FOR CARRYING
2 BROKER ACTIVITIES.—The exception
3 to being considered a broker for a
4 bank engaged in activities described in
5 subclause (I) shall not apply if the
6 bank, in connection with such activi-
7 ties, acts in the United States as a
8 carrying broker (as such term, and
9 different formulations thereof, are
10 used in section 15(c)(3) and the rules
11 and regulations thereunder) for any
12 broker or dealer, unless such carrying
13 broker activities are engaged in with
14 respect to government securities (as
15 defined in paragraph (42) of this sub-
16 section).

17 “(ix) BANKING PRODUCTS.—The bank
18 effects transactions in traditional banking
19 products, as defined in section 206(a) of
20 the Financial Services Act of 1998.

21 “(x) DE MINIMIS EXCEPTION.—The
22 bank effects, other than in transactions re-
23 ferred to in clauses (i) through (ix), not
24 more than 500 transactions in securities in
25 any calendar year, and such transactions

1 are not effected by an employee of the
2 bank who is also an employee of a broker
3 or dealer.

4 “(C) **BROKER DEALER EXECUTION.**—The
5 exception to being considered a broker for a
6 bank engaged in activities described in clauses
7 (ii), (iv), and (viii) of subparagraph (B) shall
8 not apply if the activities described in such pro-
9 visions result in the trade in the United States
10 of any security that is a publicly traded security
11 in the United States, unless—

12 “(i) the bank directs such trade to a
13 registered or broker dealer for execution;

14 “(ii) the trade is a cross trade or
15 other substantially similar trade of a secu-
16 rity that—

17 “(I) is made by the bank or be-
18 tween the bank and an affiliated fidu-
19 ciary; and

20 “(II) is not in contravention of
21 fiduciary principles established under
22 applicable Federal or State law; or

23 “(iii) the trade is conducted in some
24 other manner permitted under rules, regu-

1 lations, or orders as the Commission may
2 prescribe or issue.

3 “(D) NO EFFECT OF BANK EXEMPTIONS
4 ON OTHER COMMISSION AUTHORITY.—The ex-
5 ception to being considered a broker for a bank
6 engaged in activities described in subpara-
7 graphs (B) and (C) shall not affect the commis-
8 sion’s authority under any other provision of
9 this Act or any other securities law.

10 “(E) FIDUCIARY CAPACITY.—For purposes
11 of subparagraph (B)(ii), the term ‘fiduciary ca-
12 pacity’ means—

13 “(i) in the capacity as trustee, execu-
14 tor, administrator, registrar of stocks and
15 bonds, transfer agent, guardian, assignee,
16 receiver, or custodian under a uniform gift
17 to minor act, or as an investment adviser
18 if the bank receives a fee for its investment
19 advice;

20 “(ii) in any capacity in which the
21 bank possesses investment discretion on
22 behalf of another; or

23 “(iii) in any other similar capacity.

1 “(F) EXCEPTION 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 Financial Services Act of
6 1998, 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. 202. 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) EXCEPTION FOR CERTAIN BANK AC-
25 TIVITIES.—A bank shall not be considered to be

1 a dealer because the bank engages in any of the
2 following activities under the conditions de-
3 scribed:

4 “(i) PERMISSIBLE SECURITIES TRANS-
5 ACTIONS.—The bank buys or sells—

6 “(I) commercial paper, bankers
7 acceptances, or commercial bills;

8 “(II) exempted securities;

9 “(III) qualified Canadian govern-
10 ment obligations as defined in section
11 5136 of the Revised Statutes of the
12 United States, in conformity with sec-
13 tion 15C of this title and the rules
14 and regulations thereunder, or obliga-
15 tions of the North American Develop-
16 ment Bank; or

17 “(IV) any standardized, credit
18 enhanced debt security issued by a
19 foreign government pursuant to the
20 March 1989 plan of then Secretary of
21 the Treasury Brady, used by such for-
22 eign government to retire outstanding
23 commercial bank loans.

24 “(ii) INVESTMENT, TRUSTEE, AND FI-
25 DUCIARY TRANSACTIONS.—The bank buys

1 or sells securities for investment
2 purposes—

3 “(I) for the bank; or

4 “(II) for accounts for which the
5 bank acts as a trustee or fiduciary.

6 “(iii) ASSET-BACKED TRANS-
7 ACTIONS.—The bank engages in the
8 issuance or sale to qualified investors,
9 through a grantor trust or otherwise, of se-
10 curities backed by or representing an inter-
11 est in notes, drafts, acceptances, loans,
12 leases, receivables, other obligations, or
13 pools of any such obligations predomi-
14 nantly originated by the bank, or a syn-
15 dicate of banks of which the bank is a
16 member, or an affiliate of any such bank
17 other than a broker or dealer.

18 “(iv) BANKING PRODUCTS.—The bank
19 buys or sells traditional banking products,
20 as defined in section 206(a) of the Finan-
21 cial Services Act of 1998.

22 “(v) DERIVATIVE INSTRUMENTS.—
23 The bank issues, buys, or sells any deriva-
24 tive instrument to which the bank is a
25 party—

1 “(I) to or from a qualified inves-
2 tor, except that if the instrument pro-
3 vides for the delivery of one or more
4 securities (other than a derivative in-
5 strument or government security), the
6 transaction shall be effected with or
7 through a registered broker or dealer;

8 “(II) to or from other persons,
9 except that if the derivative instru-
10 ment provides for the delivery of one
11 or more securities (other than a deriv-
12 ative instrument or government secu-
13 rity), or is a security (other than a
14 government security), the transaction
15 shall be effected with or through a
16 registered broker or dealer; or

17 “(III) to or from any person if
18 the instrument is neither a security
19 nor provides for the delivery of one or
20 more securities (other than a deriva-
21 tive instrument).”.

1 **SEC. 203. REGISTRATION FOR SALES OF PRIVATE SECURI-**
2 **TIES OFFERINGS.**

3 Section 15A of the Securities Exchange Act of 1934
4 (15 U.S.C. 78o-3) is amended by inserting after sub-
5 section (i) the following new subsection:

6 “(j) REGISTRATION FOR SALES OF PRIVATE SECURI-
7 TIES OFFERINGS.—A registered securities association
8 shall create a limited qualification category for any associ-
9 ated person of a member who effects sales as part of a
10 primary offering of securities not involving a public offer-
11 ing, pursuant to section 3(b), 4(2), or 4(6) of the Securi-
12 ties Act of 1933 and the rules and regulations thereunder,
13 and shall deem qualified in such limited qualification cat-
14 egory, without testing, any bank employee who, in the six
15 month period preceding the date of enactment of this Act,
16 engaged in effecting such sales.”.

17 **SEC. 204. SALES PRACTICES AND COMPLAINT PROCE-**
18 **DURES.**

19 Section 18 of the Federal Deposit Insurance Act is
20 amended by adding at the end the following new sub-
21 section:

22 “(s) SALES PRACTICES AND COMPLAINT PROCE-
23 DURES WITH RESPECT TO BANK SECURITIES ACTIVI-
24 TIES.—

25 “(1) REGULATIONS REQUIRED.—Each Federal
26 banking agency shall prescribe and publish in final

1 form, not later than 6 months after the date of en-
2 actment of the Financial Services Act of 1998, regu-
3 lations which apply to retail transactions, sollicita-
4 tions, advertising, or offers of any security by any
5 insured depository institution or any affiliate thereof
6 other than a registered broker or dealer or an indi-
7 vidual acting on behalf of such a broker or dealer
8 who is an associated person of such broker or dealer.
9 Such regulations shall include—

10 “(A) requirements that sales practices
11 comply with just and equitable principles of
12 trade that are substantially similar to the Rules
13 of Fair Practice of the National Association of
14 Securities Dealers; and

15 “(B) requirements prohibiting (i) condi-
16 tioning an extension of credit on the purchase
17 or sale of a security; and (ii) any conduct lead-
18 ing a customer to believe that an extension of
19 credit is conditioned upon the purchase or sale
20 of a security.

21 “(2) PROCEDURES REQUIRED.—The appro-
22 priate Federal banking agencies shall jointly estab-
23 lish procedures and facilities for receiving and expe-
24 ditiously processing complaints against any bank or
25 employee of a bank arising in connection with the

1 purchase or sale of a security by a customer, includ-
2 ing a complaint alleging a violation of the regula-
3 tions prescribed under paragraph (1), but excluding
4 a complaint involving an individual acting on behalf
5 of such a broker or dealer who is an associated per-
6 son of such broker or dealer. The use of any such
7 procedures and facilities by such a customer shall be
8 at the election of the customer. Such procedures
9 shall include provisions to refer a complaint alleging
10 fraud to the Securities and Exchange Commission
11 and appropriate State securities commissions.

12 “(3) REQUIRED ACTIONS.—The actions re-
13 quired by the Federal banking agencies under para-
14 graph (2) shall include the following:

15 “(A) establishing a group, unit, or bureau
16 within each such agency to receive such com-
17 plaints;

18 “(B) developing and establishing proce-
19 dures for investigating, and permitting cus-
20 tomers to investigate, such complaints;

21 “(C) developing and establishing proce-
22 dures for informing customers of the rights
23 they may have in connection with such com-
24 plaints;

1 “(D) developing and establishing proce-
2 dures that allow customers a period of at least
3 6 years to make complaints and that do not re-
4 quire customers to pay the costs of the proceed-
5 ing; and

6 “(E) developing and establishing proce-
7 dures for resolving such complaints, including
8 procedures for the recovery of losses to the ex-
9 tent appropriate.

10 “(4) CONSULTATION AND JOINT REGULA-
11 TIONS.—The Federal banking agencies shall consult
12 with each other and prescribe joint regulations pur-
13 suant to paragraphs (1) and (2), after consultation
14 with the Securities and Exchange Commission.

15 “(5) PROCEDURES IN ADDITION TO OTHER
16 REMEDIES.—The procedures and remedies provided
17 under this subsection shall be in addition to, and not
18 in lieu of, any other remedies available under law.

19 “(6) DEFINITION.—As used in this
20 subsection—

21 “(A) the term ‘security’ has the same
22 meaning as in section 3(a)(10) of the Securities
23 Exchange Act of 1934;

1 “(B) the term ‘registered broker or dealer’
2 has the same meaning as in section 3(a)(48) of
3 the Securities Exchange Act of 1934; and

4 “(C) the term ‘associated person’ has the
5 same meaning as in section 3(a)(18) of the Se-
6 curities Exchange Act of 1934.”.

7 **SEC. 205. INFORMATION SHARING.**

8 Section 18 of the Federal Deposit Insurance Act is
9 amended by adding at the end the following new sub-
10 section:

11 “(t) RECORDKEEPING REQUIREMENTS.—

12 “(1) REQUIREMENTS.—Each appropriate Fed-
13 eral banking agency, after consultation with and
14 consideration of the views of the Commission, shall
15 establish recordkeeping requirements for banks rely-
16 ing on exceptions contained in paragraphs (4) and
17 (5) of section 3(a) of the Securities Exchange Act of
18 1934. Such recordkeeping requirements shall be suf-
19 ficient to demonstrate compliance with the terms of
20 such exceptions and be designed to facilitate compli-
21 ance with such exceptions. Each appropriate Federal
22 banking agency shall make any such information
23 available to the Commission upon request.

1 information regarding the borrower's cred-
2 itworthiness; and

3 (ii) based on such factors as financial
4 sophistication, net worth, and knowledge
5 and experience in financial matters, have
6 the capability to evaluate the information
7 available, as determined under generally
8 applicable banking standards or guidelines;

9 (6) any derivative instrument, whether or not
10 individually negotiated, involving or relating to—

11 (A) foreign currencies, except options on
12 foreign currencies that trade on a national se-
13 curities exchange;

14 (B) interest rates, except interest rate de-
15 rivative instruments that—

16 (i) are based on a security or a group
17 or index of securities (other than govern-
18 ment securities or a group or index of gov-
19 ernment securities);

20 (ii) provide for the delivery of one or
21 more securities (other than government se-
22 curities); or

23 (iii) trade on a national securities ex-
24 change; or

1 (C) commodities, other rates, indices, or
2 other assets, except derivative instruments
3 that—

4 (i) are securities or that are based on
5 a group or index of securities (other than
6 government securities or a group or index
7 of government securities);

8 (ii) provide for the delivery of one or
9 more securities (other than government se-
10 curities); or

11 (iii) trade on a national securities ex-
12 change; or

13 (7) any product or instrument that the Board
14 of Governors of the Federal Reserve System (here-
15 after in this subsection referred to as the “Board”),
16 after consultation with the Securities and Exchange
17 Commission (hereafter in this section referred to as
18 the “Commission”) determines to be a new banking
19 product, by regulation or order published in the Fed-
20 eral Register.

21 (b) OBJECTION BY THE SEC.—

22 (1) FILING OF PETITION FOR REVIEW.—The
23 Commission may obtain review of any regulation or
24 order described in subsection (a)(7) in the United
25 States Court of Appeals for the District of Columbia

1 Circuit by filing in such court, not later than 60
2 days after the date of publication of the regulation
3 or order, a written petition requesting that the regu-
4 lation or order be set aside.

5 (2) TRANSMITTAL OF PETITION AND
6 RECORD.—A copy of a petition described in para-
7 graph (1) shall be transmitted as soon as possible by
8 the Clerk of the Court, to an officer or employee of
9 the Board designated for that purpose. Upon receipt
10 of the petition, the Board shall file in the court the
11 regulation or order under review and any documents
12 referred to therein, and any other relevant materials
13 prescribed by the court.

14 (3) EXCLUSIVE JURISDICTION.—On the date of
15 the filing of the petition under paragraph (1), the
16 court has jurisdiction, which becomes exclusive on
17 the filing of the materials set forth in paragraph (2),
18 to affirm and enforce or to set aside the regulation
19 or order.

20 (4) STANDARD OF REVIEW.—

21 (A) IN GENERAL.—The court shall deter-
22 mine to affirm and enforce or set aside the regu-
23 lation or order of the Board, based on the de-
24 termination of the court as to whether the sub-
25 ject product or instrument would be more ap-

1 appropriately regulated under the Federal bank-
2 ing laws or the Federal securities laws, giving
3 equal deference to the views of the Board and
4 the Commission.

5 (B) CONSIDERATIONS.—In making a de-
6 termination under subparagraph (A), the court
7 shall consider—

8 (i) the nature of the subject product
9 or instrument;

10 (ii) the history, purpose, extent, and
11 appropriateness of the regulation of the
12 product or instrument under the Federal
13 banking laws; and

14 (iii) the history, purpose, extent, and
15 appropriateness of the regulation of the
16 product or instrument under the Federal
17 securities laws.

18 (5) JUDICIAL STAY.—The filing of a petition
19 pursuant to paragraph (1) shall operate as a judicial
20 stay of—

21 (A) any Commission requirement that a
22 bank register as a broker or dealer under sec-
23 tion 15 of the Securities Exchange Act of 1934,
24 because the bank engages in any transaction in,

1 or buys or sells, the product or instrument that
2 is the subject of the petition; and

3 (B) any Commission action against a bank
4 for a failure to comply with a requirement de-
5 scribed in subparagraph (A).

6 (c) CLASSIFICATION LIMITED.—Classification of a
7 particular product as a traditional banking product pursu-
8 ant to this section shall not be construed as finding or
9 implying that such product is or is not a security for any
10 purpose under the securities laws, or is or is not an ac-
11 count, agreement, contract, or transaction for any purpose
12 under the Commodity Exchange Act.

13 (d) NO LIMITATION ON OTHER AUTHORITY TO
14 CHALLENGE.—Nothing in this section shall affect the
15 right or authority that the Securities and Exchange Com-
16 mission, any appropriate Federal banking agency, or any
17 interested party has under any other provision of law to
18 object to or seek judicial review as to whether a product
19 or instrument is or is not appropriately classified as a
20 “traditional banking product” under paragraphs (1)
21 through (7) of subsection (a).

22 (e) DEFINITIONS.—For purposes of this section—

23 (1) the term “bank” has the same meaning as
24 in section 3(a)(6) of the Securities Exchange Act of
25 1934;

1 (2) the term “qualified investor” has the same
2 meaning as in section 3(a)(55) of the Securities Ex-
3 change Act of 1934;

4 (3) the term “government securities” has the
5 same meaning as in section 3(a)(42) of the Securi-
6 ties Exchange Act of 1934, and, for purposes of this
7 subsection, commercial paper, bankers acceptances,
8 and commercial bills shall be treated in the same
9 manner as government securities;

10 (4) the term “Federal banking agency” has the
11 same meaning as in section 3(z) of the Federal De-
12 posit Insurance Act; and

13 (5) the term “new banking product” means a
14 product or instrument that—

15 (A) was not subject to regulation by the
16 Securities and Exchange Commission as a secu-
17 rity under the Securities Exchange Act of 1934,
18 before the date of enactment of this Act; and

19 (B) is not a traditional banking product,
20 as defined in subparagraphs (A) through (F) of
21 paragraph (1).

1 **SEC. 207. DERIVATIVE INSTRUMENT AND QUALIFIED IN-**
2 **VESTOR DEFINED.**

3 Section 3(a) of the Securities Exchange Act of 1934
4 (15 U.S.C. 78c(a)) is amended by adding at the end the
5 following new paragraphs:

6 “(54) DERIVATIVE INSTRUMENT.—

7 “(A) DEFINITION.—The term ‘derivative
8 instrument’ means any individually negotiated
9 contract, agreement, warrant, note, or option
10 that is based, in whole or in part, on the value
11 of, any interest in, or any quantitative measure
12 or the occurrence of any event relating to, one
13 or more commodities, securities, currencies, in-
14 terest or other rates, indices, or other assets,
15 but does not include a traditional banking prod-
16 uct, as defined in section 206(a) of the Finan-
17 cial Services Act of 1998.

18 “(B) CLASSIFICATION LIMITED.— Classi-
19 fication of a particular contract as a derivative
20 instrument pursuant to this paragraph shall not
21 be construed as finding or implying that such
22 instrument is or is not a security for any pur-
23 pose under the securities laws, or is or is not
24 an account, agreement, contract, or transaction
25 for any purpose under the Commodity Ex-
26 change Act.

1 “(55) QUALIFIED INVESTOR.—

2 “(A) DEFINITION.—For purposes of this
3 title and section 206(a)(1)(E) of the Financial
4 Services Act of 1998, the term ‘qualified inves-
5 tor’ means—

6 “(i) any investment company reg-
7 istered with the Commission under section
8 of the Investment Company Act of 1940;

9 “(ii) any issuer eligible for an exclu-
10 sion from the definition of investment com-
11 pany pursuant to section 3(c)(7) of the In-
12 vestment Company Act of 1940;

13 “(iii) any bank (as defined in para-
14 graph (6) of this subsection), savings and
15 loan association (as defined in section 3(b)
16 of the Federal Deposit Insurance Act),
17 broker, dealer, insurance company (as de-
18 fined in section 2(a)(13) of the Securities
19 Act of 1933), or business development
20 company (as defined in section 2(a)(48) of
21 the Investment Company Act of 1940);

22 “(iv) any small business investment
23 company licensed by the United States
24 Small Business Administration under sec-

1 tion 301(c) or (d) of the Small Business
2 Investment Act of 1958;

3 “(v) any State sponsored employee
4 benefit plan, or any other employee benefit
5 plan, within the meaning of the Employee
6 Retirement Income Security Act of 1974,
7 other than an individual retirement ac-
8 count, if the investment decisions are made
9 by a plan fiduciary, as defined in section
10 3(21) of that Act, which is either a bank,
11 savings and loan association, insurance
12 company, or registered investment adviser;

13 “(vi) any trust whose purchases of se-
14 curities are directed by a person described
15 in clauses (i) through (v) of this subpara-
16 graph;

17 “(vii) any market intermediary ex-
18 empt under section 3(c)(2) of the Invest-
19 ment Company Act of 1940;

20 “(viii) any associated person of a
21 broker or dealer other than a natural per-
22 son;

23 “(ix) any foreign bank (as defined in
24 section 1(b)(7) of the International Bank-
25 ing Act of 1978);

1 “(x) the government of any foreign
2 country;

3 “(xi) any corporation, company, or
4 partnership that owns and invests on a dis-
5 cretionary basis, not less than \$10,000,000
6 in investments;

7 “(xii) any natural person who owns
8 and invests on a discretionary basis, not
9 less than \$10,000,000 in investments;

10 “(xiii) any government or political
11 subdivision, agency, or instrumentality of a
12 government who owns and invests on a dis-
13 cretionary basis not less than \$50,000,000
14 in investments; or

15 “(xiv) any multinational or supra-
16 national entity or any agency or instru-
17 mentality thereof.

18 “(B) ADDITIONAL AUTHORITY.—The Com-
19 mission may, by rule or order, define a ‘quali-
20 fied investor’ as any other person, taking into
21 consideration such factors as the financial so-
22 phistication of the person, net worth, and
23 knowledge and experience in financial mat-
24 ters.”.

1 **SEC. 208. GOVERNMENT SECURITIES DEFINED.**

2 Section 3(a)(42) of the Securities Exchange Act of
3 1934 (15 U.S.C. 78c(a)(42)) is amended—

4 (1) by striking “or” at the end of subparagraph
5 (C);

6 (2) by striking the period at the end of sub-
7 paragraph (D) and inserting “; or”; and

8 (3) by adding at the end the following new sub-
9 paragraph:

10 “(E) for purposes of section 15C as ap-
11 plied to a bank, a qualified Canadian govern-
12 ment obligation as defined in section 5136 of
13 the Revised Statutes.”.

14 **SEC. 209. EFFECTIVE DATE.**

15 This subtitle shall take effect at the end of the 270-
16 day period beginning on the date of the enactment of this
17 Act.

18 **SEC. 210. RULE OF CONSTRUCTION.**

19 Nothing in this Act shall supersede, affect, or other-
20 wise limit the scope and applicability of the Commodity
21 Exchange Act (7 U.S.C. 1 et seq.).

1 **Subtitle B—Bank Investment**
2 **Company Activities**

3 **SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY**
4 **AFFILIATED BANK.**

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

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

10 (2) by striking “(f) Every registered” and in-
11 serting the following:

12 “(f) **CUSTODY OF SECURITIES.**—

13 “(1) Every registered”;

14 (3) by redesignating the second, third, fourth,
15 and fifth sentences of such subsection as paragraphs
16 (2) through (5), respectively, and indenting the left
17 margin of such paragraphs appropriately; and

18 (4) by adding at the end the following new
19 paragraph:

20 “(6) **SERVICES AS TRUSTEE OR CUSTODIAN.**—

21 The Commission may adopt rules and regulations,
22 and issue orders, consistent with the protection of
23 investors, prescribing the conditions under which a
24 bank, or an affiliated person of a bank, either of
25 which is an affiliated person, promoter, organizer, or

1 sponsor of, or principal underwriter for, a registered
2 management company may serve as custodian of
3 that registered management company.”.

4 (b) UNIT INVESTMENT TRUSTS.—Section 26 of the
5 Investment Company Act of 1940 (15 U.S.C. 80a–26) is
6 amended—

7 (1) by redesignating subsections (b) through (e)
8 as subsections (c) through (f), respectively; and

9 (2) by inserting after subsection (a) the follow-
10 ing new subsection:

11 “(b) The Commission may adopt rules and regula-
12 tions, and issue orders, consistent with the protection of
13 investors, prescribing the conditions under which a bank,
14 or an affiliated person of a bank, either of which is an
15 affiliated person of a principal underwriter for, or deposi-
16 tor of, a registered unit investment trust, may serve as
17 trustee or custodian under subsection (a)(1).”.

18 (c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a)
19 of the Investment Company Act of 1940 (15 U.S.C. 80a–
20 35(a)) is amended—

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

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

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

3 “(3) as custodian.”.

4 **SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COM-**
5 **PANY.**

6 Section 17(a) of the Investment Company Act of
7 1940 (15 U.S.C. 80a-17(a)) is amended—

8 (1) by striking “or” at the end of paragraph
9 (2);

10 (2) by striking the period at the end of para-
11 graph (3) and inserting “; or”; and

12 (3) by adding at the end the following new
13 paragraph:

14 “(4) to loan money or other property to such
15 registered company, or to any company controlled by
16 such registered company, in contravention of such
17 rules, regulations, or orders as the Commission may
18 prescribe or issue consistent with the protection of
19 investors.”.

20 **SEC. 213. INDEPENDENT DIRECTORS.**

21 (a) IN GENERAL.—Section 2(a)(19)(A) of the Invest-
22 ment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)(A))
23 is amended—

24 (1) by striking clause (v) and inserting the fol-
25 lowing new clause:

1 “(v) any person or any affiliated per-
2 son of a person (other than a registered in-
3 vestment company) that, at any time dur-
4 ing the 6-month period preceding the date
5 of the determination of whether that per-
6 son or affiliated person is an interested
7 person, has executed any portfolio trans-
8 actions for, engaged in any principal trans-
9 actions with, or distributed shares for—

10 “(I) the investment company;

11 “(II) any other investment com-
12 pany having the same investment ad-
13 viser as such investment company or
14 holding itself out to investors as a re-
15 lated company for purposes of invest-
16 ment or investor services; or

17 “(III) any account over which the
18 investment company’s investment ad-
19 viser has brokerage placement discre-
20 tion,”;

21 (2) by redesignating clause (vi) as clause (vii);

22 and

23 (3) by inserting after clause (v) the following
24 new clause:

1 “(vi) any person or any affiliated per-
2 son of a person (other than a registered in-
3 vestment company) that, at any time dur-
4 ing the 6-month period preceding the date
5 of the determination of whether that per-
6 son or affiliated person is an interested
7 person, has loaned money or other prop-
8 erty to—

9 “(I) the investment company;

10 “(II) any other investment com-
11 pany having the same investment ad-
12 viser as such investment company or
13 holding itself out to investors as a re-
14 lated company for purposes of invest-
15 ment or investor services; or

16 “(III) any account for which the
17 investment company’s investment ad-
18 viser has borrowing authority,”.

19 (b) CONFORMING AMENDMENT.—Section
20 2(a)(19)(B) of the Investment Company Act of 1940 (15
21 U.S.C. 80a–2(a)(19)(B)) is amended—

22 (1) by striking clause (v) and inserting the fol-
23 lowing new clause:

24 “(v) any person or any affiliated per-
25 son of a person (other than a registered in-

1 investment company) that, at any time dur-
2 ing the 6-month period preceding the date
3 of the determination of whether that per-
4 son or affiliated person is an interested
5 person, has executed any portfolio trans-
6 actions for, engaged in any principal trans-
7 actions with, or distributed shares for—

8 “(I) any investment company for
9 which the investment adviser or prin-
10 cipal underwriter serves as such;

11 “(II) any investment company
12 holding itself out to investors, for pur-
13 poses of investment or investor serv-
14 ices, as a company related to any in-
15 vestment company for which the in-
16 vestment adviser or principal under-
17 writer serves as such; or

18 “(III) any account over which the
19 investment adviser has brokerage
20 placement discretion,”;

21 (2) by redesignating clause (vi) as clause (vii);

22 and

23 (3) by inserting after clause (v) the following
24 new clause:

1 “(vi) any person or any affiliated per-
2 son of a person (other than a registered in-
3 vestment company) that, at any time dur-
4 ing the 6-month period preceding the date
5 of the determination of whether that per-
6 son or affiliated person is an interested
7 person, has loaned money or other prop-
8 erty to—

9 “(I) any investment company for
10 which the investment adviser or prin-
11 cipal underwriter serves as such;

12 “(II) any investment company
13 holding itself out to investors, for pur-
14 poses of investment or investor serv-
15 ices, as a company related to any in-
16 vestment company for which the in-
17 vestment adviser or principal under-
18 writer serves as such; or

19 “(III) any account for which the
20 investment adviser has borrowing au-
21 thority,”.

22 (c) AFFILIATION OF DIRECTORS.—Section 10(c) of
23 the Investment Company Act of 1940 (15 U.S.C. 80a-
24 10(c)) is amended by striking “bank, except” and insert-
25 ing “bank (together with its affiliates and subsidiaries) or

1 any one bank holding company (together with its affiliates
2 and subsidiaries) (as such terms are defined in section 2
3 of the Bank Holding Company Act of 1956), except”.

4 (d) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect at the end of the 1-year period
6 beginning on the date of enactment of this subtitle.

7 **SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

8 Section 35(a) of the Investment Company Act of
9 1940 (15 U.S.C. 80a-34(a)) is amended to read as fol-
10 lows:

11 “(a) MISREPRESENTATION OF GUARANTEES.—

12 “(1) IN GENERAL.—It shall be unlawful for any
13 person, issuing or selling any security of which a
14 registered investment company is the issuer, to rep-
15 resent or imply in any manner whatsoever that such
16 security or company—

17 “(A) has been guaranteed, sponsored, rec-
18 ommended, or approved by the United States,
19 or any agency, instrumentality or officer of the
20 United States;

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

23 “(C) is guaranteed by or is otherwise an
24 obligation of any bank or insured depository in-
25 stitution.

1 “(2) DISCLOSURES.—Any person issuing or
2 selling the securities of a registered investment com-
3 pany that is advised by, or sold through, a bank
4 shall prominently disclose that an investment in the
5 company is not insured by the Federal Deposit In-
6 surance Corporation or any other government agen-
7 cy. The Commission may adopt rules and regula-
8 tions, and issue orders, consistent with the protec-
9 tion of investors, prescribing the manner in which
10 the disclosure under this paragraph shall be pro-
11 vided.

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

16 **SEC. 215. DEFINITION OF BROKER UNDER THE INVEST-**
17 **MENT COMPANY ACT OF 1940.**

18 Section 2(a)(6) of the Investment Company Act of
19 1940 (15 U.S.C. 80a-2(a)(6)) is amended to read as fol-
20 lows:

21 “(6) The term ‘broker’ has the same meaning
22 as in section 3 of the Securities Exchange Act of
23 1934, except that such term does not include any
24 person solely by reason of the fact that such person

1 is an underwriter for one or more investment compa-
2 nies.”.

3 **SEC. 216. DEFINITION OF DEALER UNDER THE INVEST-**
4 **MENT COMPANY ACT OF 1940.**

5 Section 2(a)(11) of the Investment Company Act of
6 1940 (15 U.S.C. 80a–2(a)(11)) is amended to read as fol-
7 lows:

8 “(11) The term ‘dealer’ has the same meaning
9 as in section 3 of the Securities Exchange Act of
10 1934, but does not include an insurance company or
11 investment company.”.

12 **SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINI-**
13 **TION OF INVESTMENT ADVISER FOR BANKS**
14 **THAT ADVISE INVESTMENT COMPANIES.**

15 (a) INVESTMENT ADVISER.—Section 202(a)(11) of
16 the Investment Advisers Act of 1940 (15 U.S.C. 80b–
17 2(a)(11)) is amended in subparagraph (A), by striking
18 “investment company” and inserting “investment com-
19 pany, except that the term ‘investment adviser’ includes
20 any bank or bank holding company to the extent that such
21 bank or bank holding company serves or acts as an invest-
22 ment adviser to a registered investment company, but if,
23 in the case of a bank, such services or actions are per-
24 formed through a separately identifiable department or di-

1 vision, the department or division, and not the bank itself,
2 shall be deemed to be the investment adviser”.

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

7 “(26) The term ‘separately identifiable depart-
8 ment or division’ of a bank means a unit—

9 “(A) that is under the direct supervision of
10 an officer or officers designated by the board of
11 directors of the bank as responsible for the day-
12 to-day conduct of the bank’s investment adviser
13 activities for one or more investment companies,
14 including the supervision of all bank employees
15 engaged in the performance of such activities;
16 and

17 “(B) for which all of the records relating
18 to its investment adviser activities are sepa-
19 rately maintained in or extractable from such
20 unit’s own facilities or the facilities of the bank,
21 and such records are so maintained or other-
22 wise accessible as to permit independent exam-
23 ination and enforcement by the Commission of
24 this Act or the Investment Company Act of
25 1940 and rules and regulations promulgated

1 under this Act or the Investment Company Act
2 of 1940.”.

3 **SEC. 218. DEFINITION OF BROKER UNDER THE INVEST-**
4 **MENT ADVISERS ACT OF 1940.**

5 Section 202(a)(3) of the Investment Advisers Act of
6 1940 (15 U.S.C. 80b-2(a)(3)) is amended to read as fol-
7 lows:

8 “(3) The term ‘broker’ has the same meaning
9 as in section 3 of the Securities Exchange Act of
10 1934.”.

11 **SEC. 219. DEFINITION OF DEALER UNDER THE INVEST-**
12 **MENT ADVISERS ACT OF 1940.**

13 Section 202(a)(7) of the Investment Advisers Act of
14 1940 (15 U.S.C. 80b-2(a)(7)) is amended to read as fol-
15 lows:

16 “(7) The term ‘dealer’ has the same meaning as
17 in section 3 of the Securities Exchange Act of 1934,
18 but does not include an insurance company or in-
19 vestment company.”.

20 **SEC. 220. INTERAGENCY CONSULTATION.**

21 The Investment Advisers Act of 1940 (15 U.S.C.
22 80b-1 et seq.) is amended by inserting after section 210
23 the following new section:

1 **“SEC. 210A. CONSULTATION.**

2 “(a) EXAMINATION RESULTS AND OTHER INFORMA-
3 TION.—

4 “(1) The appropriate Federal banking agency
5 shall provide the Commission upon request the re-
6 sults of any examination, reports, records, or other
7 information to which such agency may have access
8 with respect to the investment advisory activities—

9 “(A) of any—

10 “(i) bank holding company;

11 “(ii) bank; or

12 “(iii) separately identifiable depart-
13 ment or division of a bank, that is reg-
14 istered under section 203 of this title; and

15 “(B) in the case of a bank holding com-
16 pany or bank that has a subsidiary or a sepa-
17 rately identifiable department or division reg-
18 istered under that section, of such bank or bank
19 holding company.

20 “(2) The Commission shall provide to the ap-
21 propriate Federal banking agency upon request the
22 results of any examination, reports, records, or other
23 information with respect to the investment advisory
24 activities of any bank holding company, bank, or
25 separately identifiable department or division of a

1 bank, any of which is registered under section 203
2 of this title.

3 “(b) EFFECT ON OTHER AUTHORITY.—Nothing in
4 this section shall limit in any respect the authority of the
5 appropriate Federal banking agency with respect to such
6 bank holding company, bank, or department or division
7 under any provision of law.

8 “(c) DEFINITION.—For purposes of this section, the
9 term ‘appropriate Federal banking agency’ has the same
10 meaning as in section 3 of the Federal Deposit Insurance
11 Act.”.

12 **SEC. 221. TREATMENT OF BANK COMMON TRUST FUNDS.**

13 (a) SECURITIES ACT OF 1933.—Section 3(a)(2) of
14 the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is
15 amended by striking “or any interest or participation in
16 any common trust fund or similar fund maintained by a
17 bank exclusively for the collective investment and reinvest-
18 ment of assets contributed thereto by such bank in its ca-
19 pacity as trustee, executor, administrator, or guardian”
20 and inserting “or any interest or participation in any com-
21 mon trust fund or similar fund that is excluded from the
22 definition of the term ‘investment company’ under section
23 3(c)(3) of the Investment Company Act of 1940”.

24 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
25 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934

1 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as fol-
2 lows:

3 “(iii) any interest or participation in any
4 common trust fund or similar fund that is ex-
5 cluded from the definition of the term ‘invest-
6 ment company’ under section 3(c)(3) of the In-
7 vestment Company Act of 1940;”.

8 (c) INVESTMENT COMPANY ACT OF 1940.—Section
9 3(c)(3) of the Investment Company Act of 1940 (15
10 U.S.C. 80a-3(c)(3)) is amended by inserting before the
11 period the following: “, if—

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

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

19 “(i) advertised; or

20 “(ii) offered for sale to the general
21 public; and

22 “(C) fees and expenses charged by such
23 fund are not in contravention of fiduciary prin-
24 ciples established under applicable Federal or
25 State law”.

1 **SEC. 222. INVESTMENT ADVISERS PROHIBITED FROM HAV-**
2 **ING CONTROLLING INTEREST IN REG-**
3 **ISTERED INVESTMENT COMPANY.**

4 Section 15 of the Investment Company Act of 1940
5 (15 U.S.C. 80a-15) is amended by adding at the end the
6 following new subsection:

7 “(g) CONTROLLING INTEREST IN INVESTMENT COM-
8 PANY PROHIBITED.—

9 “(1) IN GENERAL.—If an investment adviser to
10 a registered investment company, or an affiliated
11 person of that investment adviser, holds a control-
12 ling interest in that registered investment company
13 in a trustee or fiduciary capacity, such person
14 shall—

15 “(A) if it holds the shares in a trustee or
16 fiduciary capacity with respect to any employee
17 benefit plan subject to the Employee Retirement
18 Income Security Act of 1974, transfer the
19 power to vote the shares of the investment com-
20 pany through to another person acting in a fi-
21 duciary capacity with respect to the plan who is
22 not an affiliated person of that investment ad-
23 viser or any affiliated person thereof; or

24 “(B) if it holds the shares in a trustee or
25 fiduciary capacity with respect to any person or
26 entity other than an employee benefit plan sub-

1 ject to the Employee Retirement Income Secu-
2 rity Act of 1974—

3 “(i) transfer the power to vote the
4 shares of the investment company through
5 to—

6 “(I) the beneficial owners of the
7 shares;

8 “(II) another person acting in a
9 fiduciary capacity who is not an affili-
10 ated person of that investment adviser
11 or any affiliated person thereof; or

12 “(III) any person authorized to
13 receive statements and information
14 with respect to the trust who is not
15 an affiliated person of that investment
16 adviser or any affiliated person there-
17 of;

18 “(ii) vote the shares of the investment
19 company held by it in the same proportion
20 as shares held by all other shareholders of
21 the investment company; or

22 “(iii) vote the shares of the invest-
23 ment company as otherwise permitted
24 under such rules, regulations, or orders as

1 the Commission may prescribe or issue
2 consistent with the protection of investors.

3 “(2) EXEMPTION.—Paragraph (1) shall not
4 apply to any investment adviser to a registered in-
5 vestment company, or any affiliated person of that
6 investment adviser, that holds shares of the invest-
7 ment company in a trustee or fiduciary capacity if
8 that registered investment company consists solely of
9 assets held in such capacities.

10 “(3) SAFE HARBOR.—No investment adviser to
11 a registered investment company or any affiliated
12 person of such investment adviser shall be deemed to
13 have acted unlawfully or to have breached a fidu-
14 ciary duty under State or Federal law solely by rea-
15 son of acting in accordance with clause (i), (ii), or
16 (iii) of paragraph (1)(B).”.

17 **SEC. 223. CONFORMING CHANGE IN DEFINITION.**

18 Section 2(a)(5) of the Investment Company Act of
19 1940 (15 U.S.C. 80a–2(a)(5)) is amended by striking
20 “(A) a banking institution organized under the laws of the
21 United States” and inserting “(A) a depository institution
22 (as defined in section 3 of the Federal Deposit Insurance
23 Act) or a branch or agency of a foreign bank (as such
24 terms are defined in section 1(b) of the International
25 Banking Act of 1978)”.

1 **SEC. 224. CONFORMING AMENDMENT.**

2 Section 202 of the Investment Advisers Act of 1940
3 (15 U.S.C. 80b–2) is amended by adding at the end the
4 following new subsection:

5 “(c) CONSIDERATION OF PROMOTION OF EFFI-
6 CIENCY, COMPETITION, AND CAPITAL FORMATION.—
7 Whenever pursuant to this title the Commission is en-
8 gaged in rulemaking and is required to consider or deter-
9 mine whether an action is necessary or appropriate in the
10 public interest, the Commission shall also consider, in ad-
11 dition to the protection of investors, whether the action
12 will promote efficiency, competition, and capital forma-
13 tion.”.

14 **SEC. 225. EFFECTIVE DATE.**

15 This subtitle shall take effect 90 days after the date
16 of the enactment of this Act.

17 **Subtitle C—Securities and Ex-**
18 **change Commission Supervision**
19 **of Investment Bank Holding**
20 **Companies**

21 **SEC. 231. SUPERVISION OF INVESTMENT BANK HOLDING**
22 **COMPANIES BY THE SECURITIES AND EX-**
23 **CHANGE COMMISSION.**

24 (a) AMENDMENT.—Section 17 of the Securities Ex-
25 change Act of 1934 (15 U.S.C. 78q) is amended—

1 (1) by redesignating subsection (i) as subsection
2 (l); and

3 (2) by inserting after subsection (h) the follow-
4 ing new subsections:

5 “(i) INVESTMENT BANK HOLDING COMPANIES.—

6 “(1) ELECTIVE SUPERVISION OF AN INVEST-
7 MENT BANK HOLDING COMPANY NOT HAVING A
8 BANK OR SAVINGS ASSOCIATION AFFILIATE.—

9 “(A) IN GENERAL.—An investment bank
10 holding company that is not—

11 “(i) an affiliate of a wholesale finan-
12 cial institution, an insured bank (other
13 than an institution described in subpara-
14 graph (D), (F), or (G) of section 2(c)(2),
15 or held under section 4(f), of the Bank
16 Holding Company Act of 1956), or a sav-
17 ings association;

18 “(ii) a foreign bank, foreign company,
19 or company that is described in section
20 8(a) of the International Banking Act of
21 1978; or

22 “(iii) a foreign bank that controls, di-
23 rectly or indirectly, a corporation chartered
24 under section 25A of the Federal Reserve
25 Act,

1 may elect to become supervised by filing with
2 the Commission a notice of intention to become
3 supervised, pursuant to subparagraph (B) of
4 this paragraph. Any investment bank holding
5 company filing such a notice shall be supervised
6 in accordance with this section and comply with
7 the rules promulgated by the Commission appli-
8 cable to supervised investment bank holding
9 companies.

10 “(B) NOTIFICATION OF STATUS AS A SU-
11 PERVISED INVESTMENT BANK HOLDING COM-
12 PANY.—An investment bank holding company
13 that elects under subparagraph (A) to become
14 supervised by the Commission shall file with the
15 Commission a written notice of intention to be-
16 come supervised by the Commission in such
17 form and containing such information and doc-
18 uments concerning such investment bank hold-
19 ing company as the Commission, by rule, may
20 prescribe as necessary or appropriate in fur-
21 therance of the purposes of this section. Unless
22 the Commission finds that such supervision is
23 not necessary or appropriate in furtherance of
24 the purposes of this section, such supervision
25 shall become effective 45 days after the date of

1 receipt of such written notice by the Commis-
2 sion, or within such shorter time period as the
3 Commission, by rule or order, may determine.

4 “(2) ELECTION NOT TO BE SUPERVISED BY
5 THE COMMISSION AS AN INVESTMENT BANK HOLD-
6 ING COMPANY.—

7 “(A) VOLUNTARY WITHDRAWAL.—A su-
8 pervised investment bank holding company that
9 is supervised pursuant to paragraph (1) may,
10 upon such terms and conditions as the Commis-
11 sion deems necessary or appropriate, elect not
12 to be supervised by the Commission by filing a
13 written notice of withdrawal from Commission
14 supervision. Such notice shall not become effec-
15 tive until one year after receipt by the Commis-
16 sion, or such shorter or longer period as the
17 Commission deems necessary or appropriate to
18 ensure effective supervision of the material
19 risks to the supervised investment bank holding
20 company and to the affiliated broker or dealer,
21 or to prevent evasion of the purposes of this
22 section.

23 “(B) DISCONTINUATION OF COMMISSION
24 SUPERVISION.—If the Commission finds that
25 any supervised investment bank holding com-

1 pany that is supervised pursuant to paragraph
2 (1) is no longer in existence or has ceased to be
3 an investment bank holding company, or if the
4 Commission finds that continued supervision of
5 such a supervised investment bank holding com-
6 pany is not consistent with the purposes of this
7 section, the Commission may discontinue the
8 supervision pursuant to a rule or order, if any,
9 promulgated by the Commission under this sec-
10 tion.

11 “(3) SUPERVISION OF INVESTMENT BANK
12 HOLDING COMPANIES.—

13 “(A) RECORDKEEPING AND REPORTING.—

14 “(i) IN GENERAL.—Every supervised
15 investment bank holding company and
16 each affiliate thereof shall make and keep
17 for prescribed periods such records, furnish
18 copies thereof, and make such reports, as
19 the Commission may require by rule, in
20 order to keep the Commission informed as
21 to—

22 “(I) the company’s or affiliate’s
23 activities, financial condition, policies,
24 systems for monitoring and control-
25 ling financial and operational risks,

1 and transactions and relationships be-
2 tween any broker or dealer affiliate of
3 the supervised investment bank hold-
4 ing company; and

5 “(II) the extent to which the
6 company or affiliate has complied with
7 the provisions of this Act and regula-
8 tions prescribed and orders issued
9 under this Act.

10 “(ii) FORM AND CONTENTS.—Such
11 records and reports shall be prepared in
12 such form and according to such specifica-
13 tions (including certification by an inde-
14 pendent public accountant), as the Com-
15 mission may require and shall be provided
16 promptly at any time upon request by the
17 Commission. Such records and reports may
18 include—

19 “(I) a balance sheet and income
20 statement;

21 “(II) an assessment of the con-
22 solidated capital of the supervised in-
23 vestment bank holding company;

24 “(III) an independent auditor’s
25 report attesting to the supervised in-

1 investment bank holding company's
2 compliance with its internal risk man-
3 agement and internal control objec-
4 tives; and

5 “(IV) reports concerning the ex-
6 tent to which the company or affiliate
7 has complied with the provisions of
8 this title and any regulations pre-
9 scribed and orders issued under this
10 title.

11 “(B) USE OF EXISTING REPORTS.—

12 “(i) IN GENERAL.—The Commission
13 shall, to the fullest extent possible, accept
14 reports in fulfillment of the requirements
15 under this paragraph that the supervised
16 investment bank holding company or its af-
17 filiates have been required to provide to
18 another appropriate regulatory agency or
19 self-regulatory organization.

20 “(ii) AVAILABILITY.—A supervised in-
21 vestment bank holding company or an af-
22 filiate of such company shall provide to the
23 Commission, at the request of the Commis-
24 sion, any report referred to in clause (i).

25 “(C) EXAMINATION AUTHORITY.—

1 “(i) FOCUS OF EXAMINATION AU-
2 THORITY.—The Commission may make ex-
3 aminations of any supervised investment
4 bank holding company and any affiliate of
5 such company in order to—

6 “(I) inform the Commission
7 regarding—

8 “(aa) the nature of the oper-
9 ations and financial condition of
10 the supervised investment bank
11 holding company and its affili-
12 ates;

13 “(bb) the financial and oper-
14 ational risks within the super-
15 vised investment bank holding
16 company that may affect any
17 broker or dealer controlled by
18 such supervised investment bank
19 holding company; and

20 “(cc) the systems of the su-
21 pervised investment bank holding
22 company and its affiliates for
23 monitoring and controlling those
24 risks; and

1 “(II) monitor compliance with
2 the provisions of this subsection, pro-
3 visions governing transactions and re-
4 lationships between any broker or
5 dealer affiliated with the supervised
6 investment bank holding company and
7 any of the company’s other affiliates,
8 and applicable provisions of sub-
9 chapter II of chapter 53, title 31,
10 United States Code (commonly re-
11 ferred to as the ‘Bank Secrecy Act’)
12 and regulations thereunder.

13 “(ii) RESTRICTED FOCUS OF EXAMI-
14 NATIONS.—The Commission shall limit the
15 focus and scope of any examination of a
16 supervised investment bank holding com-
17 pany to—

18 “(I) the company; and

19 “(II) any affiliate of the company
20 that, because of its size, condition, or
21 activities, the nature or size of the
22 transactions between such affiliate
23 and any affiliated broker or dealer, or
24 the centralization of functions within
25 the holding company system, could, in

1 the discretion of the Commission,
2 have a materially adverse effect on the
3 operational or financial condition of
4 the broker or dealer.

5 “(iii) DEFERENCE TO OTHER EXAMI-
6 NATIONS.—For purposes of this subpara-
7 graph, the Commission shall, to the fullest
8 extent possible, use the reports of examina-
9 tion of an institution described in subpara-
10 graph (D), (F), or (G) of section 2(c)(2),
11 or held under section 4(f), of the Bank
12 Holding Company Act of 1956 made by
13 the appropriate regulatory agency, or of a
14 licensed insurance company made by the
15 appropriate State insurance regulator.

16 “(4) HOLDING COMPANY CAPITAL.—

17 “(A) AUTHORITY.—If the Commission
18 finds that it is necessary to adequately super-
19 vise investment bank holding companies and
20 their broker or dealer affiliates consistent with
21 the purposes of this subsection, the Commission
22 may adopt capital adequacy rules for supervised
23 investment bank holding companies.

24 “(B) METHOD OF CALCULATION.—In de-
25 veloping rules under this paragraph:

1 “(i) DOUBLE LEVERAGE.—The Com-
2 mission shall consider the use by the su-
3 pervised investment bank holding company
4 of debt and other liabilities to fund capital
5 investments in affiliates.

6 “(ii) NO UNWEIGHTED CAPITAL
7 RATIO.—The Commission shall not impose
8 under this section a capital ratio that is
9 not based on appropriate risk-weighting
10 considerations.

11 “(iii) NO CAPITAL REQUIREMENT ON
12 REGULATED ENTITIES.—The Commission
13 shall not, by rule, regulation, guideline,
14 order or otherwise, impose any capital ade-
15 quacy provision on a nonbanking affiliate
16 (other than a broker or dealer) that is in
17 compliance with applicable capital require-
18 ments of another Federal regulatory au-
19 thority or State insurance authority.

20 “(iv) APPROPRIATE EXCLUSIONS.—
21 The Commission shall take full account of
22 the applicable capital requirements of an-
23 other Federal regulatory authority or State
24 insurance regulator.

1 “(C) INTERNAL RISK MANAGEMENT MOD-
2 ELS.—The Commission may incorporate inter-
3 nal risk management models into its capital
4 adequacy rules for supervised investment bank
5 holding companies.

6 “(5) FUNCTIONAL REGULATION OF BANKING
7 AND INSURANCE ACTIVITIES OF SUPERVISED IN-
8 VESTMENT BANK HOLDING COMPANIES.—The Com-
9 mission shall defer to—

10 “(A) the appropriate regulatory agency
11 with regard to all interpretations of, and the
12 enforcement of, applicable banking laws relating
13 to the activities, conduct, ownership, and oper-
14 ations of banks, and institutions described in
15 subparagraph (D), (F), and (G) of section
16 2(c)(2), or held under section 4(f), of the Bank
17 Holding Company Act of 1956; and

18 “(B) the appropriate State insurance regu-
19 lators with regard to all interpretations of, and
20 the enforcement of, applicable State insurance
21 laws relating to the activities, conduct, and op-
22 erations of insurance companies and insurance
23 agents.

24 “(6) DEFINITIONS.—For purposes of this sub-
25 section and subsection (j)—

1 “(A) the term ‘investment bank holding
2 company’ means—

3 “(i) any person other than a natural
4 person that owns or controls one or more
5 brokers or dealers; and

6 “(ii) the associated persons of the in-
7 vestment bank holding company;

8 “(B) the term ‘supervised investment bank
9 holding company’ means any investment bank
10 holding company that is supervised by the Com-
11 mission pursuant to this subsection;

12 “(C) the terms ‘affiliate’, ‘bank’, ‘bank
13 holding company’, ‘company’, ‘control’, and
14 ‘savings association’ have the same meanings as
15 in section 2 of the Bank Holding Company Act
16 of 1956;

17 “(D) the term ‘insured bank’ has the same
18 meaning as in section 3 of the Federal Deposit
19 Insurance Act;

20 “(E) the term ‘foreign bank’ has the same
21 meaning as in section 1(b)(7) of the Inter-
22 national Banking Act of 1978; and

23 “(F) the terms ‘person associated with an
24 investment bank holding company’ and ‘associ-
25 ated person of an investment bank holding com-

1 pany’ mean any person directly or indirectly
2 controlling, controlled by, or under common
3 control with, an investment bank holding com-
4 pany.

5 “(j) COMMISSION BACKUP AUTHORITY.—

6 “(1) AUTHORITY.—The Commission may make
7 inspections of any wholesale financial holding com-
8 pany that—

9 “(A) controls a wholesale financial institu-
10 tion;

11 “(B) is not a foreign bank; and

12 “(C) does not control an insured bank
13 (other than an institution permitted under sub-
14 paragraph (D), (F), or (G) of section 2(c)(2),
15 or held under section 4(f), of the Bank Holding
16 Company Act of 1956) or a savings association,
17 and any affiliate of such company, for the purpose
18 of monitoring and enforcing compliance by the
19 wholesale financial holding company with the Fed-
20 eral securities laws.

21 “(2) LIMITATION.—The Commission shall limit
22 the focus and scope of any inspection under para-
23 graph (1) to those transactions, policies, procedures,
24 or records that are reasonably necessary to monitor
25 and enforce compliance by the wholesale financial

1 holding company or any affiliate with the Federal
2 securities laws.

3 “(3) DEFERENCE TO EXAMINATIONS.—To the
4 fullest extent possible, the Commission shall use, for
5 the purposes of this subsection, the reports of
6 examinations—

7 “(A) made by the Board of Governors of
8 the Federal Reserve System of any wholesale fi-
9 nancial holding company that is supervised by
10 the Board;

11 “(B) made by or on behalf of any State
12 regulatory agency responsible for the super-
13 vision of an insurance company of any licensed
14 insurance company; and

15 “(C) made by any Federal or State bank-
16 ing agency of any bank or institution described
17 in subparagraph (D), (F), or (G) of section
18 2(c)(2), or held under section 4(f), of the Bank
19 Holding Company Act of 1956.

20 “(4) NOTICE.—To the fullest extent possible,
21 the Commission shall notify the appropriate regu-
22 latory agency prior to conducting an inspection of a
23 wholesale financial institution or institution de-
24 scribed in subparagraph (D), (F), or (G) of section

1 2(c)(2), or held under section 4(f), of the Bank
2 Holding Company Act of 1956.

3 “(k) AUTHORITY TO LIMIT DISCLOSURE OF INFOR-
4 MATION.—Notwithstanding any other provision of law, the
5 Commission shall not be compelled to disclose any infor-
6 mation required to be reported under subsection (h) or
7 (i) or any information supplied to the Commission by any
8 domestic or foreign regulatory agency that relates to the
9 financial or operational condition of any associated person
10 of a broker or dealer, investment bank holding company,
11 or any affiliate of an investment bank holding company.
12 Nothing in this subsection shall authorize the Commission
13 to withhold information from Congress, or prevent the
14 Commission from complying with a request for informa-
15 tion from any other Federal department or agency or any
16 self-regulatory organization requesting the information for
17 purposes within the scope of its jurisdiction, or complying
18 with an order of a court of the United States in an action
19 brought by the United States or the Commission. For pur-
20 poses of section 552 of title 5, United States Code, this
21 subsection shall be considered a statute described in sub-
22 section (b)(3)(B) of such section 552. In prescribing regu-
23 lations to carry out the requirements of this subsection,
24 the Commission shall designate information described in
25 or obtained pursuant to subparagraphs (A), (B), and (C)

1 of subsection (i)(5) as confidential information for pur-
2 poses of section 24(b)(2) of this title.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 3(a)(34) of the Securities Exchange
5 Act of 1934 (15 U.S.C. 78c(a)(34)) is amended by
6 adding at the end the following new subparagraphs:

7 “(H) When used with respect to an institu-
8 tion described in subparagraph (D), (F), or (G)
9 of section 2(c)(2), or held under section 4(f), of
10 the Bank Holding Company Act of 1956—

11 “(i) the Comptroller of the Currency,
12 in the case of a national bank or a bank
13 in the District of Columbia examined by
14 the Comptroller of the Currency;

15 “(ii) the Board of Governors of the
16 Federal Reserve System, in the case of a
17 State member bank of the Federal Reserve
18 System or any corporation chartered under
19 section 25A of the Federal Reserve Act;

20 “(iii) the Federal Deposit Insurance
21 Corporation, in the case of any other bank
22 the deposits of which are insured in ac-
23 cordance with the Federal Deposit Insur-
24 ance Act; or

1 “(iv) the Commission in the case of all
2 other such institutions.”.

3 (2) Section 1112(e) of the Right to Financial
4 Privacy Act of 1978 (12 U.S.C. 3412(e)) is
5 amended—

6 (A) by striking “this title” and inserting
7 “law”; and

8 (B) by inserting “, examination reports”
9 after “financial records”.

10 **Subtitle D—Studies**

11 **SEC. 241. STUDY OF METHODS TO INFORM INVESTORS AND** 12 **CONSUMERS OF UNINSURED PRODUCTS.**

13 Not later than 1 year after the date of enactment
14 of this Act, the Comptroller General of the United States
15 shall submit a report to the Congress regarding the effi-
16 cacy, costs, and benefits of requiring that any depository
17 institution that accepts federally insured deposits and
18 that, directly or through a contractual or other arrange-
19 ment with a broker, dealer, or agent, buys from, sells to,
20 or effects transactions for retail investors in securities or
21 consumers of insurance to inform such investors and con-
22 sumers through the use of a logo or seal that the security
23 or insurance is not insured by the Federal Deposit Insur-
24 ance Corporation.

1 **SEC. 242. STUDY OF LIMITATION ON FEES ASSOCIATED**
2 **WITH ACQUIRING FINANCIAL PRODUCTS.**

3 Not later than 1 year after the date of enactment
4 of this Act, the Comptroller General of the United States
5 shall submit a report to the Congress regarding the effi-
6 cacy and benefits of uniformly limiting any commissions,
7 fees, markups, or other costs incurred by customers in the
8 acquisition of financial products.

9 **TITLE III—INSURANCE**
10 **Subtitle A—State Regulation of**
11 **Insurance**

12 **SEC. 301. STATE REGULATION OF THE BUSINESS OF INSUR-**
13 **ANCE.**

14 The Act entitled “An Act to express the intent of the
15 Congress with reference to the regulation of the business
16 of insurance” and approved March 9, 1945 (15 U.S.C.
17 1011 et seq.), commonly referred to as the “McCarran-
18 Ferguson Act”) remains the law of the United States.

19 **SEC. 302. MANDATORY INSURANCE LICENSING REQUIRE-**
20 **MENTS.**

21 No person or entity shall provide insurance in a State
22 as principal or agent unless such person or entity is li-
23 censed as required by the appropriate insurance regulator
24 of such State in accordance with the relevant State insur-
25 ance law, subject to section 104 of this Act.

1 **SEC. 303. FUNCTIONAL REGULATION OF INSURANCE.**

2 The insurance sales activity of any person or entity
3 shall be functionally regulated by the States, subject to
4 section 104 of this Act.

5 **SEC. 304. INSURANCE UNDERWRITING IN NATIONAL**
6 **BANKS.**

7 (a) IN GENERAL.—Except as provided in section 306,
8 a national bank and the subsidiaries of a national bank
9 may not provide insurance in a State as principal except
10 that this prohibition shall not apply to authorized prod-
11 ucts.

12 (b) AUTHORIZED PRODUCTS.—For the purposes of
13 this section, a product is authorized if—

14 (1) as of January 1, 1997, the Comptroller of
15 the Currency had determined in writing that na-
16 tional banks may provide such product as principal,
17 or national banks were in fact lawfully providing
18 such product as principal;

19 (2) no court of relevant jurisdiction had, by
20 final judgment, overturned a determination of the
21 Comptroller of the Currency that national banks
22 may provide such product as principal; and

23 (3) the product is not title insurance, or an an-
24 nuity contract the income of which is subject to tax
25 treatment under section 72 of the Internal Revenue
26 Code of 1986.

1 (c) DEFINITION.—For purposes of this section, the
2 term “insurance” means—

3 (1) any product regulated as insurance as of
4 January 1, 1997, in accordance with the relevant
5 State insurance law, in the State in which the prod-
6 uct is provided;

7 (2) any product first offered after January 1,
8 1997, which—

9 (A) a State insurance regulator determines
10 shall be regulated as insurance in the State in
11 which the product is provided because the prod-
12 uct insures, guarantees, or indemnifies against
13 liability, loss of life, loss of health, or loss
14 through damage to or destruction of property,
15 including, but not limited to, surety bonds, life
16 insurance, health insurance, title insurance, and
17 property and casualty insurance (such as pri-
18 vate passenger or commercial automobile,
19 homeowners, mortgage, commercial multiperil,
20 general liability, professional liability, workers’
21 compensation, fire and allied lines, farm owners
22 multiperil, aircraft, fidelity, surety, medical
23 malpractice, ocean marine, inland marine, and
24 boiler and machinery insurance); and

1 (B) is not a product or service of a bank
2 that is—

3 (i) a deposit product;

4 (ii) a loan, discount, letter of credit,
5 or other extension of credit;

6 (iii) a trust or other fiduciary service;

7 (iv) a qualified financial contract (as
8 defined in or determined pursuant to sec-
9 tion 11(e)(8)(D)(i) of the Federal Deposit
10 Insurance Act); or

11 (v) a financial guaranty, except that
12 this subparagraph (B) shall not apply to a
13 product that includes an insurance compo-
14 nent such that if the product is offered or
15 proposed to be offered by the bank as
16 principal—

17 (I) it would be treated as a life
18 insurance contract under section 7702
19 of the Internal Revenue Code of 1986;
20 or

21 (II) in the event that the product
22 is not a letter of credit or other simi-
23 lar extension of credit, a qualified fi-
24 nancial contract, or a financial guar-
25 anty, it would qualify for treatment

1 for losses incurred with respect to
2 such product under section 832(b)(5)
3 of the Internal Revenue Code of 1986,
4 if the bank were subject to tax as an
5 insurance company under section 831
6 of that Code; or

7 (3) any annuity contract, the income on which
8 is subject to tax treatment under section 72 of the
9 Internal Revenue Code of 1986.

10 **SEC. 305. TITLE INSURANCE ACTIVITIES OF NATIONAL**
11 **BANKS AND THEIR AFFILIATES.**

12 (a) **AUTHORITY.**—Notwithstanding any other provi-
13 sion of this Act or any other law, no national bank, and
14 no subsidiary of a national bank, may engage in any activ-
15 ity involving the underwriting of title insurance, other
16 than title insurance underwriting activities in which such
17 national bank or subsidiary was actively and lawfully en-
18 gaged before the date of the enactment of this Act.

19 (b) **INSURANCE AFFILIATE.**—In the case of a na-
20 tional bank which has an affiliate which provides insur-
21 ance as principal and is not a subsidiary of the bank, the
22 national bank and any subsidiary of the national bank
23 may not engage in any activity involving the underwriting
24 of title insurance pursuant to subsection (a).

1 (c) INSURANCE SUBSIDIARY.—In the case of a na-
2 tional bank which has a subsidiary which provides insur-
3 ance as principal and has no affiliate which provides insur-
4 ance as principal and is not a subsidiary, the national
5 bank may not engage in any activity involving the under-
6 writing of title insurance pursuant to subsection (a).

7 (d) “AFFILIATE” AND “SUBSIDIARY” DEFINED.—
8 For purposes of this section, the terms “affiliate” and
9 “subsidiary” have the same meanings as in section 2 of
10 the Bank Holding Company Act of 1956.

11 **SEC. 306. EXPEDITED AND EQUALIZED DISPUTE RESOLU-**
12 **TION FOR FINANCIAL REGULATORS.**

13 (a) FILING IN COURT OF APPEAL.—In the case of
14 a regulatory conflict between a State insurance regulator
15 and a Federal regulator as to whether any product is or
16 is not insurance as defined in section 304(c) of this Act,
17 or whether a State statute, regulation, order, or interpre-
18 tation regarding any insurance sales or solicitation activity
19 is properly treated as preempted under Federal law, either
20 regulator may seek expedited judicial review of such deter-
21 mination by the United States Court of Appeals for the
22 circuit in which the State is located or in the United
23 States Court of Appeals for the District of Columbia Cir-
24 cuit by filing a petition for review in such court.

1 (b) EXPEDITED REVIEW.—The United States court
2 of appeals in which a petition for review is filed in accord-
3 ance with paragraph (1) shall complete all action on such
4 petition, including rendering a judgment, before the end
5 of the 60-day period beginning on the date such petition
6 is filed, unless all parties to such proceeding agree to any
7 extension of such period.

8 (c) SUPREME COURT REVIEW.—Any request for cer-
9 tiorari to the Supreme Court of the United States of any
10 judgment of a United States court of appeals with respect
11 to a petition for review under this section shall be filed
12 with the United States Supreme Court as soon as prac-
13 ticable after such judgment is issued.

14 (d) STATUTE OF LIMITATION.—No action may be
15 filed under this section challenging an order, ruling, deter-
16 mination, or other action of a Federal financial regulator
17 or State insurance regulator after the later of—

18 (1) the end of the 12-month period beginning
19 on the date the first public notice is made of such
20 order, ruling, or determination in its final form; or

21 (2) the end of the 6-month period beginning on
22 the date such order, ruling, or determination takes
23 effect.

24 (e) STANDARD OF REVIEW.—The court shall decide
25 an action filed under this section based on its review on

1 the merits of all questions presented under State and Fed-
2 eral law, including the nature of the product or activity
3 and the history and purpose of its regulation under State
4 and Federal law, without unequal deference.

5 **SEC. 307. CONSUMER PROTECTION REGULATIONS.**

6 The Federal Deposit Insurance Act (12 U.S.C. 1811
7 et seq.) is amended by adding at the end the following
8 new section:

9 **“SEC. 45. CONSUMER PROTECTION REGULATIONS.**

10 “(a) REGULATIONS REQUIRED.—

11 “(1) IN GENERAL.—The Federal banking agen-
12 cies shall prescribe and publish in final form, before
13 the end of the 1-year period beginning on the date
14 of the enactment of this Act, consumer protection
15 regulations (which the agencies jointly determine to
16 be appropriate) that—

17 “(A) apply to retail sales practices, solici-
18 tations, advertising, or offers of any insurance
19 product by any insured depository institution or
20 wholesale financial institution or any person
21 who is engaged in such activities at an office of
22 the institution or on behalf of the institution;
23 and

24 “(B) are consistent with the requirements
25 of this Act and provide such additional protec-

1 tions for consumers to whom such sales, solici-
2 tations, advertising, or offers are directed as
3 the agency determines to be appropriate.

4 “(2) APPLICABILITY TO SUBSIDIARIES.—The
5 regulations prescribed pursuant to paragraph (1)
6 shall extend such protections to any subsidiaries of
7 an insured depository institution, as deemed appro-
8 priate by the regulators referred to in paragraph (3),
9 where such extension is determined to be necessary
10 to ensure the consumer protections provided by this
11 section.

12 “(3) CONSULTATION AND JOINT REGULA-
13 TIONS.—The Federal banking agencies shall consult
14 with each other and prescribe joint regulations pur-
15 suant to paragraph (1), after consultation with the
16 State insurance regulators, as appropriate.

17 “(b) SALES PRACTICES.—The regulations prescribed
18 pursuant to subsection (a) shall include anticoercion rules
19 applicable to the sale of insurance products which prohibit
20 an insured depository institution from engaging in any
21 practice that would lead a consumer to believe an exten-
22 sion of credit, in violation of section 106(b) of the Bank
23 Holding Company Act Amendments of 1970, is condi-
24 tional upon—

1 “(1) the purchase of an insurance product from
2 the institution or any of its affiliates or subsidiaries;
3 or

4 “(2) an agreement by the consumer not to ob-
5 tain, or a prohibition on the consumer from obtain-
6 ing, an insurance product from an unaffiliated en-
7 tity.

8 “(c) DISCLOSURES AND ADVERTISING.—The regula-
9 tions prescribed pursuant to subsection (a) shall include
10 the following provisions relating to disclosures and adver-
11 tising in connection with the initial purchase of an insur-
12 ance product:

13 “(1) DISCLOSURES.—

14 “(A) IN GENERAL.—Requirements that the
15 following disclosures be made orally and in writ-
16 ing before the completion of the initial sale and,
17 in the case of clause (iv), at the time of applica-
18 tion for an extension of credit:

19 “(i) UNINSURED STATUS.—As appro-
20 priate, the product is not insured by the
21 Federal Deposit Insurance Corporation,
22 the United States Government, or the in-
23 sured depository institution.

24 “(ii) INVESTMENT RISK.—In the case
25 of a variable annuity or other insurance

1 product which involves an investment risk,
2 that there is an investment risk associated
3 with the product, including possible loss of
4 value.

5 “(iii) COERCION.—The approval of an
6 extension of credit may not be conditioned
7 on—

8 “(I) the purchase of an insurance
9 product from the institution in which
10 the application for credit is pending or
11 any of its affiliates or subsidiaries; or

12 “(II) an agreement by the con-
13 sumer not to obtain, or a prohibition
14 on the consumer from obtaining, an
15 insurance product from an unaffili-
16 ated entity.

17 “(B) MAKING DISCLOSURE READILY UN-
18 DERSTANDABLE.—Regulations prescribed under
19 subparagraph (A) shall encourage the use of
20 disclosure that is conspicuous, simple, direct,
21 and readily understandable, such as the follow-
22 ing:

23 “(i) ‘NOT FDIC-INSURED’.

24 “(ii) ‘NOT GUARANTEED BY THE
25 BANK’.

1 “(iii) ‘MAY GO DOWN IN VALUE’.

2 “(C) ADJUSTMENTS FOR ALTERNATIVE
3 METHODS OF PURCHASE.—In prescribing the
4 requirements under subparagraphs (A) and
5 (D), necessary adjustments shall be made for
6 purchase in person, by telephone, or by elec-
7 tronic media to provide for the most appro-
8 priate and complete form of disclosure and ac-
9 knowledgments.

10 “(D) CONSUMER ACKNOWLEDGMENT.—A
11 requirement that an insured depository institu-
12 tion shall require any person selling an insur-
13 ance product at any office of, or on behalf of,
14 the institution to obtain, at the time a con-
15 sumer receives the disclosures required under
16 this paragraph or at the time of the initial pur-
17 chase by the consumer of such product, an ac-
18 knowledgment by such consumer of the receipt
19 of the disclosure required under this subsection
20 with respect to such product.

21 “(2) PROHIBITION ON MISREPRESENTA-
22 TIONS.—A prohibition on any practice, or any adver-
23 tising, at any office of, or on behalf of, the insured
24 depository institution, or any subsidiary as appro-
25 priate, which could mislead any person or otherwise

1 cause a reasonable person to reach an erroneous be-
2 lief with respect to—

3 “(A) the uninsured nature of any insur-
4 ance product sold, or offered for sale, by the in-
5 stitution or any subsidiary of the institution; or

6 “(B) in the case of a variable annuity or
7 other insurance product that involves an invest-
8 ment risk, the investment risk associated with
9 any such product.

10 “(d) SEPARATION OF BANKING AND NONBANKING
11 ACTIVITIES.—

12 “(1) REGULATIONS REQUIRED.—The regula-
13 tions prescribed pursuant to subsection (a) shall in-
14 clude such provisions as the Federal banking agen-
15 cies consider appropriate to ensure that the routine
16 acceptance of deposits is kept, to the extent prac-
17 ticable, physically segregated from insurance product
18 activity.

19 “(2) REQUIREMENTS.—Regulations prescribed
20 pursuant to paragraph (1) shall include the follow-
21 ing requirements:

22 “(A) SEPARATE SETTING.—A clear delin-
23 eation of the setting in which, and the cir-
24 cumstances under which, transactions involving
25 insurance products should be conducted in a lo-

1 cation physically segregated from an area where
2 retail deposits are routinely accepted.

3 “(B) REFERRALS.—Standards which per-
4 mit any person accepting deposits from the
5 public in an area where such transactions are
6 routinely conducted in an insured depository in-
7 stitution to refer a customer who seeks to pur-
8 chase any insurance product to a qualified per-
9 son who sells such product, only if the person
10 making the referral receives no more than a
11 one-time nominal fee of a fixed dollar amount
12 for each referral that does not depend on
13 whether the referral results in a transaction.

14 “(C) QUALIFICATION AND LICENSING RE-
15 QUIREMENTS.—Standards prohibiting any in-
16 sured depository institution from permitting
17 any person to sell or offer for sale any insur-
18 ance product in any part of any office of the in-
19 stitution, or on behalf of the institution, unless
20 such person is appropriately qualified and li-
21 censed.

22 “(e) DOMESTIC VIOLENCE DISCRIMINATION PROHI-
23 BITION.—

24 “(1) IN GENERAL.—In the case of an applicant
25 for, or an insured under, any insurance product de-

1 scribed in paragraph (2), the status of the applicant
2 or insured as a victim of domestic violence, or as a
3 provider of services to victims of domestic violence,
4 shall not be considered as a criterion in any decision
5 with regard to insurance underwriting, pricing, re-
6 newal, or scope of coverage of insurance policies, or
7 payment of insurance claims, except as required or
8 expressly permitted under State law.

9 “(2) SCOPE OF APPLICATION.—The prohibition
10 contained in paragraph (1) shall apply to any insur-
11 ance product which is sold or offered for sale, as
12 principal, agent, or broker, by any insured deposi-
13 tory institution or any person who is engaged in
14 such activities at an office of the institution or on
15 behalf of the institution.

16 “(3) SENSE OF THE CONGRESS.—It is the sense
17 of the Congress that, by the end of the 30-month pe-
18 riod beginning on the date of the enactment of this
19 Act, the States should enact prohibitions against dis-
20 crimination with respect to insurance products that
21 are at least as strict as the prohibitions contained in
22 paragraph (1).

23 “(4) DOMESTIC VIOLENCE DEFINED.—For pur-
24 poses of this subsection, the term ‘domestic violence’
25 means the occurrence of 1 or more of the following

1 acts by a current or former family member, house-
2 hold member, intimate partner, or caretaker:

3 “(A) Attempting to cause or causing or
4 threatening another person physical harm, se-
5 vere emotional distress, psychological trauma,
6 rape, or sexual assault.

7 “(B) Engaging in a course of conduct or
8 repeatedly committing acts toward another per-
9 son, including following the person without
10 proper authority, under circumstances that
11 place the person in reasonable fear of bodily in-
12 jury or physical harm.

13 “(C) Subjecting another person to false
14 imprisonment.

15 “(D) Attempting to cause or cause damage
16 to property so as to intimidate or attempt to
17 control the behavior of another person.

18 “(f) CONSUMER GRIEVANCE PROCESS.—The Federal
19 banking agencies shall jointly establish a consumer com-
20 plaint mechanism, for receiving and expeditiously address-
21 ing consumer complaints alleging a violation of regulations
22 issued under the section, which shall—

23 “(1) establish a group within each regulatory
24 agency to receive such complaints;

1 “(2) develop procedures for investigating such
2 complaints;

3 “(3) develop procedures for informing consum-
4 ers of rights they may have in connection with such
5 complaints; and

6 “(4) develop procedures for addressing concerns
7 raised by such complaints, as appropriate, including
8 procedures for the recovery of losses to the extent
9 appropriate.

10 “(g) EFFECT ON OTHER AUTHORITY.—

11 “(1) IN GENERAL.—No provision of this section
12 shall be construed as granting, limiting, or otherwise
13 affecting—

14 “(A) any authority of the Securities and
15 Exchange Commission, any self-regulatory or-
16 ganization, the Municipal Securities Rule-
17 making Board, or the Secretary of the Treasury
18 under any Federal securities law; or

19 “(B) except as provided in paragraph (2),
20 any authority of any State insurance commis-
21 sioner or other State authority under any State
22 law.

23 “(2) COORDINATION WITH STATE LAW.—

24 “(A) IN GENERAL.—Except as provided in
25 subparagraph (B), regulations prescribed by a

1 Federal banking agency under this section shall
2 not apply to retail sales, solicitations, advertis-
3 ing, or offers of any insurance product by any
4 insured depository institution or wholesale fi-
5 nancial institution or to any person who is en-
6 gaged in such activities at an office of such in-
7 stitution or on behalf of the institution, in a
8 State where the State has in effect statutes,
9 regulations, orders, or interpretations, that are
10 inconsistent with or contrary to the regulations
11 prescribed by the Federal banking agencies.

12 “(B) PREEMPTION.—If, with respect to
13 any provision of the regulations prescribed
14 under this section, the Board of Governors of
15 the Federal Reserve System, the Comptroller of
16 the Currency, and the Board of Directors of the
17 Federal Deposit Insurance Corporation deter-
18 mine jointly that the protection afforded by
19 such provision for consumers is greater than
20 the protection provided by a comparable provi-
21 sion of the statutes, regulations, orders, or in-
22 terpretations referred to in subparagraph (A) of
23 any State, such provision of the regulations pre-
24 scribed under this section shall supersede the

1 comparable provision of such State statute, reg-
2 ulation, order, or interpretation.

3 “(h) INSURANCE PRODUCT DEFINED.—For purposes
4 of this section, the term ‘insurance product’ includes an
5 annuity contract the income of which is subject to tax
6 treatment under section 72 of the Internal Revenue Code
7 of 1986.”.

8 **SEC. 308. CERTAIN STATE AFFILIATION LAWS PREEMPTED**
9 **FOR INSURANCE COMPANIES AND AFFILI-**
10 **ATES.**

11 Except as provided in section 104(a)(2), no State
12 may, by law, regulation, order, interpretation, or
13 otherwise—

14 (1) prevent or significantly interfere with the
15 ability of any insurer, or any affiliate of an insurer
16 (whether such affiliate is organized as a stock com-
17 pany, mutual holding company, or otherwise), to be-
18 come a financial holding company or to acquire con-
19 trol of an insured depository institution;

20 (2) limit the amount of an insurer’s assets that
21 may be invested in the voting securities of an in-
22 sured depository institution (or any company which
23 controls such institution), except that the laws of an
24 insurer’s State of domicile may limit the amount of

1 such investment to an amount that is not less than
2 5 percent of the insurer's admitted assets; or

3 (3) prevent, significantly interfere with, or have
4 the authority to review, approve, or disapprove a
5 plan of reorganization by which an insurer proposes
6 to reorganize from mutual form to become a stock
7 insurer (whether as a direct or indirect subsidiary of
8 a mutual holding company or otherwise) unless such
9 State is the State of domicile of the insurer.

10 **Subtitle B—National Association of** 11 **Registered Agents and Brokers**

12 **SEC. 321. STATE FLEXIBILITY IN MULTISTATE LICENSING** 13 **REFORMS.**

14 (a) IN GENERAL.—The provisions of this subtitle
15 shall take effect unless, not later than 3 years after the
16 date of enactment of this Act, at least a majority of the
17 States—

18 (1) have enacted uniform laws and regulations
19 governing the licensure of individuals and entities
20 authorized to sell and solicit the purchase of insur-
21 ance within the State; or

22 (2) have enacted reciprocity laws and regula-
23 tions governing the licensure of nonresident individ-
24 uals and entities authorized to sell and solicit insur-
25 ance within those States.

1 (b) UNIFORMITY REQUIRED.—States shall be deemed
2 to have established the uniformity necessary to satisfy
3 subsection (a)(1) if the States—

4 (1) establish uniform criteria regarding the in-
5 tegrity, personal qualifications, education, training,
6 and experience of licensed insurance producers, in-
7 cluding the qualification and training of sales per-
8 sonnel in ascertaining the appropriateness of a par-
9 ticular insurance product for a prospective customer;

10 (2) establish uniform continuing education re-
11 quirements for licensed insurance producers;

12 (3) establish uniform ethics course require-
13 ments for licensed insurance producers in conjunc-
14 tion with the continuing education requirements
15 under paragraph (2);

16 (4) establish uniform criteria to ensure that an
17 insurance product, including any annuity contract,
18 sold to a consumer is suitable and appropriate for
19 the consumer based on financial information dis-
20 closed by the consumer; and

21 (5) do not impose any requirement upon any in-
22 surance producer to be licensed or otherwise quali-
23 fied to do business as a nonresident that has the ef-
24 fect of limiting or conditioning that producer's ac-
25 tivities because of its residence or place of oper-

1 ations, except that counter-signature requirements
2 imposed on nonresident producers shall not be
3 deemed to have the effect of limiting or conditioning
4 a producer's activities because of its residence or
5 place of operations under this section.

6 (c) RECIPROcity REQUIRED.—States shall be
7 deemed to have established the reciprocity required to sat-
8 isfy subsection (a)(2) if the following conditions are met:

9 (1) ADMINISTRATIVE LICENSING PROCE-
10 DURES.—At least a majority of the States permit a
11 producer that has a resident license for selling or so-
12 liciting the purchase of insurance in its home State
13 to receive a license to sell or solicit the purchase of
14 insurance in such majority of States as a non-
15 resident to the same extent that such producer is
16 permitted to sell or solicit the purchase of insurance
17 in its State, if the producer's home State also
18 awards such licenses on such a reciprocal basis,
19 without satisfying any additional requirements other
20 than submitting—

21 (A) a request for licensure;

22 (B) the application for licensure that the
23 producer submitted to its home State;

24 (C) proof that the producer is licensed and
25 in good standing in its home State; and

1 (D) the payment of any requisite fee to the
2 appropriate authority.

3 (2) CONTINUING EDUCATION REQUIRE-
4 MENTS.—A majority of the States accept an insur-
5 ance producer’s satisfaction of its home State’s con-
6 tinuing education requirements for licensed insur-
7 ance producers to satisfy the States’ own continuing
8 education requirements if the producer’s home State
9 also recognizes the satisfaction of continuing edu-
10 cation requirements on such a reciprocal basis.

11 (3) NO LIMITING NONRESIDENT REQUIRE-
12 MENTS.—A majority of the States do not impose
13 any requirement upon any insurance producer to be
14 licensed or otherwise qualified to do business as a
15 nonresident that has the effect of limiting or condi-
16 tioning that producer’s activities because of its resi-
17 dence or place of operations, except that
18 countersignature requirements imposed on non-
19 resident producers shall not be deemed to have the
20 effect of limiting or conditioning a producer’s activi-
21 ties because of its residence or place of operations
22 under this section.

23 (4) RECIPROCAL RECIPROCITY.—Each of the
24 States that satisfies paragraphs (1), (2), and (3)

1 grants reciprocity to residents of all of the other
2 States that satisfy such paragraphs.

3 (d) DETERMINATION.—

4 (1) NAIC DETERMINATION.—At the end of the
5 3-year period beginning on the date of the enact-
6 ment of this Act, the National Association of Insur-
7 ance Commissioners shall determine, in consultation
8 with the insurance commissioners or chief insurance
9 regulatory officials of the States, whether the uni-
10 formity or reciprocity required by subsections (b)
11 and (c) has been achieved.

12 (2) JUDICIAL REVIEW.—The appropriate
13 United States district court shall have exclusive ju-
14 risdiction over any challenge to the National Asso-
15 ciation of Insurance Commissioners' determination
16 under this section and such court shall apply the
17 standards set forth in section 706 of title 5, United
18 States Code, when reviewing any such challenge.

19 (e) CONTINUED APPLICATION.—If, at any time, the
20 uniformity or reciprocity required by subsections (b) and
21 (c) no longer exists, the provisions of this subtitle shall
22 take effect 2 years after that date, unless the uniformity
23 or reciprocity required by those provisions is satisfied be-
24 fore the expiration of that 2-year period.

1 (f) SAVINGS PROVISION.—No provision of this sec-
 2 tion shall be construed as requiring that any law, regula-
 3 tion, provision, or action of any State which purports to
 4 regulate insurance producers, including any such law, reg-
 5 ulation, provision, or action which purports to regulate un-
 6 fair trade practices or establish consumer protections, in-
 7 cluding countersignature laws, be altered or amended in
 8 order to satisfy the uniformity or reciprocity required by
 9 subsections (b) and (c), unless any such law, regulation,
 10 provision, or action is inconsistent with a specific require-
 11 ment of any such subsection and then only to the extent
 12 of such inconsistency.

13 (g) UNIFORM LICENSING.—Nothing in this section
 14 shall be construed to require any State to adopt new or
 15 additional licensing requirements to achieve the uniformity
 16 necessary to satisfy subsection (a)(1).

17 **SEC. 322. NATIONAL ASSOCIATION OF REGISTERED**
 18 **AGENTS AND BROKERS.**

19 (a) ESTABLISHMENT.—There is established the Na-
 20 tional Association of Registered Agents and Brokers
 21 (hereafter in this subtitle referred to as the “Associa-
 22 tion”).

23 (b) STATUS.—The Association shall—
 24 (1) be a nonprofit corporation;

1 (2) have succession until dissolved by an Act of
2 Congress;

3 (3) not be an agent or instrumentality of the
4 United States Government; and

5 (4) except as otherwise provided in this Act, be
6 subject to, and have all the powers conferred upon
7 a nonprofit corporation by the District of Columbia
8 Nonprofit Corporation Act (D.C. Code, sec. 29y–
9 1001 et seq.).

10 **SEC. 323. PURPOSE.**

11 The purpose of the Association shall be to provide
12 a mechanism through which uniform licensing, appoint-
13 ment, continuing education, and other insurance producer
14 sales qualification requirements and conditions can be
15 adopted and applied on a multistate basis, while preserv-
16 ing the right of States to license, supervise, and discipline
17 insurance producers and to prescribe and enforce laws and
18 regulations with regard to insurance-related consumer
19 protection and unfair trade practices.

20 **SEC. 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT.**

21 The Association shall be subject to the supervision
22 and oversight of the National Association of Insurance
23 Commissioners (hereafter in this subtitle referred to as the
24 “NAIC”).

1 **SEC. 325. MEMBERSHIP.**

2 (a) ELIGIBILITY.—

3 (1) IN GENERAL.—Any State-licensed insurance
4 producer shall be eligible to become a member in the
5 Association.

6 (2) INELIGIBILITY FOR SUSPENSION OR REV-
7 OCATION OF LICENSE.—Notwithstanding paragraph
8 (1), a State-licensed insurance producer shall not be
9 eligible to become a member if a State insurance
10 regulator has suspended or revoked such producer's
11 license in that State during the 3-year period pre-
12 ceding the date on which such producer applies for
13 membership.

14 (3) RESUMPTION OF ELIGIBILITY.—Paragraph
15 (2) shall cease to apply to any insurance producer
16 if—

17 (A) the State insurance regulator renews
18 the license of such producer in the State in
19 which the license was suspended or revoked; or

20 (B) the suspension or revocation is subse-
21 quently overturned.

22 (b) AUTHORITY TO ESTABLISH MEMBERSHIP CRI-
23 TERIA.—The Association shall have the authority to estab-
24 lish membership criteria that—

25 (1) bear a reasonable relationship to the pur-
26 poses for which the Association was established; and

1 (2) do not unfairly limit the access of smaller
2 agencies to the Association membership.

3 (c) ESTABLISHMENT OF CLASSES AND CAT-
4 EGORIES.—

5 (1) CLASSES OF MEMBERSHIP.—The Associa-
6 tion may establish separate classes of membership,
7 with separate criteria, if the Association reasonably
8 determines that performance of different duties re-
9 quires different levels of education, training, or expe-
10 rience.

11 (2) CATEGORIES.—The Association may estab-
12 lish separate categories of membership for individ-
13 uals and for other persons. The establishment of any
14 such categories of membership shall be based either
15 on the types of licensing categories that exist under
16 State laws or on the aggregate amount of business
17 handled by an insurance producer. No special cat-
18 egories of membership, and no distinct membership
19 criteria, shall be established for members which are
20 insured depository institutions or wholesale financial
21 institutions or for their employees, agents, or affili-
22 ates.

23 (d) MEMBERSHIP CRITERIA.—

24 (1) IN GENERAL.—The Association may estab-
25 lish criteria for membership which shall include

1 standards for integrity, personal qualifications, edu-
2 cation, training, and experience.

3 (2) MINIMUM STANDARD.—In establishing cri-
4 teria under paragraph (1), the Association shall con-
5 sider the highest levels of insurance producer quali-
6 fications established under the licensing laws of the
7 States.

8 (e) EFFECT OF MEMBERSHIP.—Membership in the
9 Association shall entitle the member to licensure in each
10 State for which the member pays the requisite fees, includ-
11 ing licensing fees and, where applicable, bonding require-
12 ments, set by such State.

13 (f) ANNUAL RENEWAL.—Membership in the Associa-
14 tion shall be renewed on an annual basis.

15 (g) CONTINUING EDUCATION.—The Association shall
16 establish, as a condition of membership, continuing edu-
17 cation requirements which shall be comparable to or great-
18 er than the continuing education requirements under the
19 licensing laws of a majority of the States.

20 (h) SUSPENSION AND REVOCATION.—The Associa-
21 tion may—

22 (1) inspect and examine the records and offices
23 of the members of the Association to determine com-
24 pliance with the criteria for membership established
25 by the Association; and

1 (2) suspend or revoke the membership of an in-
2 surance producer if—

3 (A) the producer fails to meet the applica-
4 ble membership criteria of the Association; or

5 (B) the producer has been subject to dis-
6 ciplinary action pursuant to a final adjudicatory
7 proceeding under the jurisdiction of a State in-
8 surance regulator, and the Association con-
9 cludes that retention of membership in the As-
10 sociation would not be in the public interest.

11 (i) OFFICE OF CONSUMER COMPLAINTS.—

12 (1) IN GENERAL.—The Association shall estab-
13 lish an office of consumer complaints that shall—

14 (A) receive and investigate complaints
15 from both consumers and State insurance regu-
16 lators related to members of the Association;
17 and

18 (B) recommend to the Association any dis-
19 ciplinary actions that the office considers appro-
20 priate, to the extent that any such rec-
21 ommendation is not inconsistent with State law.

22 (2) RECORDS AND REFERRALS.—The office of
23 consumer complaints of the Association shall—

24 (A) maintain records of all complaints re-
25 ceived in accordance with paragraph (1) and

1 make such records available to the NAIC and
2 to each State insurance regulator for the State
3 of residence of the consumer who filed the com-
4 plaint; and

5 (B) refer, when appropriate, any such com-
6 plaint to any appropriate State insurance regu-
7 lator.

8 (3) TELEPHONE AND OTHER ACCESS.—The of-
9 fice of consumer complaints shall maintain a toll-free
10 telephone number for the purpose of this subsection
11 and, as practicable, other alternative means of com-
12 munication with consumers, such as an Internet
13 home page.

14 **SEC. 326. BOARD OF DIRECTORS.**

15 (a) ESTABLISHMENT.—There is established the
16 board of directors of the Association (hereafter in this sub-
17 title referred to as the “Board”) for the purpose of govern-
18 ing and supervising the activities of the Association and
19 the members of the Association.

20 (b) POWERS.—The Board shall have such powers and
21 authority as may be specified in the bylaws of the Associa-
22 tion.

23 (c) COMPOSITION.—

24 (1) MEMBERS.—The Board shall be composed
25 of 7 members appointed by the NAIC.

1 (2) REQUIREMENT.—At least 4 of the members
2 of the Board shall have significant experience with
3 the regulation of commercial lines of insurance in at
4 least 1 of the 20 States in which the greatest total
5 dollar amount of commercial-lines insurance is
6 placed in the United States.

7 (3) INITIAL BOARD MEMBERSHIP.—

8 (A) IN GENERAL.—If, by the end of the 2-
9 year period beginning on the date of enactment
10 of this Act, the NAIC has not appointed the
11 initial 7 members of the Board of the Associa-
12 tion, the initial Board shall consist of the 7
13 State insurance regulators of the 7 States with
14 the greatest total dollar amount of commercial-
15 lines insurance in place as of the end of such
16 period.

17 (B) ALTERNATE COMPOSITION.—If any of
18 the State insurance regulators described in sub-
19 paragraph (A) declines to serve on the Board,
20 the State insurance regulator with the next
21 greatest total dollar amount of commercial-lines
22 insurance in place, as determined by the NAIC
23 as of the end of such period, shall serve as a
24 member of the Board.

1 (C) INOPERABILITY.—If fewer than 7
2 State insurance regulators accept appointment
3 to the Board, the Association shall be estab-
4 lished without NAIC oversight pursuant to sec-
5 tion 332.

6 (d) TERMS.—The term of each director shall, after
7 the initial appointment of the members of the Board, be
8 for 3 years, with $\frac{1}{3}$ of the directors to be appointed each
9 year.

10 (e) BOARD VACANCIES.—A vacancy on the Board
11 shall be filled in the same manner as the original appoint-
12 ment of the initial Board for the remainder of the term
13 of the vacating member.

14 (f) MEETINGS.—The Board shall meet at the call of
15 the chairperson, or as otherwise provided by the bylaws
16 of the Association.

17 **SEC. 327. OFFICERS.**

18 (a) IN GENERAL.—

19 (1) POSITIONS.—The officers of the Association
20 shall consist of a chairperson and a vice chairperson
21 of the Board, a president, secretary, and treasurer
22 of the Association, and such other officers and as-
23 sistant officers as may be deemed necessary.

24 (2) MANNER OF SELECTION.—Each officer of
25 the Board and the Association shall be elected or ap-

1 pointed at such time and in such manner and for
2 such terms not exceeding 3 years as may be pre-
3 scribed in the bylaws of the Association.

4 (b) CRITERIA FOR CHAIRPERSON.—Only individuals
5 who are members of the NAIC shall be eligible to serve
6 as the chairperson of the board of directors.

7 **SEC. 328. BYLAWS, RULES, AND DISCIPLINARY ACTION.**

8 (a) ADOPTION AND AMENDMENT OF BYLAWS.—

9 (1) COPY REQUIRED TO BE FILED WITH THE
10 NAIC.—The board of directors of the Association
11 shall file with the NAIC a copy of the proposed by-
12 laws or any proposed amendment to the bylaws, ac-
13 companied by a concise general statement of the
14 basis and purpose of such proposal.

15 (2) EFFECTIVE DATE.—Except as provided in
16 paragraph (3), any proposed bylaw or proposed
17 amendment shall take effect—

18 (A) 30 days after the date of the filing of
19 a copy with the NAIC;

20 (B) upon such later date as the Associa-
21 tion may designate; or

22 (C) such earlier date as the NAIC may de-
23 termine.

24 (3) DISAPPROVAL BY THE NAIC.—Notwith-
25 standing paragraph (2), a proposed bylaw or amend-

1 ment shall not take effect if, after public notice and
2 opportunity to participate in a public hearing—

3 (A) the NAIC disapproves such proposal as
4 being contrary to the public interest or contrary
5 to the purposes of this subtitle and provides no-
6 tice to the Association setting forth the reasons
7 for such disapproval; or

8 (B) the NAIC finds that such proposal in-
9 volves a matter of such significant public inter-
10 est that public comment should be obtained, in
11 which case it may, after notifying the Associa-
12 tion in writing of such finding, require that the
13 procedures set forth in subsection (b) be fol-
14 lowed with respect to such proposal, in the
15 same manner as if such proposed bylaw change
16 were a proposed rule change within the mean-
17 ing of such paragraph.

18 (b) ADOPTION AND AMENDMENT OF RULES.—

19 (1) FILING PROPOSED REGULATIONS WITH THE
20 NAIC.—

21 (A) IN GENERAL.—The board of directors
22 of the Association shall file with the NAIC a
23 copy of any proposed rule or any proposed
24 amendment to a rule of the Association which

1 shall be accompanied by a concise general state-
2 ment of the basis and purpose of such proposal.

3 (B) OTHER RULES AND AMENDMENTS IN-
4 EFFECTIVE.—No proposed rule or amendment
5 shall take effect unless approved by the NAIC
6 or otherwise permitted in accordance with this
7 paragraph.

8 (2) INITIAL CONSIDERATION BY THE NAIC.—
9 Not later than 35 days after the date of publication
10 of notice of filing of a proposal, or before the end
11 of such longer period not to exceed 90 days as the
12 NAIC may designate after such date, if the NAIC
13 finds such longer period to be appropriate and sets
14 forth its reasons for so finding, or as to which the
15 Association consents, the NAIC shall—

16 (A) by order approve such proposed rule or
17 amendment; or

18 (B) institute proceedings to determine
19 whether such proposed rule or amendment
20 should be modified or disapproved.

21 (3) NAIC PROCEEDINGS.—

22 (A) IN GENERAL.—Proceedings instituted
23 by the NAIC with respect to a proposed rule or
24 amendment pursuant to paragraph (2) shall—

- 1 (i) include notice of the grounds for
2 disapproval under consideration;
3 (ii) provide opportunity for hearing;
4 and
5 (iii) be concluded not later than 180
6 days after the date of the Association's fil-
7 ing of such proposed rule or amendment.

8 (B) DISPOSITION OF PROPOSAL.—At the
9 conclusion of any proceeding under subpara-
10 graph (A), the NAIC shall, by order, approve or
11 disapprove the proposed rule or amendment.

12 (C) EXTENSION OF TIME FOR CONSIDER-
13 ATION.—The NAIC may extend the time for
14 concluding any proceeding under subparagraph
15 (A) for—

- 16 (i) not more than 60 days if the
17 NAIC finds good cause for such extension
18 and sets forth its reasons for so finding; or
19 (ii) for such longer period as to which
20 the Association consents.

21 (4) STANDARDS FOR REVIEW.—

22 (A) GROUNDS FOR APPROVAL.—The NAIC
23 shall approve a proposed rule or amendment if
24 the NAIC finds that the rule or amendment is

1 in the public interest and is consistent with the
2 purposes of this Act.

3 (B) APPROVAL BEFORE END OF NOTICE
4 PERIOD.—The NAIC shall not approve any pro-
5 posed rule before the end of the 30-day period
6 beginning on the date on which the Association
7 files proposed rules or amendments in accord-
8 ance with paragraph (1), unless the NAIC finds
9 good cause for so doing and sets forth the rea-
10 sons for so finding.

11 (5) ALTERNATE PROCEDURE.—

12 (A) IN GENERAL.—Notwithstanding any
13 provision of this subsection other than subpara-
14 graph (B), a proposed rule or amendment relat-
15 ing to the administration or organization of the
16 Association may take effect—

17 (i) upon the date of filing with the
18 NAIC, if such proposed rule or amendment
19 is designated by the Association as relating
20 solely to matters which the NAIC, consist-
21 ent with the public interest and the pur-
22 poses of this subsection, determines by rule
23 do not require the procedures set forth in
24 this paragraph; or

1 (ii) upon such date as the NAIC shall
2 for good cause determine.

3 (B) ABROGATION BY THE NAIC.—

4 (i) IN GENERAL.—At any time within
5 60 days after the date of filing of any pro-
6 posed rule or amendment under subpara-
7 graph (A)(i) or clause (ii) of this subpara-
8 graph, the NAIC may repeal such rule or
9 amendment and require that the rule or
10 amendment be refiled and reviewed in ac-
11 cordance with this paragraph, if the NAIC
12 finds that such action is necessary or ap-
13 propriate in the public interest, for the
14 protection of insurance producers or policy-
15 holders, or otherwise in furtherance of the
16 purposes of this subtitle.

17 (ii) EFFECT OF RECONSIDERATION BY
18 THE NAIC.—Any action of the NAIC pur-
19 suant to clause (i) shall—

20 (I) not affect the validity or force
21 of a rule change during the period
22 such rule or amendment was in effect;
23 and

24 (II) not be considered to be a
25 final action.

1 (c) ACTION REQUIRED BY THE NAIC.—The NAIC
2 may, in accordance with such rules as the NAIC deter-
3 mines to be necessary or appropriate to the public interest
4 or to carry out the purposes of this subtitle, require the
5 Association to adopt, amend, or repeal any bylaw, rule or
6 amendment of the Association, whenever adopted.

7 (d) DISCIPLINARY ACTION BY THE ASSOCIATION.—

8 (1) SPECIFICATION OF CHARGES.—In any pro-
9 ceeding to determine whether membership shall be
10 denied, suspended, revoked, and not renewed (here-
11 after in this section referred to as a “disciplinary ac-
12 tion”), the Association shall bring specific charges,
13 notify such member of such charges, give the mem-
14 ber an opportunity to defend against the charges,
15 and keep a record.

16 (2) SUPPORTING STATEMENT.—A determina-
17 tion to take disciplinary action shall be supported by
18 a statement setting forth—

19 (A) any act or practice in which such
20 member has been found to have been engaged;

21 (B) the specific provision of this subtitle,
22 the rules or regulations under this subtitle, or
23 the rules of the Association which any such act
24 or practice is deemed to violate; and

1 (C) the sanction imposed and the reason
2 for such sanction.

3 (e) NAIC REVIEW OF DISCIPLINARY ACTION.—

4 (1) NOTICE TO THE NAIC.—If the Association
5 orders any disciplinary action, the Association shall
6 promptly notify the NAIC of such action.

7 (2) REVIEW BY THE NAIC.—Any disciplinary
8 action taken by the Association shall be subject to
9 review by the NAIC—

10 (A) on the NAIC's own motion; or

11 (B) upon application by any person ag-
12 grieved by such action if such application is
13 filed with the NAIC not more than 30 days
14 after the later of—

15 (i) the date the notice was filed with
16 the NAIC pursuant to paragraph (1); or

17 (ii) the date the notice of the discipli-
18 nary action was received by such aggrieved
19 person.

20 (f) EFFECT OF REVIEW.—The filing of an applica-
21 tion to the NAIC for review of a disciplinary action, or
22 the institution of review by the NAIC on the NAIC's own
23 motion, shall not operate as a stay of disciplinary action
24 unless the NAIC otherwise orders.

25 (g) SCOPE OF REVIEW.—

1 (1) IN GENERAL.—In any proceeding to review
2 such action, after notice and the opportunity for
3 hearing, the NAIC shall—

4 (A) determine whether the action should be
5 taken;

6 (B) affirm, modify, or rescind the discipli-
7 nary sanction; or

8 (C) remand to the Association for further
9 proceedings.

10 (2) DISMISSAL OF REVIEW.—The NAIC may
11 dismiss a proceeding to review disciplinary action if
12 the NAIC finds that—

13 (A) the specific grounds on which the ac-
14 tion is based exist in fact;

15 (B) the action is in accordance with appli-
16 cable rules and regulations; and

17 (C) such rules and regulations are, and
18 were, applied in a manner consistent with the
19 purposes of this subtitle.

20 **SEC. 329. ASSESSMENTS.**

21 (a) INSURANCE PRODUCERS SUBJECT TO ASSESS-
22 MENT.—The Association may establish such application
23 and membership fees as the Association finds necessary
24 to cover the costs of its operations, including fees made
25 reimbursable to the NAIC under subsection (b), except

1 that, in setting such fees, the Association may not dis-
2 criminate against smaller insurance producers.

3 (b) NAIC ASSESSMENTS.—The NAIC may assess the
4 Association for any costs that the NAIC incurs under this
5 subtitle.

6 **SEC. 330. FUNCTIONS OF THE NAIC.**

7 (a) ADMINISTRATIVE PROCEDURE.—Determinations
8 of the NAIC, for purposes of making rules pursuant to
9 section 328, shall be made after appropriate notice and
10 opportunity for a hearing and for submission of views of
11 interested persons.

12 (b) EXAMINATIONS AND REPORTS.—

13 (1) The NAIC may make such examinations
14 and inspections of the Association and require the
15 Association to furnish to the NAIC such reports and
16 records or copies thereof as the NAIC may consider
17 necessary or appropriate in the public interest or to
18 effectuate the purposes of this subtitle.

19 (2) As soon as practicable after the close of
20 each fiscal year, the Association shall submit to the
21 NAIC a written report regarding the conduct of its
22 business, and the exercise of the other rights and
23 powers granted by this subtitle, during such fiscal
24 year. Such report shall include financial statements
25 setting forth the financial position of the Association

1 at the end of such fiscal year and the results of its
2 operations (including the source and application of
3 its funds) for such fiscal year. The NAIC shall
4 transmit such report to the President and the Con-
5 gress with such comment thereon as the NAIC de-
6 termines to be appropriate.

7 **SEC. 331. LIABILITY OF THE ASSOCIATION AND THE DIREC-**
8 **TORS, OFFICERS, AND EMPLOYEES OF THE**
9 **ASSOCIATION.**

10 (a) IN GENERAL.—The Association shall not be
11 deemed to be an insurer or insurance producer within the
12 meaning of any State law, rule, regulation, or order regu-
13 lating or taxing insurers, insurance producers, or other en-
14 tities engaged in the business of insurance, including pro-
15 visions imposing premium taxes, regulating insurer sol-
16 vency or financial condition, establishing guaranty funds
17 and levying assessments, or requiring claims settlement
18 practices.

19 (b) LIABILITY OF THE ASSOCIATION, ITS DIREC-
20 TORS, OFFICERS, AND EMPLOYEES.—Neither the Associa-
21 tion nor any of its directors, officers, or employees shall
22 have any liability to any person for any action taken or
23 omitted in good faith under or in connection with any mat-
24 ter subject to this subtitle.

1 **SEC. 332. ELIMINATION OF NAIC OVERSIGHT.**

2 (a) IN GENERAL.—The Association shall be estab-
3 lished without NAIC oversight and the provisions set forth
4 in section 324, subsections (a), (b), (c), and (e) of section
5 328, and sections 329(b) and 330 of this subtitle shall
6 cease to be effective if, at the end of the 2-year period
7 beginning on the date on which the provisions of this sub-
8 title take effect pursuant to section 321—

9 (1) at least a majority of the States represent-
10 ing at least 50 percent of the total United States
11 commercial-lines insurance premiums have not satis-
12 fied the uniformity or reciprocity requirements of
13 subsections (a) and (b) of section 321; and

14 (2) the NAIC has not approved the Associa-
15 tion's bylaws as required by section 328 or is unable
16 to operate or supervise the Association, or the Asso-
17 ciation is not conducting its activities as required
18 under this Act.

19 (b) BOARD APPOINTMENTS.—If the repeals required
20 by subsection (a) are implemented, the following shall
21 apply:

22 (1) GENERAL APPOINTMENT POWER.—The
23 President, with the advice and consent of the United
24 States Senate, shall appoint the members of the As-
25 sociation's Board established under section 326 from
26 lists of candidates recommended to the President by

1 the National Association of Insurance Commis-
2 sioners.

3 (2) PROCEDURES FOR OBTAINING NATIONAL
4 ASSOCIATION OF INSURANCE COMMISSIONERS AP-
5 POINTMENT RECOMMENDATIONS.—

6 (A) INITIAL DETERMINATION AND REC-
7 OMMENDATIONS.—After the date on which the
8 provisions of subsection (a) take effect, the
9 NAIC shall, not later than 60 days thereafter,
10 provide a list of recommended candidates to the
11 President. If the NAIC fails to provide a list by
12 that date, or if any list that is provided does
13 not include at least 14 recommended candidates
14 or comply with the requirements of section
15 326(c), the President shall, with the advice and
16 consent of the United States Senate, make the
17 requisite appointments without considering the
18 views of the NAIC.

19 (B) SUBSEQUENT APPOINTMENTS.—After
20 the initial appointments, the NAIC shall pro-
21 vide a list of at least 6 recommended candidates
22 for the Board to the President by January 15
23 of each subsequent year. If the NAIC fails to
24 provide a list by that date, or if any list that
25 is provided does not include at least 6 rec-

1 ommended candidates or comply with the re-
2 quirements of section 326(c), the President,
3 with the advice and consent of the Senate, shall
4 make the requisite appointments without con-
5 sidering the views of the NAIC.

6 (C) PRESIDENTIAL OVERSIGHT.—

7 (i) REMOVAL.—If the President deter-
8 mines that the Association is not acting in
9 the interests of the public, the President
10 may remove the entire existing Board for
11 the remainder of the term to which the
12 members of the Board were appointed and
13 appoint, with the advice and consent of the
14 Senate, new members to fill the vacancies
15 on the Board for the remainder of such
16 terms.

17 (ii) SUSPENSION OF RULES OR AC-
18 TIONS.—The President, or a person des-
19 ignated by the President for such purpose,
20 may suspend the effectiveness of any rule,
21 or prohibit any action, of the Association
22 which the President or the designee deter-
23 mines is contrary to the public interest.

24 (c) ANNUAL REPORT.—As soon as practicable after
25 the close of each fiscal year, the Association shall submit

1 to the President and to the Congress a written report rel-
2 ative to the conduct of its business, and the exercise of
3 the other rights and powers granted by this subtitle, dur-
4 ing such fiscal year. Such report shall include financial
5 statements setting forth the financial position of the Asso-
6 ciation at the end of such fiscal year and the results of
7 its operations (including the source and application of its
8 funds) for such fiscal year.

9 **SEC. 333. RELATIONSHIP TO STATE LAW.**

10 (a) **PREEMPTION OF STATE LAWS.**—State laws, reg-
11 ulations, provisions, or other actions purporting to regu-
12 late insurance producers shall be preempted as provided
13 in subsection (b).

14 (b) **PROHIBITED ACTIONS.**—No State shall—

15 (1) impede the activities of, take any action
16 against, or apply any provision of law or regulation
17 to, any insurance producer because that insurance
18 producer or any affiliate plans to become, has ap-
19 plied to become, or is a member of the Association;

20 (2) impose any requirement upon a member of
21 the Association that it pay different fees to be li-
22 censed or otherwise qualified to do business in that
23 State, including bonding requirements, based on its
24 residency;

1 (3) impose any licensing, appointment, integ-
2 rity, personal or corporate qualifications, education,
3 training, experience, residency, or continuing edu-
4 cation requirement upon a member of the Associa-
5 tion that is different from the criteria for member-
6 ship in the Association or renewal of such member-
7 ship, except that counter-signature requirements im-
8 posed on nonresident producers shall not be deemed
9 to have the effect of limiting or conditioning a pro-
10 ducer's activities because of its residence or place of
11 operations under this section; or

12 (4) implement the procedures of such State's
13 system of licensing or renewing the licenses of insur-
14 ance producers in a manner different from the au-
15 thority of the Association under section 325.

16 (c) SAVINGS PROVISION.—Except as provided in sub-
17 sections (a) and (b), no provision of this section shall be
18 construed as altering or affecting the continuing effective-
19 ness of any law, regulation, provision, or other action of
20 any State which purports to regulate insurance producers,
21 including any such law, regulation, provision, or action
22 which purports to regulate unfair trade practices or estab-
23 lish consumer protections, including countersignature
24 laws.

1 **SEC. 334. COORDINATION WITH OTHER REGULATORS.**

2 (a) COORDINATION WITH STATE INSURANCE REGU-
3 LATORS.—The Association shall have the authority to—

4 (1) issue uniform insurance producer applica-
5 tions and renewal applications that may be used to
6 apply for the issuance or removal of State licenses,
7 while preserving the ability of each State to impose
8 such conditions on the issuance or renewal of a li-
9 cense as are consistent with section 333;

10 (2) establish a central clearinghouse through
11 which members of the Association may apply for the
12 issuance or renewal of licenses in multiple States;
13 and

14 (3) establish or utilize a national database for
15 the collection of regulatory information concerning
16 the activities of insurance producers.

17 (b) COORDINATION WITH THE NATIONAL ASSOCIA-
18 TION OF SECURITIES DEALERS.—The Association shall
19 coordinate with the National Association of Securities
20 Dealers in order to ease any administrative burdens that
21 fall on persons that are members of both associations, con-
22 sistent with the purposes of this subtitle and the Federal
23 securities laws.

24 **SEC. 335. JUDICIAL REVIEW.**

25 (a) JURISDICTION.—The appropriate United States
26 district court shall have exclusive jurisdiction over litiga-

1 tion involving the Association, including disputes between
2 the Association and its members that arise under this sub-
3 title. Suits brought in State court involving the Associa-
4 tion shall be deemed to have arisen under Federal law and
5 therefore be subject to jurisdiction in the appropriate
6 United States district court.

7 (b) EXHAUSTION OF REMEDIES.—An aggrieved per-
8 son shall be required to exhaust all available administra-
9 tive remedies before the Association and the NAIC before
10 it may seek judicial review of an Association decision.

11 (c) STANDARDS OF REVIEW.—The standards set
12 forth in section 553 of title 5, United States Code, shall
13 be applied whenever a rule or bylaw of the Association is
14 under judicial review, and the standards set forth in sec-
15 tion 554 of title 5, United States Code, shall be applied
16 whenever a disciplinary action of the Association is judi-
17 cially reviewed.

18 **SEC. 336. DEFINITIONS.**

19 For purposes of this subtitle, the following definitions
20 shall apply:

21 (1) HOME STATE.—The term “home State”
22 means the State in which the insurance producer
23 maintains its principal place of residence and is li-
24 censed to act as an insurance producer.

1 (2) INSURANCE.—The term “insurance” means
2 any product, other than title insurance, defined or
3 regulated as insurance by the appropriate State in-
4 surance regulatory authority.

5 (3) INSURANCE PRODUCER.—The term “insur-
6 ance producer” means any insurance agent or
7 broker, surplus lines broker, insurance consultant,
8 limited insurance representative, and any other per-
9 son that solicits, negotiates, effects, procures, deliv-
10 ers, renews, continues or binds policies of insurance
11 or offers advice, counsel, opinions or services related
12 to insurance.

13 (4) STATE.—The term “State” includes any
14 State, the District of Columbia, American Samoa,
15 Guam, Puerto Rico, and the United States Virgin
16 Islands.

17 (5) STATE LAW.—The term “State law” in-
18 cludes all laws, decisions, rules, regulations, or other
19 State action having the effect of law, of any State.
20 A law of the United States applicable only to the
21 District of Columbia shall be treated as a State law
22 rather than a law of the United States.

1 **TITLE IV—UNITARY SAVINGS**
2 **AND LOAN HOLDING COMPA-**
3 **NIES**

4 **SEC. 401. PREVENTION OF CREATION OF NEW S&L HOLD-**
5 **ING COMPANIES WITH COMMERCIAL AFFILI-**
6 **ATES.**

7 Section 10(c) of the Home Owners' Loan Act (12
8 U.S.C. 1467a(c)) is amended by adding at the end the
9 following new paragraph:

10 “(9) PREVENTION OF NEW AFFILIATIONS BE-
11 TWEEN S&L HOLDING COMPANIES AND COMMERCIAL
12 FIRMS.—

13 “(A) IN GENERAL.—Notwithstanding para-
14 graph (3), no company may directly or indi-
15 rectly, including through any merger, consolida-
16 tion, or other type of business combination, ac-
17 quire control of a savings association after Oc-
18 tober 8, 1998, unless the company is engaged,
19 directly or indirectly (including through a sub-
20 sidiary other than a savings association), only
21 in activities that are permitted—

22 “(i) under paragraph (1)(C) or (2); or

23 “(ii) for financial holding companies
24 under section 6(c) of the Bank Holding
25 Company Act of 1956.

1 “(B) PREVENTION OF NEW COMMERCIAL
2 AFFILIATIONS.—Notwithstanding paragraph
3 (3), no savings and loan holding company may
4 engage directly or indirectly (including through
5 a subsidiary other than a savings association)
6 in any activity other than as described in
7 clauses (i) and (ii) of subparagraph (A).

8 “(C) PRESERVATION OF AUTHORITY OF
9 EXISTING UNITARY S&L HOLDING COMPA-
10 NIES.—Subparagraphs (A) and (B) do not
11 apply with respect to any company that was a
12 savings and loan holding company on October
13 8, 1998, or that becomes a savings and loan
14 holding company pursuant to an application
15 pending before the Office of Thrift Supervision
16 on or before that date, or that is a company de-
17 scribed in subparagraph (A) that acquires con-
18 trol of a savings and loan holding company de-
19 scribed in this subparagraph and complies
20 thereafter with subparagraph (B) with respect
21 to any activity in which such company or the
22 acquired savings and loan holding company was
23 not engaged as of the date of the acquisition,
24 and that—

1 “(i) meets and continues to meet the
2 requirements of paragraph (3); and

3 “(ii) continues to control not fewer
4 than 1 savings association that it con-
5 trolled on October 8, 1998, or that it ac-
6 quired pursuant to an application pending
7 before the Office of Thrift Supervision on
8 or before that date, or the successor to
9 such savings association.

10 “(D) CORPORATE REORGANIZATIONS PER-
11 MITTED.—This paragraph does not prevent a
12 transaction that—

13 “(i) involves solely a company under
14 common control with a savings and loan
15 holding company from acquiring, directly
16 or indirectly, control of the savings and
17 loan holding company or any savings asso-
18 ciation that is already a subsidiary of the
19 savings and loan holding company; or

20 “(ii) involves solely a merger, consoli-
21 dation, or other type of business combina-
22 tion as a result of which a company under
23 common control with the savings and loan
24 holding company acquires, directly or indi-
25 rectly, control of the savings and loan hold-

1 ing company or any savings association
2 that is already a subsidiary of the savings
3 and loan holding company.

4 “(E) AUTHORITY TO PREVENT EVA-
5 SIONS.—The Director may issue interpreta-
6 tions, regulations, or orders that the Director
7 determines necessary to administer and carry
8 out the purpose and prevent evasions of this
9 paragraph, including a determination that, not-
10 withstanding the form of a transaction, the
11 transaction would in substance result in a com-
12 pany acquiring control of a savings associa-
13 tion.”.

14 **SEC. 402. OPTIONAL CONVERSION OF FEDERAL SAVINGS**
15 **ASSOCIATIONS TO NATIONAL BANKS.**

16 Section 5(i) of the Home Owners’ Loan Act (12
17 U.S.C. 1464(i)) is amended by adding at the end the fol-
18 lowing new paragraph:

19 “(5) CONVERSION TO A NATIONAL BANK.—Not-
20 withstanding any other provision of law, any Federal
21 savings association chartered and in operation before
22 the date of enactment of the Financial Services Act
23 of 1998, with branches in 1 or more States, may
24 convert, with the approval of the Comptroller of the
25 Currency, into 1 or more national banks, each of

1 which may encompass one or more of the branches
 2 of the Federal savings association in 1 or more
 3 States, but only if the resulting national bank or
 4 banks will meet any and all financial, management,
 5 and capital requirements applicable to a national
 6 bank.”.

7 **SEC. 403. RETENTION OF “FEDERAL” IN NAME OF CON-**
 8 **VERTED FEDERAL SAVINGS ASSOCIATION.**

9 Section 2 of the Act entitled “An Act to enable na-
 10 tional banking associations to increase their capital stock
 11 and to change their names or locations”, approved May
 12 1, 1886 (12 U.S.C. 30), is amended by adding at the end
 13 the following new subsection:

14 “(d) RETENTION OF ‘FEDERAL’ IN NAME OF CON-
 15 VERTED FEDERAL SAVINGS ASSOCIATION.—

16 “(1) IN GENERAL.—Notwithstanding subsection
 17 (a) or any other provision of law, any depository in-
 18 stitution the charter of which is converted from that
 19 of a Federal savings association to a national bank
 20 or a State bank after the date of the enactment of
 21 the Financial Services Act of 1998 may retain the
 22 term ‘Federal’ in the name of such institution if
 23 such depository institution remains an insured de-
 24 pository institution.

1 **“SEC. 1002. DEFINITIONS.**

2 “For purposes of this title, the following definitions
3 shall apply:

4 “(1) CUSTOMER.—The term ‘customer’ means,
5 with respect to a financial institution, any person (or
6 authorized representative of a person) to whom the
7 financial institution provides a product or service,
8 including that of acting as a fiduciary.

9 “(2) CUSTOMER INFORMATION OF A FINANCIAL
10 INSTITUTION.—The term ‘customer information of a
11 financial institution’ means any information main-
12 tained by a financial institution which is derived
13 from the relationship between the financial institu-
14 tion and a customer of the financial institution and
15 is identified with the customer.

16 “(3) DOCUMENT.—The term ‘document’ means
17 any information in any form.

18 “(4) FINANCIAL INSTITUTION.—

19 “(A) IN GENERAL.—The term ‘financial
20 institution’ means any institution engaged in
21 the business of providing financial services to
22 customers who maintain a credit, deposit, trust,
23 or other financial account or relationship with
24 the institution.

25 “(B) CERTAIN FINANCIAL INSTITUTIONS
26 SPECIFICALLY INCLUDED.—The term ‘financial

1 institution' includes any depository institution
2 (as defined in section 19(b)(1)(A) of the Fed-
3 eral Reserve Act), any loan or finance company,
4 any credit card issuer or operator of a credit
5 card system, and any consumer reporting agen-
6 cy that compiles and maintains files on consum-
7 ers on a nationwide basis (as defined in section
8 603(p)).

9 “(C) FURTHER DEFINITION BY REGULA-
10 TION.—The Board of Governors of the Federal
11 Reserve System may prescribe regulations fur-
12 ther defining the term ‘financial institution’, in
13 accordance with subparagraph (A), for purposes
14 of this title.

15 **“SEC. 1003. PRIVACY PROTECTION FOR CUSTOMER INFOR-**
16 **MATION OF FINANCIAL INSTITUTIONS.**

17 “(a) PROHIBITION ON OBTAINING CUSTOMER INFOR-
18 MATION BY FALSE PRETENSES.—It shall be a violation
19 of this title for any person to obtain or attempt to obtain,
20 or cause to be disclosed or attempt to cause to be disclosed
21 to any person, customer information of a financial institu-
22 tion relating to another person—

23 “(1) by knowingly making a false, fictitious, or
24 fraudulent statement or representation to an officer,
25 employee, or agent of a financial institution with the

1 intent to deceive the officer, employee, or agent into
2 relying on that statement or representation for pur-
3 poses of releasing the customer information;

4 “(2) by knowingly making a false, fictitious, or
5 fraudulent statement or representation to a cus-
6 tomer of a financial institution with the intent to de-
7 ceive the customer into relying on that statement or
8 representation for purposes of releasing the cus-
9 tomer information or authorizing the release of such
10 information; or

11 “(3) by knowingly providing any document to
12 an officer, employee, or agent of a financial institu-
13 tion, knowing that the document is forged, counter-
14 feit, lost, or stolen, was fraudulently obtained, or
15 contains a false, fictitious, or fraudulent statement
16 or representation, if the document is provided with
17 the intent to deceive the officer, employee, or agent
18 into relying on that document for purposes of releas-
19 ing the customer information.

20 “(b) PROHIBITION ON SOLICITATION OF A PERSON
21 TO OBTAIN CUSTOMER INFORMATION FROM FINANCIAL
22 INSTITUTION UNDER FALSE PRETENSES.—It shall be a
23 violation of this title to request a person to obtain cus-
24 tomer information of a financial institution, knowing or
25 consciously avoiding knowing that the person will obtain,

1 or attempt to obtain, the information from the institution
2 in any manner described in subsection (a).

3 “(c) NONAPPLICABILITY TO LAW ENFORCEMENT
4 AGENCIES.—No provision of this section shall be con-
5 strued so as to prevent any action by a law enforcement
6 agency, or any officer, employee, or agent of such agency,
7 to obtain customer information of a financial institution
8 in connection with the performance of the official duties
9 of the agency.

10 “(d) NONAPPLICABILITY TO FINANCIAL INSTITU-
11 TIONS IN CERTAIN CASES.—No provision of this section
12 shall be construed to prevent any financial institution, or
13 any officer, employee, or agent of a financial institution,
14 from obtaining customer information of such financial in-
15 stitution in the course of—

16 “(1) testing the security procedures or systems
17 of such institution for maintaining the confidential-
18 ity of customer information;

19 “(2) investigating allegations of misconduct or
20 negligence on the part of any officer, employee, or
21 agent of the financial institution; or

22 “(3) recovering customer information of the fi-
23 nancial institution which was obtained or received by
24 another person in any manner described in sub-
25 section (a) or (b).

1 “(e) NONAPPLICABILITY TO CERTAIN TYPES OF
2 CUSTOMER INFORMATION OF FINANCIAL INSTITU-
3 TIONS.—No provision of this section shall be construed to
4 prevent any person from obtaining customer information
5 of a financial institution that otherwise is available as a
6 public record filed pursuant to the securities laws (as de-
7 fined in section 3(a)(47) of the Securities Exchange Act
8 of 1934).

9 **“SEC. 1004. ADMINISTRATIVE ENFORCEMENT.**

10 “(a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
11 SION.—Except as provided in subsection (b), compliance
12 with this title shall be enforced by the Federal Trade Com-
13 mission in the same manner and with the same power and
14 authority as the Commission has under the Fair Debt Col-
15 lection Practices Act to enforce compliance with that title.

16 “(b) ENFORCEMENT BY OTHER AGENCIES IN CER-
17 TAIN CASES.—

18 “(1) IN GENERAL.—Compliance with this title
19 shall be enforced under—

20 “(A) section 8 of the Federal Deposit In-
21 surance Act, in the case of—

22 “(i) national banks, and Federal
23 branches and Federal agencies of foreign
24 banks, by the Office of the Comptroller of
25 the Currency;

1 “(ii) member banks of the Federal
2 Reserve System (other than national
3 banks), branches and agencies of foreign
4 banks (other than Federal branches, Fed-
5 eral agencies, and insured State branches
6 of foreign banks), commercial lending com-
7 panies owned or controlled by foreign
8 banks, and organizations operating under
9 section 25 or 25A of the Federal Reserve
10 Act, by the Board;

11 “(iii) banks insured by the Federal
12 Deposit Insurance Corporation (other than
13 members of the Federal Reserve System
14 and national nonmember banks) and in-
15 sured State branches of foreign banks, by
16 the Board of Directors of the Federal De-
17 posit Insurance Corporation; and

18 “(iv) savings associations the deposits
19 of which are insured by the Federal De-
20 posit Insurance Corporation, by the Direc-
21 tor of the Office of Thrift Supervision; and

22 “(B) the Federal Credit Union Act, by the
23 Administrator of the National Credit Union Ad-
24 ministration with respect to any Federal credit
25 union.

1 “(2) VIOLATIONS OF THIS TITLE TREATED AS
2 VIOLATIONS OF OTHER LAWS.—For the purpose of
3 the exercise by any agency referred to in paragraph
4 (1) of its powers under any Act referred to in that
5 paragraph, a violation of this title shall be deemed
6 to be a violation of a requirement imposed under
7 that Act. In addition to its powers under any provi-
8 sion of law specifically referred to in paragraph (1),
9 each of the agencies referred to in that paragraph
10 may exercise, for the purpose of enforcing compli-
11 ance with this title, any other authority conferred on
12 such agency by law.

13 “(c) STATE ACTION FOR VIOLATIONS.—

14 “(1) AUTHORITY OF STATES.—In addition to
15 such other remedies as are provided under State
16 law, if the chief law enforcement officer of a State,
17 or an official or agency designated by a State, has
18 reason to believe that any person has violated or is
19 violating this title, the State—

20 “(A) may bring an action to enjoin such
21 violation in any appropriate United States dis-
22 trict court or in any other court of competent
23 jurisdiction;

1 “(B) may bring an action on behalf of the
2 residents of the State to recover damages of not
3 more than \$1,000 for each violation; and

4 “(C) in the case of any successful action
5 under subparagraph (A) or (B), shall be award-
6 ed the costs of the action and reasonable attor-
7 ney fees as determined by the court.

8 “(2) RIGHTS OF FEDERAL REGULATORS.—

9 “(A) PRIOR NOTICE.—The State shall
10 serve prior written notice of any action under
11 paragraph (1) upon the Federal Trade Commis-
12 sion and, in the case of an action which involves
13 a financial institution described in section
14 1004(b)(1), the agency referred to in such sec-
15 tion with respect to such institution and provide
16 the Federal Trade Commission and any such
17 agency with a copy of its complaint, except in
18 any case in which such prior notice is not fea-
19 sible, in which case the State shall serve such
20 notice immediately upon instituting such action.

21 “(B) RIGHT TO INTERVENE.—The Federal
22 Trade Commission or an agency described in
23 subsection (b) shall have the right—

24 “(i) to intervene in an action under
25 paragraph (1);

1 “(ii) upon so intervening, to be heard
2 on all matters arising therein;

3 “(iii) to remove the action to the ap-
4 propriate United States district court; and

5 “(iv) to file petitions for appeal.

6 “(3) INVESTIGATORY POWERS.—For purposes
7 of bringing any action under this subsection, no pro-
8 vision of this subsection shall be construed as pre-
9 venting the chief law enforcement officer, or an offi-
10 cial or agency designated by a State, from exercising
11 the powers conferred on the chief law enforcement
12 officer or such official by the laws of such State to
13 conduct investigations or to administer oaths or af-
14 firmations or to compel the attendance of witnesses
15 or the production of documentary and other evi-
16 dence.

17 “(4) LIMITATION ON STATE ACTION WHILE
18 FEDERAL ACTION PENDING.—If the Federal Trade
19 Commission or any agency described in subsection
20 (b) has instituted a civil action for a violation of this
21 title, no State may, during the pendency of such ac-
22 tion, bring an action under this section against any
23 defendant named in the complaint of the Federal
24 Trade Commission or such agency for any violation
25 of this title that is alleged in that complaint.

1 **“SEC. 1005. CIVIL LIABILITY.**

2 “Any person, other than a financial institution, who
3 fails to comply with any provision of this title with respect
4 to any financial institution or any customer information
5 of a financial institution shall be liable to such financial
6 institution or the customer to whom such information re-
7 lates in an amount equal to the sum of the amounts deter-
8 mined under each of the following paragraphs:

9 “(1) ACTUAL DAMAGES.—The greater of—

10 “(A) the amount of any actual damage
11 sustained by the financial institution or cus-
12 tomer as a result of such failure; or

13 “(B) any amount received by the person
14 who failed to comply with this title, including
15 an amount equal to the value of any nonmone-
16 tary consideration, as a result of the action
17 which constitutes such failure.

18 “(2) ADDITIONAL DAMAGES.—Such additional
19 amount as the court may allow.

20 “(3) ATTORNEYS’ FEES.—In the case of any
21 successful action to enforce any liability under para-
22 graph (1) or (2), the costs of the action, together
23 with reasonable attorneys’ fees.

24 **“SEC. 1006. CRIMINAL PENALTY.**

25 “(a) IN GENERAL.—Whoever violates, or attempts to
26 violate, section 1003 shall be fined in accordance with title

1 18, United States Code, or imprisoned for not more than
2 5 years, or both.

3 “(b) ENHANCED PENALTY FOR AGGRAVATED
4 CASES.—Whoever violates, or attempts to violate, section
5 1003 while violating another law of the United States or
6 as part of a pattern of any illegal activity involving more
7 than \$100,000 in a 12-month period shall be fined twice
8 the amount provided in subsection (b)(3) or (c)(3) (as the
9 case may be) of section 3571 of title 18, United States
10 Code, imprisoned for not more than 10 years, or both.

11 **“SEC. 1007. RELATION TO STATE LAWS.**

12 “(a) IN GENERAL.—This title shall not be construed
13 as superseding, altering, or affecting the statutes, regula-
14 tions, orders, or interpretations in effect in any State, ex-
15 cept to the extent that such statutes, regulations, orders,
16 or interpretations are inconsistent with the provisions of
17 this title, and then only to the extent of the inconsistency.

18 “(b) GREATER PROTECTION UNDER STATE LAW.—
19 For purposes of this section, a State statute, regulation,
20 order, or interpretation is not inconsistent with the provi-
21 sions of this title if the protection such statute, regulation,
22 order, or interpretation affords any person is greater than
23 the protection provided under this title.

1 **“SEC. 1008. AGENCY GUIDANCE.**

2 “In furtherance of the objectives of this title, each
3 Federal banking agency (as defined in section 3(z) of the
4 Federal Deposit Insurance Act) shall issue advisories to
5 depository institutions under the jurisdiction of the agen-
6 cy, in order to assist such depository institutions in deter-
7 ring and detecting activities proscribed under section
8 1003.”.

9 **SEC. 502. REPORT TO CONGRESS ON FINANCIAL PRIVACY.**

10 Not later than 18 months after the date of enactment
11 of this Act, the Comptroller General of the United States,
12 in consultation with the Federal Trade Commission, the
13 Federal banking agencies, and other appropriate Federal
14 law enforcement agencies, shall submit to the Congress a
15 report on—

16 (1) the efficacy and adequacy of the remedies
17 provided in the amendments made by section 501 in
18 addressing attempts to obtain financial information
19 by fraudulent means or by false pretenses; and

20 (2) any recommendations for additional legisla-
21 tive or regulatory action to address threats to the
22 privacy of financial information created by attempts
23 to obtain information by fraudulent means or false
24 pretenses.

1 **TITLE VI—MISCELLANEOUS**

2 **SEC. 601. GRAND JURY PROCEEDINGS.**

3 Section 3322(b) of title 18, United States Code, is
4 amended—

5 (1) in paragraph (1), by inserting “Federal or
6 State” before “financial institution”; and

7 (2) in paragraph (2), by inserting “at any time
8 during or after the completion of the investigation of
9 the grand jury,” before “upon”.

10 **SEC. 602. SENSE OF THE COMMITTEE ON BANKING, HOUS-**
11 **ING, AND URBAN AFFAIRS OF THE SENATE.**

12 (a) FINDINGS.—The Committee on Banking, Hous-
13 ing, and Urban Affairs of the Senate finds that—

14 (1) financial modernization legislation should
15 benefit small institutions as well as large institu-
16 tions;

17 (2) the Congress made the subchapter S elec-
18 tion of the Internal Revenue Code of 1986, available
19 to banks in 1996, reflecting a desire by the Congress
20 to reduce the tax burden on community banks;

21 (3) large numbers of community banks have
22 elected or expressed interest in the subchapter S
23 election; and

24 (4) the Committee on Banking, Housing, and
25 Urban Affairs of the Senate recognizes that some

1 obstacles remain for community banks wishing to
2 make the subchapter S election.

3 (b) SENSE OF THE COMMITTEE.—It is the sense of
4 the Committee on Banking, Housing, and Urban Affairs
5 of the Senate that—

6 (1) the small business tax provisions of the In-
7 ternal Revenue Code of 1986, should be more widely
8 available to community banks;

9 (2) legislation should be passed to amend the
10 Internal Revenue Code of 1986, to—

11 (A) increase the allowed number of S cor-
12 poration shareholders;

13 (B) permit S corporation stock to be held
14 in individual retirement accounts;

15 (C) clarify that interest on investments
16 held for safety, soundness, and liquidity pur-
17 poses should not be considered to be passive in-
18 come;

19 (D) provide that bank director stock is not
20 treated as a disqualifying second class of stock
21 for S corporations; and

22 (E) improve the tax treatment of bad debt
23 and interest deductions; and

1 (3) the legislation described in paragraph (2)
2 should be adopted by the Congress in conjunction
3 with any financial modernization legislation.

4 **SEC. 603. INVESTMENTS IN GOVERNMENT SPONSORED EN-**
5 **TERPRISES.**

6 Section 18(s) of the Federal Deposit Insurance Act
7 (12 U.S.C. 1828(s)) is amended—

8 (1) by redesignating paragraph (4) as para-
9 graph (6); and

10 (2) by inserting after paragraph (3) the follow-
11 ing:

12 “(4) CERTAIN INVESTMENTS.—Paragraph (1)
13 shall not apply with respect to investments lawfully
14 made before April 11, 1996, by a depository institu-
15 tion in any Government sponsored enterprise.

16 “(5) STUDENT LOANS.—

17 “(A) IN GENERAL.—This subsection shall
18 not apply to any arrangement between the
19 Holding Company (or any subsidiary of the
20 Holding Company other than the Student Loan
21 Marketing Association) and a depository insti-
22 tution, if the Secretary approves the affiliation
23 and determines that—

24 “(i) the reorganization of such Asso-
25 ciation in accordance with section 440 of

1 the Higher Education Act of 1965, as
2 amended, will not be adversely affected by
3 the arrangement;

4 “(ii) the dissolution of the Association
5 pursuant to such reorganization will occur
6 before the end of the 2-year period begin-
7 ning on the date on which such arrange-
8 ment is consummated or on such earlier
9 date as the Secretary deems appropriate:
10 *Provided*, That the Secretary may extend
11 this period for not more than one year at
12 a time if the Secretary determines that
13 such extension is in the public interest and
14 is appropriate to achieve an orderly reorga-
15 nization of the Association or to prevent
16 market disruptions in connection with such
17 reorganization, but no such extensions
18 shall in the aggregate exceed two years;

19 “(iii) the Association will not purchase
20 or extend credit to, or guarantee or provide
21 credit enhancement to, any obligation of
22 the depository institution;

23 “(iv) the operations of the Association
24 will be separate from the operations of the
25 depository institution; and

1 “(v) until the ‘dissolution date’ (as
2 that term is defined in section 440 of the
3 Higher Education Act of 1965, as amend-
4 ed) has occurred, such depository institu-
5 tion will not use the trade name or service
6 mark ‘Sallie Mae’ in connection with any
7 product or service it offers if the appro-
8 priate Federal banking agency for such de-
9 pository institution determines that:

10 “(I) the depository institution is
11 the only institution offering such
12 product or service using the ‘Sallie
13 Mae’ name; and

14 “(II) such use would result in the
15 depository institution having an unfair
16 competitive advantage over other de-
17 pository institutions.

18 “(B) TERMS AND CONDITIONS.—In ap-
19 proving any arrangement referred to in sub-
20 paragraph (A), the Secretary may impose any
21 terms and conditions on such an arrangement
22 that the Secretary considers appropriate,
23 including—

1 “(i) imposing additional restrictions
2 on the issuance of debt obligations by the
3 Association; or

4 “(ii) restricting the use of proceeds
5 from the issuance of such debt.

6 “(C) ADDITIONAL LIMITATIONS.—In the
7 event that the Holding Company (or any sub-
8 sidiary of the Holding Company) enters into
9 such an arrangement, the value of the Associa-
10 tion’s ‘investment portfolio’ shall not at any
11 time exceed the lesser of: (i) the value of such
12 portfolio on the date of the enactment of this
13 subsection; or, (ii) the value of such portfolio on
14 the date such an arrangement is consummated.
15 The term ‘investment portfolio’ shall mean all
16 investments shown on the consolidated balance
17 sheet of the Association other than: (i) any in-
18 struments or assets described in section 439(d)
19 of the Higher Education Act of 1965, amended;
20 (ii) any direct non-callable obligations of the
21 United States or any agency thereof for which
22 the full faith and credit of the United States is
23 pledged; or, (iii) cash or cash equivalents.

24 “(D) ENFORCEMENT.—The terms and
25 conditions imposed under subparagraph (B)

1 may be enforced by the Secretary in accordance
2 with section 440 of the Higher Education Act
3 of 1965.

4 “(E) DEFINITIONS.—For purposes of this
5 paragraph, the following definitions shall apply:

6 “(i) ASSOCIATION; HOLDING COM-
7 PANY.—Notwithstanding any provision in
8 section 3, the terms ‘Association’ and
9 ‘Holding Company’ have the same mean-
10 ings as in section 440(i) of the Higher
11 Education Act of 1965.

12 “(ii) SECRETARY.—The term ‘Sec-
13 retary’ means the Secretary of the Treas-
14 ury.”.

15 **SEC. 604. REPEAL OF SAVINGS BANK PROVISIONS IN THE**
16 **BANK HOLDING COMPANY ACT OF 1956.**

17 Section 3(f) of the Bank Holding Company Act of
18 1956 (12 U.S.C. 1842(f)) is amended to read as follows:

19 “(f) [Reserved].”.

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