

106TH CONGRESS  
1ST SESSION

# H. R. 10

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

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1999

Mr. LEACH (for himself, Mr. MCCOLLUM, Mrs. ROUKEMA, Mr. BAKER, Mr. LAZIO, Mr. BACHUS, Mr. CASTLE, Mr. KING, Mr. NEY, Mr. COOK, Mr. LATOURETTE, and Mrs. KELLY) introduced the following bill; which was referred to the Committee on Banking and Financial Services, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

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

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

1 **SECTION 1. SHORT TITLE; PURPOSES; TABLE OF CON-**  
2 **TENTS.**

3 (a) **SHORT TITLE.**—This Act may be cited as the  
4 “Financial Services Act of 1999”.

5 (b) **PURPOSES.**—The purposes of this Act are as fol-  
6 lows:

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

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

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

15 (4) To avoid duplicative, potentially conflicting,  
16 and overly burdensome regulatory requirements  
17 through the creation of a regulatory framework for  
18 financial holding companies that respects the diver-  
19 gent requirements of each of the component busi-  
20 nesses of the holding company, and that is based  
21 upon principles of strong functional regulation and  
22 enhanced regulatory coordination.

23 (5) To reduce and, to the maximum extent  
24 practicable, to eliminate the legal barriers preventing  
25 affiliation among depository institutions, securities  
26 firms, insurance companies, and other financial serv-

1 ice providers and to provide a prudential framework  
2 for achieving that result.

3 (6) To enhance the availability of financial serv-  
4 ices to citizens of all economic circumstances and in  
5 all geographic areas.

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

8 (8) To ensure compliance by depository institu-  
9 tions with the provisions of the Community Rein-  
10 vestment Act of 1977 and enhance the ability of de-  
11 pository institutions to meet the capital and credit  
12 needs of all citizens and communities, including un-  
13 derserved communities and populations.

14 (c) TABLE OF CONTENTS.—The table of contents for  
15 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.
- Sec. 120. Repeal of savings bank provisions in the Bank Holding Company Act of 1956.

#### Subtitle C—Subsidiaries of National Banks

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

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

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

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

##### CHAPTER 2—WHOLESALE FINANCIAL INSTITUTIONS

- Sec. 136. Wholesale financial institutions.

#### Subtitle E—Preservation of FTC Authority

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

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

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

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

- Sec. 161. Short title.
- Sec. 162. Definitions.

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

#### Subtitle H—Direct Activities of Banks

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

#### Subtitle I—Deposit Insurance Funds

- Sec. 186. Study of safety and soundness of funds.
- Sec. 187. Elimination of SAIF and DIF special reserves.

#### 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 Federal regulators.

Sec. 307. Consumer protection regulations.

Sec. 308. Certain State affiliation laws preempted for insurance companies and affiliates.

Sec. 309. Publication of preemption of State laws.

Subtitle B—Redomestication of Mutual Insurers

Sec. 311. General application.

Sec. 312. Redomestication of mutual insurers.

Sec. 313. Effect on State laws restricting redomestication.

Sec. 314. Other provisions.

Sec. 315. Definitions.

Sec. 316. Effective date.

Subtitle C—National Association of Registered Agents and Brokers

Sec. 321. State flexibility in multistate licensing reforms.

Sec. 322. National Association of Registered Agents and Brokers.

Sec. 323. Purpose.

Sec. 324. Relationship to the Federal Government.

Sec. 325. Membership.

Sec. 326. Board of Directors.

Sec. 327. Officers.

Sec. 328. Bylaws, rules, and disciplinary action.

Sec. 329. Assessments.

Sec. 330. Functions of the NAIC.

Sec. 331. Liability of the Association and the directors, officers, and employees of the Association.

Sec. 332. Elimination of NAIC oversight.

Sec. 333. Relationship to State law.

Sec. 334. Coordination with other regulators.

Sec. 335. Judicial review.

Sec. 336. Definitions.

TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES

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

Sec. 402. Retention of “Federal” in name of converted Federal savings association.

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 of the  
 9 Banking Act of 1933 (12 U.S.C. 377) (commonly referred  
 10 to as the “Glass-Steagall Act”) is repealed.

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

19 “(8) shares of any company the activities of  
 20 which had been determined by the Board by regula-  
 21 tion under this paragraph as of the day before the  
 22 date of the enactment of the Financial Services Act  
 23 of 1999, to be so closely related to banking as to be  
 24 a proper incident thereto (subject to such terms and

1 conditions contained in such regulation, unless modi-  
2 fied by the Board);”.

3 (b) CONFORMING CHANGES TO OTHER STATUTES.—

4 (1) AMENDMENT TO THE BANK HOLDING COM-  
5 PANY ACT AMENDMENTS OF 1970.—Section 105 of  
6 the Bank Holding Company Act Amendments of  
7 1970 (12 U.S.C. 1850) is amended by striking “, to  
8 engage directly or indirectly in a nonbanking activity  
9 pursuant to section 4 of such Act,”.

10 (2) AMENDMENT TO THE BANK SERVICE COM-  
11 PANY ACT.—Section 4(f) of the Bank Service Com-  
12 pany Act (12 U.S.C. 1864(f)) is amended by strik-  
13 ing the period and adding at the end the following:  
14 “as of the day before the date of enactment of the  
15 Financial Services Act of 1999.”.

16 **SEC. 103. FINANCIAL HOLDING COMPANIES.**

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

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

21 “(a) FINANCIAL HOLDING COMPANY DEFINED.—  
22 For purposes of this section, the term ‘financial holding  
23 company’ means a bank holding company which meets the  
24 requirements of subsection (b).

1       “(b) ELIGIBILITY REQUIREMENTS FOR FINANCIAL  
2 HOLDING COMPANIES.—

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

8           “(A) All of the subsidiary depository insti-  
9 tutions of the bank holding company are well  
10 capitalized.

11           “(B) All of the subsidiary depository insti-  
12 tutions of the bank holding company are well  
13 managed.

14           “(C) The company has filed with the  
15 Board a declaration that the company elects to  
16 be a financial holding company and certifying  
17 that the company meets the requirements of  
18 subparagraphs (A) and (B) and paragraph (2).

19           “(2) COMMUNITY NEEDS REQUIREMENT.—No  
20 bank holding company may become a financial hold-  
21 ing company unless all of the subsidiary depository  
22 institutions of the bank holding company have  
23 achieved a rating of ‘satisfactory record of meeting  
24 community credit needs’, or better, at the most re-

1 cent examination of each such institution under the  
2 Community Reinvestment Act of 1977.

3 “(3) FOREIGN BANKS AND COMPANIES.—For  
4 purposes of paragraph (1), the Board shall establish  
5 and apply comparable capital and other operating  
6 standards to a foreign bank that operates a branch  
7 or agency or owns or controls a bank or commercial  
8 lending company in the United States, and any com-  
9 pany that owns or controls such foreign bank, giving  
10 due regard to the principle of national treatment  
11 and equality of competitive opportunity.

12 “(c) ENGAGING IN ACTIVITIES THAT ARE FINANCIAL  
13 IN NATURE.—

14 “(1) FINANCIAL ACTIVITIES.—

15 “(A) IN GENERAL.—Notwithstanding sec-  
16 tion 4(a), a financial holding company and a  
17 wholesale financial holding company may en-  
18 gage in any activity, and acquire and retain the  
19 shares of any company engaged in any activity,  
20 that the Board has determined (by regulation  
21 or order) to be financial in nature or incidental  
22 to such financial activities.

23 “(B) COORDINATION BETWEEN THE  
24 BOARD AND THE DEPARTMENT OF THE TREAS-  
25 URY.—

1                   “(i) PROPOSALS RAISED BEFORE THE  
2 BOARD.—

3                   “(I)           CONSULTATION.—The  
4 Board shall notify the Secretary of  
5 the Treasury of, and consult with the  
6 Secretary of the Treasury concerning,  
7 any request, proposal, or application  
8 under this subsection for a determina-  
9 tion of whether an activity is financial  
10 in nature or incidental to such a fi-  
11 nancial activity.

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

1 in nature or incidental to a financial  
2 activity.

3 “(ii) PROPOSALS RAISED BY THE  
4 TREASURY.—

5 “(I) TREASURY RECOMMENDA-  
6 TION.—The Secretary of the Treasury  
7 may, at any time, recommend in writ-  
8 ing that the Board find an activity to  
9 be financial in nature or incidental to  
10 a financial activity.

11 “(II) TIME PERIOD FOR BOARD  
12 ACTION.—Not later than 30 days  
13 after the date of receipt of a written  
14 recommendation from the Secretary of  
15 the Treasury under subclause (I) (or  
16 such longer period as the Secretary of  
17 the Treasury and the Board deter-  
18 mine to be appropriate in light of the  
19 circumstances), the Board shall deter-  
20 mine whether to initiate a public rule-  
21 making proposing that the subject  
22 recommended activity be found to be  
23 financial in nature or incidental to a  
24 financial activity under this sub-  
25 section, and shall notify the Secretary

1 of the Treasury in writing of the de-  
2 termination of the Board and, in the  
3 event that the Board determines not  
4 to seek public comment on the pro-  
5 posal, the reasons for that determina-  
6 tion.

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

11 “(A) the purposes of this Act and the Fi-  
12 nancial Services Act of 1999;

13 “(B) changes or reasonably expected  
14 changes in the marketplace in which bank hold-  
15 ing companies compete;

16 “(C) changes or reasonably expected  
17 changes in the technology for delivering finan-  
18 cial services; and

19 “(D) whether such activity is necessary or  
20 appropriate to allow a bank holding company  
21 and the affiliates of a bank holding company  
22 to—

23 “(i) compete effectively with any com-  
24 pany seeking to provide financial services  
25 in the United States;

1           “(ii) use any available or emerging  
2           technological means, including any applica-  
3           tion necessary to protect the security or ef-  
4           ficacy of systems for the transmission of  
5           data or financial transactions, in providing  
6           financial services; and

7           “(iii) offer customers any available or  
8           emerging technological means for using fi-  
9           nancial services.

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

13           “(A) Lending, exchanging, transferring, in-  
14           vesting for others, or safeguarding money or se-  
15           curities.

16           “(B) Insuring, guaranteeing, or indemnify-  
17           ing against loss, harm, damage, illness, disabil-  
18           ity, or death, or providing and issuing annu-  
19           ities, and acting as principal, agent, or broker  
20           for purposes of the foregoing.

21           “(C) Providing financial, investment, or  
22           economic advisory services, including advising  
23           an investment company (as defined in section 3  
24           of the Investment Company Act of 1940).

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

4           “(E) Underwriting, dealing in, or making  
5           a market in securities.

6           “(F) Engaging in any activity that the  
7           Board has determined, by order or regulation  
8           that is in effect on the date of enactment of the  
9           Financial Services Act of 1999, to be so closely  
10          related to banking or managing or controlling  
11          banks as to be a proper incident thereto (sub-  
12          ject to the same terms and conditions contained  
13          in such order or regulation, unless modified by  
14          the Board).

15          “(G) Engaging, in the United States, in  
16          any activity that—

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

19                 “(ii) the Board has determined, under  
20                 regulations issued pursuant to section  
21                 4(c)(13) of this Act (as in effect on the  
22                 day before the date of enactment of the Fi-  
23                 nancial Services Act of 1999) to be usual  
24                 in connection with the transaction of bank-  
25                 ing or other financial operations abroad.

1           “(H) Directly or indirectly acquiring or  
2 controlling, whether as principal, on behalf of 1  
3 or more entities (including entities, other than  
4 a depository institution or subsidiary of a de-  
5 pository institution, that the bank holding com-  
6 pany controls) or otherwise, shares, assets, or  
7 ownership interests (including without limita-  
8 tion debt or equity securities, partnership inter-  
9 ests, trust certificates or other instruments rep-  
10 resenting ownership) of a company or other en-  
11 tity, whether or not constituting control of such  
12 company or entity, engaged in any activity not  
13 authorized pursuant to this section if—

14           “(i) the shares, assets, or ownership  
15 interests are not acquired or held by a de-  
16 pository institution or subsidiary of a de-  
17 pository institution;

18           “(ii) such shares, assets, or ownership  
19 interests are acquired and held by a securi-  
20 ties affiliate or an affiliate thereof as part  
21 of a bona fide underwriting or merchant  
22 banking activity, including investment ac-  
23 tivities engaged in for the purpose of ap-  
24 preciation and ultimate resale or disposi-  
25 tion of the investment;

1           “(iii) such shares, assets, or owner-  
2           ship interests are held only for such a pe-  
3           riod of time as will permit the sale or dis-  
4           position thereof on a reasonable basis con-  
5           sistent with the nature of the activities de-  
6           scribed in clause (ii); and

7           “(iv) during the period such shares,  
8           assets, or ownership interests are held, the  
9           bank holding company does not actively  
10          participate in the day to day management  
11          or operation of such company or entity, ex-  
12          cept insofar as necessary to achieve the ob-  
13          jectives of clause (ii).

14          “(I) Directly or indirectly acquiring or con-  
15          trolling, whether as principal, on behalf of 1 or  
16          more entities (including entities, other than a  
17          depository institution or subsidiary of a depository  
18          institution, that the bank holding company  
19          controls) or otherwise, shares, assets, or owner-  
20          ship interests (including without limitation debt  
21          or equity securities, partnership interests, trust  
22          certificates or other instruments representing  
23          ownership) of a company or other entity, wheth-  
24          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 a subsidiary of a de-  
6 pository institution;

7 “(ii) such shares, assets, or ownership  
8 interests are acquired and held by an in-  
9 surance company that is predominantly en-  
10 gaged in underwriting life, accident and  
11 health, or property and casualty insurance  
12 (other than credit-related insurance) or  
13 providing and issuing annuities;

14 “(iii) such shares, assets, or owner-  
15 ship interests represent an investment  
16 made in the ordinary course of business of  
17 such insurance company in accordance  
18 with relevant State law governing such in-  
19 vestments; and

20 “(iv) during the period such shares,  
21 assets, or ownership interests are held, the  
22 bank holding company does not directly or  
23 indirectly participate in the day-to-day  
24 management or operation of the company  
25 or entity except insofar as necessary to

1           achieve the objectives of clauses (ii) and  
2           (iii).

3           “(4) ACTIONS REQUIRED.—The Board shall, by  
4           regulation or order, define, consistent with the pur-  
5           poses of this Act, the following activities as, and the  
6           extent to which such activities are, financial in na-  
7           ture or incidental to activities which are financial in  
8           nature:

9                   “(A) Lending, exchanging, transferring, in-  
10                   vesting for others, or safeguarding financial as-  
11                   sets other than money or securities.

12                   “(B) Providing any device or other instru-  
13                   mentality for transferring money or other finan-  
14                   cial assets.

15                   “(C) Arranging, effecting, or facilitating fi-  
16                   nancial transactions for the account of third  
17                   parties.

18           “(5) POST-CONSUMMATION NOTIFICATION.—

19                   “(A) IN GENERAL.—A financial holding  
20                   company and a wholesale financial holding com-  
21                   pany that acquires any company, or commences  
22                   any activity, pursuant to this subsection shall  
23                   provide written notice to the Board describing  
24                   the activity commenced or conducted by the  
25                   company acquired no later than 30 calendar

1 days after commencing the activity or con-  
2 summing the acquisition.

3 “(B) APPROVAL NOT REQUIRED FOR CER-  
4 TAIN FINANCIAL ACTIVITIES.—Except as pro-  
5 vided in section 4(j) with regard to the acquisi-  
6 tion of a savings association or in paragraph  
7 (6) of this subsection, a financial holding com-  
8 pany and a wholesale financial holding company  
9 may commence any activity, or acquire any  
10 company, pursuant to paragraph (3) or any  
11 regulation prescribed or order issued under  
12 paragraph (4), without prior approval of the  
13 Board.

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

16 “(A) IN GENERAL.—No financial holding  
17 company or wholesale financial holding com-  
18 pany shall directly or indirectly acquire, and no  
19 company that becomes a financial holding com-  
20 pany or a wholesale financial holding company  
21 shall directly or indirectly acquire control of,  
22 any company in the United States, including  
23 through merger, consolidation, or other type of  
24 business combination, that—

1           “(i) is engaged in activities permitted  
2           under this subsection or subsection (g);  
3           and

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

6           unless such holding company has provided no-  
7           tice to the Board, not later than 60 days prior  
8           to such proposed acquisition or prior to becom-  
9           ing a financial holding company or wholesale fi-  
10          nancial holding company, and during that time  
11          period, or such longer time period not exceeding  
12          an additional 60 days, as established by the  
13          Board, the Board has not issued a notice dis-  
14          approving the proposed acquisition or retention.

15          “(B) FACTORS FOR CONSIDERATION.—In  
16          reviewing any prior notice filed under this para-  
17          graph, the Board shall take into  
18          consideration—

19                 “(i) whether the company is in com-  
20                 pliance with all applicable criteria set forth  
21                 in subsection (b) and the provisions of sub-  
22                 section (d);

23                 “(ii) whether the proposed combina-  
24                 tion represents an undue aggregation of  
25                 resources;

1           “(iii) whether the proposed combina-  
2           tion poses a risk to the deposit insurance  
3           system;

4           “(iv) whether the proposed combina-  
5           tion poses a risk to State insurance guar-  
6           anty funds;

7           “(v) whether the proposed combina-  
8           tion can reasonably be expected to be in  
9           the best interests of depositors or policy-  
10          holders of the respective entities; and

11          “(vi) whether the proposed trans-  
12          action can reasonably be expected to  
13          produce benefits to the public.

14          “(C)   REQUIRED    INFORMATION.—The  
15          Board may disapprove any prior notice filed  
16          under this paragraph if the company submitting  
17          such notice neglects, fails, or refuses to furnish  
18          to the Board all relevant information required  
19          by the Board.

20          “(D)   SOLICITATION OF VIEWS OF OTHER  
21          SUPERVISORY AGENCIES.—

22          “(i)   IN GENERAL.—Upon receiving a  
23          prior notice under this paragraph, in order  
24          to provide for the submission of their views

1 and recommendations, the Board shall give  
2 notice of the proposal to—

3 “(I) the appropriate Federal  
4 banking agency of any bank involved;

5 “(II) the appropriate functional  
6 regulator of any functionally regulated  
7 nondepository institution (as defined  
8 in section 5(c)(1)(C)) involved; and

9 “(III) the Secretary of the Treas-  
10 ury, the Department of Justice, and  
11 the Federal Trade Commission.

12 “(ii) TIMING.—The views and rec-  
13 ommendations of any agency provided no-  
14 tice under this paragraph shall be submit-  
15 ted to the Board not later than 30 cal-  
16 endar days after the date on which notice  
17 to the agency was given, unless the Board  
18 determines that another shorter time pe-  
19 riod is appropriate.

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

22 “(1) IN GENERAL.—If the Board finds that a  
23 financial holding company is not in compliance with  
24 the requirements of subparagraph (A) or (B) of sub-

1 section (b)(1), the Board shall give notice of such  
2 finding to the company.

3 “(2) AGREEMENT TO CORRECT CONDITIONS RE-  
4 QUIRED.—Not later than 45 days after receipt by a  
5 financial holding company of a notice given under  
6 paragraph (1) (or such additional period as the  
7 Board may permit), the company shall execute an  
8 agreement acceptable to the Board to comply with  
9 the requirements applicable to a financial holding  
10 company.

11 “(3) BOARD MAY IMPOSE LIMITATIONS.—Until  
12 the conditions described in a notice to a financial  
13 holding company under paragraph (1) are corrected,  
14 the Board may impose such limitations on the con-  
15 duct or activities of the company or any affiliate of  
16 the company as the Board determines to be appro-  
17 priate under the circumstances.

18 “(4) FAILURE TO CORRECT.—If, after receiving  
19 a notice under paragraph (1), a financial holding  
20 company does not—

21 “(A) execute and implement an agreement  
22 in accordance with paragraph (2);

23 “(B) comply with any limitations imposed  
24 under paragraph (3);

1           “(C) in the case of a notice of failure to  
2           comply with subsection (b)(1)(A), restore each  
3           depository institution subsidiary to well capital-  
4           ized status before the end of the 180-day period  
5           beginning on the date such notice is received by  
6           the company (or such other period permitted by  
7           the Board); or

8           “(D) in the case of a notice of failure to  
9           comply with subparagraph (B) of subsection  
10          (b)(1), restore compliance with any such sub-  
11          paragraph on or before the date on which the  
12          next examination of the depository institution  
13          subsidiary is completed or by the end of such  
14          other period as the Board determines to be ap-  
15          propriate,

16          the Board may require such company, under such  
17          terms and conditions as may be imposed by the  
18          Board and subject to such extension of time as may  
19          be granted in the Board’s discretion, to divest con-  
20          trol of any depository institution subsidiary or, at  
21          the election of the financial holding company, in-  
22          stead to cease to engage in any activity conducted by  
23          such company or its subsidiaries pursuant to this  
24          section.

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

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

6           “(1) the procedures of the holding company for  
7           identifying and managing financial and operational  
8           risks within the company, and the subsidiaries of  
9           such company, adequately protect the subsidiaries of  
10          such company which are insured depository institu-  
11          tions from such risks;

12          “(2) the holding company has reasonable poli-  
13          cies and procedures to preserve the separate cor-  
14          porate identity and limited liability of such company  
15          and the subsidiaries of such company, for the pro-  
16          tection of the company’s subsidiary insured deposi-  
17          tory institutions; and

18          “(3) the holding company complies with this  
19          section.

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

22          “(1) IN GENERAL.—Notwithstanding section  
23          4(a), a company that is not a bank holding company  
24          or a foreign bank (as defined in section 1(b)(7) of  
25          the International Banking Act of 1978) and becomes

1 a financial holding company after the date of the en-  
2 actment of the Financial Services Act of 1999 may  
3 continue to engage in any activity and retain direct  
4 or indirect ownership or control of shares of a com-  
5 pany engaged in any activity if—

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

9 “(B) the holding company is predomi-  
10 nantly engaged in financial activities as defined  
11 in paragraph (2); and

12 “(C) the company engaged in such activity  
13 continues to engage only in the same activities  
14 that such company conducted on September 30,  
15 1997, and other activities permissible under  
16 this Act.

17 “(2) PREDOMINANTLY FINANCIAL.—For pur-  
18 poses of this subsection, a company is predominantly  
19 engaged in financial activities if the annual gross  
20 revenues derived by the holding company and all  
21 subsidiaries of the holding company (excluding reve-  
22 nues derived from subsidiary depository institu-  
23 tions), on a consolidated basis, from engaging in ac-  
24 tivities that are financial in nature or are incidental  
25 to activities that are financial in nature under sub-

1 section (c) represent at least 85 percent of the con-  
2 solidated annual gross revenues of the company.

3 “(3) NO EXPANSION OF GRANDFATHERED COM-  
4 Mercial ACTIVITIES THROUGH MERGER OR CON-  
5 SOLIDATION.—A financial holding company that en-  
6 gages in activities or holds shares pursuant to this  
7 subsection, or a subsidiary of such financial holding  
8 company, may not acquire, in any merger, consolida-  
9 tion, or other type of business combination, assets of  
10 any other company which is engaged in any activity  
11 which the Board has not determined to be financial  
12 in nature or incidental to activities that are financial  
13 in nature under subsection (c).

14 “(4) CONTINUING REVENUE LIMITATION ON  
15 GRANDFATHERED COMMERCIAL ACTIVITIES.—Not-  
16 withstanding any other provision of this subsection,  
17 a financial holding company may continue to engage  
18 in activities or hold shares in companies pursuant to  
19 this subsection only to the extent that the aggregate  
20 annual gross revenues derived from all such activi-  
21 ties and all such companies does not exceed 15 per-  
22 cent of the consolidated annual gross revenues of the  
23 financial holding company (excluding revenues de-  
24 rived from subsidiary depository institutions).

1           “(5) CROSS MARKETING RESTRICTIONS APPLI-  
2           CABLE TO COMMERCIAL ACTIVITIES.—A depository  
3           institution controlled by a financial holding company  
4           shall not—

5                   “(A) offer or market, directly or through  
6                   any arrangement, any product or service of a  
7                   company whose activities are conducted or  
8                   whose shares are owned or controlled by the fi-  
9                   nancial holding company pursuant to this sub-  
10                  section or subparagraph (H) or (I) of sub-  
11                  section (c)(3); or

12                  “(B) permit any of its products or services  
13                  to be offered or marketed, directly or through  
14                  any arrangement, by or through any company  
15                  described in subparagraph (A).

16           “(6) TRANSACTIONS WITH NONFINANCIAL AF-  
17           FILIATES.—An insured depository institution con-  
18           trolled by a financial holding company or wholesale  
19           financial holding company may not engage in a cov-  
20           ered transaction (as defined by section 23A(b)(7) of  
21           the Federal Reserve Act) with any affiliate con-  
22           trolled by the company pursuant to section 10(c),  
23           this subsection, or subparagraph (H) or (I) of sub-  
24           section (c)(3).

1           “(7) SUNSET OF GRANDFATHER.—A financial  
2 holding company engaged in any activity, or retain-  
3 ing direct or indirect ownership or control of shares  
4 of a company, pursuant to this subsection, shall ter-  
5 minate such activity and divest ownership or control  
6 of the shares of such company before the end of the  
7 10-year period beginning on the date of the enact-  
8 ment of the Financial Services Act of 1999. The  
9 Board may, upon application by a financial holding  
10 company, extend such 10-year period by a period not  
11 to exceed an additional 5 years if such extension  
12 would not be detrimental to the public interest.

13           “(g) DEVELOPING ACTIVITIES.—A financial holding  
14 company and a wholesale financial holding company may  
15 engage directly or indirectly, or acquire shares of any com-  
16 pany engaged, in any activity that the Board has not de-  
17 termined to be financial in nature or incidental to financial  
18 activities under subsection (c) if—

19           “(1) the holding company reasonably concludes  
20 that the activity is financial in nature or incidental  
21 to financial activities;

22           “(2) the gross revenues from all activities con-  
23 ducted under this subsection represent less than 5  
24 percent of the consolidated gross revenues of the  
25 holding company;

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

5           “(4) the total capital invested in activities con-  
6           ducted under this subsection represents less than 5  
7           percent of the consolidated total capital of the hold-  
8           ing company;

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

12          “(6) the holding company is not required to  
13          provide prior written notice of the transaction to the  
14          Board under subsection (c)(6); and

15          “(7) the holding company provides written noti-  
16          fication to the Board describing the activity com-  
17          menced or conducted by the company acquired no  
18          later than 10 business days after commencing the  
19          activity or consummating the acquisition.”.

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

21           (a) AFFILIATIONS.—

22           (1) IN GENERAL.—Except as provided in para-  
23           graph (2), no State may, by statute, regulation,  
24           order, interpretation, or other action, prevent or re-  
25           strict an insured depository institution or wholesale

1 financial institution, or a subsidiary or affiliate  
2 thereof, from being affiliated directly or indirectly or  
3 associated with any person or entity, as authorized  
4 or permitted by this Act or any other provision of  
5 Federal law.

6 (2) INSURANCE.—With respect to affiliations  
7 between insured depository institutions or wholesale  
8 financial institutions, or any subsidiary or affiliate  
9 thereof, and persons or entities engaged in the busi-  
10 ness of insurance, paragraph (1) does not prohibit  
11 any State from—

12 (A) requiring any person or entity that  
13 proposes to acquire control of an entity that is  
14 engaged in the business of insurance and domi-  
15 ciled in that State (hereafter in this subpara-  
16 graph referred to as the “insurer”) to furnish  
17 to the insurance regulatory authority of that  
18 State, not later than 60 days before the effec-  
19 tive date of the proposed acquisition—

20 (i) the name and address of each per-  
21 son by whom, or on whose behalf, the af-  
22 filiation referred to in this subparagraph is  
23 to be effected (hereafter in this subpara-  
24 graph referred to as the “acquiring  
25 party”);

1           (ii) if the acquiring party is an indi-  
2           vidual, his or her principal occupation and  
3           all offices and positions held during the 5  
4           years preceding the date of notification,  
5           and any conviction of crimes other than  
6           minor traffic violations during the 10 years  
7           preceding the date of notification;

8           (iii) if the acquiring party is not an  
9           individual—

10           (I) a report of the nature of its  
11           business operations during the 5 years  
12           preceding the date of notification, or  
13           for such shorter period as such person  
14           and any predecessors thereof shall  
15           have been in existence;

16           (II) an informative description of  
17           the business intended to be done by  
18           the acquiring party and any subsidi-  
19           ary thereof; and

20           (III) a list of all individuals who  
21           are, or who have been selected to be-  
22           come, directors or executive officers of  
23           the acquiring party or who perform,  
24           or will perform, functions appropriate  
25           to such positions, including, for each

1           such individual, the information re-  
2           quired by clause (ii);

3           (iv) the source, nature, and amount of  
4           the consideration used, or to be used, in ef-  
5           fecting the merger or other acquisition of  
6           control, a description of any transaction  
7           wherein funds were, or are to be, obtained  
8           for any such purpose, and the identity of  
9           persons furnishing such consideration, ex-  
10          cept that, if a source of such consideration  
11          is a loan made in the lender's ordinary  
12          course of business, the identity of the lend-  
13          er shall remain confidential if the person  
14          filing such statement so requests;

15          (v) fully audited financial information  
16          as to the earnings and financial condition  
17          of each acquiring party for the 5 fiscal  
18          years preceding the date of notification of  
19          each such acquiring party, or for such less-  
20          er period as such acquiring party and any  
21          predecessors thereof shall have been in ex-  
22          istence, and similar unaudited information  
23          as of a date not earlier than 90 days be-  
24          fore the date of notification, except that, in  
25          the case of an acquiring party that is an

1 insurer actively engaged in the business of  
2 insurance, the financial statements of such  
3 insurer need not be audited, but such audit  
4 may be required if the need therefor is de-  
5 termined by the insurance regulatory au-  
6 thority of the State;

7 (vi) any plans or proposals that each  
8 acquiring party may have to liquidate such  
9 insurer, to sell its assets, or to merge or  
10 consolidate it with any person or to make  
11 any other material change in its business  
12 or corporate structure or management;

13 (vii) the number of shares of any se-  
14 curity of the insurer that each acquiring  
15 party proposes to acquire, the terms of any  
16 offer, request, invitation, agreement, or ac-  
17 quisition, and a statement as to the meth-  
18 od by which the fairness of the proposal  
19 was arrived at;

20 (viii) the amount of each class of any  
21 security of the insurer that is beneficially  
22 owned or concerning which there is a right  
23 to acquire beneficial ownership by each ac-  
24 quiring party;

1 (ix) a full description of any contracts,  
2 arrangements, or understandings with re-  
3 spect to any security of the insurer in  
4 which any acquiring party is involved, in-  
5 cluding transfer of any of the securities,  
6 joint ventures, loan or option arrange-  
7 ments, puts or calls, guarantees of loans,  
8 guarantees against loss or guarantees of  
9 profits, division of losses or profits, or the  
10 giving or withholding of proxies, and iden-  
11 tification of the persons with whom such  
12 contracts, arrangements, or understand-  
13 ings have been entered into;

14 (x) a description of the purchase of  
15 any security of the insurer during the 12-  
16 month period preceding the date of notifi-  
17 cation by any acquiring party, including  
18 the dates of purchase, names of the pur-  
19 chasers, and consideration paid, or agreed  
20 to be paid, therefor;

21 (xi) a description of any recommenda-  
22 tions to purchase any security of the in-  
23 surer made during the 12-month period  
24 preceding the date of notification by any  
25 acquiring party or by any person based

1           upon interviews or at the suggestion of  
2           such acquiring party;

3           (xii) copies of all tender offers for, re-  
4           quests or invitations for tenders of, ex-  
5           change offers for and agreements to ac-  
6           quire or exchange any securities of the in-  
7           surer and, if distributed, of additional so-  
8           liciting material relating thereto; and

9           (xiii) the terms of any agreement,  
10          contract, or understanding made with any  
11          broker-dealer as to solicitation of securities  
12          of the insurer for tender and the amount  
13          of any fees, commissions, or other com-  
14          pensation to be paid to broker-dealers with  
15          regard thereto;

16          (B) requiring an entity that is acquiring  
17          control of an entity that is engaged in the busi-  
18          ness of insurance and domiciled in that State to  
19          maintain or restore the capital requirements of  
20          that insurance entity to the level required under  
21          the capital regulations of general applicability  
22          in that State to avoid the requirement of pre-  
23          paring and filing with the insurance regulatory  
24          authority of that State a plan to increase the  
25          capital of the entity, except that any determina-

1           tion by the State insurance regulatory authority  
2           with respect to such requirement shall be made  
3           not later than 60 days after the date of notifi-  
4           cation under subparagraph (A);

5           (C) taking actions with respect to the re-  
6           ceivership or conservatorship of any insurance  
7           company; or

8           (D) restricting a change in the ownership  
9           of stock in an insurance company, or a com-  
10          pany formed for the purpose of controlling such  
11          insurance company, for a period of not more  
12          than 3 years beginning on the date of the con-  
13          version of such company from mutual to stock  
14          form.

15          (3) PRESERVATION OF STATE ANTITRUST AND  
16          GENERAL CORPORATE LAWS.—

17           (A) IN GENERAL.—Nothing in paragraph  
18           (1) shall be construed as affecting State laws,  
19           regulations, orders, interpretations, or other ac-  
20           tions of general applicability relating to the gov-  
21           ernance of corporations, partnerships, limited li-  
22           ability companies or other business associations  
23           incorporated or formed under the laws of that  
24           State or domiciled in that State, or the applica-

1           bility of the antitrust laws of any State or any  
2           State law that is similar to the antitrust laws.

3           (B) DEFINITION.—The term “antitrust  
4           laws” has the same meaning as in subsection  
5           (a) of the first section of the Clayton Act, and  
6           includes section 5 of the Federal Trade Com-  
7           mission Act to the extent that such section 5  
8           relates to unfair methods of competition.

9           (b) ACTIVITIES.—

10           (1) IN GENERAL.—Except as provided in para-  
11           graph (3), and except with respect to insurance  
12           sales, solicitation, and cross marketing activities,  
13           which shall be governed by paragraph (2), no State  
14           may, by statute, regulation, order, interpretation, or  
15           other action, prevent or restrict an insured deposi-  
16           tory institution, wholesale financial institution, or  
17           subsidiary or affiliate thereof from engaging directly  
18           or indirectly, either by itself or in conjunction with  
19           a subsidiary, affiliate, or any other entity or person,  
20           in any activity authorized or permitted under this  
21           Act.

22           (2) INSURANCE SALES.—

23           (A) IN GENERAL.—In accordance with the  
24           legal standards for preemption set forth in the  
25           decision of the Supreme Court of the United

1 States in *Barnett Bank of Marion County N.A.*  
2 *v. Nelson*, 116 S. Ct. 1103 (1996), no State  
3 may, by statute, regulation, order, interpreta-  
4 tion, or other action, prevent or significantly  
5 interfere with the ability of an insured deposi-  
6 tory institution or wholesale financial institu-  
7 tion, or a subsidiary or affiliate thereof, to en-  
8 gage, directly or indirectly, either by itself or  
9 in conjunction with a subsidiary, affiliate, or  
10 any other party, in any insurance sales, sollicita-  
11 tion, or cross-marketing activity.

12 (B) CERTAIN STATE LAWS PRESERVED.—  
13 Notwithstanding subparagraph (A), a State  
14 may impose any of the following restrictions, or  
15 restrictions which are substantially the same as  
16 but no more burdensome or restrictive than  
17 those in each of the following clauses:

18 (i) Restrictions prohibiting the rejec-  
19 tion of an insurance policy solely because  
20 the policy has been issued or underwritten  
21 by any person who is not associated with  
22 such insured depository institution or  
23 wholesale financial institution, or any sub-  
24 subsidiary or affiliate thereof, when such in-

1 insurance is required in connection with a  
2 loan or extension of credit.

3 (ii) Restrictions prohibiting a require-  
4 ment for any debtor, insurer, or insurance  
5 agent or broker to pay a separate charge  
6 in connection with the handling of insur-  
7 ance that is required in connection with a  
8 loan or other extension of credit or the  
9 provision of another traditional banking  
10 product, unless such charge would be re-  
11 quired when the insured depository institu-  
12 tion or wholesale financial institution, or  
13 any subsidiary or affiliate thereof, is the li-  
14 censed insurance agent or broker providing  
15 the insurance.

16 (iii) Restrictions prohibiting the use of  
17 any advertisement or other insurance pro-  
18 motional material by an insured depository  
19 institution or wholesale financial institu-  
20 tion, or any subsidiary or affiliate thereof,  
21 that would cause a reasonable person to  
22 believe mistakenly that—

23 (I) a State or the Federal Gov-  
24 ernment is responsible for the insur-  
25 ance sales activities of, or stands be-

1 hind the credit of, the institution, af-  
2 filiate, or subsidiary; or

3 (II) a State, or the Federal Gov-  
4 ernment guarantees any returns on  
5 insurance products, or is a source of  
6 payment on any insurance obligation  
7 of or sold by the institution, affiliate,  
8 or subsidiary;

9 (iv) Restrictions prohibiting the pay-  
10 ment or receipt of any commission or bro-  
11 kerage fee or other valuable consideration  
12 for services as an insurance agent or  
13 broker to or by any person, unless such  
14 person holds a valid State license regard-  
15 ing the applicable class of insurance at the  
16 time at which the services are performed,  
17 except that, in this clause, the term “serv-  
18 ices as an insurance agent or broker” does  
19 not include a referral by an unlicensed per-  
20 son of a customer or potential customer to  
21 a licensed insurance agent or broker that  
22 does not include a discussion of specific in-  
23 surance policy terms and conditions.

24 (v) Restrictions prohibiting any com-  
25 pensation paid to or received by any indi-

1           vidual who is not licensed to sell insurance,  
2           for the referral of a customer that seeks to  
3           purchase, or seeks an opinion or advice on,  
4           any insurance product to a person that  
5           sells or provides opinions or advice on such  
6           product, based on the purchase of insur-  
7           ance by the customer.

8           (vi) Restrictions prohibiting the re-  
9           lease of the insurance information of a cus-  
10          tomer (defined as information concerning  
11          the premiums, terms, and conditions of in-  
12          surance coverage, including expiration  
13          dates and rates, and insurance claims of a  
14          customer contained in the records of the  
15          insured depository institution or wholesale  
16          financial institution, or a subsidiary or af-  
17          filiate thereof) to any person or entity  
18          other than an officer, director, employee,  
19          agent, subsidiary, or affiliate of an insured  
20          depository institution or a wholesale finan-  
21          cial institution, for the purpose of soliciting  
22          or selling insurance, without the express  
23          consent of the customer, other than a pro-  
24          vision that prohibits—

1 (I) a transfer of insurance infor-  
2 mation to an unaffiliated insurance  
3 company, agent, or broker in connec-  
4 tion with transferring insurance in  
5 force on existing insureds of the in-  
6 sured depository institution or whole-  
7 sale financial institution, or subsidiary  
8 or affiliate thereof, or in connection  
9 with a merger with or acquisition of  
10 an unaffiliated insurance company,  
11 agent, or broker; or

12 (II) the release of information as  
13 otherwise authorized by State or Fed-  
14 eral law.

15 (vii) Restrictions prohibiting the use  
16 of health information obtained from the in-  
17 surance records of a customer for any pur-  
18 pose, other than for its activities as a li-  
19 censed agent or broker, without the ex-  
20 press consent of the customer.

21 (viii) Restrictions prohibiting the ex-  
22 tension of credit or any product or service  
23 that is equivalent to an extension of credit,  
24 lease or sale of property of any kind, or  
25 furnishing of any services or fixing or vary-

1           ing the consideration for any of the fore-  
2           going, on the condition or requirement that  
3           the customer obtain insurance from the in-  
4           sured depository institution, wholesale fi-  
5           nancial institution, a subsidiary or affiliate  
6           thereof, or a particular insurer, agent, or  
7           broker, other than a prohibition that would  
8           prevent any insured depository institution  
9           or wholesale financial institution, or any  
10          subsidiary or affiliate thereof—

11                   (I) from engaging in any activity  
12                   that would not violate section 106 of  
13                   the Bank Holding Company Act  
14                   Amendments of 1970, as interpreted  
15                   by the Board of Governors of the Fed-  
16                   eral Reserve System; or

17                   (II) from informing a customer  
18                   or prospective customer that insur-  
19                   ance is required in order to obtain a  
20                   loan or credit, that loan or credit ap-  
21                   proval is contingent upon the procure-  
22                   ment by the customer of acceptable  
23                   insurance, or that insurance is avail-  
24                   able from the insured depository insti-  
25                   tution or wholesale financial institu-

1                   tion, or any subsidiary or affiliate  
2                   thereof.

3                   (ix) Restrictions requiring, when an  
4                   application by a consumer for a loan or  
5                   other extension of credit from an insured  
6                   depository institution or wholesale financial  
7                   institution is pending, and insurance is of-  
8                   fered or sold to the consumer or is re-  
9                   quired in connection with the loan or ex-  
10                  tension of credit by the insured depository  
11                  institution or wholesale financial institu-  
12                  tion, that a written disclosure be provided  
13                  to the consumer or prospective customer  
14                  indicating that his or her choice of an in-  
15                  surance provider will not affect the credit  
16                  decision or credit terms in any way, except  
17                  that the insured depository institution or  
18                  wholesale financial institution, or subsidi-  
19                  ary or affiliate thereof, may impose reason-  
20                  able requirements concerning the credit-  
21                  worthiness of the insurance provider and  
22                  scope of coverage chosen.

23                  (x) Restrictions requiring clear and  
24                  conspicuous disclosure, in writing, where  
25                  practicable, to the customer prior to the

1 sale of any insurance policy that such  
2 policy—

3 (I) is not a deposit;

4 (II) is not insured by the Federal  
5 Deposit Insurance Corporation;

6 (III) is not guaranteed by the in-  
7 sured depository institution or whole-  
8 sale financial institution or, if appro-  
9 priate, its subsidiaries or affiliates or  
10 any person soliciting the purchase of  
11 or selling insurance on the premises  
12 thereof; and

13 (IV) where appropriate, involves  
14 investment risk, including potential  
15 loss of principal.

16 (xi) Restrictions requiring that, when  
17 a 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  
21 any subsidiary or affiliate thereof, or any  
22 person soliciting the purchase of or selling  
23 insurance on the premises thereof, the  
24 credit and insurance transactions be com-  
25 pleted through separate documents.

1           (xii) Restrictions prohibiting, when a  
2           customer obtains insurance (other than  
3           credit insurance or flood insurance) and  
4           credit from an insured depository institu-  
5           tion or wholesale financial institution or its  
6           subsidiaries or affiliates, or any person so-  
7           liciting the purchase of or selling insurance  
8           on the premises thereof, inclusion of the  
9           expense of insurance premiums in the pri-  
10          mary credit transaction without the ex-  
11          press written consent of the customer.

12          (xiii) Restrictions requiring mainte-  
13          nance of separate and distinct books and  
14          records relating to insurance transactions,  
15          including all files relating to and reflecting  
16          consumer complaints, and requiring that  
17          such insurance books and records be made  
18          available to the appropriate State insur-  
19          ance regulator for inspection upon reason-  
20          able notice.

21          (C) LIMITATIONS.—

22          (i) OCC DEFERENCE.—Section 306(e)  
23          does not apply with respect to any State  
24          statute, regulation, order, interpretation,  
25          or other action regarding insurance sales,

1 solicitation, or cross marketing activities  
2 described in subparagraph (A) that was  
3 issued, adopted, or enacted before Septem-  
4 ber 3, 1998, and that is not described in  
5 subparagraph (B).

6 (ii) NONDISCRIMINATION.—Subsection  
7 (c) does not apply with respect to any  
8 State statute, regulation, order, interpreta-  
9 tion, or other action regarding insurance  
10 sales, solicitation, or cross marketing ac-  
11 tivities described in subparagraph (A) that  
12 was issued, adopted, or enacted before  
13 September 3, 1998, and that is not de-  
14 scribed in subparagraph (B).

15 (iii) CONSTRUCTION.—Nothing in this  
16 paragraph shall be construed to limit the  
17 applicability of the decision of the Supreme  
18 Court in *Barnett Bank of Marion County*  
19 *N.A. v. Nelson*, 116 S. Ct. 1103 (1996)  
20 with respect to a State statute, regulation,  
21 order, interpretation, or other action that  
22 is not described in subparagraph (B).

23 (iv) LIMITATION ON INFERENCES.—  
24 Nothing in this paragraph shall be con-  
25 strued to create any inference with respect

1 to any State statute, regulation, order, in-  
2 terpretation, or other action that is not re-  
3 ferred to or described in this paragraph.

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

8 (A) relate to, or are issued, adopted, or en-  
9 acted for the purpose of regulating the business  
10 of insurance in accordance with the Act of  
11 March 9, 1945 (commonly known as the  
12 “McCarran-Ferguson Act”);

13 (B) apply only to persons or entities that  
14 are not insured depository institutions or whole-  
15 sale financial institutions, but that are directly  
16 engaged in the business of insurance (except  
17 that they may apply to depository institutions  
18 engaged in providing savings bank life insur-  
19 ance as principal to the extent of regulating  
20 such insurance);

21 (C) do not relate to or directly or indirectly  
22 regulate insurance sales, solicitations, or cross-  
23 marketing activities; and

24 (D) are not prohibited under subsection  
25 (c).

1           (4) FINANCIAL ACTIVITIES OTHER THAN INSUR-  
2           ANCE.—No State statute, regulation, interpretation,  
3           order, or other action shall be preempted under sub-  
4           section (b)(1) to the extent that—

5                   (A) it does not relate to, and is not issued  
6                   and adopted, or enacted for the purpose of reg-  
7                   ulating, directly or indirectly, insurance sales,  
8                   solicitations, or cross marketing activities cov-  
9                   ered under paragraph (2);

10                   (B) it does not relate to, and is not issued  
11                   and adopted, or enacted for the purpose of reg-  
12                   ulating, directly or indirectly, the business of in-  
13                   surance activities other than sales, solicitations,  
14                   or cross marketing activities, covered under  
15                   paragraph (3);

16                   (C) it does not relate to securities inves-  
17                   tigations or enforcement actions referred to in  
18                   subsection (d); and

19                   (D) it—

20                           (i) does not distinguish by its terms  
21                           between insured depository institutions,  
22                           wholesale financial institutions, and sub-  
23                           sidiaries and affiliates thereof engaged in  
24                           the activity at issue and other persons or  
25                           entities engaged in the same activity in a

1 manner that is in any way adverse with re-  
2 spect to the conduct of the activity by any  
3 such insured depository institution, whole-  
4 sale financial institution, or subsidiary or  
5 affiliate thereof engaged in the activity at  
6 issue;

7 (ii) as interpreted or applied, does not  
8 have, and will not have, an impact on de-  
9 pository institutions, wholesale financial in-  
10 stitutions, or subsidiaries or affiliates  
11 thereof engaged in the activity at issue, or  
12 any person or entity affiliated therewith,  
13 that is substantially more adverse than its  
14 impact on other persons or entities en-  
15 gaged in the same activity that are not in-  
16 sured depository institutions, wholesale fi-  
17 nancial institutions, or subsidiaries or af-  
18 filiates thereof, or persons or entities affili-  
19 ated therewith;

20 (iii) does not effectively prevent a de-  
21 pository institution, wholesale financial in-  
22 stitution, or subsidiary or affiliate thereof  
23 from engaging in activities authorized or  
24 permitted by this Act or any other provi-  
25 sion of Federal law; and

1 (iv) does not conflict with the intent  
2 of this Act generally to permit affiliations  
3 that are authorized or permitted by Fed-  
4 eral law.

5 (c) NONDISCRIMINATION.—Except as provided in any  
6 restrictions described in subsection (b)(2)(B), no State  
7 may, by statute, regulation, order, interpretation, or other  
8 action, regulate the insurance activities authorized or per-  
9 mitted under this Act or any other provision of Federal  
10 law of an insured depository institution or wholesale finan-  
11 cial institution, or subsidiary or affiliate thereof, to the  
12 extent that such statute, regulation, order, interpretation,  
13 or other action—

14 (1) distinguishes by its terms between insured  
15 depository institutions or wholesale financial institu-  
16 tions, or subsidiaries or affiliates thereof, and other  
17 persons or entities engaged in such activities, in a  
18 manner that is in any way adverse to any such in-  
19 sured depository institution or wholesale financial in-  
20 stitution, or subsidiary or affiliate thereof;

21 (2) as interpreted or applied, has or will have  
22 an impact on depository institutions or wholesale fi-  
23 nancial institutions, or subsidiaries or affiliates  
24 thereof, that is substantially more adverse than its  
25 impact on other persons or entities providing the

1 same products or services or engaged in the same  
2 activities that are not insured depository institu-  
3 tions, wholesale financial institutions, or subsidiaries  
4 or affiliates thereof, or persons or entities affiliated  
5 therewith;

6 (3) effectively prevents a depository institution  
7 or wholesale financial institution, or subsidiary or af-  
8 filiate thereof, from engaging in insurance activities  
9 authorized or permitted by this Act or any other  
10 provision of Federal law; or

11 (4) conflicts with the intent of this Act gen-  
12 erally to permit affiliations that are authorized or  
13 permitted by Federal law between insured depository  
14 institutions or wholesale financial institutions, or  
15 subsidiaries or affiliates thereof, and persons and en-  
16 tities engaged in the business of insurance.

17 (d) LIMITATION.—Subsections (a) and (b) shall not  
18 be construed to affect the jurisdiction of the securities  
19 commission (or any agency or office performing like func-  
20 tions) of any State, under the laws of such State, to inves-  
21 tigate and bring enforcement actions, consistent with sec-  
22 tion 18(c) of the Securities Act of 1933, with respect to  
23 fraud or deceit or unlawful conduct by any person, in con-  
24 nection with securities or securities transactions.

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

7 **SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHOR-**  
8 **IZED.**

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

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

17 **SEC. 106. PROHIBITION ON DEPOSIT PRODUCTION OF-**  
18 **FICES.**

19 (a) IN GENERAL.—Section 109(d) of the Riegle-Neal  
20 Interstate Banking and Branching Efficiency Act of 1994  
21 (12 U.S.C. 1835a(d)) is amended—

22 (1) by inserting “, the Financial Services Act of  
23 1999,” after “pursuant to this title”; and

24 (2) by inserting “or such Act” after “made by  
25 this title”.

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

8 **SEC. 107. CLARIFICATION OF BRANCH CLOSURE REQUIRE-**  
9 **MENTS.**

10 Section 42(d)(4)(A) of the Federal Deposit Insurance  
11 Act (12 U.S.C. 1831r-1(d)(4)(A)) is amended by inserting  
12 “and any bank controlled by an out-of-State bank holding  
13 company (as defined in section 2(o)(7) of the Bank Hold-  
14 ing Company Act of 1956)” before the period.

15 **SEC. 108. AMENDMENTS RELATING TO LIMITED PURPOSE**  
16 **BANKS.**

17 (a) IN GENERAL.—Section 4(f) of the Bank Holding  
18 Company Act of 1956 (12 U.S.C. 1843(f)) is amended—

19 (1) in paragraph (2)(A)(ii)—

20 (A) by striking “and” at the end of sub-  
21 clause (IX);

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

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

1                   “(XI) assets that are derived  
2                   from, or are incidental to, activities in  
3                   which institutions described in section  
4                   2(c)(2)(F) are permitted to engage,”;

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

7                   “(B) any bank subsidiary of such company  
8                   engages in any activity in which the bank was  
9                   not lawfully engaged as of March 5, 1987, un-  
10                  less the bank is well managed and well capital-  
11                  ized;

12                  “(C) any bank subsidiary of such company  
13                  both—

14                         “(i) accepts demand deposits or de-  
15                         posits that the depositor may withdraw by  
16                         check or similar means for payment to  
17                         third parties; and

18                         “(ii) engages in the business of mak-  
19                         ing commercial loans (and, for purposes of  
20                         this clause, loans made in the ordinary  
21                         course of a credit card operation shall not  
22                         be treated as commercial loans); or

23                         “(D) after the date of the enactment of the  
24                         Competitive Equality Amendments of 1987, any  
25                         bank subsidiary of such company permits any

1 overdraft (including any intraday overdraft), or  
2 incurs any such overdraft in such bank's ac-  
3 count at a Federal reserve bank, on behalf of  
4 an affiliate, other than an overdraft described  
5 in paragraph (3)."; and

6 (3) by striking paragraphs (3) and (4) and in-  
7 serting the following new paragraphs:

8 “(3) PERMISSIBLE OVERDRAFTS DESCRIBED.—  
9 For purposes of paragraph (2)(D), an overdraft is  
10 described in this paragraph if—

11 “(A) such overdraft results from an inad-  
12 vertent computer or accounting error that is be-  
13 yond the control of both the bank and the affili-  
14 ate; or

15 “(B) such overdraft—

16 “(i) is permitted or incurred on behalf  
17 of an affiliate which is monitored by, re-  
18 ports to, and is recognized as a primary  
19 dealer by the Federal Reserve Bank of  
20 New York; and

21 “(ii) is fully secured, as required by  
22 the Board, by bonds, notes, or other obli-  
23 gations which are direct obligations of the  
24 United States or on which the principal  
25 and interest are fully guaranteed by the

1 United States or by securities and obliga-  
2 tions eligible for settlement on the Federal  
3 Reserve book entry system.

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

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

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

21 (b) INDUSTRIAL LOAN COMPANIES AFFILIATE OVER-  
22 DRAFTS.—Section 2(c)(2)(H) of the Bank Holding Com-  
23 pany Act of 1956 (12 U.S.C. 1841(c)(2)(H)) is amended  
24 by inserting before the period at the end “, or that is oth-

1 erwise permissible for a bank controlled by a company de-  
2 scribed in section 4(f)(1)’’.

3 **SEC. 109. REPORTS ON ONGOING FTC STUDY OF CON-**  
4 **SUMER PRIVACY ISSUES.**

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

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

17 (a) **STUDY REQUIRED.**—The Comptroller General of  
18 the United States shall conduct a study of the projected  
19 economic impact that the enactment of this Act will have  
20 on financial institutions which have total assets of  
21 \$100,000,000 or less.

22 (b) **REPORT TO THE CONGRESS.**—The Comptroller  
23 General of the United States shall submit a report to the  
24 Congress before the end of the 6-month period beginning  
25 on the date of the date of the enactment of this Act con-

1 taining the findings and conclusions of the Comptroller  
2 General with regard to the study required under sub-  
3 section (a) and such recommendations for legislative or  
4 administrative action as the Comptroller General may de-  
5 termine to be appropriate.

6 **Subtitle B—Streamlining Super-**  
7 **vision of Financial Holding**  
8 **Companies**

9 **SEC. 111. STREAMLINING FINANCIAL HOLDING COMPANY**  
10 **SUPERVISION.**

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

13 “(c) REPORTS AND EXAMINATIONS.—

14 “(1) REPORTS.—

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

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

1           “(ii) compliance by the company or  
2 subsidiary with applicable provisions of  
3 this Act.

4           “(B) USE OF EXISTING REPORTS.—

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

14           “(ii) AVAILABILITY.—A bank holding  
15 company or a subsidiary of such company  
16 shall provide to the Board, at the request  
17 of the Board, a report referred to in clause  
18 (i).

19           “(iii) REQUIRED USE OF PUBLICLY  
20 REPORTED INFORMATION.—The Board  
21 shall, to the fullest extent possible, accept  
22 in fulfillment of any reporting or record-  
23 keeping requirements under this Act infor-  
24 mation that is otherwise required to be re-

1 reported publicly and externally audited fi-  
2 nancial statements.

3 “(iv) REPORTS FILED WITH OTHER  
4 AGENCIES.—In the event the Board re-  
5 quires a report from a functionally regu-  
6 lated nondepository institution subsidiary  
7 of a bank holding company of a kind that  
8 is not required by another Federal or State  
9 regulator or appropriate self-regulatory or-  
10 ganization, the Board shall request that  
11 the appropriate regulator or self-regulatory  
12 organization obtain such report. If the re-  
13 port is not made available to the Board,  
14 and the report is necessary to assess a ma-  
15 terial risk to the bank holding company or  
16 any of its subsidiary depository institutions  
17 or compliance with this Act, the Board  
18 may require such subsidiary to provide  
19 such a report to the Board.

20 “(C) DEFINITION.—For purposes of this  
21 subsection, the term ‘functionally regulated  
22 nondepository institution’ means—

23 “(i) a broker or dealer registered  
24 under the Securities Exchange Act of  
25 1934;

1           “(ii) an investment adviser registered  
2           under the Investment Advisers Act of  
3           1940, or with any State, with respect to  
4           the investment advisory activities of such  
5           investment adviser and activities incidental  
6           to such investment advisory activities;

7           “(iii) an insurance company subject to  
8           supervision by a State insurance commis-  
9           sion, agency, or similar authority; and

10           “(iv) an entity subject to regulation  
11           by the Commodity Futures Trading Com-  
12           mission, with respect to the commodities  
13           activities of such entity and activities inci-  
14           dental to such commodities activities.

15           “(2) EXAMINATIONS.—

16           “(A) EXAMINATION AUTHORITY.—

17           “(i) IN GENERAL.—The Board may  
18           make examinations of each bank holding  
19           company and each subsidiary of a bank  
20           holding company.

21           “(ii) FUNCTIONALLY REGULATED  
22           NONDEPOSITORY INSTITUTION SUBSIDI-  
23           ARIES.—Notwithstanding clause (i), the  
24           Board may make examinations of a func-  
25           tionally regulated nondepository institution

1 subsidiary of a bank holding company only  
2 if—

3 “(I) the Board has reasonable  
4 cause to believe that such subsidiary  
5 is engaged in activities that pose a  
6 material risk to an affiliated deposi-  
7 tory institution, or

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

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

1           “(i) inform the Board of the nature of  
2           the operations and financial condition of  
3           the holding company and such subsidiaries;

4           “(ii) inform the Board of—

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

11                   “(II) the systems for monitoring  
12                   and controlling such risks; and

13                   “(iii) monitor compliance with the  
14                   provisions of this Act and those governing  
15                   transactions and relationships between any  
16                   subsidiary depository institution and its af-  
17                   filiates.

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

22                   “(i) the bank holding company; and

23                   “(ii) any subsidiary of the holding  
24                  company that, because of—

1                   “(I) the size, condition, or activi-  
2                   ties of the subsidiary;

3                   “(II) the nature or size of trans-  
4                   actions between such subsidiary and  
5                   any depository institution which is  
6                   also a subsidiary of such holding com-  
7                   pany; or

8                   “(III) the centralization of func-  
9                   tions within the holding company sys-  
10                  tem,

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

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

21                  “(E) DEFERENCE TO OTHER EXAMINA-  
22                  TIONS.—The Board shall, to the fullest extent  
23                  possible, address the circumstances which might  
24                  otherwise permit or require an examination by  
25                  the Board by forgoing an examination and in-

1           stead reviewing the reports of examination  
2           made of—

3                   “(i) any registered broker or dealer by  
4                   or on behalf of the Securities and Ex-  
5                   change Commission;

6                   “(ii) any registered investment adviser  
7                   properly registered by or on behalf of ei-  
8                   ther the Securities and Exchange Commis-  
9                   sion or any State;

10                   “(iii) any licensed insurance company  
11                   by or on behalf of any state regulatory au-  
12                   thority responsible for the supervision of  
13                   insurance companies; and

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

17           “(3) CAPITAL.—

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

24                           “(i) is in compliance with applicable  
25                           capital requirements of another Federal

1 regulatory authority (including the Securi-  
2 ties and Exchange Commission) or State  
3 insurance authority; or

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

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

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

24 “(i) a bank holding company; or

1           “(ii) controlled by a bank holding  
2           company by reason of ownership by the  
3           bank holding company (including through  
4           all of its affiliates) of 25 percent or more  
5           of the shares of the investment company,  
6           where the shares owned by the bank hold-  
7           ing company have a market value equal to  
8           more than \$1,000,000.

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

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

20           “(B) AUTHORITY TRANSFERRED.—An  
21          agency designated by the Board under subpara-  
22          graph (A) shall have the same authority as the  
23          Board under this Act to—

24           “(i) examine and require reports from  
25          the bank holding company and any affiliate

1 of such company (other than a depository  
2 institution) under section 5;

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

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

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

15 “(C) AGENCY ORDERS.—Section 9 of this  
16 Act and section 105 of the Bank Holding Com-  
17 pany Act Amendments of 1970 shall apply to  
18 orders issued by an agency designated under  
19 subparagraph (A) in the same manner such sec-  
20 tions apply to orders issued by the Board.

21 “(5) FUNCTIONAL REGULATION OF SECURITIES  
22 AND INSURANCE ACTIVITIES.—The Board shall defer  
23 to—

24 “(A) the Securities and Exchange Commis-  
25 sion with regard to all interpretations of, and

1 the enforcement of, applicable Federal securi-  
2 ties laws (and rules, regulations, orders, and  
3 other directives issued thereunder) relating to  
4 the activities, conduct, and operations of reg-  
5 istered brokers, dealers, investment advisers,  
6 and investment companies;

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

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

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

23 (a) PREVENTION OF DUPLICATIVE FILINGS.—Sec-  
24 tion 5(a) of the Bank Holding Company Act of 1956 (12  
25 U.S.C. 1844(a)) is amended by adding the following new

1 sentence at the end: “A declaration filed in accordance  
2 with section 6(b)(1)(C) shall satisfy the requirements of  
3 this subsection with regard to the registration of a bank  
4 holding company but not any requirement to file an appli-  
5 cation to acquire a bank pursuant to section 3.”.

6 (b) DIVESTITURE PROCEDURES.—Section 5(e)(1) of  
7 the Bank Holding Company Act of 1956 (12 U.S.C.  
8 1844(e)(1)) is amended—

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

13 “(A) order”; and

14 (2) by striking “shareholders of the bank hold-  
15 ing company. Such distribution” and inserting  
16 “shareholders of the bank holding company; or

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

1 as the Board may direct) the ownership or control  
 2 of any such bank by such company.

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

4 **SEC. 113. AUTHORITY OF STATE INSURANCE REGULATOR**  
 5 **AND SECURITIES AND EXCHANGE COMMIS-**  
 6 **SION.**

7 Section 5 of the Bank Holding Company Act of 1956  
 8 (12 U.S.C. 1844) is amended by adding at the end the  
 9 following new subsection:

10 “(g) AUTHORITY OF STATE INSURANCE REGULATOR  
 11 AND THE SECURITIES AND EXCHANGE COMMISSION.—

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

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

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

24 “(ii) an affiliate of the depository in-  
 25 stitution which is an insurance company or

1 a broker or dealer registered under such  
2 Act; and

3 “(B) the State insurance authority for the  
4 insurance company or the Securities and Ex-  
5 change Commission for the registered broker or  
6 dealer, as the case may be, determines in writ-  
7 ing sent to the holding company and the Board  
8 that the holding company shall not provide such  
9 funds or assets because such action would have  
10 a material adverse effect on the financial condi-  
11 tion of the insurance company or the broker or  
12 dealer, as the case may be.

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

1           “(3) DIVESTITURE IN LIEU OF OTHER AC-  
2           TION.—If the Board receives a notice described in  
3           paragraph (1)(B) from a State insurance authority  
4           or the Securities and Exchange Commission with re-  
5           gard to a bank holding company or affiliate referred  
6           to in that paragraph, the Board may order the bank  
7           holding company to divest the insured depository in-  
8           stitution not later than 180 days after receiving the  
9           notice, or such longer period as the Board deter-  
10          mines consistent with the safe and sound operation  
11          of the insured depository institution.

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

23 **SEC. 114. PRUDENTIAL SAFEGUARDS.**

24          Section 5 of the Bank Holding Company Act of 1956  
25          (12 U.S.C. 1844) is amended by inserting after subsection

1 (g) (as added by section 113 of this subtitle) the following  
2 new subsection:

3 “(h) PRUDENTIAL SAFEGUARDS.—

4 “(1) IN GENERAL.—The Board may, by regula-  
5 tion or order, impose restrictions or requirements on  
6 relationships or transactions between a depository  
7 institution subsidiary of a bank holding company  
8 and any affiliate of such depository institution (other  
9 than a subsidiary of such institution) which the  
10 Board finds is consistent with the public interest,  
11 the purposes of this Act, the Financial Services Act  
12 of 1999, the Federal Reserve Act, and other Federal  
13 law applicable to depository institution subsidiaries  
14 of bank holding companies and the standards in  
15 paragraph (2).

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

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

22 “(B) enhance the financial stability of  
23 bank holding companies;

24 “(C) avoid conflicts of interest or other  
25 abuses;

1           “(D) enhance the privacy of customers of  
2           depository institutions; or

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

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

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

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

19           “(4) FOREIGN BANKS.—The Board may, by  
20           regulation or order, impose restrictions or require-  
21           ments on relationships or transactions between a  
22           foreign bank and any affiliate in the United States  
23           of such foreign bank that the Board finds are con-  
24           sistent with the public interest, the purposes of this  
25           Act, the Financial Services Act of 1999, the Federal

1 Reserve Act, and other Federal law applicable to for-  
2 eign banks and their affiliates in the United States,  
3 and the standards in paragraphs (2) and (3).”.

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

5 (a) **EXCLUSIVE COMMISSION AUTHORITY.**—

6 (1) **IN GENERAL.**—Except as provided in para-  
7 graph (3), the Commission shall be the sole Federal  
8 agency with authority to inspect and examine any  
9 registered investment company that is not a bank  
10 holding company or a savings and loan holding com-  
11 pany.

12 (2) **PROHIBITION ON BANKING AGENCIES.**—Ex-  
13 cept as provided in paragraph (3), a Federal bank-  
14 ing agency may not inspect or examine any reg-  
15 istered investment company that is not a bank hold-  
16 ing company or a savings and loan holding company.

17 (3) **CERTAIN EXAMINATIONS AUTHORIZED.**—  
18 Nothing in this subsection prevents the Federal De-  
19 posit Insurance Corporation, if the Corporation finds  
20 it necessary to determine the condition of an insured  
21 depository institution for insurance purposes, from  
22 examining an affiliate of any insured depository in-  
23 stitution, pursuant to its authority under section  
24 10(b)(4) of the Federal Deposit Insurance Act, as  
25 may be necessary to disclose fully the relationship

1       between the depository institution and the affiliate,  
2       and the effect of such relationship on the depository  
3       institution.

4       (b) EXAMINATION RESULTS AND OTHER INFORMA-  
5       TION.—The Commission shall provide to any Federal  
6       banking agency, upon request, the results of any examina-  
7       tion, reports, records, or other information with respect  
8       to any registered investment company to the extent nec-  
9       essary for the agency to carry out its statutory responsibil-  
10      ities.

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

13           (1) BANK HOLDING COMPANY.—The term  
14      “bank holding company” has the same meaning as  
15      in section 2 of the Bank Holding Company Act of  
16      1956.

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

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

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

1           (5) SAVINGS AND LOAN HOLDING COMPANY.—  
2           The term “savings and loan holding company” has  
3           the same meaning as in section 10(a)(1)(D) of the  
4           Home Owners’ Loan Act.

5 **SEC. 116. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-**  
6                           **PERVISORY, AND ENFORCEMENT AUTHORITY**  
7                           **OF THE BOARD.**

8           The Bank Holding Company Act of 1956 (12 U.S.C.  
9 1841 et seq.) is amended by inserting after section 10 the  
10 following new section:

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

14           “(a) LIMITATION ON DIRECT ACTION.—

15                   “(1) IN GENERAL.—The Board may not pre-  
16                   scribe regulations, issue or seek entry of orders, im-  
17                   pose restraints, restrictions, guidelines, require-  
18                   ments, safeguards, or standards, or otherwise take  
19                   any action under or pursuant to any provision of  
20                   this Act or section 8 of the Federal Deposit Insur-  
21                   ance Act against or with respect to a regulated sub-  
22                   sidiary of a bank holding company unless the action  
23                   is necessary to prevent or redress an unsafe or un-  
24                   sound practice or breach of fiduciary duty by such  
25                   subsidiary that poses a material risk to—

1           “(A) the financial safety, soundness, or  
2           stability of an affiliated depository institution;  
3           or

4           “(B) the domestic or international pay-  
5           ment system.

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

13          “(b) LIMITATION ON INDIRECT ACTION.—The Board  
14          may not prescribe regulations, issue or seek entry of or-  
15          ders, impose restraints, restrictions, guidelines, require-  
16          ments, safeguards, or standards, or otherwise take any ac-  
17          tion under or pursuant to any provision of this Act or sec-  
18          tion 8 of the Federal Deposit Insurance Act against or  
19          with respect to a financial holding company or a wholesale  
20          financial holding company where the purpose or effect of  
21          doing so would be to take action indirectly against or with  
22          respect to a regulated subsidiary that may not be taken  
23          directly against or with respect to such subsidiary in ac-  
24          cordance with subsection (a).

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

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

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

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

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

21               “(4) an insurance company or an insurance  
22 agency subject to supervision by a State insurance  
23 commission, agency, or similar authority; or

24               “(5) an entity subject to regulation by the Com-  
25 modity Futures Trading Commission, with respect

1 to the commodities activities of such entity and ac-  
2 tivities incidental to such commodities activities.”.

3 **SEC. 117. INTERAGENCY CONSULTATION.**

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

1 coordination and confidential sharing of information, and  
2 to thereby improve both the efficiency and the quality of  
3 the supervision of financial holding companies and their  
4 affiliated depository institutions and companies engaged  
5 in insurance activities.

6 (b) EXAMINATION RESULTS AND OTHER INFORMA-  
7 TION.—

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

23 (2) BANKING AGENCY INFORMATION.—Upon  
24 the request of the appropriate insurance regulator of  
25 any State, the appropriate Federal banking agency

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

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

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

21 (B) is an affiliate of an insured depository  
22 institution, wholesale financial institution, or fi-  
23 nancial holding company.

24 (c) CONSULTATION.—Before making any determina-  
25 tion relating to the initial affiliation of, or the continuing

1 affiliation of, an insured depository institution, wholesale  
2 financial institution, or financial holding company with a  
3 company engaged in insurance activities, the appropriate  
4 Federal banking agency shall consult with the appropriate  
5 State insurance regulator of such company and take the  
6 views of such insurance regulator into account in making  
7 such determination.

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

14 (e) CONFIDENTIALITY AND PRIVILEGE.—

15 (1) CONFIDENTIALITY.—The appropriate Fed-  
16 eral banking agency shall not provide any informa-  
17 tion or material that is entitled to confidential treat-  
18 ment under applicable Federal banking agency regu-  
19 lations, or other applicable law, to a State insurance  
20 regulator unless such regulator agrees to maintain  
21 the information or material in confidence and to  
22 take all reasonable steps to oppose any effort to se-  
23 cure disclosure of the information or material by the  
24 regulator. The appropriate Federal banking agency  
25 shall treat as confidential any information or mate-

1       rial obtained from a State insurance regulator that  
2       is entitled to confidential treatment under applicable  
3       State regulations, or other applicable law, and take  
4       all reasonable steps to oppose any effort to secure  
5       disclosure of the information or material by the Fed-  
6       eral banking agency.

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

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

15           (1) APPROPRIATE FEDERAL BANKING AGENCY;  
16      INSURED DEPOSITORY INSTITUTION.—The terms  
17      “appropriate Federal banking agency” and “insured  
18      depository institution” have the same meanings as  
19      in section 3 of the Federal Deposit Insurance Act.

20           (2) BOARD; FINANCIAL HOLDING COMPANY;  
21      AND WHOLESALE FINANCIAL INSTITUTION.—The  
22      terms “Board”, “financial holding company”, and  
23      “wholesale financial institution” have the same  
24      meanings as in section 2 of the Bank Holding Com-  
25      pany Act of 1956.

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

2 (a) IN GENERAL.—Notwithstanding any other provi-  
3 sion of law, the provisions of—

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

11 (2) section 10A of the Bank Holding Company  
12 Act of 1956 (as added by this Act) that limit what-  
13 ever authority the Board might otherwise have to  
14 take direct or indirect action with respect to bank  
15 holding companies and their nonbank subsidiaries,  
16 shall also limit whatever authority that the Federal De-  
17 posit Insurance Corporation might otherwise have under  
18 any statute to require reports, make examinations, impose  
19 capital requirements or take any other direct or indirect  
20 action with respect to bank holding companies and their  
21 nonbank subsidiaries (including nonbank subsidiaries of  
22 depository institutions), subject to the same standards and  
23 requirements as are applicable to the Board under such  
24 provisions.

25 (b) CERTAIN EXAMINATIONS AUTHORIZED.—Noth-  
26 ing in this section shall prevent the Federal Deposit Insur-

1 ance Corporation, if the Corporation finds it necessary to  
 2 determine the condition of an insured depository institu-  
 3 tion for insurance purposes, from examining an affiliate  
 4 of any insured depository institution, pursuant to its au-  
 5 thority under section 10(b)(4) of the Federal Deposit In-  
 6 surance Act, as may be necessary to disclose fully the rela-  
 7 tionship between the depository institution and the affili-  
 8 ate, and the effect of such relationship on the depository  
 9 institution.

10 **SEC. 119. PROHIBITION ON FDIC ASSISTANCE TO AFFILI-**  
 11 **ATES AND SUBSIDIARIES.**

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

18 **Subtitle C—Subsidiaries of**  
 19 **National Banks**

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

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

1           (1) by redesignating section 5136A as section  
2           5136C; and

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

5   **“SEC. 5136A. SUBSIDIARIES OF NATIONAL BANKS.**

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

8           “(1) EXCLUSIVE AUTHORITY.—No provision of  
9           section 5136 or any other provision of this title  
10          LXII of the Revised Statutes shall be construed as  
11          authorizing a subsidiary of a national bank to en-  
12          gage in, or own any share of or any other interest  
13          in any company engaged in, any activity that—

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

16                 “(B) is conducted under terms or condi-  
17                 tions other than those that would govern the  
18                 conduct of such activity by a national bank,

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

1           “(2) SPECIFIC AUTHORIZATION TO CONDUCT  
2 AGENCY ACTIVITIES WHICH ARE FINANCIAL IN NA-  
3 TURE.—A national bank may control a company, or  
4 hold an interest in a company that is wholly owned  
5 by an insured depository institution or subsidiary  
6 thereof, that engages in agency activities that have  
7 been determined to be financial in nature or inciden-  
8 tal to such financial activities pursuant to and in ac-  
9 cordance with section 6(c) of the Bank Holding  
10 Company Act of 1956 if—

11                   “(A) the company engages in such activi-  
12 ties solely as agent and not directly or indirectly  
13 as principal;

14                   “(B) the national bank is well capitalized  
15 and well managed;

16                   “(C) all depository institution affiliates of  
17 the national bank are well capitalized and well  
18 managed; and

19                   “(D) the bank has received the approval of  
20 the Comptroller of the Currency.

21           “(3) COMMUNITY NEEDS REQUIREMENT.—A  
22 national bank may not acquire control of, or an in-  
23 terest in, any company under paragraph (2) unless  
24 the national bank, and all depository institution af-  
25 filiates of the national bank, have achieved a rating

1 of ‘satisfactory record of meeting community credit  
2 needs’, or better, at the most recent examination of  
3 each such bank or institution under the Community  
4 Reinvestment Act of 1977.

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

7 “(A) COMPANY; CONTROL; AFFILIATE;  
8 SUBSIDIARY.—The terms ‘company’, ‘control’,  
9 ‘affiliate’, and ‘subsidiary’ have the same mean-  
10 ings as in section 2 of the Bank Holding Com-  
11 pany Act of 1956.

12 “(B) WELL CAPITALIZED.—The term ‘well  
13 capitalized’ has the same meaning as in section  
14 38 of the Federal Deposit Insurance Act and,  
15 for purposes of this section, the Comptroller  
16 shall have exclusive jurisdiction to determine  
17 whether a national bank is well capitalized.

18 “(C) WELL MANAGED.—The term ‘well  
19 managed’ means—

20 “(i) in the case of a depository insti-  
21 tution that has been examined, unless oth-  
22 erwise determined in writing by the appro-  
23 priate Federal banking agency—

24 “(I) the achievement of a com-  
25 posite rating of 1 or 2 under the Uni-

1 form Financial Institutions Rating  
2 System (or an equivalent rating under  
3 an equivalent rating system) in con-  
4 nection with the most recent examina-  
5 tion or subsequent review of the de-  
6 pository institution; and

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

10 “(ii) in the case of any depository in-  
11 stitution that has not been examined, the  
12 existence and use of managerial resources  
13 that the appropriate Federal banking agen-  
14 cy determines are satisfactory.

15 “(D) INCORPORATED DEFINITIONS.—The  
16 terms ‘appropriate Federal banking agency’ and  
17 ‘depository institution’ have the same meanings  
18 as in section 3 of the Federal Deposit Insur-  
19 ance Act.”.

20 (b) LIMITATION ON CERTAIN ACTIVITIES IN SUB-  
21 SIDIARIES.—Section 21(a)(1) of the Banking Act of 1933  
22 (12 U.S.C. 378(a)(1)) is amended—

23 (1) by inserting “, or to be a subsidiary of any  
24 person, firm, corporation, association, business trust,  
25 or similar organization engaged (unless such subsidi-

1 ary (A) was engaged in such securities activities as  
2 of September 15, 1997, or (B) is a nondepository  
3 subsidiary of (i) a foreign bank and is not also a  
4 subsidiary of a domestic depository institution, or  
5 (ii) an unincorporated private bank that is not in-  
6 sured under the Federal Deposit Insurance Act),”  
7 after “to engage at the same time”; and

8 (2) by inserting “or any subsidiary of such  
9 bank, company, or institution” after “or private  
10 bankers”.

11 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

12 (1) ANTITYING.—Section 106(a) of the Bank  
13 Holding Company Act Amendments of 1970 is  
14 amended by adding at the end the following new  
15 sentence: “For purposes of this section, a subsidiary  
16 of a national bank which engages in activities as an  
17 agent pursuant to section 5136A(a)(2) shall be  
18 deemed to be a subsidiary of a bank holding com-  
19 pany, and not a subsidiary of a bank.”.

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

23 “(4) SUBSIDIARY OF NATIONAL BANK.—For  
24 purposes of this section, a subsidiary of a national  
25 bank which engages in activities as an agent pursu-

1 ant to section 5136A(a)(2) shall be deemed to be an  
 2 affiliate of the national bank and not a subsidiary of  
 3 the bank.”.

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

7 (1) by redesignating the item relating to section  
 8 5136A as section 5136C; and

9 (2) by inserting after the item relating to sec-  
 10 tion 5136 the following new item:

“5136A. Financial subsidiaries of national banks.”.

11 **SEC. 122. MISREPRESENTATIONS REGARDING DEPOSITORY**  
 12 **INSTITUTION LIABILITY FOR OBLIGATIONS**  
 13 **OF AFFILIATES.**

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

17 **“§ 1008. Misrepresentations regarding financial insti-**  
 18 **tution liability for obligations of affiliates**

19 “(a) IN GENERAL.—No institution-affiliated party of  
 20 an insured depository institution or institution-affiliated  
 21 party of a subsidiary or affiliate of an insured depository  
 22 institution shall fraudulently represent that the institution  
 23 is or will be liable for any obligation of a subsidiary or  
 24 other affiliate of the institution.

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

4       “(c) INSTITUTION-AFFILIATED PARTY DEFINED.—  
5 For purposes of this section, the term ‘institution-affili-  
6 ated party’ with respect to a subsidiary or affiliate has  
7 the same meaning as in section 3 of the Federal Deposit  
8 Insurance Act, except that references to an insured depository  
9 institution shall be deemed to be references to a sub-  
10 sidiary or affiliate of an insured depository institution.

11       “(d) OTHER DEFINITIONS.—For purposes of this  
12 section, the terms ‘affiliate’, ‘insured depository institu-  
13 tion’, and ‘subsidiary’ have same meanings as in section  
14 3 of the Federal Deposit Insurance Act.”.

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

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

19 **SEC. 123. REPEAL OF STOCK LOAN LIMIT IN FEDERAL RE-**  
20 **SERVE ACT.**

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

1 **Subtitle D—Wholesale Financial**  
2 **Holding Companies; Wholesale**  
3 **Financial Institutions**

4 **CHAPTER 1—WHOLESALE FINANCIAL**  
5 **HOLDING COMPANIES**

6 **SEC. 131. WHOLESALE FINANCIAL HOLDING COMPANIES**  
7 **ESTABLISHED.**

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

11 **“SEC. 10. WHOLESALE FINANCIAL HOLDING COMPANIES.**

12 **“(a) COMPANIES THAT CONTROL WHOLESALE FI-**  
13 **NANCIAL INSTITUTIONS.—**

14 **“(1) WHOLESALE FINANCIAL HOLDING COM-**  
15 **PANY DEFINED.—**The term ‘wholesale financial  
16 holding company’ means any company that—

17 **“(A) is registered as a bank holding com-**  
18 **pany;**

19 **“(B) is predominantly engaged in financial**  
20 **activities as defined in section 6(f)(2);**

21 **“(C) controls 1 or more wholesale financial**  
22 **institutions;**

23 **“(D) does not control—**

24 **“(i) a bank other than a wholesale fi-**  
25 **nancial institution;**

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

4                   “(iii) a savings association; and

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

8                   “(2) SAVINGS ASSOCIATION TRANSITION PE-  
9                   RIOD.—Notwithstanding paragraph (1)(D)(iii), the  
10                  Board may permit a company that controls a sav-  
11                  ings association and that otherwise meets the re-  
12                  quirements of paragraph (1) to become supervised  
13                  under paragraph (1), if the company divests control  
14                  of any such savings association within such period,  
15                  not to exceed 5 years after becoming supervised  
16                  under paragraph (1), as permitted by the Board.

17                  “(b) SUPERVISION BY THE BOARD.—

18                  “(1) IN GENERAL.—The provisions of this sec-  
19                  tion shall govern the reporting, examination, and  
20                  capital requirements of wholesale financial holding  
21                  companies.

22                  “(2) REPORTS.—

23                  “(A) IN GENERAL.—The Board from time  
24                  to time may require any wholesale financial  
25                  holding company and any subsidiary of such

1 company to submit reports under oath to keep  
2 the Board informed as to—

3 “(i) the company’s or subsidiary’s ac-  
4 tivities, financial condition, policies, sys-  
5 tems for monitoring and controlling finan-  
6 cial and operational risks, and transactions  
7 with depository institution subsidiaries of  
8 the holding company; and

9 “(ii) the extent to which the company  
10 or subsidiary has complied with the provi-  
11 sions of this Act and regulations prescribed  
12 and orders issued under this Act.

13 “(B) USE OF EXISTING REPORTS.—

14 “(i) IN GENERAL.—The Board shall,  
15 to the fullest extent possible, accept re-  
16 ports in fulfillment of the Board’s report-  
17 ing requirements under this paragraph  
18 that the wholesale financial holding com-  
19 pany or any subsidiary of such company  
20 has provided or been required to provide to  
21 other Federal and State supervisors or to  
22 appropriate self-regulatory organizations.

23 “(ii) AVAILABILITY.—A wholesale fi-  
24 nancial holding company or a subsidiary of  
25 such company shall provide to the Board,

1 at the request of the Board, a report re-  
2 ferred to in clause (i).

3 “(C) EXEMPTIONS FROM REPORTING RE-  
4 QUIREMENTS.—

5 “(i) IN GENERAL.—The Board may,  
6 by regulation or order, exempt any com-  
7 pany or class of companies, under such  
8 terms and conditions and for such periods  
9 as the Board shall provide in such regula-  
10 tion or order, from the provisions of this  
11 paragraph and any regulation prescribed  
12 under this paragraph.

13 “(ii) CRITERIA FOR CONSIDER-  
14 ATION.—In making any determination  
15 under clause (i) with regard to any exemp-  
16 tion under such clause, the Board shall  
17 consider, among such other factors as the  
18 Board may determine to be appropriate,  
19 the following factors:

20 “(I) Whether information of the  
21 type required under this paragraph is  
22 available from a supervisory agency  
23 (as defined in section 1101(7) of the  
24 Right to Financial Privacy Act of

1 1978) or a foreign regulatory author-  
2 ity of a similar type.

3 “(II) The primary business of the  
4 company.

5 “(III) The nature and extent of  
6 the domestic and foreign regulation of  
7 the activities of the company.

8 “(3) EXAMINATIONS.—

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

14 “(i) inform the Board regarding the  
15 nature of the operations and financial con-  
16 dition of the wholesale financial holding  
17 company and its subsidiaries;

18 “(ii) inform the Board regarding—

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

1                   “(II) the systems of the holding  
2                   company and its subsidiaries for mon-  
3                   itoring and controlling those risks;  
4                   and

5                   “(iii) monitor compliance with the  
6                   provisions of this Act and those governing  
7                   transactions and relationships between any  
8                   depository institution controlled by the  
9                   wholesale financial holding company and  
10                  any of the company’s other subsidiaries.

11                  “(B) RESTRICTED FOCUS OF EXAMINA-  
12                  TIONS.—The Board shall, to the fullest extent  
13                  possible, limit the focus and scope of any exam-  
14                  ination of a wholesale financial holding com-  
15                  pany under this paragraph to—

16                         “(i) the holding company; and

17                         “(ii) any subsidiary (other than an in-  
18                         sured depository institution subsidiary) of  
19                         the holding company that, because of the  
20                         size, condition, or activities of the subsidi-  
21                         ary, the nature or size of transactions be-  
22                         tween such subsidiary and any affiliated  
23                         depository institution, or the centralization  
24                         of functions within the holding company  
25                         system, could have a materially adverse ef-

1           fect on the safety and soundness of any de-  
2           pository institution affiliate of the holding  
3           company.

4           “(C) DEFERENCE TO BANK EXAMINA-  
5           TIONS.—The Board shall, to the fullest extent  
6           possible, use the reports of examination of de-  
7           pository institutions made by the Comptroller of  
8           the Currency, the Federal Deposit Insurance  
9           Corporation, the Director of the Office of Thrift  
10          Supervision or the appropriate State depository  
11          institution supervisory authority for the pur-  
12          poses of this section.

13          “(D) DEFERENCE TO OTHER EXAMINA-  
14          TIONS.—The Board shall, to the fullest extent  
15          possible, address the circumstances which might  
16          otherwise permit or require an examination by  
17          the Board by forgoing an examination and by  
18          instead reviewing the reports of examination  
19          made of—

20                 “(i) any registered broker or dealer or  
21                 any registered investment adviser by or on  
22                 behalf of the Commission; and

23                 “(ii) any licensed insurance company  
24                 by or on behalf of any State government

1 insurance agency responsible for the super-  
2 vision of the insurance company.

3 “(E) CONFIDENTIALITY OF REPORTED IN-  
4 FORMATION.—

5 “(i) IN GENERAL.—Notwithstanding  
6 any other provision of law, the Board shall  
7 not be compelled to disclose any nonpublic  
8 information required to be reported under  
9 this paragraph, or any information sup-  
10 plied to the Board by any domestic or for-  
11 eign regulatory agency, that relates to the  
12 financial or operational condition of any  
13 wholesale financial holding company or any  
14 subsidiary of such company.

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

1 in an action brought by the United States  
2 or the Board.

3 “(iii) COORDINATION WITH OTHER  
4 LAW.—For purposes of section 552 of title  
5 5, United States Code, this subparagraph  
6 shall be considered to be a statute de-  
7 scribed in subsection (b)(3)(B) of such sec-  
8 tion.

9 “(iv) DESIGNATION OF CONFIDENTIAL  
10 INFORMATION.—In prescribing regulations  
11 to carry out the requirements of this sub-  
12 section, the Board shall designate informa-  
13 tion described in or obtained pursuant to  
14 this paragraph as confidential information.

15 “(F) COSTS.—The cost of any examination  
16 conducted by the Board under this section may  
17 be assessed against, and made payable by, the  
18 wholesale financial holding company.

19 “(4) CAPITAL ADEQUACY GUIDELINES.—

20 “(A) CAPITAL ADEQUACY PROVISIONS.—  
21 Subject to the requirements of, and solely in ac-  
22 cordance with, the terms of this paragraph, the  
23 Board may adopt capital adequacy rules or  
24 guidelines for wholesale financial holding com-  
25 panies.

1           “(B) METHOD OF CALCULATION.—In de-  
2           veloping rules or guidelines under this para-  
3           graph, the following provisions shall apply:

4                   “(i) FOCUS ON DOUBLE LEVERAGE.—  
5           The Board shall focus on the use by whole-  
6           sale financial holding companies of debt  
7           and other liabilities to fund capital invest-  
8           ments in subsidiaries.

9                   “(ii) NO UNWEIGHTED CAPITAL  
10          RATIO.—The Board shall not, by regula-  
11          tion, guideline, order, or otherwise, impose  
12          under this section a capital ratio that is  
13          not based on appropriate risk-weighting  
14          considerations.

15                  “(iii) NO CAPITAL REQUIREMENT ON  
16          REGULATED ENTITIES.—The Board shall  
17          not, by regulation, guideline, order or oth-  
18          erwise, prescribe or impose any capital or  
19          capital adequacy rules, standards, guide-  
20          lines, or requirements upon any subsidiary  
21          that—

22                          “(I) is not a depository institu-  
23                          tion; and

24                          “(II) is in compliance with appli-  
25                          cable capital requirements of another

1 Federal regulatory authority (includ-  
2 ing the Securities and Exchange Com-  
3 mission) or State insurance authority.

4 “(iv) CERTAIN SUBSIDIARIES.—The  
5 Board shall not, by regulation, guideline,  
6 order or otherwise, prescribe or impose any  
7 capital or capital adequacy rules, stand-  
8 ards, guidelines, or requirements upon any  
9 subsidiary that is not a depository institu-  
10 tion and that is registered as an invest-  
11 ment adviser under the Investment Advis-  
12 ers Act of 1940, except that this clause  
13 shall not be construed as preventing the  
14 Board from imposing capital or capital  
15 adequacy rules, guidelines, standards, or  
16 requirements with respect to activities of a  
17 registered investment adviser other than  
18 investment advisory activities or activities  
19 incidental to investment advisory activities.

20 “(v) LIMITATIONS ON INDIRECT AC-  
21 TION.—In developing, establishing, or as-  
22 sessing holding company capital or capital  
23 adequacy rules, guidelines, standards, or  
24 requirements for purposes of this para-  
25 graph, the Board shall not take into ac-

1 count the activities, operations, or invest-  
2 ments of an affiliated investment company  
3 registered under the Investment Company  
4 Act of 1940, if the investment company is  
5 not—

6 “(I) a bank holding company; or

7 “(II) controlled by a bank hold-  
8 ing company by reason of ownership  
9 by the bank holding company (includ-  
10 ing through all of its affiliates) of 25  
11 percent or more of the shares of the  
12 investment company, where the shares  
13 owned by the bank holding company  
14 have a market value equal to more  
15 than \$1,000,000.

16 “(vi) APPROPRIATE EXCLUSIONS.—

17 The Board shall take full account of—

18 “(I) the capital requirements  
19 made applicable to any subsidiary that  
20 is not a depository institution by an-  
21 other Federal regulatory authority or  
22 State insurance authority; and

23 “(II) industry norms for capital-  
24 ization of a company’s unregulated  
25 subsidiaries and activities.

1                   “(vii) INTERNAL RISK MANAGEMENT  
2                   MODELS.—The Board may incorporate in-  
3                   ternal risk management models of whole-  
4                   sale financial holding companies into its  
5                   capital adequacy guidelines or rules and  
6                   may take account of the extent to which  
7                   resources of a subsidiary depository insti-  
8                   tution may be used to service the debt or  
9                   other liabilities of the wholesale financial  
10                  holding company.

11                  “(c) NONFINANCIAL ACTIVITIES AND INVEST-  
12                  MENTS.—

13                   “(1) GRANDFATHERED ACTIVITIES.—

14                   “(A) IN GENERAL.—Notwithstanding sec-  
15                   tion 4(a), a company that becomes a wholesale  
16                   financial holding company may continue to en-  
17                   gage, directly or indirectly, in any activity and  
18                   may retain ownership and control of shares of  
19                   a company engaged in any activity if—

20                   “(i) on the date of the enactment of  
21                   the Financial Services Act of 1999, such  
22                   wholesale financial holding company was  
23                   lawfully engaged in that nonfinancial activ-  
24                   ity, held the shares of such company, or  
25                   had entered into a contract to acquire

1 shares of any company engaged in such ac-  
2 tivity; and

3 “(ii) the company engaged in such ac-  
4 tivity continues to engage only in the same  
5 activities that such company conducted on  
6 the date of the enactment of the Financial  
7 Services Act of 1999, and other activities  
8 permissible under this Act.

9 “(B) NO EXPANSION OF GRANDFATHERED  
10 COMMERCIAL ACTIVITIES THROUGH MERGER OR  
11 CONSOLIDATION.—A wholesale financial holding  
12 company that engages in activities or holds  
13 shares pursuant to this paragraph, or a subsidi-  
14 ary of such wholesale financial holding com-  
15 pany, may not acquire, in any merger, consoli-  
16 dation, or other type of business combination,  
17 assets of any other company which is engaged  
18 in any activity which the Board has not deter-  
19 mined to be financial in nature or incidental to  
20 activities that are financial in nature under sec-  
21 tion 6(c).

22 “(C) LIMITATION TO SINGLE EXEMP-  
23 TION.—No company that engages in any activ-  
24 ity or controls any shares under subsection (f)

1 of section 6 may engage in any activity or own  
2 any shares pursuant to this paragraph.

3 “(2) COMMODITIES.—

4 “(A) IN GENERAL.—Notwithstanding sec-  
5 tion 4(a), a wholesale financial holding company  
6 which was predominately engaged as of Janu-  
7 ary 1, 1997, in financial activities in the United  
8 States (or any successor to any such company)  
9 may engage in, or directly or indirectly own or  
10 control shares of a company engaged in, activi-  
11 ties related to the trading, sale, or investment  
12 in commodities and underlying physical prop-  
13 erties that were not permissible for bank hold-  
14 ing companies to conduct in the United States  
15 as of January 1, 1997, if such wholesale finan-  
16 cial holding company, or any subsidiary of such  
17 holding company, was engaged directly, indi-  
18 rectly, or through any such company in any of  
19 such activities as of January 1, 1997, in the  
20 United States.

21 “(B) LIMITATION.—The attributed aggre-  
22 gate consolidated assets of a wholesale financial  
23 holding company held under the authority  
24 granted under this paragraph and not otherwise  
25 permitted to be held by all wholesale financial

1 holding companies under this section may not  
2 exceed 5 percent of the total consolidated assets  
3 of the wholesale financial holding company, ex-  
4 cept that the Board may increase such percent-  
5 age of total consolidated assets by such  
6 amounts and under such circumstances as the  
7 Board considers appropriate, consistent with  
8 the purposes of this Act.

9 “(3) CROSS MARKETING RESTRICTIONS.—A  
10 wholesale financial holding company shall not  
11 permit—

12 “(A) any company whose shares it owns or  
13 controls pursuant to paragraph (1) or (2) to  
14 offer or market any product or service of an af-  
15 filiated wholesale financial institution; or

16 “(B) any affiliated wholesale financial in-  
17 stitution to offer or market any product or serv-  
18 ice of any company whose shares are owned or  
19 controlled by such wholesale financial holding  
20 company pursuant to such paragraphs.

21 “(d) QUALIFICATION OF FOREIGN BANK AS WHOLE-  
22 SALE FINANCIAL HOLDING COMPANY.—

23 “(1) IN GENERAL.—Any foreign bank, or any  
24 company that owns or controls a foreign bank, that  
25 operates a branch, agency, or commercial lending

1 company in the United States, including a foreign  
2 bank or company that owns or controls a wholesale  
3 financial institution, may request a determination  
4 from the Board that such bank or company be treat-  
5 ed as a wholesale financial holding company (other  
6 than for purposes of subsection (c)), subject to such  
7 conditions as the Board deems appropriate, giving  
8 due regard to the principle of national treatment  
9 and equality of competitive opportunity and the re-  
10 quirements imposed on domestic banks and compa-  
11 nies.

12 “(2) CONDITIONS FOR TREATMENT AS A  
13 WHOLESALE FINANCIAL HOLDING COMPANY.—A for-  
14 eign bank and a company that owns or controls a  
15 foreign bank may not be treated as a wholesale fi-  
16 nancial holding company unless the bank and com-  
17 pany meet and continue to meet the following cri-  
18 teria:

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

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

7           “(C) TRANSACTION WITH AFFILIATES.—  
8 Transactions between a branch, agency, or com-  
9 mercial lending company subsidiary of the for-  
10 eign bank in the United States, and any securi-  
11 ties affiliate or company in which the foreign  
12 bank (or any company that owns or controls  
13 such foreign bank), has invested and which en-  
14 gages in any activity authorized only as a result  
15 of the application of subsection (e) or (g) of  
16 section 6, comply with the provisions of sections  
17 23A and 23B of the Federal Reserve Act in the  
18 same manner and to the same extent as such  
19 transactions would be required to comply with  
20 such sections if the foreign bank were a mem-  
21 ber bank.

22           “(3) TREATMENT AS A WHOLESALE FINANCIAL  
23 INSTITUTION.—Any foreign bank which is, or is af-  
24 filiated with a company which is, treated as a whole-  
25 sale financial holding company under this subsection

1 shall be treated as a wholesale financial institution  
2 for purposes of paragraphs (1)(C) and (3) of section  
3 9B(c) of the Federal Reserve Act, and any such for-  
4 eign bank or company shall be subject to paragraphs  
5 (3), (4), and (5) of section 9B(d) of the Federal Re-  
6 serve Act, except that the Board may adopt such  
7 modifications, conditions, or exemptions as the  
8 Board deems appropriate, giving due regard to the  
9 principle of national treatment and equality of com-  
10 petitive opportunity.

11 “(4) SUPERVISION OF FOREIGN BANK WHICH  
12 MAINTAINS NO BANKING PRESENCE OTHER THAN  
13 CONTROL OF A WHOLESALE FINANCIAL INSTITU-  
14 TION.—A foreign bank that owns or controls a  
15 wholesale financial institution but does not operate  
16 a branch, agency, or commercial lending company in  
17 the United States (and any company that owns or  
18 controls such foreign bank) may request a deter-  
19 mination from the Board that such bank or com-  
20 pany be treated as a wholesale financial holding  
21 company, except that such bank or company shall be  
22 subject to the restrictions of paragraphs (2)(A) and  
23 (3) of this subsection.

24 “(5) NO EFFECT ON OTHER PROVISIONS.—This  
25 section shall not be construed as limiting the author-

1       ity of the Board under the International Banking  
2       Act of 1978 with respect to the regulation, super-  
3       vision, or examination of foreign banks and their of-  
4       fices and affiliates in the United States.”.

5       (b) UNINSURED STATE BANKS.—Section 9 of the  
6       Federal Reserve Act (12 U.S.C. 321 et seq.) is amended  
7       by adding at the end the following new paragraph:

8               “(24) ENFORCEMENT AUTHORITY OVER UNIN-  
9       SURED STATE MEMBER BANKS.—Section 3(u) of the  
10       Federal Deposit Insurance Act, subsections (j) and  
11       (k) of section 7 of such Act, and subsections (b)  
12       through (n), (s), (u), and (v) of section 8 of such  
13       Act shall apply to an uninsured State member bank  
14       in the same manner and to the same extent such  
15       provisions apply to an insured State member bank  
16       and any reference in any such provision to ‘insured  
17       depository institution’ shall be deemed to be a ref-  
18       erence to ‘uninsured State member bank’ for pur-  
19       poses of this paragraph.”.

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

21       (a) FEDERAL RESERVE ACT.—The last sentence of  
22       the eighth undesignated paragraph of section 9 of the  
23       Federal Reserve Act (12 U.S.C. 326) is amended to read  
24       as follows: “The Board of Governors of the Federal Re-  
25       serve System, at its discretion, may furnish reports of ex-

1 amination or other confidential supervisory information  
 2 concerning State member banks or any other entities ex-  
 3 amined under any other authority of the Board to any  
 4 Federal or State authorities with supervisory or regulatory  
 5 authority over the examined entity, to officers, directors,  
 6 or receivers of the examined entity, and to any other per-  
 7 son that the Board determines to be proper.”.

8 (b) COMMODITY FUTURES TRADING COMMISSION.—  
 9 The Right to Financial Privacy Act of 1978 (12 U.S.C.  
 10 3401 et seq.) is amended—

11 (1) in section 1101(7) (12 U.S.C. 3401(7))—

12 (A) by redesignating subparagraphs (G)  
 13 and (H) as subparagraphs (H) and (I), respec-  
 14 tively; and

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

17 “(G) the Commodity Futures Trading  
 18 Commission; or”; and

19 (2) in section 1112(e) (12 U.S.C. 3412(e)), by  
 20 striking “and the Securities and Exchange Commis-  
 21 sion” and inserting “, the Securities and Exchange  
 22 Commission, and the Commodity Futures Trading  
 23 Commission”.

24 **SEC. 133. CONFORMING AMENDMENTS.**

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

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

5           “(p) WHOLESALE FINANCIAL INSTITUTION.—The  
6           term ‘wholesale financial institution’ means a wholesale fi-  
7           nancial institution subject to section 9B of the Federal  
8           Reserve Act.

9           “(q) COMMISSION.—The term ‘Commission’ means  
10          the Securities and Exchange Commission.

11          “(r) DEPOSITORY INSTITUTION.—The term ‘deposi-  
12          tory institution’—

13                 “(1) has the same meaning as in section 3 of  
14                 the Federal Deposit Insurance Act; and

15                 “(2) includes a wholesale financial institution.”.

16          (2) DEFINITION OF BANK INCLUDES WHOLE-  
17          SALE FINANCIAL INSTITUTION.—Section 2(e)(1) of  
18          the Bank Holding Company Act of 1956 (12 U.S.C.  
19          1841(e)(1)) is amended by adding at the end the fol-  
20          lowing new subparagraph:

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

22          (3) INCORPORATED DEFINITIONS.—Section  
23          2(n) of the Bank Holding Company Act of 1956 (12  
24          U.S.C. 1841(n)) is amended by inserting “‘insured  
25          bank’,” after “‘in danger of default’,”.

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

7           (b) FEDERAL DEPOSIT INSURANCE ACT.—Section  
 8           3(q)(2)(A) of the Federal Deposit Insurance Act (12  
 9           U.S.C. 1813(q)(2)(A)) is amended to read as follows:

10                   “(A) any State member insured bank (ex-  
 11                   cept a District bank) and any wholesale finan-  
 12                   cial institution as authorized pursuant to sec-  
 13                   tion 9B of the Federal Reserve Act;”.

14           **CHAPTER 2—WHOLESALE FINANCIAL**  
 15                                   **INSTITUTIONS**

16           **SEC. 136. WHOLESALE FINANCIAL INSTITUTIONS.**

17           (a) NATIONAL WHOLESALE FINANCIAL INSTITU-  
 18           TIONS.—

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

1 **“SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITU-**  
2 **TIONS.**

3 “(a) **AUTHORIZATION OF THE COMPTROLLER RE-**  
4 **QUIRED.**—A national bank may apply to the Comptroller  
5 on such forms and in accordance with such regulations  
6 as the Comptroller may prescribe, for permission to oper-  
7 ate as a national wholesale financial institution.

8 “(b) **REGULATION.**—A national wholesale financial  
9 institution may exercise, in accordance with such institu-  
10 tion’s articles of incorporation and regulations issued by  
11 the Comptroller, all the powers and privileges of a national  
12 bank formed in accordance with section 5133 of the Re-  
13 vised Statutes of the United States, subject to section 9B  
14 of the Federal Reserve Act and the limitations and restric-  
15 tions contained therein.

16 “(c) **COMMUNITY REINVESTMENT ACT OF 1977.**—A  
17 national wholesale financial institution shall be subject to  
18 the Community Reinvestment Act of 1977.”.

19 (2) **CLERICAL AMENDMENT.**—The table of sec-  
20 tions for chapter one of title LXII of the Revised  
21 Statutes of the United States is amended by insert-  
22 ing after the item relating to section 5136A (as  
23 added by section 121(d) of this title) the following  
24 new item:

“5136B. National wholesale financial institutions.”.

1 (b) STATE WHOLESALE FINANCIAL INSTITUTIONS.—  
2 The Federal Reserve Act (12 U.S.C. 221 et seq.) is  
3 amended by inserting after section 9A the following new  
4 section:

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

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

8 “(1) APPLICATION REQUIRED.—

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

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

20 “(2) INSURANCE TERMINATION.—No bank the  
21 deposits of which are insured under the Federal De-  
22 posit Insurance Act may become a wholesale finan-  
23 cial institution unless it has met all requirements  
24 under that Act for voluntary termination of deposit  
25 insurance.

1       “(b) GENERAL REQUIREMENTS APPLICABLE TO  
2 WHOLESALE FINANCIAL INSTITUTIONS.—

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

14               “(2) PROMPT CORRECTIVE ACTION.—A whole-  
15 sale financial institution shall be deemed to be an in-  
16 sured depository institution for purposes of section  
17 38 of the Federal Deposit Insurance Act except  
18 that—

19                       “(A) the relevant capital levels and capital  
20 measures for each capital category shall be the  
21 levels specified by the Board for wholesale fi-  
22 nancial institutions; and

23                       “(B) all references to the appropriate Fed-  
24 eral banking agency or to the Corporation in

1           that section shall be deemed to be references to  
2           the Board.

3           “(3) ENFORCEMENT AUTHORITY.—Subsections  
4           (j) and (k) of section 7, subsections (b) through (n),  
5           (s), and (v) of section 8, and section 19 of the Fed-  
6           eral Deposit Insurance Act shall apply to a wholesale  
7           financial institution in the same manner and to the  
8           same extent as such provisions apply to State mem-  
9           ber insured banks and any reference in such sections  
10          to an insured depository institution shall be deemed  
11          to include a reference to a wholesale financial insti-  
12          tution.

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

19          “(5) BANK MERGER ACT.—A wholesale finan-  
20          cial institution shall be subject to sections 18(c) and  
21          44 of the Federal Deposit Insurance Act in the same  
22          manner and to the same extent the wholesale finan-  
23          cial institution would be subject to such sections if  
24          the institution were a State member insured bank.

1           “(6) BRANCHING.—Notwithstanding any other  
2 provision of law, a wholesale financial institution  
3 may establish and operate a branch at any location  
4 on such terms and conditions as established by the  
5 Board and, in the case of a State-chartered whole-  
6 sale financial institution, with the approval of the  
7 Board, and, in the case of a national bank wholesale  
8 financial institution, with the approval of the Comp-  
9 troller of the Currency.

10           “(7) ACTIVITIES OF OUT-OF-STATE BRANCHES  
11 OF WHOLESALE FINANCIAL INSTITUTIONS.—

12           “(A) GENERAL.—A State-chartered whole-  
13 sale financial institution shall be deemed to be  
14 a State bank and an insured State bank for  
15 purposes of paragraphs (1), (2), and (3) of sec-  
16 tion 24(j) of the Federal Deposit Insurance  
17 Act, and a national wholesale financial institu-  
18 tion shall be deemed to be a national bank for  
19 purposes of section 5155(f) of the Revised Stat-  
20 utes of the United States.

21           “(B) DEFINITIONS.—The following defini-  
22 tions shall apply solely for purposes of applying  
23 paragraph (1):

24           “(i) HOME STATE.—The term ‘home  
25 State’ means—

1                   “(I) with respect to a national  
2                   wholesale financial institution, the  
3                   State in which the main office of the  
4                   institution is located; and

5                   “(II) with respect to a State-  
6                   chartered wholesale financial institu-  
7                   tion, the State by which the institu-  
8                   tion is chartered.

9                   “(ii) HOST STATE.—The term ‘host  
10                  State’ means a State, other than the home  
11                  State of the wholesale financial institution,  
12                  in which the institution maintains, or seeks  
13                  to establish and maintain, a branch.

14                  “(iii) OUT-OF-STATE BANK.—The  
15                  term ‘out-of-State bank’ means, with re-  
16                  spect to any State, a wholesale financial  
17                  institution whose home State is another  
18                  State.

19                  “(8) DISCRIMINATION REGARDING INTEREST  
20                  RATES.—Section 27 of the Federal Deposit Insur-  
21                  ance Act shall apply to State-chartered wholesale fi-  
22                  nancial institutions in the same manner and to the  
23                  same extent as such provisions apply to State mem-  
24                  ber insured banks and any reference in such section  
25                  to a State-chartered insured depository institution

1 shall be deemed to include a reference to a State-  
2 chartered wholesale financial institution.

3 “(9) PREEMPTION OF STATE LAWS REQUIRING  
4 DEPOSIT INSURANCE FOR WHOLESALE FINANCIAL  
5 INSTITUTIONS.—The appropriate State banking au-  
6 thority may grant a charter to a wholesale financial  
7 institution notwithstanding any State constitution or  
8 statute requiring that the institution obtain insur-  
9 ance of its deposits and any such State constitution  
10 or statute is hereby preempted solely for purposes of  
11 this paragraph.

12 “(10) PARITY FOR WHOLESALE FINANCIAL IN-  
13 STITUTIONS.—A State bank that is a wholesale fi-  
14 nancial institution under this section shall have all  
15 of the rights, powers, privileges, and immunities (in-  
16 cluding those derived from status as a federally  
17 chartered institution) of and as if it were a national  
18 bank, subject to such terms and conditions as estab-  
19 lished by the Board.

20 “(11) COMMUNITY REINVESTMENT ACT OF  
21 1977.—A State wholesale financial institution shall  
22 be subject to the Community Reinvestment Act of  
23 1977.

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

1           “(1) LIMITATIONS ON DEPOSITS.—

2                 “(A) MINIMUM AMOUNT.—

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

7                     “(ii) LIMITATION ON DEPOSITS OF  
8                     LESS THAN \$100,000.—No wholesale finan-  
9                     cial institution may receive initial deposits  
10                    of \$100,000 or less if such deposits con-  
11                    stitute more than 5 percent of the institu-  
12                    tion’s total deposits.

13                    “(B) NO DEPOSIT INSURANCE.—Except as  
14                    otherwise provided in section 8A(f) of the Fed-  
15                    eral Deposit Insurance Act, no deposits held by  
16                    a wholesale financial institution shall be insured  
17                    deposits under the Federal Deposit Insurance  
18                    Act.

19                    “(C) ADVERTISING AND DISCLOSURE.—  
20                    The Board shall prescribe regulations pertain-  
21                    ing to advertising and disclosure by wholesale  
22                    financial institutions to ensure that each deposi-  
23                    tor is notified that deposits at the wholesale fi-  
24                    nancial institution are not federally insured or

1 otherwise guaranteed by the United States Gov-  
2 ernment.

3 “(2) MINIMUM CAPITAL LEVELS APPLICABLE  
4 TO WHOLESALE FINANCIAL INSTITUTIONS.—The  
5 Board shall, by regulation, adopt capital require-  
6 ments for wholesale financial institutions—

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

11 “(B) to provide for the safe and sound op-  
12 eration of the wholesale financial institution  
13 without undue risk to creditors or other per-  
14 sons, including Federal reserve banks, engaged  
15 in transactions with the bank.

16 “(3) ADDITIONAL REQUIREMENTS APPLICABLE  
17 TO WHOLESALE FINANCIAL INSTITUTIONS.—In addi-  
18 tion to any requirement otherwise applicable to State  
19 member insured banks or applicable, under this sec-  
20 tion, to wholesale financial institutions, the Board  
21 may impose, by regulation or order, upon wholesale  
22 financial institutions—

23 “(A) limitations on transactions, direct or  
24 indirect, with affiliates to prevent—

1           “(i) the transfer of risk to the deposit  
2 insurance funds; or

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

7           “(B) special clearing balance requirements;  
8 and

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

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

16           “(ii) prevent the transfer of risk to  
17 the deposit insurance funds; or

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

22           “(4) EXEMPTIONS FOR WHOLESale FINANCIAL  
23 INSTITUTIONS.—The Board may, by regulation or  
24 order, exempt any wholesale financial institution  
25 from any provision applicable to a member bank

1 that is not a wholesale financial institution, if the  
2 Board finds that such exemption is not inconsistent  
3 with—

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

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

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

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

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

1 or extend any advance or discount under this Act to  
2 any member bank or other depository institution.

3 “(d) CAPITAL AND MANAGERIAL REQUIREMENTS.—

4 “(1) IN GENERAL.—A wholesale financial insti-  
5 tution shall be well capitalized and well managed.

6 “(2) NOTICE TO COMPANY.—The Board shall  
7 promptly provide notice to a company that controls  
8 a wholesale financial institution whenever such  
9 wholesale financial institution is not well capitalized  
10 or well managed.

11 “(3) AGREEMENT TO RESTORE INSTITUTION.—  
12 Not later than 45 days after the date of receipt of  
13 a notice under paragraph (2) (or such additional pe-  
14 riod not to exceed 90 days as the Board may per-  
15 mit), the company shall execute an agreement ac-  
16 ceptable to the Board to restore the wholesale finan-  
17 cial institution to compliance with all of the require-  
18 ments of paragraph (1).

19 “(4) LIMITATIONS UNTIL INSTITUTION RE-  
20 STORED.—Until the wholesale financial institution is  
21 restored to compliance with all of the requirements  
22 of paragraph (1), the Board may impose such limi-  
23 tations on the conduct or activities of the company  
24 or any affiliate of the company as the Board deter-  
25 mines to be appropriate under the circumstances.

1           “(5) FAILURE TO RESTORE.—If the company  
2 does not execute and implement an agreement in ac-  
3 cordance with paragraph (3), comply with any limi-  
4 tation imposed under paragraph (4), restore the  
5 wholesale financial institution to well capitalized sta-  
6 tus not later than 180 days after the date of receipt  
7 by the company of the notice described in paragraph  
8 (2), or restore the wholesale financial institution to  
9 well managed status within such period as the Board  
10 may permit, the company shall, under such terms  
11 and conditions as may be imposed by the Board and  
12 subject to such extension of time as may be granted  
13 in the Board’s discretion, divest control of its sub-  
14 sidiary depository institutions.

15           “(6) WELL MANAGED DEFINED.—For purposes  
16 of this subsection, the term ‘well managed’ has the  
17 same meaning as in section 2 of the Bank Holding  
18 Company Act of 1956.

19           “(e) RESOLUTION OF WHOLESALE FINANCIAL INSTI-  
20 TUTIONS.—

21           “(1) CONSERVATORSHIP OR RECEIVERSHIP.—

22           “(A) APPOINTMENT.—The Board may ap-  
23 point a conservator or receiver for a wholesale  
24 financial institution to the same extent and in  
25 the same manner as the Comptroller of the

1           Currency may appoint a conservator or receiver  
2           for a national bank.

3           “(B) POWERS.—The conservator or re-  
4           ceiver for a wholesale financial institution shall  
5           exercise the same powers, functions, and duties,  
6           subject to the same limitations, as a conserva-  
7           tor or receiver for a national bank.

8           “(2) BOARD AUTHORITY.—The Board shall  
9           have the same authority with respect to any con-  
10          servator or receiver appointed for a wholesale finan-  
11          cial institution under paragraph (1), and the whole-  
12          sale financial institution for which it has been ap-  
13          pointed, as the Comptroller of the Currency has with  
14          respect to a conservator or receiver for a national  
15          bank and the national bank for which the conserva-  
16          tor or receiver has been appointed.

17          “(3) BANKRUPTCY PROCEEDINGS.—The Comp-  
18          troller of the Currency (in the case of a national  
19          wholesale financial institution) and the Board may  
20          direct the conservator or receiver of a wholesale fi-  
21          nancial institution to file a petition pursuant to title  
22          11, United States Code, in which case, title 11,  
23          United States Code, shall apply to the wholesale fi-  
24          nancial institution in lieu of otherwise applicable  
25          Federal or State insolvency law.

1       “(f) **EXCLUSIVE JURISDICTION.**—Subsections (c) and  
 2 (e) of section 43 of the Federal Deposit Insurance Act  
 3 shall not apply to any wholesale financial institution.”.

4       (c) **VOLUNTARY TERMINATION OF INSURED STATUS**  
 5 **BY CERTAIN INSTITUTIONS.**—

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

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

10                   (B) by redesignating paragraphs (2)  
 11 through (10) as paragraphs (1) through (9), re-  
 12 spectively.

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

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

19       “(a) **IN GENERAL.**—Except as provided in subsection  
 20 (b), an insured State bank or a national bank may volun-  
 21 tarily terminate such bank’s status as an insured deposi-  
 22 tory institution in accordance with regulations of the Cor-  
 23 poration if—

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

1           “(A) to the Corporation and the Board of  
2           Governors of the Federal Reserve System not  
3           less than 6 months before the effective date of  
4           such termination; and

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

8           “(2) either—

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

18          “(B) the Corporation and the Board of  
19          Governors of the Federal Reserve System ap-  
20          proved the termination of the bank’s insured  
21          status and the bank pays an exit fee in accord-  
22          ance with subsection (e).

23          “(b) EXCEPTION.—Subsection (a) shall not apply  
24          with respect to—

25          “(1) an insured savings association; or

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

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

10          “(d) INSTITUTION MUST BECOME WHOLESALe FI-  
11 NANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING  
12 ACTIVITIES.—Any depository institution which voluntarily  
13 terminates such institution’s status as an insured depository  
14 institution under this section may not, upon termination  
15 of insurance, accept any deposits unless the institution  
16 is a wholesale financial institution subject to section  
17 9B of the Federal Reserve Act.

18          “(e) EXIT FEES.—

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

1 to the fund's designated reserve ratio as of the date  
2 the bank provides a written notice under subsection  
3 (a)(1).

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

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

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

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

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

10 “(g) ADVERTISEMENTS.—

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

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

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

5 “(h) NOTICE REQUIREMENTS.—

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

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

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

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

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

21 (d) TECHNICAL AND CONFORMING AMENDMENTS TO  
22 THE BANKRUPTCY CODE.—

23 (1) BANKRUPTCY CODE DEBTORS.—Section  
24 109(b)(2) of title 11, United States Code, is amend-

1 ed by striking “; or” and inserting the following: “,  
2 except that—

3 “(A) a wholesale financial institution es-  
4 tablished under section 5136B of the Revised  
5 Statutes of the United States or section 9B of  
6 the Federal Reserve Act may be a debtor if a  
7 petition is filed at the direction of the Comp-  
8 troller of the Currency (in the case of a whole-  
9 sale financial institution established under sec-  
10 tion 5136B of the Revised Statutes of the  
11 United States) or the Board of Governors of  
12 the Federal Reserve System (in the case of any  
13 wholesale financial institution); and

14 “(B) a corporation organized under section  
15 25A of the Federal Reserve Act may be a debt-  
16 or if a petition is filed at the direction of the  
17 Board of Governors of the Federal Reserve Sys-  
18 tem; or”.

19 (2) CHAPTER 7 DEBTORS.—Section 109(d) of  
20 title 11, United States Code, is amended to read as  
21 follows:

22 “(d) Only a railroad and a person that may be a debt-  
23 or under chapter 7 of this title, except that a stockbroker,  
24 a wholesale financial institution established under section  
25 5136B of the Revised Statutes of the United States or

1 section 9B of the Federal Reserve Act, a corporation orga-  
2 nized under section 25A of the Federal Reserve Act, or  
3 a commodity broker, may be a debtor under chapter 11  
4 of this title.”.

5 (3) DEFINITION OF FINANCIAL INSTITUTION.—

6 Section 101(22) of title 11, United States Code, is  
7 amended to read as follows:

8 “(22) ‘financial institution’ means a person that  
9 is a commercial or savings bank, industrial savings  
10 bank, savings and loan association, trust company,  
11 wholesale financial institution established under sec-  
12 tion 5136B of the Revised Statutes of the United  
13 States or section 9B of the Federal Reserve Act, or  
14 corporation organized under section 25A of the Fed-  
15 eral Reserve Act and, when any such person is act-  
16 ing as agent or custodian for a customer in connec-  
17 tion with a securities contract, as defined in section  
18 741 of this title, such customer,”.

19 (4) SUBCHAPTER V OF CHAPTER 7.—

20 (A) IN GENERAL.—Section 103 of title 11,  
21 United States Code, is amended—

22 (i) by redesignating subsections (e)  
23 through (i) as subsections (f) through (j),  
24 respectively; and

1 (ii) by inserting after subsection (d)  
2 the following:

3 “(e) Subchapter V of chapter 7 of this title applies  
4 only in a case under such chapter concerning the liquida-  
5 tion of a wholesale financial institution established under  
6 section 5136B of the Revised Statutes of the United  
7 States or section 9B of the Federal Reserve Act, or a cor-  
8 poration organized under section 25A of the Federal Re-  
9 serve Act.”.

10 (B) WHOLESALE BANK LIQUIDATION.—

11 Chapter 7 of title 11, United States Code, is  
12 amended by adding at the end the following:

13 “SUBCHAPTER V—WHOLESALE BANK  
14 LIQUIDATION

15 “§ 781. **Definitions for subchapter**

16 “In this subchapter—

17 “(1) the term ‘Board’ means the Board of Gov-  
18 ernors of the Federal Reserve System;

19 “(2) the term ‘depository institution’ has the  
20 same meaning as in section 3 of the Federal Deposit  
21 Insurance Act, and includes any wholesale bank;

22 “(3) the term ‘national wholesale financial insti-  
23 tution’ means a wholesale financial institution estab-  
24 lished under section 5136B of the Revised Statutes  
25 of the United States; and

1           “(4) the term ‘wholesale bank’ means a na-  
2           tional wholesale financial institution, a wholesale fi-  
3           nancial institution established under section 9B of  
4           the Federal Reserve Act, or a corporation organized  
5           under section 25A of the Federal Reserve Act.

6   **“§ 782. Selection of trustee**

7           “Notwithstanding any other provision of this title,  
8           the conservator or receiver who files the petition shall be  
9           the trustee under this chapter, unless the Comptroller of  
10          the Currency (in the case of a national wholesale financial  
11          institution for which it appointed the conservator or re-  
12          ceiver) or the Board (in the case of any wholesale bank  
13          for which it appointed the conservator or receiver) des-  
14          ignates an alternative trustee. The Comptroller of the Cur-  
15          rency or the Board (as applicable) may designate a succes-  
16          sor trustee, if required.

17   **“§ 783. Additional powers of trustee**

18          “(a) The trustee under this subchapter has power,  
19          with permission of the court—

20                 “(1) to sell the wholesale bank to a depository  
21                 institution or consortium of depository institutions  
22                 (which consortium may agree on the allocation of  
23                 the wholesale bank among the consortium);

24                 “(2) to merge the wholesale bank with a depository  
25                 institution;

1           “(3) to transfer contracts to the same extent as  
2           could a receiver for a depository institution under  
3           paragraphs (9) and (10) of section 11(e) of the Fed-  
4           eral Deposit Insurance Act;

5           “(4) to transfer assets or liabilities to a deposi-  
6           tory institution;

7           “(5) to distribute property not of the estate, in-  
8           cluding distributions to customers that are man-  
9           dated by subchapters III and IV of this chapter; or

10          “(6) to transfer assets and liabilities to a bridge  
11          bank as provided in paragraphs (1), (3)(A), (5), (6),  
12          and (9) through (13), and subparagraphs (A)  
13          through (H) and (K) of paragraph (4) of section  
14          11(n) of the Federal Deposit Insurance Act, except  
15          that—

16                 “(A) the bridge bank shall be treated as a  
17                 wholesale bank for the purpose of this sub-  
18                 section; and

19                 “(B) any references in any such provision  
20                 of law to the Federal Deposit Insurance Cor-  
21                 poration shall be construed to be references to  
22                 the appointing agency and that references to  
23                 deposit insurance shall be omitted.

1           “(b) Any reference in this section to transfers of li-  
2 abilities includes a ratable transfer of liabilities within a  
3 priority class.

4           **“§ 784. Right to be heard**

5           “The Comptroller of the Currency (in the case of a  
6 national wholesale financial institution), the Board (in the  
7 case of any wholesale bank), or a Federal Reserve bank  
8 (in the case of a wholesale bank that is a member of that  
9 bank) may raise and may appear and be heard on any  
10 issue in a case under this subchapter.

11           **“§ 785. Expedited transfers**

12           “The trustee may make a transfer pursuant to sec-  
13 tion 783 without prior judicial approval, if the Comptroller  
14 of the Currency (in the case of a national wholesale finan-  
15 cial institution for which it appointed the conservator or  
16 receiver) or the Board (in the case of any wholesale bank  
17 for which it appointed the conservator or receiver) deter-  
18 mines that the transfer would be necessary to avert serious  
19 adverse effects on economic conditions or financial stabil-  
20 ity.”.

21                           (C)   CONFORMING    AMENDMENT.—The  
22                           table of sections for chapter 7 of title 11,  
23                           United States Code, is amended by adding at  
24                           the end the following:

“781. Definitions for subchapter.

“782. Selection of trustee.

“783. Additional powers of trustee.

“784. Right to be heard.

“785. Expedited transfers.”.

1           (e) RESOLUTION OF EDGE CORPORATIONS.—Section  
2 25A(16) of the Federal Reserve Act (12 U.S.C. 624(16))  
3 is amended to read as follows:

4                   “(16) APPOINTMENT OF RECEIVER OR CON-  
5           SERVATOR.—

6                           “(A) IN GENERAL.—The Board may ap-  
7                   point a conservator or receiver for a corporation  
8                   organized under the provisions of this section to  
9                   the same extent and in the same manner as the  
10                  Comptroller of the Currency may appoint a con-  
11                  servator or receiver for a national bank, and the  
12                  conservator or receiver for such corporation  
13                  shall exercise the same powers, functions, and  
14                  duties, subject to the same limitations, as a  
15                  conservator or receiver for a national bank.

16                           “(B) EQUIVALENT AUTHORITY.—The  
17                   Board shall have the same authority with re-  
18                   spect to any conservator or receiver appointed  
19                   for a corporation organized under the provisions  
20                   of this section under this paragraph and any  
21                   such corporation as the Comptroller of the Cur-  
22                   rency has with respect to a conservator or re-  
23                   ceiver of a national bank and the national bank

1 for which a conservator or receiver has been ap-  
 2 pointed.

3 “(C) TITLE 11 PETITIONS.—The Board  
 4 may direct the conservator or receiver of a cor-  
 5 poration organized under the provisions of this  
 6 section to file a petition pursuant to title 11,  
 7 United States Code, in which case, title 11,  
 8 United States Code, shall apply to the corpora-  
 9 tion in lieu of otherwise applicable Federal or  
 10 State insolvency law.”.

## 11 **Subtitle E—Preservation of FTC** 12 **Authority**

### 13 **SEC. 141. AMENDMENT TO THE BANK HOLDING COMPANY** 14 **ACT OF 1956 TO MODIFY NOTIFICATION AND** 15 **POST-APPROVAL WAITING PERIOD FOR SEC-** 16 **TION 3 TRANSACTIONS.**

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

### 23 **SEC. 142. INTERAGENCY DATA SHARING.**

24 To the extent not prohibited by other law, the Comp-  
 25 troller of the Currency, the Director of the Office of Thrift

1 Supervision, the Federal Deposit Insurance Corporation,  
2 and the Board of Governors of the Federal Reserve Sys-  
3 tem shall make available to the Attorney General and the  
4 Federal Trade Commission any data in the possession of  
5 any such banking agency that the antitrust agency deems  
6 necessary for antitrust review of any transaction requiring  
7 notice to any such antitrust agency or the approval of such  
8 agency under section 3, 4, or 6 of the Bank Holding Com-  
9 pany Act of 1956, section 18(c) of the Federal Deposit  
10 Insurance Act, the National Bank Consolidation and  
11 Merger Act, section 10 of the Home Owners' Loan Act,  
12 or the antitrust laws.

13 **SEC. 143. CLARIFICATION OF STATUS OF SUBSIDIARIES**  
14 **AND AFFILIATES.**

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

1 (b) SAVINGS PROVISION.—No provision of this sec-  
2 tion shall be construed as restricting the authority of any  
3 Federal banking agency (as defined in section 3 of the  
4 Federal Deposit Insurance Act) under any Federal bank-  
5 ing law, including section 8 of the Federal Deposit Insur-  
6 ance Act.

7 (c) HART-SCOTT-RODINO AMENDMENT.—Section  
8 7A(c)(7) of the Clayton Act (15 U.S.C. 18a(c)(7)) is  
9 amended by inserting before the semicolon at the end  
10 thereof the following: “, except that a portion of a trans-  
11 action is not exempt under this paragraph if such portion  
12 of the transaction (A) requires notice under section 6 of  
13 the Bank Holding Company Act of 1956; and (B) does  
14 not require approval under section 3 or 4 of the Bank  
15 Holding Company Act of 1956”.

16 **SEC. 144. ANNUAL GAO REPORT.**

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

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

1           (1) the positive and negative effects of affili-  
2           ations between various types of financial companies,  
3           and of acquisitions pursuant to this Act and the  
4           amendments made by this Act to other provisions of  
5           law, including any positive or negative effects on  
6           consumers, area markets, and submarkets thereof or  
7           on registered securities brokers and dealers which  
8           have been purchased by depository institutions or  
9           depository institution holding companies;

10           (2) the changes in business practices and the  
11           effects of any such changes on the availability of  
12           venture capital, consumer credit, and other financial  
13           services or products and the availability of capital  
14           and credit for small businesses; and

15           (3) the acquisition patterns among depository  
16           institutions, depository institution holding compa-  
17           nies, securities firms, and insurance companies in-  
18           cluding acquisitions among the largest 20 percent of  
19           firms and acquisitions within regions or other lim-  
20           ited geographical areas.

1 **Subtitle F—Applying the Principles**  
2 **of National Treatment and**  
3 **Equality of Competitive Oppor-**  
4 **tunity to Foreign Banks and**  
5 **Foreign Financial Institutions**

6 **SEC. 151. APPLYING THE PRINCIPLES OF NATIONAL TREAT-**  
7 **MENT AND EQUALITY OF COMPETITIVE OP-**  
8 **PORTUNITY TO FOREIGN BANKS THAT ARE**  
9 **FINANCIAL HOLDING COMPANIES.**

10 Section 8(c) of the International Banking Act of  
11 1978 (12 U.S.C. 3106(c)) is amended by adding at the  
12 end the following new paragraph:

13 “(3) **TERMINATION OF GRANDFATHERED**  
14 **RIGHTS.—**

15 “(A) **IN GENERAL.—**If any foreign bank or  
16 foreign company files a declaration under sec-  
17 tion 6(b)(1)(C) of the Bank Holding Company  
18 Act of 1956, or receives a determination under  
19 section 10(d)(1) of the Bank Holding Company  
20 Act of 1956, any authority conferred by this  
21 subsection on any foreign bank or company to  
22 engage in any activity which the Board has de-  
23 termined to be permissible for financial holding  
24 companies under section 6 of such Act shall ter-  
25minate immediately.

1           “(B) RESTRICTIONS AND REQUIREMENTS  
2           AUTHORIZED.—If a foreign bank or company  
3           that engages, directly or through an affiliate  
4           pursuant to paragraph (1), in an activity which  
5           the Board has determined to be permissible for  
6           financial holding companies under section 6 of  
7           the Bank Holding Company Act of 1956 has  
8           not filed a declaration with the Board of its sta-  
9           tus as a financial holding company under such  
10          section or received a determination under sec-  
11          tion 10(d)(1) by the end of the 2-year period  
12          beginning on the date of enactment of the Fi-  
13          nancial Services Act of 1999, the Board, giving  
14          due regard to the principle of national treat-  
15          ment and equality of competitive opportunity,  
16          may impose such restrictions and requirements  
17          on the conduct of such activities by such foreign  
18          bank or company as are comparable to those  
19          imposed on a financial holding company orga-  
20          nized under the laws of the United States, in-  
21          cluding a requirement to conduct such activities  
22          in compliance with any prudential safeguards  
23          established under section 5(h) of the Bank  
24          Holding Company Act of 1956.”.

1 **SEC. 152. APPLYING THE PRINCIPLES OF NATIONAL TREAT-**  
2 **MENT AND EQUALITY OF COMPETITIVE OP-**  
3 **PORTUNITY TO FOREIGN BANKS AND FOR-**  
4 **EIGN FINANCIAL INSTITUTIONS THAT ARE**  
5 **WHOLESALE FINANCIAL INSTITUTIONS.**

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

9 “(i) **VOLUNTARY TERMINATION OF DEPOSIT INSUR-**  
10 **ANCE.**—The provisions on voluntary termination of insur-  
11 ance in this section shall apply to an insured branch of  
12 a foreign bank (including a Federal branch) in the same  
13 manner and to the same extent as they apply to an insured  
14 State bank or a national bank.”.

15 **SEC. 153. REPRESENTATIVE OFFICES.**

16 (a) **DEFINITION OF “REPRESENTATIVE OFFICE”.**—  
17 Section 1(b)(15) of the International Banking Act of 1978  
18 (12 U.S.C. 3101(15)) is amended by striking “State agen-  
19 cy, or subsidiary of a foreign bank” and inserting “or  
20 State agency”.

21 (b) **EXAMINATIONS.**—Section 10(c) of the Inter-  
22 national Banking Act of 1978 (12 U.S.C. 3107(c)) is  
23 amended by adding at the end the following: “The Board  
24 may also make examinations of any affiliate of a foreign  
25 bank conducting business in any State if the Board deems  
26 it necessary to determine and enforce compliance with this

1 Act, the Bank Holding Company Act of 1956 (12 U.S.C.  
2 1841 et seq.), or other applicable Federal banking law.”.

3 **Subtitle G—Federal Home Loan**  
4 **Bank System Modernization**

5 **SEC. 161. SHORT TITLE.**

6 This subtitle may be cited as the “Federal Home  
7 Loan Bank System Modernization Act of 1999”.

8 **SEC. 162. DEFINITIONS.**

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

11 (1) in paragraph (1), by striking “term ‘Board’  
12 means” and inserting “terms ‘Finance Board’ and  
13 ‘Board’ mean”;

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

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

21 (3) by adding at the end the following new  
22 paragraph:

23 “(13) COMMUNITY FINANCIAL INSTITUTION.—

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

1           “(i) the deposits of which are insured  
2           under the Federal Deposit Insurance Act;  
3           and

4           “(ii) that has, as of the date of the  
5           transaction at issue, less than  
6           \$500,000,000 in average total assets,  
7           based on an average of total assets over  
8           the 3 years preceding that date.

9           “(B) ADJUSTMENTS.—The \$500,000,000  
10          limit referred to in subparagraph (A)(ii) shall  
11          be adjusted annually by the Finance Board,  
12          based on the annual percentage increase, if any,  
13          in the Consumer Price Index for all urban con-  
14          sumers, as published by the Department of  
15          Labor.”.

16 **SEC. 163. SAVINGS ASSOCIATION MEMBERSHIP.**

17          (a) FEDERAL HOME LOAN BANK MEMBERSHIP.—  
18          Section 5(f) of the Home Owners’ Loan Act (12 U.S.C.  
19          1464(f)) is amended to read as follows:

20          “(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—  
21          On and after January 1, 1999, a Federal savings associa-  
22          tion may become a member of the Federal Home Loan  
23          Bank System, and shall qualify for such membership in  
24          the manner provided by the Federal Home Loan Bank  
25          Act.”.

1 (b) WITHDRAWAL.—Section 6(e) of the Federal  
2 Home Loan Bank Act (12 U.S.C. 1426(e)) is amended  
3 by striking “Any member other than a Federal savings  
4 and loan association may withdraw” and inserting “Any  
5 member may withdraw”.

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

7 (a) IN GENERAL.—Section 10(a) of the Federal  
8 Home Loan Bank Act (12 U.S.C. 1430(a)) is amended—  
9 (1) by redesignating paragraphs (1) through  
10 (4) as subparagraphs (A) through (D), respectively,  
11 and indenting appropriately;

12 (2) by striking “(a) Each” and inserting the  
13 following:

14 “(a) IN GENERAL.—

15 “(1) ALL ADVANCES.—Each”;

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

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

20 “(A) providing funds to any member for  
21 residential housing finance; and

22 “(B) providing funds to any community fi-  
23 nancial institution for small businesses, agricul-  
24 tural, rural development, or low-income commu-  
25 nity development lending.”;

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

3           “(3) COLLATERAL.—A Bank”;

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

6           (A) in subparagraph (C) (as so redesign-  
7           ated by paragraph (1) of this subsection) by  
8           striking “Deposits” and inserting “Cash or de-  
9           posits”;

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

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

16                 “(E) Secured loans for small business, ag-  
17                 riculture, rural development, or low-income  
18                 community development, or securities represent-  
19                 ing a whole interest in such secured loans, in  
20                 the case of any community financial institu-  
21                 tion.”;

22          (6) in paragraph (5)—

23                 (A) in the second sentence, by striking  
24                 “and the Board”;

1 (B) in the third sentence, by striking  
2 “Board” and inserting “Federal home loan  
3 bank”; and

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

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

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

9 “(5) REVIEW OF CERTAIN COLLATERAL STAND-  
10 ARDS.—The Board may review the collateral stand-  
11 ards applicable to each Federal home loan bank for  
12 the classes of collateral described in subparagraphs  
13 (D) and (E) of paragraph (3), and may, if necessary  
14 for safety and soundness purposes, require an in-  
15 crease in the collateral standards for any or all of  
16 those classes of collateral.

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

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

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

2 (c) CONFORMING AMENDMENTS RELATING TO MEM-  
3 BERS WHICH ARE NOT QUALIFIED THRIFT LENDERS—  
4 Section 10(e)(1) of the Federal Home Loan Bank Act (12  
5 U.S.C. 1430(e)(1)) is amended in the second sentence, by  
6 inserting before the period “or, in the case of any commu-  
7 nity financial institution, for the purposes described in  
8 subsection (a)(2)”.

9 **SEC. 165. ELIGIBILITY CRITERIA.**

10 Section 4(a) of the Federal Home Loan Bank Act  
11 (12 U.S.C. 1424(a)) is amended—

12 (1) in paragraph (2)(A), by inserting, “(other  
13 than a community financial institution)” after “in-  
14 stitution”; and

15 (2) by adding at the end the following new  
16 paragraph:

17 “(3) LIMITED EXEMPTION FOR COMMUNITY FI-  
18 NANCIAL INSTITUTIONS.—A community financial in-  
19 stitution that otherwise meets the requirements of  
20 paragraph (2) may become a member without regard  
21 to the percentage of its total assets that is rep-  
22 resented by residential mortgage loans, as described  
23 in subparagraph (A) of paragraph (2).”.

1 **SEC. 166. MANAGEMENT OF BANKS.**

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

5 (1) by striking “(d) The term” and inserting  
6 the following:

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

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

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

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

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

18 (1) in subsection (a)—

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

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

23 (C) by striking “and, by its Board of direc-  
24 tors,” and all that follows through “agent of  
25 such bank,” and inserting “and, by the board  
26 of directors of the bank, to prescribe, amend,

1 and repeal by-laws governing the manner in  
2 which its affairs may be administered, consist-  
3 ent with applicable laws and regulations, as ad-  
4 ministered by the Finance Board. No officer,  
5 employee, attorney, or agent of a Federal home  
6 loan bank”; and

7 (D) by striking “Board of directors” each  
8 place that term appears and inserting “board of  
9 directors”; and

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

12 (e) POWERS AND DUTIES OF FEDERAL HOUSING FI-  
13 NANCE BOARD.—

14 (1) ISSUANCE OF NOTICES OF VIOLATIONS.—  
15 Section 2B(a) of the Federal Home Loan Bank Act  
16 (12 U.S.C. 1422b(a)) is amended by adding at the  
17 end the following new paragraphs:

18 “(5) To issue and serve a notice of charges  
19 upon a Federal home loan bank or upon any execu-  
20 tive officer or director of a Federal home loan bank  
21 if, in the determination of the Finance Board, the  
22 bank, executive officer, or director is engaging or  
23 has engaged in, or the Finance Board has reason-  
24 able cause to believe that the bank, executive officer,  
25 or director is about to engage in, any conduct that

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

1       prises under the Federal Housing Enterprises Fi-  
2       nancial Safety and Soundness Act of 1992.

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

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

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

12      (f) ELIGIBILITY TO SECURE ADVANCES.—

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

16              (A) in the second sentence, by striking  
17              “with the approval of the Board”; and

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

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

23              (A) in subsection (c)—

1 (i) in the first sentence, by striking  
2 “Board” and inserting “Federal home loan  
3 bank”; and

4 (ii) in the second sentence, by striking  
5 “held by” and all that follows before the  
6 period;

7 (B) in subsection (d)—

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

10 (ii) by striking “Subject to the ap-  
11 proval of the Board, any” and inserting  
12 “Any”; and

13 (C) in subsection (j)(1)—

14 (i) by striking “to subsidize the inter-  
15 est rate on advances” and inserting “to  
16 provide subsidies, including subsidized in-  
17 terest rates on advances”;

18 (ii) by striking “Pursuant” and in-  
19 serting the following:

20 “(A) ESTABLISHMENT.—Pursuant”; and

21 (iii) by adding at the end the follow-  
22 ing new subparagraph:

23 “(B) NONDELEGATION OF APPROVAL AU-  
24 THORITY.—Subject to such regulations as the  
25 Finance Board may prescribe, the board of di-

1           rectors of each Federal home loan bank may  
2           approve or disapprove requests from members  
3           for Affordable Housing Program subsidies, and  
4           may not delegate such authority.”.

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

7           (1) in the third sentence—

8                   (A) by striking “net earnings” and insert-  
9                   ing “previously retained earnings or current net  
10                   earnings”; and

11                   (B) by striking “, and then only with the  
12                   approval of the Federal Housing Finance  
13                   Board”; and

14           (2) by striking the fourth sentence.

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

18 **SEC. 167. RESOLUTION FUNDING CORPORATION.**

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

22                   “(C) PAYMENTS BY FEDERAL HOME LOAN  
23                   BANKS.—

24                   “(i) IN GENERAL.—To the extent that  
25                   the amounts available pursuant to sub-

1 paragraphs (A) and (B) are insufficient to  
2 cover the amount of interest payments,  
3 each Federal home loan bank shall pay to  
4 the Funding Corporation in each calendar  
5 year, 20.75 percent of the net earnings of  
6 that bank (after deducting expenses relat-  
7 ing to section 10(j) and operating ex-  
8 penses).

9 “(ii) ANNUAL DETERMINATION.—The  
10 Board annually shall determine the extent  
11 to which the value of the aggregate  
12 amounts paid by the Federal home loan  
13 banks exceeds or falls short of the value of  
14 an annuity of \$300,000,000 per year that  
15 commences on the issuance date and ends  
16 on the final scheduled maturity date of the  
17 obligations, and shall select appropriate  
18 present value factors for making such de-  
19 terminations.

20 “(iii) PAYMENT TERM ALTER-  
21 ATIONS.—The Board shall extend or short-  
22 en the term of the payment obligations of  
23 a Federal home loan bank under this sub-  
24 paragraph as necessary to ensure that the  
25 value of all payments made by the banks

1 is equivalent to the value of an annuity re-  
2 ferred to in clause (ii).

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

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

7 **Subtitle H—Direct Activities of**  
8 **Banks**

9 **SEC. 181. AUTHORITY OF NATIONAL BANKS TO UNDER-**  
10 **WRITE CERTAIN MUNICIPAL BONDS.**

11 The paragraph designated the Seventh of section  
12 5136 of the Revised Statutes of the United States (12  
13 U.S.C. 24(7)) is amended by adding at the end the follow-  
14 ing new sentence: “In addition to the provisions in this  
15 paragraph for dealing in, underwriting or purchasing secu-  
16 rities, the limitations and restrictions contained in this  
17 paragraph as to dealing in, underwriting, and purchasing  
18 investment securities for the national bank’s own account  
19 shall not apply to obligations (including limited obligation  
20 bonds, revenue bonds, and obligations that satisfy the re-  
21 quirements of section 142(b)(1) of the Internal Revenue  
22 Code of 1986) issued by or on behalf of any state or politi-  
23 cal subdivision of a state, including any municipal cor-  
24 porate instrumentality of 1 or more states, or any public  
25 agency or authority of any state or political subdivision

1 of a state, if the national banking association is well cap-  
2 italized (as defined in section 38 of the Federal Deposit  
3 Insurance Act).”.

## 4           **Subtitle I—Deposit Insurance** 5                           **Funds**

### 6   **SEC. 186. STUDY OF SAFETY AND SOUNDNESS OF FUNDS.**

7           (a) STUDY REQUIRED.—The Board of Directors of  
8 the Federal Deposit Insurance Corporation shall conduct  
9 a study of the following issues with regard to the Bank  
10 Insurance Fund and the Savings Association Insurance  
11 Fund:

12                   (1) SAFETY AND SOUNDNESS.—The safety and  
13 soundness of the funds and the adequacy of the re-  
14 serve requirements applicable to the funds in light  
15 of—

16                           (A) the size of the insured depository insti-  
17 tutions which are resulting from mergers and  
18 consolidations since the effective date of the  
19 Riegle-Neal Interstate Banking and Branching  
20 Efficiency Act of 1994; and

21                           (B) the affiliation of insured depository in-  
22 stitutions with other financial institutions pur-  
23 suant to this Act and the amendments made by  
24 this Act.

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

9           (3) MERGER ISSUES.—Issues relating to the  
10          planned merger of the funds, including the cost of  
11          merging the funds and the manner in which such  
12          costs will be distributed among the members of the  
13          respective funds.

14          (b) REPORT REQUIRED.—

15               (1) IN GENERAL.—Before the end of the 9-  
16               month period beginning on the date of the enact-  
17               ment of this Act, the Board of Directors of the Fed-  
18               eral Deposit Insurance Corporation shall submit a  
19               report to the Congress on the study conducted pur-  
20               suant to subsection (a).

21               (2) CONTENTS OF REPORT.—The report shall  
22               include—

23                       (A) detailed findings of the Board of Di-  
24                       rectors with regard to the issues described in  
25                       subsection (a);

1 (B) a description of the plans developed by  
2 the Board of Directors for merging the Bank  
3 Insurance Fund and the Savings Association  
4 Insurance Fund, including an estimate of the  
5 amount of the cost of such merger which would  
6 be borne by Savings Association Insurance  
7 Fund members; and

8 (C) such recommendations for legislative  
9 and administrative action as the Board of Di-  
10 rectors determines to be necessary or appro-  
11 priate to preserve the safety and soundness of  
12 the deposit insurance funds, reduce the risks to  
13 such funds, provide for an efficient merger of  
14 such funds, and for other purposes.

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

17 (1) INSURED DEPOSITORY INSTITUTION.—The  
18 term “insured depository institution” has the same  
19 meaning as in section 3(c) of the Federal Deposit  
20 Insurance Act.

21 (2) BIF AND SAIF MEMBERS.—The terms  
22 “Bank Insurance Fund member” and “Savings As-  
23 sociation Insurance Fund member” have the same  
24 meanings as in section 7(l) of the Federal Deposit  
25 Insurance Act.

1 **SEC. 187. ELIMINATION OF SAIF AND DIF SPECIAL RE-**  
2 **SERVES.**

3 (a) SAIF SPECIAL RESERVES.—Section 11(a)(6) of  
4 the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6))  
5 is amended by striking subparagraph (L).

6 (b) DIF SPECIAL RESERVES.—Section 2704 of the  
7 Deposit Insurance Funds Act of 1996 (12 U.S.C. 1821  
8 note) is amended—

9 (1) by striking subsection (b); and

10 (2) in subsection (d)—

11 (A) by striking paragraph (4);

12 (B) in paragraph (6)(C)(i), by striking  
13 “(6) and (7)” and inserting “(5), (6), and (7)”;  
14 and

15 (C) in paragraph (6)(C), by striking clause  
16 (ii) and inserting the following:

17 “(ii) by redesignating paragraph (8)  
18 as paragraph (5).”.

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

20 **SEC. 191. EFFECTIVE DATE.**

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

1                   **TITLE II—FUNCTIONAL**  
2                                   **REGULATION**  
3           **Subtitle A—Brokers and Dealers**

4   **SEC. 201. DEFINITION OF BROKER.**

5           Section 3(a)(4) of the Securities Exchange Act of  
6 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

7                   “(4) BROKER.—

8                                   “(A) IN GENERAL.—The term ‘broker’  
9                   means any person engaged in the business of  
10                   effecting transactions in securities for the ac-  
11                   count of others.

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

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

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

4           “(II) the broker or dealer per-  
5 forms brokerage services in an area  
6 that is clearly marked and, to the ex-  
7 tent practicable, physically separate  
8 from the routine deposit-taking activi-  
9 ties of the bank;

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

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

1           “(V) bank employees (other than  
2           associated persons of a broker or deal-  
3           er who are qualified pursuant to the  
4           rules of a self-regulatory organization)  
5           perform only clerical or ministerial  
6           functions in connection with broker-  
7           age transactions including scheduling  
8           appointments with the associated per-  
9           sons of a broker or dealer, except that  
10          bank employees may forward cus-  
11          tomer funds or securities and may de-  
12          scribe in general terms the range of  
13          investment vehicles available from the  
14          bank and the broker or dealer under  
15          the contractual or other arrangement;

16          “(VI) bank employees do not di-  
17          rectly receive incentive compensation  
18          for any brokerage transaction unless  
19          such employees are associated persons  
20          of a broker or dealer and are qualified  
21          pursuant to the rules of a self-regu-  
22          latory organization, except that the  
23          bank employees may receive com-  
24          pensation for the referral of any cus-  
25          tomer if the compensation is a nomi-

1           nal one-time cash fee of a fixed dollar  
2           amount and the payment of the fee is  
3           not contingent on whether the referral  
4           results in a transaction;

5           “(VII) such services are provided  
6           by the broker or dealer on a basis in  
7           which all customers which receive any  
8           services are fully disclosed to the  
9           broker or dealer;

10          “(VIII) the bank does not carry  
11          a securities account of the customer  
12          except in a customary custodian or  
13          trustee capacity; and

14          “(IX) the bank, broker, or dealer  
15          informs each customer that the bro-  
16          kerage services are provided by the  
17          broker or dealer and not by the bank  
18          and that the securities are not depos-  
19          its or other obligations of the bank,  
20          are not guaranteed by the bank, and  
21          are not insured by the Federal De-  
22          posit Insurance Corporation.

23          “(ii) TRUST ACTIVITIES.—The bank  
24          effects transactions in a trustee capacity,  
25          or effects transactions in a fiduciary capac-

1           ity in its trust department or other depart-  
2           ment that is regularly examined by bank  
3           examiners for compliance with fiduciary  
4           principles and standards, and (in either  
5           case)—

6                       “(I) is primarily compensated for  
7                       such transactions on the basis of an  
8                       administration or annual fee (payable  
9                       on a monthly, quarterly, or other  
10                      basis), a percentage of assets under  
11                      management, or a flat or capped per  
12                      order processing fee equal to not more  
13                      than the cost incurred by the bank in  
14                      connection with executing securities  
15                      transactions for trustee and fiduciary  
16                      customers, or any combination of such  
17                      fees, consistent with fiduciary prin-  
18                      ciples and standards; and

19                      “(II) does not publicly solicit bro-  
20                      kerage business, other than by adver-  
21                      tising that it effects transactions in  
22                      securities in conjunction with advertis-  
23                      ing its other trust activities.

1                   “(iii)    PERMISSIBLE    SECURITIES  
2                   TRANSACTIONS.—The bank effects trans-  
3                   actions in—

4                           “(I) commercial paper, bankers  
5                           acceptances, or commercial bills;

6                           “(II) exempted securities;

7                           “(III) qualified Canadian govern-  
8                           ment obligations as defined in section  
9                           5136 of the Revised Statutes, in con-  
10                           formity with section 15C of this title  
11                           and the rules and regulations there-  
12                           under, or obligations of the North  
13                           American Development Bank; or

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

21                   “(iv)    CERTAIN    STOCK    PURCHASE  
22                   PLANS.—

23                           “(I)    EMPLOYEE    BENEFIT  
24                           PLANS.—The bank effects trans-  
25                           actions, as part of its transfer agency

1 activities, in the securities of an issuer  
2 as part of any pension, retirement,  
3 profit-sharing, bonus, thrift, savings,  
4 incentive, or other similar benefit plan  
5 for the employees of that issuer or its  
6 subsidiaries, if—

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

12 “(bb) the bank’s compensa-  
13 tion for such plan or program  
14 consists primarily of administra-  
15 tion fees, or flat or capped per  
16 order processing fees, or both.

17 “(II) DIVIDEND REINVESTMENT  
18 PLANS.—The bank effects trans-  
19 actions, as part of its transfer agency  
20 activities, in the securities of an issuer  
21 as part of that issuer’s dividend rein-  
22 vestment plan, if—

23 “(aa) the bank does not so-  
24 licit transactions or provide in-  
25 vestment advice with respect to

1 the purchase or sale of securities  
2 in connection with the plan;

3 “(bb) the bank does not net  
4 shareholders’ buy and sell orders,  
5 other than for programs for odd-  
6 lot holders or plans registered  
7 with the Commission; and

8 “(cc) the bank’s compensa-  
9 tion for such plan or program  
10 consists primarily of administra-  
11 tion fees, or flat or capped per  
12 order processing fees, or both.

13 “(III) ISSUER PLANS.—The bank  
14 effects transactions, as part of its  
15 transfer agency activities, in the secu-  
16 rities of an issuer as part of a plan or  
17 program for the purchase or sale of  
18 that issuer’s shares, if—

19 “(aa) the bank does not so-  
20 licit transactions or provide in-  
21 vestment advice with respect to  
22 the purchase or sale of securities  
23 in connection with the plan or  
24 program;

1                   “(bb) the bank does not net  
2                   shareholders’ buy and sell orders,  
3                   other than for programs for odd-  
4                   lot holders or plans registered  
5                   with the Commission; and

6                   “(cc) the bank’s compensa-  
7                   tion for such plan or program  
8                   consists primarily of administra-  
9                   tion fees, or flat or capped per  
10                  order processing fees, or both.

11                  “(IV) PERMISSIBLE DELIVERY  
12                  OF MATERIALS.—The exception to  
13                  being considered a broker for a bank  
14                  engaged in activities described in sub-  
15                  clauses (I), (II), and (III) will not be  
16                  affected by a bank’s delivery of writ-  
17                  ten or electronic plan materials to em-  
18                  ployees of the issuer, shareholders of  
19                  the issuer, or members of affinity  
20                  groups of the issuer, so long as such  
21                  materials are—

22                  “(aa) comparable in scope or  
23                  nature to that permitted by the  
24                  Commission as of the date of the

1 enactment of the Financial Serv-  
2 ices Act of 1999; or

3 “(bb) otherwise permitted by  
4 the Commission.

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

13 “(vi) AFFILIATE TRANSACTIONS.—  
14 The bank effects transactions for the ac-  
15 count of any affiliate of the bank (as de-  
16 fined in section 2 of the Bank Holding  
17 Company Act of 1956) other than—

18 “(I) a registered broker or deal-  
19 er; or

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

24 “(vii) PRIVATE SECURITIES OFFER-  
25 INGS.—The bank—

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

7           “(II) at any time after the date  
8           that is 1 year after the date of enact-  
9           ment of the Financial Services Act of  
10          1999, is not affiliated with a broker  
11          or dealer that has been registered for  
12          more than 1 year in accordance with  
13          this Act, and engages in dealing, mar-  
14          ket making, or underwriting activities,  
15          other than with respect to exempted  
16          securities; and

17          “(III) 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           eise 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 1999.

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 broker or 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 author-  
8           ity of the Commission under any other provi-  
9           sion of 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 1999, 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 1999.

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 1999, 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           “(2) DEFINITIONS.—As used in this subsection  
2           the term ‘Commission’ means the Securities and Ex-  
3           change Commission.”.

4 **SEC. 206. DEFINITION AND TREATMENT OF BANKING PROD-**  
5 **UCTS.**

6           (a) DEFINITION OF TRADITIONAL BANKING PROD-  
7 UCT.—For purposes of paragraphs (4) and (5) of section  
8 3(a) of the Securities Exchange Act of 1934 (15 U.S.C.  
9 78c(a) (4), (5)), the term “traditional banking product”  
10 means—

11           (1) a deposit account, savings account, certifi-  
12           cate of deposit, or other deposit instrument issued  
13           by a bank;

14           (2) a banker’s acceptance;

15           (3) a letter of credit issued or loan made by a  
16           bank;

17           (4) a debit account at a bank arising from a  
18           credit card or similar arrangement;

19           (5) a participation in a loan which the bank or  
20           an affiliate of the bank (other than a broker or deal-  
21           er) funds, participates in, or owns that is sold—

22                   (A) to qualified investors; or

23                   (B) to other persons that—

24                           (i) have the opportunity to review and  
25                           assess any material information, including

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 and

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

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

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

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

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

24 (iii) trade on a national securities ex-  
25 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.

13 (b) AMENDMENT TO THE SECURITIES EXCHANGE  
14 ACT OF 1934.—Section 15 of the Securities Exchange Act  
15 of 1934 (15 U.S.C. 78o) is amended by adding at the end  
16 the following new subsection:

17 “(i) TRANSACTIONS INVOLVING HYBRID PROD-  
18 UCTS.—

19 “(1) COMMISSION AUTHORITY.—

20 “(A) IN GENERAL.—The Commission may,  
21 after consultation with the Board, determine,  
22 by regulation published in the Federal Register,  
23 that a bank that effects transactions in, or buys  
24 or sells, a new product should be subject to the  
25 registration requirements of this section.

1           “(B) LIMITATION.—The Commission may  
2 not impose the registration requirements of this  
3 section on any bank that effects transactions in,  
4 or buys or sells, a product under this subsection  
5 unless the Commission determines in the regu-  
6 lations described in subparagraph (A) that—

7                   “(i) the subject product is a new prod-  
8 uct;

9                   “(ii) the subject product is a security;  
10 and

11                   “(iii) imposing the registration re-  
12 quirements of this section is necessary or  
13 appropriate in the public interest and for  
14 the protection of investors.

15           “(2) OBJECTION TO COMMISSION REGULA-  
16 TION.—

17                   “(A) FILING OF PETITION FOR REVIEW.—  
18 The Board, or any aggrieved party, may obtain  
19 review of any final regulation described in para-  
20 graph (1) in the United States Court of Ap-  
21 peals for the District of Columbia Circuit by fil-  
22 ing in such court, not later than 60 days after  
23 the date of publication of the final regulation,  
24 a written petition requesting that the regulation  
25 be set aside.

1           “(B) TRANSMITTAL OF PETITION AND  
2 RECORD.—A copy of a petition described in  
3 subparagraph (A) shall be transmitted as soon  
4 as possible by the Clerk of the Court to an offi-  
5 cer or employee of the Commission designated  
6 for that purpose. Upon receipt of the petition,  
7 the Commission shall file with the court the  
8 regulation under review and any documents re-  
9 ferred to therein, and any other relevant mate-  
10 rials prescribed by the court.

11           “(C) EXCLUSIVE JURISDICTION.—On the  
12 date of the filing of the petition under subpara-  
13 graph (A), the court has jurisdiction, which be-  
14 comes exclusive on the filing of the materials  
15 set forth in subparagraph (B), to affirm and  
16 enforce or to set aside the regulation at issue.

17           “(D) STANDARD OF REVIEW.—

18           “(i) IN GENERAL.—The court shall  
19 determine to affirm and enforce or set  
20 aside a regulation of the Commission  
21 under this subsection, based on the deter-  
22 mination of the court as to whether the  
23 subject product—

24                           “(I) is a new product, as defined  
25                           in this subsection;

1 “(II) is a security; and

2 “(III) would be more appro-  
3 priately regulated under the Federal  
4 securities laws or the Federal banking  
5 laws, giving equal deference to the  
6 views of the Commission and the  
7 Board.

8 “(ii) CONSIDERATIONS.—In making a  
9 determination under clause (i)(III), the  
10 court shall consider—

11 “(I) the nature of the subject  
12 new product;

13 “(II) the history, purpose, extent,  
14 and appropriateness of the regulation  
15 of the new product under the Federal  
16 securities laws; and

17 “(III) the history, purpose, ex-  
18 tent, and appropriateness of the regu-  
19 lation of the new product under the  
20 Federal banking laws.

21 “(E) JUDICIAL STAY.—The filing of a peti-  
22 tion by the Board or an aggrieved party pursu-  
23 ant to subparagraph (A) shall operate as a judi-  
24 cial stay, until the date on which the court

1 makes a final determination under this para-  
2 graph, of—

3 “(i) any Commission requirement that  
4 a bank register as a broker or dealer under  
5 this section, because the bank engages in  
6 any transaction in, or buys or sells, the  
7 new product that is the subject of the peti-  
8 tion; and

9 “(ii) any Commission action against a  
10 bank for a failure to comply with a re-  
11 quirement described in clause (i).

12 “(3) DEFINITIONS.—For purposes of this  
13 subsection—

14 “(A) the term ‘Board’ means the Board of  
15 Governors of the Federal Reserve System; and

16 “(B) the term ‘new product’ means a prod-  
17 uct or instrument offered or provided by a bank  
18 that—

19 “(i) was not subject to regulation by  
20 the Commission as a security under this  
21 Act before the date of enactment of this  
22 subsection; and

23 “(ii) is not a traditional banking prod-  
24 uct, as defined in paragraphs (1) through

1                   (6) of section 206(a) of the Financial Serv-  
2                   ices Act of 1999.”.

3           (c) CLASSIFICATION LIMITED.—Classification of a  
4 particular product or instrument as a traditional banking  
5 product pursuant to this section or the amendments made  
6 by this section shall not be construed as finding or imply-  
7 ing that such product or instrument is or is not a security  
8 for any purpose under the securities laws, or is or is not  
9 an account, agreement, contract, or transaction for any  
10 purpose under the Commodity Exchange Act.

11          (d) NO LIMITATION ON OTHER AUTHORITY TO  
12 CHALLENGE.—Nothing in this section or the amendments  
13 made by this section shall affect the right or authority  
14 of the Board of Governors of the Federal Reserve System,  
15 any appropriate Federal banking agency, or any interested  
16 party under any other provision of law to object to or seek  
17 judicial review as to whether a product or instrument is  
18 or is not appropriately classified as a traditional banking  
19 product under paragraphs (1) through (6) of section  
20 206(a).

21          (e) INCORPORATED DEFINITIONS.—For purposes of  
22 this section—

23               (1) the term “appropriate Federal banking  
24               agency” has the same meaning as in section 3 of the  
25               Federal Deposit Insurance Act;

1           (2) the term “bank” has the same meaning as  
2           in section 3(a)(6) of the Securities Exchange Act of  
3           1934;

4           (3) the term “Board” means the Board of Gov-  
5           ernors of the Federal Reserve System;

6           (4) the term “government securities” has the  
7           same meaning as in section 3(a)(42) of the Securi-  
8           ties Exchange Act of 1934, and, for purposes of this  
9           subsection, commercial paper, bankers acceptances,  
10          and commercial bills shall be treated in the same  
11          manner as government securities; and

12          (5) the term “qualified investor” has the same  
13          meaning as in section 3(a)(55) of the Securities Ex-  
14          change Act of 1934, as amended by this Act.

15 **SEC. 207. DERIVATIVE INSTRUMENT AND QUALIFIED IN-**  
16 **VESTOR DEFINED.**

17          Section 3(a) of the Securities Exchange Act of 1934  
18          (15 U.S.C. 78c(a)) is amended by adding at the end the  
19          following new paragraphs:

20                 “(54) DERIVATIVE INSTRUMENT.—

21                         “(A) DEFINITION.—The term ‘derivative  
22                         instrument’ means any individually negotiated  
23                         contract, agreement, warrant, note, or option  
24                         that is based, in whole or in part, on the value  
25                         of, any interest in, or any quantitative measure

1 or the occurrence of any event relating to, one  
2 or more commodities, securities, currencies, in-  
3 terest or other rates, indices, or other assets,  
4 but does not include a traditional banking prod-  
5 uct, as defined in section 206(a) of the Finan-  
6 cial Services Act of 1999.

7 “(B) CLASSIFICATION LIMITED.— Classi-  
8 fication of a particular contract as a derivative  
9 instrument pursuant to this paragraph shall not  
10 be construed as finding or implying that such  
11 instrument is or is not a security for any pur-  
12 pose under the securities laws, or is or is not  
13 an account, agreement, contract, or transaction  
14 for any purpose under the Commodity Ex-  
15 change Act.

16 “(55) QUALIFIED INVESTOR.—

17 “(A) DEFINITION.—For purposes of this  
18 title, the term ‘qualified investor’ means—

19 “(i) any investment company reg-  
20 istered with the Commission under section  
21 8 of the Investment Company Act of 1940;

22 “(ii) any issuer eligible for an exclu-  
23 sion from the definition of investment com-  
24 pany pursuant to section 3(c)(7) of the In-  
25 vestment Company Act of 1940;

1           “(iii) any bank (as defined in para-  
2 graph (6) of this subsection), savings asso-  
3 ciation (as defined in section 3(b) of the  
4 Federal Deposit Insurance Act), broker,  
5 dealer, insurance company (as defined in  
6 section 2(a)(13) of the Securities Act of  
7 1933), or business development company  
8 (as defined in section 2(a)(48) of the In-  
9 vestment Company Act of 1940);

10           “(iv) any small business investment  
11 company licensed by the United States  
12 Small Business Administration under sec-  
13 tion 301 (c) or (d) of the Small Business  
14 Investment Act of 1958;

15           “(v) any State sponsored employee  
16 benefit plan, or any other employee benefit  
17 plan, within the meaning of the Employee  
18 Retirement Income Security Act of 1974,  
19 other than an individual retirement ac-  
20 count, if the investment decisions are made  
21 by a plan fiduciary, as defined in section  
22 3(21) of that Act, which is either a bank,  
23 savings and loan association, insurance  
24 company, or registered investment adviser;

1           “(vi) any trust whose purchases of se-  
2           curities are directed by a person described  
3           in clauses (i) through (v) of this subpara-  
4           graph;

5           “(vii) any market intermediary ex-  
6           empt under section 3(c)(2) of the Invest-  
7           ment Company Act of 1940;

8           “(viii) any associated person of a  
9           broker or dealer other than a natural per-  
10          son;

11          “(ix) any foreign bank (as defined in  
12          section 1(b)(7) of the International Bank-  
13          ing Act of 1978);

14          “(x) the government of any foreign  
15          country;

16          “(xi) any corporation, company, or  
17          partnership that owns and invests on a dis-  
18          cretionary basis, not less than \$10,000,000  
19          in investments;

20          “(xii) any natural person who owns  
21          and invests on a discretionary basis, not  
22          less than \$10,000,000 in investments;

23          “(xiii) any government or political  
24          subdivision, agency, or instrumentality of a  
25          government who owns and invests on a dis-

1                   cretionary basis not less than \$50,000,000  
2                   in investments; or

3                   “(xiv) any multinational or supra-  
4                   national entity or any agency or instru-  
5                   mentality thereof.

6                   “(B) ADDITIONAL AUTHORITY.—The Com-  
7                   mission may, by rule or order, define a ‘quali-  
8                   fied investor’ as any other person, taking into  
9                   consideration such factors as the financial so-  
10                  phistication of the person, net worth, and  
11                  knowledge and experience in financial mat-  
12                  ters.”.

13 **SEC. 208. GOVERNMENT SECURITIES DEFINED.**

14                  Section 3(a)(42) of the Securities Exchange Act of  
15 1934 (15 U.S.C. 78c(a)(42)) is amended—

16                  (1) by striking “or” at the end of subparagraph  
17                  (C);

18                  (2) by striking the period at the end of sub-  
19                  paragraph (D) and inserting “; or”; and

20                  (3) by adding at the end the following new sub-  
21                  paragraph:

22                  “(E) for purposes of section 15C as ap-  
23                  plied to a bank, a qualified Canadian govern-  
24                  ment obligation as defined in section 5136 of  
25                  the Revised Statutes.”.

1 **SEC. 209. EFFECTIVE DATE.**

2 This subtitle shall take effect at the end of the 270-  
3 day period beginning on the date of the enactment of this  
4 Act.

5 **SEC. 210. RULE OF CONSTRUCTION.**

6 Nothing in this Act shall supersede, affect, or other-  
7 wise limit the scope and applicability of the Commodity  
8 Exchange Act (7 U.S.C. 1 et seq.).

9 **Subtitle B—Bank Investment**  
10 **Company Activities**

11 **SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY**  
12 **AFFILIATED BANK.**

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

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

18 (2) by striking “(f) Every registered” and in-  
19 serting the following:

20 “(f) CUSTODY OF SECURITIES.—

21 “(1) Every registered”;

22 (3) by redesignating the second, third, fourth,  
23 and fifth sentences of such subsection as paragraphs  
24 (2) through (5), respectively, and indenting the left  
25 margin of such paragraphs appropriately; and

1           (4) by adding at the end the following new  
2 paragraph:

3           “(6) SERVICES AS TRUSTEE OR CUSTODIAN.—  
4 The Commission may adopt rules and regulations,  
5 and issue orders, consistent with the protection of  
6 investors, prescribing the conditions under which a  
7 bank, or an affiliated person of a bank, either of  
8 which is an affiliated person, promoter, organizer, or  
9 sponsor of, or principal underwriter for, a registered  
10 management company may serve as custodian of  
11 that registered management company.”.

12           (b) UNIT INVESTMENT TRUSTS.—Section 26 of the  
13 Investment Company Act of 1940 (15 U.S.C. 80a–26) is  
14 amended—

15           (1) by redesignating subsections (b) through (e)  
16 as subsections (c) through (f), respectively; and

17           (2) by inserting after subsection (a) the follow-  
18 ing new subsection:

19           “(b) The Commission may adopt rules and regula-  
20 tions, and issue orders, consistent with the protection of  
21 investors, prescribing the conditions under which a bank,  
22 or an affiliated person of a bank, either of which is an  
23 affiliated person of a principal underwriter for, or deposi-  
24 tor of, a registered unit investment trust, may serve as  
25 trustee or custodian under subsection (a)(1).”.

1 (c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a)  
2 of the Investment Company Act of 1940 (15 U.S.C. 80a–  
3 35(a)) is amended—

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

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

8 (3) by inserting after paragraph (2) the follow-  
9 ing:

10 “(3) as custodian.”.

11 **SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COM-**  
12 **PANY.**

13 Section 17(a) of the Investment Company Act of  
14 1940 (15 U.S.C. 80a–17(a)) is amended—

15 (1) by striking “or” at the end of paragraph  
16 (2);

17 (2) by striking the period at the end of para-  
18 graph (3) and inserting “; or”; and

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

21 “(4) to loan money or other property to such  
22 registered company, or to any company controlled by  
23 such registered company, in contravention of such  
24 rules, regulations, or orders as the Commission may

1       prescribe or issue consistent with the protection of  
2       investors.”.

3       **SEC. 213. INDEPENDENT DIRECTORS.**

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

7               (1) by striking clause (v) and inserting the fol-  
8       lowing new clause:

9                       “(v) any person or any affiliated per-  
10                      son of a person (other than a registered in-  
11                      vestment company) that, at any time dur-  
12                      ing the 6-month period preceding the date  
13                      of the determination of whether that per-  
14                      son or affiliated person is an interested  
15                      person, has executed any portfolio trans-  
16                      actions for, engaged in any principal trans-  
17                      actions with, or distributed shares for—

18                               “(I) the investment company;

19                               “(II) any other investment com-  
20                              pany having the same investment ad-  
21                              viser as such investment company or  
22                              holding itself out to investors as a re-  
23                              lated company for purposes of invest-  
24                              ment or investor services; or

1                   “(III) any account over which the  
2                   investment company’s investment ad-  
3                   viser has brokerage placement discre-  
4                   tion,”;

5                   (2) by redesignating clause (vi) as clause (vii);

6                   and

7                   (3) by inserting after clause (v) the following  
8                   new clause:

9                   “(vi) any person or any affiliated per-  
10                  son of a person (other than a registered in-  
11                  vestment company) that, at any time dur-  
12                  ing the 6-month period preceding the date  
13                  of the determination of whether that per-  
14                  son or affiliated person is an interested  
15                  person, has loaned money or other prop-  
16                  erty to—

17                               “(I) the investment company;

18                               “(II) any other investment com-  
19                               pany having the same investment ad-  
20                               viser as such investment company or  
21                               holding itself out to investors as a re-  
22                               lated company for purposes of invest-  
23                               ment or investor services; or

1                   “(III) any account for which the  
2                   investment company’s investment ad-  
3                   viser has borrowing authority,”.

4           (b)       CONFORMING        AMENDMENT.—Section  
5 2(a)(19)(B) of the Investment Company Act of 1940 (15  
6 U.S.C. 80a-2(a)(19)(B)) is amended—

7                   (1) by striking clause (v) and inserting the fol-  
8                   lowing new clause:

9                               “(v) any person or any affiliated per-  
10                              son of a person (other than a registered in-  
11                              vestment company) that, at any time dur-  
12                              ing the 6-month period preceding the date  
13                              of the determination of whether that per-  
14                              son or affiliated person is an interested  
15                              person, has executed any portfolio trans-  
16                              actions for, engaged in any principal trans-  
17                              actions with, or distributed shares for—

18                                       “(I) any investment company for  
19                                      which the investment adviser or prin-  
20                                      cipal underwriter serves as such;

21                                       “(II) any investment company  
22                                      holding itself out to investors, for pur-  
23                                      poses of investment or investor serv-  
24                                      ices, as a company related to any in-  
25                                      vestment company for which the in-

1 investment adviser or principal under-  
2 writer serves as such; or

3 “(III) any account over which the  
4 investment adviser has brokerage  
5 placement discretion,”;

6 (2) by redesignating clause (vi) as clause (vii);

7 and

8 (3) by inserting after clause (v) the following  
9 new clause:

10 “(vi) any person or any affiliated per-  
11 son of a person (other than a registered in-  
12 vestment company) that, at any time dur-  
13 ing the 6-month period preceding the date  
14 of the determination of whether that per-  
15 son or affiliated person is an interested  
16 person, has loaned money or other prop-  
17 erty to—

18 “(I) any investment company for  
19 which the investment adviser or prin-  
20 cipal underwriter serves as such;

21 “(II) any investment company  
22 holding itself out to investors, for pur-  
23 poses of investment or investor serv-  
24 ices, as a company related to any in-  
25 vestment company for which the in-

1 investment adviser or principal under-  
2 writer serves as such; or

3 “(III) any account for which the  
4 investment adviser has borrowing au-  
5 thority,”.

6 (c) AFFILIATION OF DIRECTORS.—Section 10(c) of  
7 the Investment Company Act of 1940 (15 U.S.C. 80a-  
8 10(c)) is amended by striking “bank, except” and insert-  
9 ing “bank (together with its affiliates and subsidiaries) or  
10 any one bank holding company (together with its affiliates  
11 and subsidiaries) (as such terms are defined in section 2  
12 of the Bank Holding Company Act of 1956), except”.

13 (d) EFFECTIVE DATE.—The amendments made by  
14 this section shall take effect at the end of the 1-year period  
15 beginning on the date of enactment of this subtitle.

16 **SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

17 Section 35(a) of the Investment Company Act of  
18 1940 (15 U.S.C. 80a-34(a)) is amended to read as fol-  
19 lows:

20 “(a) MISREPRESENTATION OF GUARANTEES.—

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

1           “(A) has been guaranteed, sponsored, rec-  
2           ommended, or approved by the United States,  
3           or any agency, instrumentality or officer of the  
4           United States;

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

7           “(C) is guaranteed by or is otherwise an  
8           obligation of any bank or insured depository in-  
9           stitution.

10          “(2) DISCLOSURES.—Any person issuing or  
11          selling the securities of a registered investment com-  
12          pany that is advised by, or sold through, a bank  
13          shall prominently disclose that an investment in the  
14          company is not insured by the Federal Deposit In-  
15          surance Corporation or any other government agen-  
16          cy. The Commission may adopt rules and regula-  
17          tions, and issue orders, consistent with the protec-  
18          tion of investors, prescribing the manner in which  
19          the disclosure under this paragraph shall be pro-  
20          vided.

21          “(3) DEFINITIONS.—The terms ‘insured deposi-  
22          tory institution’ and ‘appropriate Federal banking  
23          agency’ have the same meanings as in section 3 of  
24          the Federal Deposit Insurance Act.”.

1 **SEC. 215. DEFINITION OF BROKER UNDER THE INVEST-**  
2 **MENT COMPANY ACT OF 1940.**

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

6 “(6) The term ‘broker’ has the same meaning  
7 as in section 3 of the Securities Exchange Act of  
8 1934, except that such term does not include any  
9 person solely by reason of the fact that such person  
10 is an underwriter for one or more investment compa-  
11 nies.”.

12 **SEC. 216. DEFINITION OF DEALER UNDER THE INVEST-**  
13 **MENT COMPANY ACT OF 1940.**

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

17 “(11) The term ‘dealer’ has the same meaning  
18 as in section 3 of the Securities Exchange Act of  
19 1934, but does not include an insurance company or  
20 investment company.”.

21 **SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINI-**  
22 **TION OF INVESTMENT ADVISER FOR BANKS**  
23 **THAT ADVISE INVESTMENT COMPANIES.**

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

1 “investment company” and inserting “investment com-  
2 pany, except that the term ‘investment adviser’ includes  
3 any bank or bank holding company to the extent that such  
4 bank or bank holding company serves or acts as an invest-  
5 ment adviser to a registered investment company, but if,  
6 in the case of a bank, such services or actions are per-  
7 formed through a separately identifiable department or di-  
8 vision, the department or division, and not the bank itself,  
9 shall be deemed to be the investment adviser”.

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

14 “(26) The term ‘separately identifiable depart-  
15 ment or division’ of a bank means a unit—

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

24 “(B) for which all of the records relating  
25 to its investment adviser activities are sepa-

1           rately maintained in or extractable from such  
2           unit’s own facilities or the facilities of the bank,  
3           and such records are so maintained or other-  
4           wise accessible as to permit independent exam-  
5           ination and enforcement by the Commission of  
6           this Act or the Investment Company Act of  
7           1940 and rules and regulations promulgated  
8           under this Act or the Investment Company Act  
9           of 1940.”.

10 **SEC. 218. DEFINITION OF BROKER UNDER THE INVEST-**  
11 **MENT ADVISERS ACT OF 1940.**

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

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

18 **SEC. 219. DEFINITION OF DEALER UNDER THE INVEST-**  
19 **MENT ADVISERS ACT OF 1940.**

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

23           “(7) The term ‘dealer’ has the same meaning as  
24           in section 3 of the Securities Exchange Act of 1934,

1 but does not include an insurance company or in-  
2 vestment company.”.

3 **SEC. 220. INTERAGENCY CONSULTATION.**

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

7 **“SEC. 210A. CONSULTATION.**

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

10 “(1) The appropriate Federal banking agency  
11 shall provide the Commission upon request the re-  
12 sults of any examination, reports, records, or other  
13 information to which such agency may have access  
14 with respect to the investment advisory activities—

15 “(A) of any—

16 “(i) bank holding company;

17 “(ii) bank; or

18 “(iii) separately identifiable depart-  
19 ment or division of a bank, that is reg-  
20 istered under section 203 of this title; and

21 “(B) in the case of a bank holding com-  
22 pany or bank that has a subsidiary or a sepa-  
23 rately identifiable department or division reg-  
24 istered under that section, of such bank or bank  
25 holding company.

1           “(2) The Commission shall provide to the ap-  
2           propriate Federal banking agency upon request the  
3           results of any examination, reports, records, or other  
4           information with respect to the investment advisory  
5           activities of any bank holding company, bank, or  
6           separately identifiable department or division of a  
7           bank, any of which is registered under section 203  
8           of this title.

9           “(b) EFFECT ON OTHER AUTHORITY.—Nothing in  
10          this section shall limit in any respect the authority of the  
11          appropriate Federal banking agency with respect to such  
12          bank holding company, bank, or department or division  
13          under any provision of law.

14          “(c) DEFINITION.—For purposes of this section, the  
15          term ‘appropriate Federal banking agency’ has the same  
16          meaning as in section 3 of the Federal Deposit Insurance  
17          Act.”.

18          **SEC. 221. TREATMENT OF BANK COMMON TRUST FUNDS.**

19          (a) SECURITIES ACT OF 1933.—Section 3(a)(2) of  
20          the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is  
21          amended by striking “or any interest or participation in  
22          any common trust fund or similar fund maintained by a  
23          bank exclusively for the collective investment and reinvest-  
24          ment of assets contributed thereto by such bank in its ca-  
25          pacity as trustee, executor, administrator, or guardian”

1 and inserting “or any interest or participation in any com-  
2 mon trust fund or similar fund that is excluded from the  
3 definition of the term ‘investment company’ under section  
4 3(c)(3) of the Investment Company Act of 1940”.

5 (b) SECURITIES EXCHANGE ACT OF 1934.—Section  
6 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934  
7 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as fol-  
8 lows:

9 “(iii) any interest or participation in any  
10 common trust fund or similar fund that is ex-  
11 cluded from the definition of the term ‘invest-  
12 ment company’ under section 3(c)(3) of the In-  
13 vestment Company Act of 1940;”.

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

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

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

25 “(i) advertised; or

1                   “(ii) offered for sale to the general  
2                   public; and

3                   “(C) fees and expenses charged by such  
4                   fund are not in contravention of fiduciary prin-  
5                   ciples established under applicable Federal or  
6                   State law”.

7 **SEC. 222. INVESTMENT ADVISERS PROHIBITED FROM HAV-**  
8                   **ING CONTROLLING INTEREST IN REG-**  
9                   **ISTERED INVESTMENT COMPANY.**

10           Section 15 of the Investment Company Act of 1940  
11 (15 U.S.C. 80a-15) is amended by adding at the end the  
12 following new subsection:

13           “(g) **CONTROLLING INTEREST IN INVESTMENT COM-**  
14 **PANY PROHIBITED.—**

15                   “(1) **IN GENERAL.—**If an investment adviser to  
16                   a registered investment company, or an affiliated  
17                   person of that investment adviser, holds a control-  
18                   ling interest in that registered investment company  
19                   in a trustee or fiduciary capacity, such person  
20                   shall—

21                           “(A) if it holds the shares in a trustee or  
22                           fiduciary capacity with respect to any employee  
23                           benefit plan subject to the Employee Retirement  
24                           Income Security Act of 1974, transfer the  
25                           power to vote the shares of the investment com-

1           pany through to another person acting in a fi-  
2           duciary capacity with respect to the plan who is  
3           not an affiliated person of that investment ad-  
4           viser or any affiliated person thereof; or

5           “(B) if it holds the shares in a trustee or  
6           fiduciary capacity with respect to any person or  
7           entity other than an employee benefit plan sub-  
8           ject to the Employee Retirement Income Secu-  
9           rity Act of 1974—

10           “(i) transfer the power to vote the  
11           shares of the investment company through  
12           to—

13           “(I) the beneficial owners of the  
14           shares;

15           “(II) another person acting in a  
16           fiduciary capacity who is not an affili-  
17           ated person of that investment adviser  
18           or any affiliated person thereof; or

19           “(III) any person authorized to  
20           receive statements and information  
21           with respect to the trust who is not an  
22           affiliated person of that investment  
23           adviser or any affiliated person there-  
24           of;

1           “(ii) vote the shares of the investment  
2           company held by it in the same proportion  
3           as shares held by all other shareholders of  
4           the investment company; or

5           “(iii) vote the shares of the invest-  
6           ment company as otherwise permitted  
7           under such rules, regulations, or orders as  
8           the Commission may prescribe or issue  
9           consistent with the protection of investors.

10           “(2) EXEMPTION.—Paragraph (1) shall not  
11           apply to any investment adviser to a registered in-  
12           vestment company, or any affiliated person of that  
13           investment adviser, that holds shares of the invest-  
14           ment company in a trustee or fiduciary capacity if  
15           that registered investment company consists solely of  
16           assets held in such capacities.

17           “(3) SAFE HARBOR.—No investment adviser to  
18           a registered investment company or any affiliated  
19           person of such investment adviser shall be deemed to  
20           have acted unlawfully or to have breached a fidu-  
21           ciary duty under State or Federal law solely by rea-  
22           son of acting in accordance with clause (i), (ii), or  
23           (iii) of paragraph (1)(B).”.

1 **SEC. 223. CONFORMING CHANGE IN DEFINITION.**

2 Section 2(a)(5) of the Investment Company Act of  
3 1940 (15 U.S.C. 80a-2(a)(5)) is amended by striking  
4 “(A) a banking institution organized under the laws of the  
5 United States” and inserting “(A) a depository institution  
6 (as defined in section 3 of the Federal Deposit Insurance  
7 Act) or a branch or agency of a foreign bank (as such  
8 terms are defined in section 1(b) of the International  
9 Banking Act of 1978)”.

10 **SEC. 224. CONFORMING AMENDMENT.**

11 Section 202 of the Investment Advisers Act of 1940  
12 (15 U.S.C. 80b-2) is amended by adding at the end the  
13 following new subsection:

14 “(c) CONSIDERATION OF PROMOTION OF EFFI-  
15 CIENCY, COMPETITION, AND CAPITAL FORMATION.—  
16 Whenever pursuant to this title the Commission is en-  
17 gaged in rulemaking and is required to consider or deter-  
18 mine whether an action is necessary or appropriate in the  
19 public interest, the Commission shall also consider, in ad-  
20 dition to the protection of investors, whether the action  
21 will promote efficiency, competition, and capital forma-  
22 tion.”.

23 **SEC. 225. EFFECTIVE DATE.**

24 This subtitle shall take effect 90 days after the date  
25 of the enactment of this Act.

1 **Subtitle C—Securities and Ex-**  
2 **change Commission Supervision**  
3 **of Investment Bank Holding**  
4 **Companies**

5 **SEC. 231. SUPERVISION OF INVESTMENT BANK HOLDING**  
6 **COMPANIES BY THE SECURITIES AND EX-**  
7 **CHANGE COMMISSION.**

8 (a) AMENDMENT.—Section 17 of the Securities Ex-  
9 change Act of 1934 (15 U.S.C. 78q) is amended—

10 (1) by redesignating subsection (i) as subsection  
11 (l); and

12 (2) by inserting after subsection (h) the follow-  
13 ing new subsections:

14 “(i) INVESTMENT BANK HOLDING COMPANIES.—

15 “(1) ELECTIVE SUPERVISION OF AN INVEST-  
16 MENT BANK HOLDING COMPANY NOT HAVING A  
17 BANK OR SAVINGS ASSOCIATION AFFILIATE.—

18 “(A) IN GENERAL.—An investment bank  
19 holding company that is not—

20 “(i) an affiliate of a wholesale finan-  
21 cial institution, an insured bank (other  
22 than an institution described in subpara-  
23 graph (D), (F), or (G) of section 2(c)(2),  
24 or held under section 4(f), of the Bank

1 Holding Company Act of 1956), or a sav-  
2 ings association;

3 “(ii) a foreign bank, foreign company,  
4 or company that is described in section  
5 8(a) of the International Banking Act of  
6 1978; or

7 “(iii) a foreign bank that controls, di-  
8 rectly or indirectly, a corporation chartered  
9 under section 25A of the Federal Reserve  
10 Act,

11 may elect to become supervised by filing with  
12 the Commission a notice of intention to become  
13 supervised, pursuant to subparagraph (B) of  
14 this paragraph. Any investment bank holding  
15 company filing such a notice shall be supervised  
16 in accordance with this section and comply with  
17 the rules promulgated by the Commission appli-  
18 cable to supervised investment bank holding  
19 companies.

20 “(B) NOTIFICATION OF STATUS AS A SU-  
21 PERVISED INVESTMENT BANK HOLDING COM-  
22 PANY.—An investment bank holding company  
23 that elects under subparagraph (A) to become  
24 supervised by the Commission shall file with the  
25 Commission a written notice of intention to be-

1           come supervised by the Commission in such  
2           form and containing such information and doc-  
3           uments concerning such investment bank hold-  
4           ing company as the Commission, by rule, may  
5           prescribe as necessary or appropriate in fur-  
6           therance of the purposes of this section. Unless  
7           the Commission finds that such supervision is  
8           not necessary or appropriate in furtherance of  
9           the purposes of this section, such supervision  
10          shall become effective 45 days after the date of  
11          receipt of such written notice by the Commis-  
12          sion, or within such shorter time period as the  
13          Commission, by rule or order, may determine.

14           “(2) ELECTION NOT TO BE SUPERVISED BY  
15          THE COMMISSION AS AN INVESTMENT BANK HOLD-  
16          ING COMPANY.—

17                   “(A) VOLUNTARY WITHDRAWAL.—A su-  
18                   pervised investment bank holding company that  
19                   is supervised pursuant to paragraph (1) may,  
20                   upon such terms and conditions as the Commis-  
21                   sion deems necessary or appropriate, elect not  
22                   to be supervised by the Commission by filing a  
23                   written notice of withdrawal from Commission  
24                   supervision. Such notice shall not become effec-  
25                   tive until one year after receipt by the Commis-

1 sion, or such shorter or longer period as the  
2 Commission deems necessary or appropriate to  
3 ensure effective supervision of the material  
4 risks to the supervised investment bank holding  
5 company and to the affiliated broker or dealer,  
6 or to prevent evasion of the purposes of this  
7 section.

8 “(B) DISCONTINUATION OF COMMISSION  
9 SUPERVISION.—If the Commission finds that  
10 any supervised investment bank holding com-  
11 pany that is supervised pursuant to paragraph  
12 (1) is no longer in existence or has ceased to be  
13 an investment bank holding company, or if the  
14 Commission finds that continued supervision of  
15 such a supervised investment bank holding com-  
16 pany is not consistent with the purposes of this  
17 section, the Commission may discontinue the  
18 supervision pursuant to a rule or order, if any,  
19 promulgated by the Commission under this sec-  
20 tion.

21 “(3) SUPERVISION OF INVESTMENT BANK  
22 HOLDING COMPANIES.—

23 “(A) RECORDKEEPING AND REPORTING.—

24 “(i) IN GENERAL.—Every supervised  
25 investment bank holding company and

1 each affiliate thereof shall make and keep  
2 for prescribed periods such records, furnish  
3 copies thereof, and make such reports, as  
4 the Commission may require by rule, in  
5 order to keep the Commission informed as  
6 to—

7 “(I) the company’s or affiliate’s  
8 activities, financial condition, policies,  
9 systems for monitoring and control-  
10 ling financial and operational risks,  
11 and transactions and relationships be-  
12 tween any broker or dealer affiliate of  
13 the supervised investment bank hold-  
14 ing company; and

15 “(II) the extent to which the  
16 company or affiliate has complied with  
17 the provisions of this Act and regula-  
18 tions prescribed and orders issued  
19 under this Act.

20 “(ii) FORM AND CONTENTS.—Such  
21 records and reports shall be prepared in  
22 such form and according to such specifica-  
23 tions (including certification by an inde-  
24 pendent public accountant), as the Com-  
25 mission may require and shall be provided

1 promptly at any time upon request by the  
2 Commission. Such records and reports may  
3 include—

4 “(I) a balance sheet and income  
5 statement;

6 “(II) an assessment of the con-  
7 solidated capital of the supervised in-  
8 vestment bank holding company;

9 “(III) an independent auditor’s  
10 report attesting to the supervised in-  
11 vestment bank holding company’s  
12 compliance with its internal risk man-  
13 agement and internal control objec-  
14 tives; and

15 “(IV) reports concerning the ex-  
16 tent to which the company or affiliate  
17 has complied with the provisions of  
18 this title and any regulations pre-  
19 scribed and orders issued under this  
20 title.

21 “(B) USE OF EXISTING REPORTS.—

22 “(i) IN GENERAL.—The Commission  
23 shall, to the fullest extent possible, accept  
24 reports in fulfillment of the requirements  
25 under this paragraph that the supervised

1 investment bank holding company or its af-  
2 filiates have been required to provide to  
3 another appropriate regulatory agency or  
4 self-regulatory organization.

5 “(ii) AVAILABILITY.—A supervised in-  
6 vestment bank holding company or an af-  
7 filiate of such company shall provide to the  
8 Commission, at the request of the Commis-  
9 sion, any report referred to in clause (i).

10 “(C) EXAMINATION AUTHORITY.—

11 “(i) FOCUS OF EXAMINATION AU-  
12 THORITY.—The Commission may make ex-  
13 aminations of any supervised investment  
14 bank holding company and any affiliate of  
15 such company in order to—

16 “(I) inform the Commission  
17 regarding—

18 “(aa) the nature of the oper-  
19 ations and financial condition of  
20 the supervised investment bank  
21 holding company and its affili-  
22 ates;

23 “(bb) the financial and oper-  
24 ational risks within the super-  
25 vised investment bank holding

1 company that may affect any  
2 broker or dealer controlled by  
3 such supervised investment bank  
4 holding company; and

5 “(cc) the systems of the su-  
6 pervised investment bank holding  
7 company and its affiliates for  
8 monitoring and controlling those  
9 risks; and

10 “(II) monitor compliance with  
11 the provisions of this subsection, pro-  
12 visions governing transactions and re-  
13 lationships between any broker or  
14 dealer affiliated with the supervised  
15 investment bank holding company and  
16 any of the company’s other affiliates,  
17 and applicable provisions of sub-  
18 chapter II of chapter 53, title 31,  
19 United States Code (commonly re-  
20 ferred to as the ‘Bank Secrecy Act’)  
21 and regulations thereunder.

22 “(ii) RESTRICTED FOCUS OF EXAMI-  
23 NATIONS.—The Commission shall limit the  
24 focus and scope of any examination of a

1 supervised investment bank holding com-  
2 pany to—

3 “(I) the company; and

4 “(II) any affiliate of the company  
5 that, because of its size, condition, or  
6 activities, the nature or size of the  
7 transactions between such affiliate  
8 and any affiliated broker or dealer, or  
9 the centralization of functions within  
10 the holding company system, could, in  
11 the discretion of the Commission,  
12 have a materially adverse effect on the  
13 operational or financial condition of  
14 the broker or dealer.

15 “(iii) DEFERENCE TO OTHER EXAMI-  
16 NATIONS.—For purposes of this subpara-  
17 graph, the Commission shall, to the fullest  
18 extent possible, use the reports of examina-  
19 tion of an institution described in subpara-  
20 graph (D), (F), or (G) of section 2(c)(2),  
21 or held under section 4(f), of the Bank  
22 Holding Company Act of 1956 made by  
23 the appropriate regulatory agency, or of a  
24 licensed insurance company made by the  
25 appropriate State insurance regulator.

1           “(4) HOLDING COMPANY CAPITAL.—

2                   “(A) AUTHORITY.—If the Commission  
3 finds that it is necessary to adequately super-  
4 vise investment bank holding companies and  
5 their broker or dealer affiliates consistent with  
6 the purposes of this subsection, the Commission  
7 may adopt capital adequacy rules for supervised  
8 investment bank holding companies.

9                   “(B) METHOD OF CALCULATION.—In de-  
10 veloping rules under this paragraph:

11                   “(i) DOUBLE LEVERAGE.—The Com-  
12 mission shall consider the use by the su-  
13 pervised investment bank holding company  
14 of debt and other liabilities to fund capital  
15 investments in affiliates.

16                   “(ii) NO UNWEIGHTED CAPITAL  
17 RATIO.—The Commission shall not impose  
18 under this section a capital ratio that is  
19 not based on appropriate risk-weighting  
20 considerations.

21                   “(iii) NO CAPITAL REQUIREMENT ON  
22 REGULATED ENTITIES.—The Commission  
23 shall not, by rule, regulation, guideline,  
24 order or otherwise, impose any capital ade-  
25 quacy provision on a nonbanking affiliate

1 (other than a broker or dealer) that is in  
2 compliance with applicable capital require-  
3 ments of another Federal regulatory au-  
4 thority or State insurance authority.

5 “(iv) APPROPRIATE EXCLUSIONS.—

6 The Commission shall take full account of  
7 the applicable capital requirements of an-  
8 other Federal regulatory authority or State  
9 insurance regulator.

10 “(C) INTERNAL RISK MANAGEMENT MOD-  
11 ELS.—The Commission may incorporate inter-  
12 nal risk management models into its capital  
13 adequacy rules for supervised investment bank  
14 holding companies.

15 “(5) FUNCTIONAL REGULATION OF BANKING  
16 AND INSURANCE ACTIVITIES OF SUPERVISED IN-  
17 VESTMENT BANK HOLDING COMPANIES.—The Com-  
18 mission shall defer to—

19 “(A) the appropriate regulatory agency  
20 with regard to all interpretations of, and the  
21 enforcement of, applicable banking laws relating  
22 to the activities, conduct, ownership, and oper-  
23 ations of banks, and institutions described in  
24 subparagraph (D), (F), and (G) of section

1           2(e)(2), or held under section 4(f), of the Bank  
2           Holding Company Act of 1956; and

3           “(B) the appropriate State insurance regu-  
4           lators with regard to all interpretations of, and  
5           the enforcement of, applicable State insurance  
6           laws relating to the activities, conduct, and op-  
7           erations of insurance companies and insurance  
8           agents.

9           “(6) DEFINITIONS.—For purposes of this sub-  
10          section and subsection (j)—

11           “(A) the term ‘investment bank holding  
12          company’ means—

13           “(i) any person other than a natural  
14           person that owns or controls one or more  
15           brokers or dealers; and

16           “(ii) the associated persons of the in-  
17           vestment bank holding company;

18           “(B) the term ‘supervised investment bank  
19           holding company’ means any investment bank  
20           holding company that is supervised by the Com-  
21           mission pursuant to this subsection;

22           “(C) the terms ‘affiliate’, ‘bank’, ‘bank  
23           holding company’, ‘company’, ‘control’, and  
24           ‘savings association’ have the same meanings as

1 in section 2 of the Bank Holding Company Act  
2 of 1956;

3 “(D) the term ‘insured bank’ has the same  
4 meaning as in section 3 of the Federal Deposit  
5 Insurance Act;

6 “(E) the term ‘foreign bank’ has the same  
7 meaning as in section 1(b)(7) of the Inter-  
8 national Banking Act of 1978; and

9 “(F) the terms ‘person associated with an  
10 investment bank holding company’ and ‘associ-  
11 ated person of an investment bank holding com-  
12 pany’ mean any person directly or indirectly  
13 controlling, controlled by, or under common  
14 control with, an investment bank holding com-  
15 pany.

16 “(j) COMMISSION BACKUP AUTHORITY.—

17 “(1) AUTHORITY.—The Commission may make  
18 inspections of any wholesale financial holding com-  
19 pany that—

20 “(A) controls a wholesale financial institu-  
21 tion;

22 “(B) is not a foreign bank; and

23 “(C) does not control an insured bank  
24 (other than an institution permitted under sub-  
25 paragraph (D), (F), or (G) of section 2(c)(2),

1           or held under section 4(f), of the Bank Holding  
2           Company Act of 1956) or a savings association,  
3           and any affiliate of such company, for the purpose  
4           of monitoring and enforcing compliance by the  
5           wholesale financial holding company with the Fed-  
6           eral securities laws.

7           “(2) LIMITATION.—The Commission shall limit  
8           the focus and scope of any inspection under para-  
9           graph (1) to those transactions, policies, procedures,  
10          or records that are reasonably necessary to monitor  
11          and enforce compliance by the wholesale financial  
12          holding company or any affiliate with the Federal  
13          securities laws.

14          “(3) DEFERENCE TO EXAMINATIONS.—To the  
15          fullest extent possible, the Commission shall use, for  
16          the purposes of this subsection, the reports of  
17          examinations—

18                 “(A) made by the Board of Governors of  
19                 the Federal Reserve System of any wholesale fi-  
20                 nancial holding company that is supervised by  
21                 the Board;

22                 “(B) made by or on behalf of any State  
23                 regulatory agency responsible for the super-  
24                 vision of an insurance company of any licensed  
25                 insurance company; and

1           “(C) made by any Federal or State bank-  
2           ing agency of any bank or institution described  
3           in subparagraph (D), (F), or (G) of section  
4           2(c)(2), or held under section 4(f), of the Bank  
5           Holding Company Act of 1956.

6           “(4) NOTICE.—To the fullest extent possible,  
7           the Commission shall notify the appropriate regu-  
8           latory agency prior to conducting an inspection of a  
9           wholesale financial institution or institution de-  
10          scribed in subparagraph (D), (F), or (G) of section  
11          2(c)(2), or held under section 4(f), of the Bank  
12          Holding Company Act of 1956.

13          “(k) AUTHORITY TO LIMIT DISCLOSURE OF INFOR-  
14          MATION.—Notwithstanding any other provision of law, the  
15          Commission shall not be compelled to disclose any infor-  
16          mation required to be reported under subsection (h) or  
17          (i) or any information supplied to the Commission by any  
18          domestic or foreign regulatory agency that relates to the  
19          financial or operational condition of any associated person  
20          of a broker or dealer, investment bank holding company,  
21          or any affiliate of an investment bank holding company.  
22          Nothing in this subsection shall authorize the Commission  
23          to withhold information from Congress, or prevent the  
24          Commission from complying with a request for informa-  
25          tion from any other Federal department or agency or any

1 self-regulatory organization requesting the information for  
2 purposes within the scope of its jurisdiction, or complying  
3 with an order of a court of the United States in an action  
4 brought by the United States or the Commission. For pur-  
5 poses of section 552 of title 5, United States Code, this  
6 subsection shall be considered a statute described in sub-  
7 section (b)(3)(B) of such section 552. In prescribing regu-  
8 lations to carry out the requirements of this subsection,  
9 the Commission shall designate information described in  
10 or obtained pursuant to subparagraphs (A), (B), and (C)  
11 of subsection (i)(5) as confidential information for pur-  
12 poses of section 24(b)(2) of this title.”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) Section 3(a)(34) of the Securities Exchange  
15 Act of 1934 (15 U.S.C. 78c(a)(34)) is amended by  
16 adding at the end the following new subparagraphs:

17 “(H) When used with respect to an institu-  
18 tion described in subparagraph (D), (F), or (G)  
19 of section 2(c)(2), or held under section 4(f), of  
20 the Bank Holding Company Act of 1956—

21 “(i) the Comptroller of the Currency,  
22 in the case of a national bank or a bank  
23 in the District of Columbia examined by  
24 the Comptroller of the Currency;

1 “(ii) the Board of Governors of the  
2 Federal Reserve System, in the case of a  
3 State member bank of the Federal Reserve  
4 System or any corporation chartered under  
5 section 25A of the Federal Reserve Act;

6 “(iii) the Federal Deposit Insurance  
7 Corporation, in the case of any other bank  
8 the deposits of which are insured in ac-  
9 cordance with the Federal Deposit Insur-  
10 ance Act; or

11 “(iv) the Commission in the case of all  
12 other such institutions.”.

13 (2) Section 1112(e) of the Right to Financial  
14 Privacy Act of 1978 (12 U.S.C. 3412(e)) is  
15 amended—

16 (A) by striking “this title” and inserting  
17 “law”; and

18 (B) by inserting “, examination reports”  
19 after “financial records”.

## 20 **Subtitle D—Studies**

### 21 **SEC. 241. STUDY OF METHODS TO INFORM INVESTORS AND** 22 **CONSUMERS OF UNINSURED PRODUCTS.**

23 Not later than 1 year after the date of enactment  
24 of this Act, the Comptroller General of the United States  
25 shall submit a report to the Congress regarding the effi-

1 cacy, costs, and benefits of requiring that any depository  
2 institution that accepts federally insured deposits and  
3 that, directly or through a contractual or other arrange-  
4 ment with a broker, dealer, or agent, buys from, sells to,  
5 or effects transactions for retail investors in securities or  
6 consumers of insurance to inform such investors and con-  
7 sumers through the use of a logo or seal that the security  
8 or insurance is not insured by the Federal Deposit Insur-  
9 ance Corporation.

10 **SEC. 242. STUDY OF LIMITATION ON FEES ASSOCIATED**  
11 **WITH ACQUIRING FINANCIAL PRODUCTS.**

12 Not later than 1 year after the date of enactment  
13 of this Act, the Comptroller General of the United States  
14 shall submit a report to the Congress regarding the effi-  
15 cacy and benefits of uniformly limiting any commissions,  
16 fees, markups, or other costs incurred by customers in the  
17 acquisition of financial products.

18 **TITLE III—INSURANCE**  
19 **Subtitle A—State Regulation of**  
20 **Insurance**

21 **SEC. 301. STATE REGULATION OF THE BUSINESS OF INSUR-**  
22 **ANCE.**

23 The Act entitled “An Act to express the intent of the  
24 Congress with reference to the regulation of the business  
25 of insurance” and approved March 9, 1945 (15 U.S.C.

1 1011 et seq.), commonly referred to as the “McCarran-  
2 Ferguson Act” remains the law of the United States.

3 **SEC. 302. MANDATORY INSURANCE LICENSING REQUIRE-**  
4 **MENTS.**

5 No person or entity shall provide insurance in a State  
6 as principal or agent unless such person or entity is li-  
7 censed as required by the appropriate insurance regulator  
8 of such State in accordance with the relevant State insur-  
9 ance law, subject to section 104.

10 **SEC. 303. FUNCTIONAL REGULATION OF INSURANCE.**

11 The insurance sales activity of any person or entity  
12 shall be functionally regulated by the States, subject to  
13 section 104.

14 **SEC. 304. INSURANCE UNDERWRITING IN NATIONAL**  
15 **BANKS.**

16 (a) IN GENERAL.—Except as provided in section 305,  
17 a national bank and the subsidiaries of a national bank  
18 may not provide insurance in a State as principal except  
19 that this prohibition shall not apply to authorized prod-  
20 ucts.

21 (b) AUTHORIZED PRODUCTS.—For the purposes of  
22 this section, a product is authorized if—

23 (1) as of January 1, 1997, the Comptroller of  
24 the Currency had determined in writing that na-  
25 tional banks may provide such product as principal,

1 or national banks were in fact lawfully providing  
2 such product as principal;

3 (2) no court of relevant jurisdiction had, by  
4 final judgment, overturned a determination of the  
5 Comptroller of the Currency that national banks  
6 may provide such product as principal; and

7 (3) the product is not title insurance, or an an-  
8 nuity contract the income of which is subject to tax  
9 treatment under section 72 of the Internal Revenue  
10 Code of 1986.

11 (c) DEFINITION.—For purposes of this section, the  
12 term “insurance” means—

13 (1) any product regulated as insurance as of  
14 January 1, 1997, in accordance with the relevant  
15 State insurance law, in the State in which the prod-  
16 uct is provided;

17 (2) any product first offered after January 1,  
18 1997, which—

19 (A) a State insurance regulator determines  
20 shall be regulated as insurance in the State in  
21 which the product is provided because the prod-  
22 uct insures, guarantees, or indemnifies against  
23 liability, loss of life, loss of health, or loss  
24 through damage to or destruction of property,  
25 including, but not limited to, surety bonds, life

1 insurance, health insurance, title insurance, and  
2 property and casualty insurance (such as pri-  
3 vate passenger or commercial automobile,  
4 homeowners, mortgage, commercial multiperil,  
5 general liability, professional liability, workers'  
6 compensation, fire and allied lines, farm owners  
7 multiperil, aircraft, fidelity, surety, medical  
8 malpractice, ocean marine, inland marine, and  
9 boiler and machinery insurance); and

10 (B) is not a product or service of a bank  
11 that is—

12 (i) a deposit product;

13 (ii) a loan, discount, letter of credit,  
14 or other extension of credit;

15 (iii) a trust or other fiduciary service;

16 (iv) a qualified financial contract (as  
17 defined in or determined pursuant to sec-  
18 tion 11(e)(8)(D)(i) of the Federal Deposit  
19 Insurance Act); or

20 (v) a financial guaranty, except that  
21 this subparagraph (B) shall not apply to a  
22 product that includes an insurance compo-  
23 nent such that if the product is offered or  
24 proposed to be offered by the bank as  
25 principal—

1 (I) it would be treated as a life  
2 insurance contract under section 7702  
3 of the Internal Revenue Code of 1986;  
4 or

5 (II) in the event that the product  
6 is not a letter of credit or other simi-  
7 lar extension of credit, a qualified fi-  
8 nancial contract, or a financial guar-  
9 anty, it would qualify for treatment  
10 for losses incurred with respect to  
11 such product under section 832(b)(5)  
12 of the Internal Revenue Code of 1986,  
13 if the bank were subject to tax as an  
14 insurance company under section 831  
15 of that Code; or

16 (3) any annuity contract, the income on which  
17 is subject to tax treatment under section 72 of the  
18 Internal Revenue Code of 1986.

19 **SEC. 305. TITLE INSURANCE ACTIVITIES OF NATIONAL**  
20 **BANKS AND THEIR AFFILIATES.**

21 (a) **AUTHORITY.**—Notwithstanding any other provi-  
22 sion of this Act or any other law, no national bank, and  
23 no subsidiary of a national bank, may engage in any activ-  
24 ity involving the underwriting of title insurance, other  
25 than title insurance underwriting activities in which such

1 national bank or subsidiary was actively and lawfully en-  
2 gaged before the date of the enactment of this Act.

3 (b) INSURANCE AFFILIATE.—In the case of a na-  
4 tional bank which has an affiliate which provides insur-  
5 ance as principal and is not a subsidiary of the bank, the  
6 national bank and any subsidiary of the national bank  
7 may not engage in any activity involving the underwriting  
8 of title insurance pursuant to subsection (a).

9 (c) INSURANCE SUBSIDIARY.—In the case of a na-  
10 tional bank which has a subsidiary which provides insur-  
11 ance as principal and has no affiliate which provides insur-  
12 ance as principal and is not a subsidiary, the national  
13 bank may not engage in any activity involving the under-  
14 writing of title insurance pursuant to subsection (a).

15 (d) “AFFILIATE” AND “SUBSIDIARY” DEFINED.—  
16 For purposes of this section, the terms “affiliate” and  
17 “subsidiary” have the same meanings as in section 2 of  
18 the Bank Holding Company Act of 1956.

19 **SEC. 306. EXPEDITED AND EQUALIZED DISPUTE RESOLU-**  
20 **TION FOR FEDERAL REGULATORS.**

21 (a) FILING IN COURT OF APPEALS.—In the case of  
22 a regulatory conflict between a State insurance regulator  
23 and a Federal regulator as to whether any product is or  
24 is not insurance, as defined in section 304(c) of this Act,  
25 or whether a State statute, regulation, order, or interpre-

1 tation regarding any insurance sales or solicitation activity  
2 is properly treated as preempted under Federal law, either  
3 regulator may seek expedited judicial review of such deter-  
4 mination by the United States Court of Appeals for the  
5 circuit in which the State is located or in the United  
6 States Court of Appeals for the District of Columbia Cir-  
7 cuit by filing a petition for review in such court.

8 (b) EXPEDITED REVIEW.—The United States Court  
9 of Appeals in which a petition for review is filed in accord-  
10 ance with subsection (a) shall complete all action on such  
11 petition, including rendering a judgment, before the end  
12 of the 60-day period beginning on the date on which such  
13 petition is filed, unless all parties to such proceeding agree  
14 to any extension of such period.

15 (c) SUPREME COURT REVIEW.—Any request for cer-  
16 tiorari to the Supreme Court of the United States of any  
17 judgment of a United States Court of Appeals with respect  
18 to a petition for review under this section shall be filed  
19 with the Supreme Court of the United States as soon as  
20 practicable after such judgment is issued.

21 (d) STATUTE OF LIMITATION.—No action may be  
22 filed under this section challenging an order, ruling, deter-  
23 mination, or other action of a Federal regulator or State  
24 insurance regulator after the later of—

1           (1) the end of the 12-month period beginning  
2           on the date on which the first public notice is made  
3           of such order, ruling, determination or other action  
4           in its final form; or

5           (2) the end of the 6-month period beginning on  
6           the date on which such order, ruling, determination,  
7           or other action takes effect.

8           (e) STANDARD OF REVIEW.—The court shall decide  
9           an action filed under this section based on its review on  
10          the merits of all questions presented under State and Fed-  
11          eral law, including the nature of the product or activity  
12          and the history and purpose of its regulation under State  
13          and Federal law, without unequal deference.

14       **SEC. 307. CONSUMER PROTECTION REGULATIONS.**

15          The Federal Deposit Insurance Act (12 U.S.C. 1811  
16          et seq.) is amended by adding at the end the following  
17          new section:

18       **“SEC. 45. CONSUMER PROTECTION REGULATIONS.**

19          “(a) REGULATIONS REQUIRED.—

20               “(1) IN GENERAL.—The Federal banking agen-  
21               cies shall prescribe and publish in final form, before  
22               the end of the 1-year period beginning on the date  
23               of enactment of the Financial Services Act of 1999,  
24               consumer protection regulations (which the agencies  
25               jointly determine to be appropriate) that—

1           “(A) apply to retail sales practices, solici-  
2           tations, advertising, or offers of any insurance  
3           product by any insured depository institution or  
4           wholesale financial institution or any person  
5           who is engaged in such activities at an office of  
6           the institution or on behalf of the institution;  
7           and

8           “(B) are consistent with the requirements  
9           of this Act and provide such additional protec-  
10          tions for consumers to whom such sales, solici-  
11          tations, advertising, or offers are directed as  
12          the agency determines to be appropriate.

13          “(2) APPLICABILITY TO SUBSIDIARIES.—The  
14          regulations prescribed pursuant to paragraph (1)  
15          shall extend such protections to any subsidiaries of  
16          an insured depository institution, as deemed appro-  
17          priate by the regulators referred to in paragraph (3),  
18          where such extension is determined to be necessary  
19          to ensure the consumer protections provided by this  
20          section.

21          “(3) CONSULTATION AND JOINT REGULA-  
22          TIONS.—The Federal banking agencies shall consult  
23          with each other and prescribe joint regulations pur-  
24          suant to paragraph (1), after consultation with the  
25          State insurance regulators, as appropriate.

1           “(b) SALES PRACTICES.—The regulations prescribed  
2 pursuant to subsection (a) shall include anticoercion rules  
3 applicable to the sale of insurance products which prohibit  
4 an insured depository institution from engaging in any  
5 practice that would lead a consumer to believe an exten-  
6 sion of credit, in violation of section 106(b) of the Bank  
7 Holding Company Act Amendments of 1970, is condi-  
8 tional upon—

9           “(1) the purchase of an insurance product from  
10 the institution or any of its affiliates or subsidiaries;  
11 or

12           “(2) an agreement by the consumer not to ob-  
13 tain, or a prohibition on the consumer from obtain-  
14 ing, an insurance product from an unaffiliated en-  
15 tity.

16           “(c) DISCLOSURES AND ADVERTISING.—The regula-  
17 tions prescribed pursuant to subsection (a) shall include  
18 the following provisions relating to disclosures and adver-  
19 tising in connection with the initial purchase of an insur-  
20 ance product:

21           “(1) DISCLOSURES.—

22           “(A) IN GENERAL.—Requirements that the  
23 following disclosures be made orally and in writ-  
24 ing before the completion of the initial sale and,

1 in the case of clause (iii), at the time of applica-  
2 tion for an extension of credit:

3 “(i) UNINSURED STATUS.—As appro-  
4 priate, the product is not insured by the  
5 Federal Deposit Insurance Corporation,  
6 the United States Government, or the in-  
7 sured depository institution.

8 “(ii) INVESTMENT RISK.—In the case  
9 of a variable annuity or other insurance  
10 product which involves an investment risk,  
11 that there is an investment risk associated  
12 with the product, including possible loss of  
13 value.

14 “(iii) COERCION.—The approval of an  
15 extension of credit may not be conditioned  
16 on—

17 “(I) the purchase of an insurance  
18 product from the institution in which  
19 the application for credit is pending or  
20 any of its affiliates or subsidiaries; or

21 “(II) an agreement by the con-  
22 sumer not to obtain, or a prohibition  
23 on the consumer from obtaining, an  
24 insurance product from an unaffili-  
25 ated entity.

1           “(B) MAKING DISCLOSURE READILY UN-  
2           DERSTANDABLE.—Regulations prescribed under  
3           subparagraph (A) shall encourage the use of  
4           disclosure that is conspicuous, simple, direct,  
5           and readily understandable, such as the follow-  
6           ing:

7                   “(i) ‘NOT FDIC-INSURED’.

8                   “(ii) ‘NOT GUARANTEED BY THE  
9           BANK’.

10                  “(iii) ‘MAY GO DOWN IN VALUE’.

11           “(C) ADJUSTMENTS FOR ALTERNATIVE  
12           METHODS OF PURCHASE.—In prescribing the  
13           requirements under subparagraphs (A) and  
14           (D), necessary adjustments shall be made for  
15           purchase in person, by telephone, or by elec-  
16           tronic media to provide for the most appro-  
17           priate and complete form of disclosure and ac-  
18           knowledgments.

19           “(D) CONSUMER ACKNOWLEDGMENT.—A  
20           requirement that an insured depository institu-  
21           tion shall require any person selling an insur-  
22           ance product at any office of, or on behalf of,  
23           the institution to obtain, at the time a con-  
24           sumer receives the disclosures required under  
25           this paragraph or at the time of the initial pur-

1           chase by the consumer of such product, an ac-  
2           knowledge by such consumer of the receipt  
3           of the disclosure required under this paragraph  
4           with respect to such product.

5           “(2) PROHIBITION ON MISREPRESENTA-  
6           TIONS.—A prohibition on any practice, or any adver-  
7           tising, at any office of, or on behalf of, the insured  
8           depository institution, or any subsidiary as appro-  
9           priate, which could mislead any person or otherwise  
10          cause a reasonable person to reach an erroneous be-  
11          lief with respect to—

12                   “(A) the uninsured nature of any insur-  
13                   ance product sold, or offered for sale, by the in-  
14                   stitution or any subsidiary of the institution; or

15                   “(B) in the case of a variable annuity or  
16                   other insurance product that involves an invest-  
17                   ment risk, the investment risk associated with  
18                   any such product.

19          “(d) SEPARATION OF BANKING AND NONBANKING  
20          ACTIVITIES.—

21                   “(1) REGULATIONS REQUIRED.—The regula-  
22                   tions prescribed pursuant to subsection (a) shall in-  
23                   clude such provisions as the Federal banking agen-  
24                   cies consider appropriate to ensure that the routine  
25                   acceptance of deposits is kept, to the extent prac-

1        ticable, physically segregated from insurance product  
2        activity.

3            “(2) REQUIREMENTS.—Regulations prescribed  
4        pursuant to paragraph (1) shall include the follow-  
5        ing requirements:

6            “(A) SEPARATE SETTING.—A clear delin-  
7        eation of the setting in which, and the cir-  
8        cumstances under which, transactions involving  
9        insurance products should be conducted in a lo-  
10       cation physically segregated from an area where  
11       retail deposits are routinely accepted.

12           “(B) REFERRALS.—Standards which per-  
13       mit any person accepting deposits from the  
14       public in an area where such transactions are  
15       routinely conducted in an insured depository in-  
16       stitution to refer a customer who seeks to pur-  
17       chase any insurance product to a qualified per-  
18       son who sells such product, only if the person  
19       making the referral receives no more than a  
20       one-time nominal fee of a fixed dollar amount  
21       for each referral that does not depend on  
22       whether the referral results in a transaction.

23           “(C) QUALIFICATION AND LICENSING RE-  
24       QUIREMENTS.—Standards prohibiting any in-  
25       sured depository institution from permitting

1           any person to sell or offer for sale any insur-  
2           ance product in any part of any office of the in-  
3           stitution, or on behalf of the institution, unless  
4           such person is appropriately qualified and li-  
5           censed.

6           “(e) DOMESTIC VIOLENCE DISCRIMINATION PROHI-  
7           BITION.—

8           “(1) IN GENERAL.—In the case of an applicant  
9           for, or an insured under, any insurance product de-  
10          scribed in paragraph (2), the status of the applicant  
11          or insured as a victim of domestic violence, or as a  
12          provider of services to victims of domestic violence,  
13          shall not be considered as a criterion in any decision  
14          with regard to insurance underwriting, pricing, re-  
15          newal, or scope of coverage of insurance policies, or  
16          payment of insurance claims, except as required or  
17          expressly permitted under State law.

18          “(2) SCOPE OF APPLICATION.—The prohibition  
19          contained in paragraph (1) shall apply to any insur-  
20          ance product which is sold or offered for sale, as  
21          principal, agent, or broker, by any insured depository  
22          institution or any person who is engaged in  
23          such activities at an office of the institution or on  
24          behalf of the institution.

1           “(3) SENSE OF THE CONGRESS.—It is the sense  
2 of the Congress that, by the end of the 30-month pe-  
3 riod beginning on the date of the enactment of the  
4 Financial Services Act of 1999, the States should  
5 enact prohibitions against discrimination with re-  
6 spect to insurance products that are at least as  
7 strict as the prohibitions contained in paragraph (1).

8           “(4) DOMESTIC VIOLENCE DEFINED.—For pur-  
9 poses of this subsection, the term ‘domestic violence’  
10 means the occurrence of 1 or more of the following  
11 acts by a current or former family member, house-  
12 hold member, intimate partner, or caretaker:

13           “(A) Attempting to cause or causing or  
14 threatening another person with physical harm,  
15 severe emotional distress, psychological trauma,  
16 rape, or sexual assault.

17           “(B) Engaging in a course of conduct or  
18 repeatedly committing acts toward another per-  
19 son, including following the person without  
20 proper authority, under circumstances that  
21 place the person in reasonable fear of bodily in-  
22 jury or physical harm.

23           “(C) Subjecting another person to false  
24 imprisonment.

1           “(D) Attempting to cause or causing dam-  
2           age to property so as to intimidate or attempt  
3           to control the behavior of another person.

4           “(f) CONSUMER GRIEVANCE PROCESS.—The Federal  
5           banking agencies shall jointly establish a consumer com-  
6           plaint mechanism, for receiving and expeditiously address-  
7           ing consumer complaints alleging a violation of regulations  
8           issued under this section, which mechanism shall—

9           “(1) establish a group within each regulatory  
10          agency to receive such complaints;

11          “(2) develop procedures for investigating such  
12          complaints;

13          “(3) develop procedures for informing consum-  
14          ers of rights they may have in connection with such  
15          complaints; and

16          “(4) develop procedures for addressing concerns  
17          raised by such complaints, as appropriate, including  
18          procedures for the recovery of losses to the extent  
19          appropriate.

20          “(g) EFFECT ON OTHER AUTHORITY.—

21          “(1) IN GENERAL.—No provision of this section  
22          shall be construed as granting, limiting, or otherwise  
23          affecting—

24                  “(A) any authority of the Securities and  
25                  Exchange Commission, any self-regulatory or-

1           ganization, the Municipal Securities Rule-  
2           making Board, or the Secretary of the Treasury  
3           under any Federal securities law; or

4           “(B) except as provided in paragraph (2),  
5           any authority of any State insurance commis-  
6           sioner or other State authority under any State  
7           law.

8           “(2) COORDINATION WITH STATE LAW.—

9           “(A) IN GENERAL.—Except as provided in  
10          subparagraph (B), regulations prescribed by a  
11          Federal banking agency under this section shall  
12          not apply to retail sales, solicitations, advertis-  
13          ing, or offers of any insurance product by any  
14          insured depository institution or wholesale fi-  
15          nancial institution or to any person who is en-  
16          gaged in such activities at an office of such in-  
17          stitution or on behalf of the institution, in a  
18          State where the State has in effect statutes,  
19          regulations, orders, or interpretations, that are  
20          inconsistent with or contrary to the regulations  
21          prescribed by the Federal banking agencies.

22          “(B) PREEMPTION.—If, with respect to  
23          any provision of the regulations prescribed  
24          under this section, the Board of Governors of  
25          the Federal Reserve System, the Comptroller of

1 the Currency, and the Board of Directors of the  
2 Federal Deposit Insurance Corporation deter-  
3 mine jointly that the protection afforded by  
4 such provision for consumers is greater than  
5 the protection provided by a comparable provi-  
6 sion of the statutes, regulations, orders, or in-  
7 terpretations referred to in subparagraph (A) of  
8 any State, such provision of the regulations pre-  
9 scribed under this section shall supersede the  
10 comparable provision of such State statute, reg-  
11 ulation, order, or interpretation.

12 “(h) INSURANCE PRODUCT DEFINED.—For purposes  
13 of this section, the term ‘insurance product’ includes an  
14 annuity contract the income of which is subject to tax  
15 treatment under section 72 of the Internal Revenue Code  
16 of 1986.”.

17 **SEC. 308. CERTAIN STATE AFFILIATION LAWS PREEMPTED**  
18 **FOR INSURANCE COMPANIES AND AFFILI-**  
19 **ATES.**

20 Except as provided in section 104(a)(2), no State  
21 may, by law, regulation, order, interpretation, or  
22 otherwise—

23 (1) prevent or significantly interfere with the  
24 ability of any insurer, or any affiliate of an insurer  
25 (whether such affiliate is organized as a stock com-

1       pany, mutual holding company, or otherwise), to be-  
2       come a financial holding company or to acquire con-  
3       trol of an insured depository institution;

4           (2) limit the amount of an insurer's assets that  
5       may be invested in the voting securities of an in-  
6       sured depository institution (or any company which  
7       controls such institution), except that the laws of an  
8       insurer's State of domicile may limit the amount of  
9       such investment to an amount that is not less than  
10      5 percent of the insurer's admitted assets; or

11          (3) prevent, significantly interfere with, or have  
12      the authority to review, approve, or disapprove a  
13      plan of reorganization by which an insurer proposes  
14      to reorganize from mutual form to become a stock  
15      insurer (whether as a direct or indirect subsidiary of  
16      a mutual holding company or otherwise) unless such  
17      State is the State of domicile of the insurer.

18 **SEC. 309. PUBLICATION OF PREEMPTION OF STATE LAWS.**

19       Section 5244 of the Revised Statutes of the United  
20      States (12 U.S.C. 43) is amended—

21          (1) by inserting “or Federal savings associa-  
22      tion” after “national bank” each place that term ap-  
23      pears; and

24          (2) in subsection (c)(3)(B)(i), by inserting “or  
25      savings associations” after “banks”.

1           **Subtitle B—Redomestication of**  
2                           **Mutual Insurers**

3   **SEC. 311. GENERAL APPLICATION.**

4           This subtitle shall only apply to a mutual insurance  
5 company in a State which has not enacted a law which  
6 expressly establishes reasonable terms and conditions for  
7 a mutual insurance company domiciled in such State to  
8 reorganize into a mutual holding company.

9   **SEC. 312. REDOMESTICATION OF MUTUAL INSURERS.**

10          (a) REDOMESTICATION.—A mutual insurer organized  
11 under the laws of any State may transfer its domicile to  
12 a transferee domicile as a step in a reorganization in  
13 which, pursuant to the laws of the transferee domicile and  
14 consistent with the standards in subsection (f), the mutual  
15 insurer becomes a stock insurer that is a direct or indirect  
16 subsidiary of a mutual holding company.

17          (b) RESULTING DOMICILE.—Upon complying with  
18 the applicable law of the transferee domicile governing  
19 transfers of domicile and completion of a transfer pursu-  
20 ant to this section, the mutual insurer shall cease to be  
21 a domestic insurer in the transferor domicile and, as a  
22 continuation of its corporate existence, shall be a domestic  
23 insurer of the transferee domicile.

24          (c) LICENSES PRESERVED.—The certificate of au-  
25 thority, agents' appointments and licenses, rates, approv-

1 als and other items that a licensed State allows and that  
2 are in existence immediately prior to the date that a re-  
3 domesticating insurer transfers its domicile pursuant to  
4 this subtitle shall continue in full force and effect upon  
5 transfer, if the insurer remains duly qualified to transact  
6 the business of insurance in such licensed State.

7 (d) EFFECTIVENESS OF OUTSTANDING POLICIES  
8 AND CONTRACTS.—

9 (1) IN GENERAL.—All outstanding insurance  
10 policies and annuities contracts of a redomesticating  
11 insurer shall remain in full force and effect and need  
12 not be endorsed as to the new domicile of the in-  
13 surer, unless so ordered by the State insurance regu-  
14 lator of a licensed State, and then only in the case  
15 of outstanding policies and contracts whose owners  
16 reside in such licensed State.

17 (2) FORMS.—

18 (A) Applicable State law may require a re-  
19 domesticating insurer to file new policy forms  
20 with the State insurance regulator of a licensed  
21 State on or before the effective date of the  
22 transfer.

23 (B) Notwithstanding subparagraph (A), a  
24 redomesticating insurer may use existing policy  
25 forms with appropriate endorsements to reflect

1           the new domicile of the redomesticating insurer  
2           until the new policy forms are approved for use  
3           by the State insurance regulator of such li-  
4           censed State.

5           (e) NOTICE.—A redomesticating insurer shall give  
6 notice of the proposed transfer to the State insurance reg-  
7 ulator of each licensed State and shall file promptly any  
8 resulting amendments to corporate documents required to  
9 be filed by a foreign licensed mutual insurer with the in-  
10 surance regulator of each such licensed State.

11          (f) PROCEDURAL REQUIREMENTS.—No mutual in-  
12 surer may redomesticate to another State and reorganize  
13 into a mutual holding company pursuant to this section  
14 unless the State insurance regulator of the transferee  
15 domicile determines that the plan of reorganization of the  
16 insurer includes the following requirements:

17           (1) APPROVAL BY BOARD OF DIRECTORS AND  
18           POLICYHOLDERS.—The reorganization is approved  
19           by at least a majority of the board of directors of  
20           the mutual insurer and at least a majority of the  
21           policyholders who vote after notice, disclosure of the  
22           reorganization and the effects of the transaction on  
23           policyholder contractual rights, and reasonable op-  
24           portunity to vote, in accordance with such notice,  
25           disclosure, and voting procedures as are approved by

1 the State insurance regulator of the transferee domi-  
2 cile.

3 (2) CONTINUED VOTING CONTROL BY POLICY-  
4 HOLDERS; REVIEW OF PUBLIC STOCK OFFERING.—  
5 After the consummation of a reorganization, the pol-  
6 icyholders of the reorganized insurer shall have the  
7 same voting rights with respect to the mutual hold-  
8 ing company as they had before the reorganization  
9 with respect to the mutual insurer. With respect to  
10 an initial public offering of stock, the offering shall  
11 be conducted in compliance with applicable securities  
12 laws and in a manner approved by the State insur-  
13 ance regulator of the transferee domicile.

14 (3) AWARD OF STOCK OR GRANT OF OPTIONS  
15 TO OFFICERS AND DIRECTORS.—For a period of 6  
16 months after completion of an initial public offering,  
17 neither a stock holding company nor the converted  
18 insurer shall award any stock options or stock  
19 grants to persons who are elected officers or direc-  
20 tors of the mutual holding company, the stock hold-  
21 ing company, or the converted insurer, except with  
22 respect to any such awards or options to which a  
23 person is entitled as a policyholder and as approved  
24 by the State insurance regulator of the transferee  
25 domicile.

1           (4) CONTRACTUAL RIGHTS.—Upon reorganiza-  
2           tion into a mutual holding company, the contractual  
3           rights of the policyholders are preserved.

4           (5) FAIR AND EQUITABLE TREATMENT OF POL-  
5           ICYHOLDERS.—The reorganization is approved as  
6           fair and equitable to the policyholders by the insur-  
7           ance regulator of the transferee domicile.

8   **SEC. 313. EFFECT ON STATE LAWS RESTRICTING REDOMES-**  
9                                   **TICATION.**

10          (a) IN GENERAL.—Unless otherwise permitted by  
11          this subtitle, State laws of any transferor domicile that  
12          conflict with the purposes and intent of this subtitle are  
13          preempted, including but not limited to—

14               (1) any law that has the purpose or effect of  
15               impeding the activities of, taking any action against,  
16               or applying any provision of law or regulation to,  
17               any insurer or an affiliate of such insurer because  
18               that insurer or any affiliate plans to redomesticate,  
19               or has redomesticated, pursuant to this subtitle;

20               (2) any law that has the purpose or effect of  
21               impeding the activities of, taking action against, or  
22               applying any provision of law or regulation to, any  
23               insured or any insurance licensee or other inter-  
24               mediary because such person or entity has procured  
25               insurance from or placed insurance with any insurer

1 or affiliate of such insurer that plans to redomes-  
2 ticate, or has redomesticated, pursuant to this sub-  
3 title, but only to the extent that such law would  
4 treat such insured licensee or other intermediary dif-  
5 ferently than if the person or entity procured insur-  
6 ance from, or placed insurance with, an insured li-  
7 censee or other intermediary which had not redomes-  
8 ticated;

9 (3) any law that has the purpose or effect of  
10 terminating, because of the redomestication of a mu-  
11 tual insurer pursuant to this subtitle, any certificate  
12 of authority, agent appointment or license, rate ap-  
13 proval, or other approval, of any State insurance  
14 regulator or other State authority in existence imme-  
15 diately prior to the redomestication in any State  
16 other than the transferee domicile.

17 (b) DIFFERENTIAL TREATMENT PROHIBITED.—No  
18 State law, regulation, interpretation, or functional equiva-  
19 lent thereof, of a State other than a transferee domicile  
20 may treat a redomesticating or redomesticated insurer or  
21 any affiliate thereof any differently than an insurer oper-  
22 ating in that State that is not a redomesticating or re-  
23 domesticated insurer.

24 (c) LAWS PROHIBITING OPERATIONS.—If any li-  
25 censed State fails to issue, delays the issuance of, or seeks

1 to revoke an original or renewal certificate of authority  
2 of a redomesticated insurer immediately following re-  
3 domestication, except on grounds and in a manner consist-  
4 ent with its past practices regarding the issuance of cer-  
5 tificates of authority to foreign insurers that are not re-  
6 domesticating, then the redomesticating insurer shall be  
7 exempt from any State law of the licensed State to the  
8 extent that such State law or the operation of such State  
9 law would make unlawful, or regulate, directly or indi-  
10 rectly, the operation of the redomesticated insurer, except  
11 that such licensed State may require the redomesticated  
12 insurer to—

13           (1) comply with the unfair claim settlement  
14 practices law of the licensed State;

15           (2) pay, on a nondiscriminatory basis, applica-  
16 ble premium and other taxes which are levied on li-  
17 censed insurers or policyholders under the laws of  
18 the licensed State;

19           (3) register with and designate the State insur-  
20 ance regulator as its agent solely for the purpose of  
21 receiving service of legal documents or process;

22           (4) submit to an examination by the State in-  
23 surance regulator in any licensed state in which the  
24 redomesticated insurer is doing business to deter-  
25 mine the insurer's financial condition, if—

1 (A) the State insurance regulator of the  
2 transferee domicile has not begun an examina-  
3 tion of the redomesticated insurer and has not  
4 scheduled such an examination to begin before  
5 the end of the 1-year period beginning on the  
6 date of the redomestication; and

7 (B) any such examination is coordinated to  
8 avoid unjustified duplication and repetition;

9 (5) comply with a lawful order issued in—

10 (A) a delinquency proceeding commenced  
11 by the State insurance regulator of any licensed  
12 State if there has been a judicial finding of fi-  
13 nancial impairment under paragraph (7); or

14 (B) a voluntary dissolution proceeding;

15 (6) comply with any State law regarding decep-  
16 tive, false, or fraudulent acts or practices, except  
17 that if the licensed State seeks an injunction regard-  
18 ing the conduct described in this paragraph, such in-  
19 junction must be obtained from a court of competent  
20 jurisdiction as provided in section 314(a);

21 (7) comply with an injunction issued by a court  
22 of competent jurisdiction, upon a petition by the  
23 State insurance regulator alleging that the redomes-  
24 ticating insurer is in hazardous financial condition  
25 or is financially impaired;

1           (8) participate in any insurance insolvency  
2 guaranty association on the same basis as any other  
3 insurer licensed in the licensed State; and

4           (9) require a person acting, or offering to act,  
5 as an insurance licensee for a redomesticated insurer  
6 in the licensed State to obtain a license from that  
7 State, except that such State may not impose any  
8 qualification or requirement that discriminates  
9 against a nonresident insurance licensee.

10 **SEC. 314. OTHER PROVISIONS.**

11       (a) JUDICIAL REVIEW.—The appropriate United  
12 States district court shall have exclusive jurisdiction over  
13 litigation arising under this section involving any redomes-  
14 ticating or redomesticated insurer.

15       (b) SEVERABILITY.—If any provision of this section,  
16 or the application thereof to any person or circumstances,  
17 is held invalid, the remainder of the section, and the appli-  
18 cation of such provision to other persons or circumstances,  
19 shall not be affected thereby.

20 **SEC. 315. DEFINITIONS.**

21       For purposes of this subtitle, the following definitions  
22 shall apply:

23       (1) COURT OF COMPETENT JURISDICTION.—

24       The term “court of competent jurisdiction” means a

1 court authorized pursuant to section 314(a) to adju-  
2 dicate litigation arising under this subtitle.

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

6 (3) INSURANCE LICENSEE.—The term “insur-  
7 ance licensee” means any person holding a license  
8 under State law to act as insurance agent, subagent,  
9 broker, or consultant.

10 (4) INSTITUTION.—The term “institution”  
11 means a corporation, joint stock company, limited li-  
12 ability company, limited liability partnership, asso-  
13 ciation, trust, partnership, or any similar entity.

14 (5) LICENSED STATE.—The term “licensed  
15 State” means any State, the District of Columbia,  
16 American Samoa, Guam, Puerto Rico, or the United  
17 States Virgin Islands in which the redomesticating  
18 insurer has a certificate of authority in effect imme-  
19 diately prior to the redomestication.

20 (6) MUTUAL INSURER.—The term “mutual in-  
21 surer” means a mutual insurer organized under the  
22 laws of any State.

23 (7) PERSON.—The term “person” means an in-  
24 dividual, institution, government or governmental  
25 agency, State or political subdivision of a State, pub-

1       lic corporation, board, association, estate, trustee, or  
2       fiduciary, or other similar entity.

3           (8) POLICYHOLDER.—The term “policyholder”  
4       means the owner of a policy issued by a mutual in-  
5       surer, except that, with respect to voting rights, the  
6       term means a member of a mutual insurer or mu-  
7       tual holding company granted the right to vote, as  
8       determined under applicable State law.

9           (9) REDOMESTICATED INSURER.—The term  
10       “redomesticated insurer” means a mutual insurer  
11       that has redomesticated pursuant to this subtitle.

12           (10) REDOMESTICATING INSURER.—The term  
13       “redomesticating insurer” means a mutual insurer  
14       that is redomesticating pursuant to this subtitle.

15           (11) REDOMESTICATION OR TRANSFER.—The  
16       terms “redomestication” and “transfer” mean the  
17       transfer of the domicile of a mutual insurer from  
18       one State to another State pursuant to this subtitle.

19           (12) STATE INSURANCE REGULATOR.—The  
20       term “State insurance regulator” means the prin-  
21       cipal insurance regulatory authority of a State, the  
22       District of Columbia, American Samoa, Guam,  
23       Puerto Rico, or the United States Virgin Islands.

24           (13) STATE LAW.—The term “State law”  
25       means the statutes of any State, the District of Co-

1       lumbia, American Samoa, Guam, Puerto Rico, or the  
2       United States Virgin Islands and any regulation,  
3       order, or requirement prescribed pursuant to any  
4       such statute.

5           (14) TRANSFEREE DOMICILE.—The term  
6       “transferee domicile” means the State to which a  
7       mutual insurer is redomesticating pursuant to this  
8       subtitle.

9           (15) TRANSFEROR DOMICILE.—The term  
10      “transferor domicile” means the State from which a  
11      mutual insurer is redomesticating pursuant to this  
12      subtitle.

13 **SEC. 316. EFFECTIVE DATE.**

14      This subtitle shall take effect on the date of the en-  
15      actment of this Act.

16 **Subtitle C—National Association of**  
17 **Registered Agents and Brokers**

18 **SEC. 321. STATE FLEXIBILITY IN MULTISTATE LICENSING**

19 **REFORMS.**

20      (a) IN GENERAL.—The provisions of this subtitle  
21      shall take effect unless, not later than 3 years after the  
22      date of enactment of this Act, at least a majority of the  
23      States—

24           (1) have enacted uniform laws and regulations  
25      governing the licensure of individuals and entities

1 authorized to sell and solicit the purchase of insur-  
2 ance within the State; or

3 (2) have enacted reciprocity laws and regula-  
4 tions governing the licensure of nonresident individ-  
5 uals and entities authorized to sell and solicit insur-  
6 ance within those States.

7 (b) UNIFORMITY REQUIRED.—States shall be deemed  
8 to have established the uniformity necessary to satisfy  
9 subsection (a)(1) if the States—

10 (1) establish uniform criteria regarding the in-  
11 tegrity, personal qualifications, education, training,  
12 and experience of licensed insurance producers, in-  
13 cluding the qualification and training of sales per-  
14 sonnel in ascertaining the appropriateness of a par-  
15 ticular insurance product for a prospective customer;

16 (2) establish uniform continuing education re-  
17 quirements for licensed insurance producers;

18 (3) establish uniform ethics course require-  
19 ments for licensed insurance producers in conjunc-  
20 tion with the continuing education requirements  
21 under paragraph (2);

22 (4) establish uniform criteria to ensure that an  
23 insurance product, including any annuity contract,  
24 sold to a consumer is suitable and appropriate for

1 the consumer based on financial information dis-  
2 closed by the consumer; and

3 (5) do not impose any requirement upon any in-  
4 surance producer to be licensed or otherwise quali-  
5 fied to do business as a nonresident that has the ef-  
6 fect of limiting or conditioning that producer's ac-  
7 tivities because of its residence or place of oper-  
8 ations, except that counter-signature requirements  
9 imposed on nonresident producers shall not be  
10 deemed to have the effect of limiting or conditioning  
11 a producer's activities because of its residence or  
12 place of operations under this section.

13 (c) RECIPROCITY REQUIRED.—States shall be  
14 deemed to have established the reciprocity required to sat-  
15 isfy subsection (a)(2) if the following conditions are met:

16 (1) ADMINISTRATIVE LICENSING PROCEDURE.—At least a majority of the States permit a  
17 producer that has a resident license for selling or so-  
18 liciting the purchase of insurance in its home State  
19 to receive a license to sell or solicit the purchase of  
20 insurance in such majority of States as a non-  
21 resident to the same extent that such producer is  
22 permitted to sell or solicit the purchase of insurance  
23 in its State, if the producer's home State also  
24 awards such licenses on such a reciprocal basis,  
25

1 without satisfying any additional requirements other  
2 than submitting—

3 (A) a request for licensure;

4 (B) the application for licensure that the  
5 producer submitted to its home State;

6 (C) proof that the producer is licensed and  
7 in good standing in its home State; and

8 (D) the payment of any requisite fee to the  
9 appropriate authority.

10 (2) CONTINUING EDUCATION REQUIRE-  
11 MENTS.—A majority of the States accept an insur-  
12 ance producer’s satisfaction of its home State’s con-  
13 tinuing education requirements for licensed insur-  
14 ance producers to satisfy the States’ own continuing  
15 education requirements if the producer’s home State  
16 also recognizes the satisfaction of continuing edu-  
17 cation requirements on such a reciprocal basis.

18 (3) NO LIMITING NONRESIDENT REQUIRE-  
19 MENTS.—A majority of the States do not impose  
20 any requirement upon any insurance producer to be  
21 licensed or otherwise qualified to do business as a  
22 nonresident that has the effect of limiting or condi-  
23 tioning that producer’s activities because of its resi-  
24 dence or place of operations, except that  
25 countersignature requirements imposed on non-

1 resident producers shall not be deemed to have the  
2 effect of limiting or conditioning a producer's activi-  
3 ties because of its residence or place of operations  
4 under this section.

5 (4) RECIPROCAL RECIPROCITY.—Each of the  
6 States that satisfies paragraphs (1), (2), and (3)  
7 grants reciprocity to residents of all of the other  
8 States that satisfy such paragraphs.

9 (d) DETERMINATION.—

10 (1) NAIC DETERMINATION.—At the end of the  
11 3-year period beginning on the date of the enact-  
12 ment of this Act, the National Association of Insur-  
13 ance Commissioners shall determine, in consultation  
14 with the insurance commissioners or chief insurance  
15 regulatory officials of the States, whether the uni-  
16 formity or reciprocity required by subsections (b)  
17 and (c) has been achieved.

18 (2) JUDICIAL REVIEW.—The appropriate  
19 United States district court shall have exclusive ju-  
20 risdiction over any challenge to the National Asso-  
21 ciation of Insurance Commissioners' determination  
22 under this section and such court shall apply the  
23 standards set forth in section 706 of title 5, United  
24 States Code, when reviewing any such challenge.

1 (e) CONTINUED APPLICATION.—If, at any time, the  
2 uniformity or reciprocity required by subsections (b) and  
3 (c) no longer exists, the provisions of this subtitle shall  
4 take effect 2 years after the date on which such uniformity  
5 or reciprocity ceases to exist, unless the uniformity or reci-  
6 procity required by those provisions is satisfied before the  
7 expiration of that 2-year period.

8 (f) SAVINGS PROVISION.—No provision of this sec-  
9 tion shall be construed as requiring that any law, regula-  
10 tion, provision, or action of any State which purports to  
11 regulate insurance producers, including any such law, reg-  
12 ulation, provision, or action which purports to regulate un-  
13 fair trade practices or establish consumer protections, in-  
14 cluding countersignature laws, be altered or amended in  
15 order to satisfy the uniformity or reciprocity required by  
16 subsections (b) and (c), unless any such law, regulation,  
17 provision, or action is inconsistent with a specific require-  
18 ment of any such subsection and then only to the extent  
19 of such inconsistency.

20 (g) UNIFORM LICENSING.—Nothing in this section  
21 shall be construed to require any State to adopt new or  
22 additional licensing requirements to achieve the uniformity  
23 necessary to satisfy subsection (a)(1).

1 **SEC. 322. NATIONAL ASSOCIATION OF REGISTERED**  
2 **AGENTS AND BROKERS.**

3 (a) **ESTABLISHMENT.**—There is established the Na-  
4 tional Association of Registered Agents and Brokers  
5 (hereafter in this subtitle referred to as the “Associa-  
6 tion”).

7 (b) **STATUS.**—The Association shall—

8 (1) be a nonprofit corporation;

9 (2) have succession until dissolved by an Act of  
10 Congress;

11 (3) not be an agent or instrumentality of the  
12 United States Government; and

13 (4) except as otherwise provided in this Act, be  
14 subject to, and have all the powers conferred upon  
15 a nonprofit corporation by the District of Columbia  
16 Nonprofit Corporation Act (D.C. Code, sec. 29y-  
17 1001 et seq.).

18 **SEC. 323. PURPOSE.**

19 The purpose of the Association shall be to provide  
20 a mechanism through which uniform licensing, appoint-  
21 ment, continuing education, and other insurance producer  
22 sales qualification requirements and conditions can be  
23 adopted and applied on a multistate basis, while preserv-  
24 ing the right of States to license, supervise, and discipline  
25 insurance producers and to prescribe and enforce laws and

1 regulations with regard to insurance-related consumer  
2 protection and unfair trade practices.

3 **SEC. 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT.**

4 The Association shall be subject to the supervision  
5 and oversight of the National Association of Insurance  
6 Commissioners (hereafter in this subtitle referred to as the  
7 “NAIC”).

8 **SEC. 325. MEMBERSHIP.**

9 (a) ELIGIBILITY.—

10 (1) IN GENERAL.—Any State-licensed insurance  
11 producer shall be eligible to become a member in the  
12 Association.

13 (2) INELIGIBILITY FOR SUSPENSION OR REV-  
14 OCATION OF LICENSE.—Notwithstanding paragraph  
15 (1), a State-licensed insurance producer shall not be  
16 eligible to become a member if a State insurance  
17 regulator has suspended or revoked such producer’s  
18 license in that State during the 3-year period pre-  
19 ceding the date on which such producer applies for  
20 membership.

21 (3) RESUMPTION OF ELIGIBILITY.—Paragraph  
22 (2) shall cease to apply to any insurance producer  
23 if—

1 (A) the State insurance regulator renews  
2 the license of such producer in the State in  
3 which the license was suspended or revoked; or

4 (B) the suspension or revocation is subse-  
5 quently overturned.

6 (b) AUTHORITY TO ESTABLISH MEMBERSHIP CRI-  
7 TERIA.—The Association shall have the authority to estab-  
8 lish membership criteria that—

9 (1) bear a reasonable relationship to the pur-  
10 poses for which the Association was established; and

11 (2) do not unfairly limit the access of smaller  
12 agencies to the Association membership.

13 (c) ESTABLISHMENT OF CLASSES AND CAT-  
14 EGORIES.—

15 (1) CLASSES OF MEMBERSHIP.—The Associa-  
16 tion may establish separate classes of membership,  
17 with separate criteria, if the Association reasonably  
18 determines that performance of different duties re-  
19 quires different levels of education, training, or expe-  
20 rience.

21 (2) CATEGORIES.—The Association may estab-  
22 lish separate categories of membership for individ-  
23 uals and for other persons. The establishment of any  
24 such categories of membership shall be based either  
25 on the types of licensing categories that exist under

1 State laws or on the aggregate amount of business  
2 handled by an insurance producer. No special cat-  
3 egories of membership, and no distinct membership  
4 criteria, shall be established for members which are  
5 insured depository institutions or wholesale financial  
6 institutions or for their employees, agents, or affili-  
7 ates.

8 (d) MEMBERSHIP CRITERIA.—

9 (1) IN GENERAL.—The Association may estab-  
10 lish criteria for membership which shall include  
11 standards for integrity, personal qualifications, edu-  
12 cation, training, and experience.

13 (2) MINIMUM STANDARD.—In establishing cri-  
14 teria under paragraph (1), the Association shall con-  
15 sider the highest levels of insurance producer quali-  
16 fications established under the licensing laws of the  
17 States.

18 (e) EFFECT OF MEMBERSHIP.—Membership in the  
19 Association shall entitle the member to licensure in each  
20 State for which the member pays the requisite fees, includ-  
21 ing licensing fees and, where applicable, bonding require-  
22 ments, set by such State.

23 (f) ANNUAL RENEWAL.—Membership in the Associa-  
24 tion shall be renewed on an annual basis.

1 (g) CONTINUING EDUCATION.—The Association shall  
2 establish, as a condition of membership, continuing edu-  
3 cation requirements which shall be comparable to or great-  
4 er than the continuing education requirements under the  
5 licensing laws of a majority of the States.

6 (h) SUSPENSION AND REVOCATION.—The Associa-  
7 tion may—

8 (1) inspect and examine the records and offices  
9 of the members of the Association to determine com-  
10 pliance with the criteria for membership established  
11 by the Association; and

12 (2) suspend or revoke the membership of an in-  
13 surance producer if—

14 (A) the producer fails to meet the applica-  
15 ble membership criteria of the Association; or

16 (B) the producer has been subject to dis-  
17 ciplinary action pursuant to a final adjudicatory  
18 proceeding under the jurisdiction of a State in-  
19 surance regulator, and the Association con-  
20 cludes that retention of membership in the As-  
21 sociation would not be in the public interest.

22 (i) OFFICE OF CONSUMER COMPLAINTS.—

23 (1) IN GENERAL.—The Association shall estab-  
24 lish an office of consumer complaints that shall—

1 (A) receive and investigate complaints  
2 from both consumers and State insurance regu-  
3 lators related to members of the Association;  
4 and

5 (B) recommend to the Association any dis-  
6 ciplinary actions that the office considers appro-  
7 priate, to the extent that any such rec-  
8 ommendation is not inconsistent with State law.

9 (2) RECORDS AND REFERRALS.—The office of  
10 consumer complaints of the Association shall—

11 (A) maintain records of all complaints re-  
12 ceived in accordance with paragraph (1) and  
13 make such records available to the NAIC and  
14 to each State insurance regulator for the State  
15 of residence of the consumer who filed the com-  
16 plaint; and

17 (B) refer, when appropriate, any such com-  
18 plaint to any appropriate State insurance regu-  
19 lator.

20 (3) TELEPHONE AND OTHER ACCESS.—The of-  
21 fice of consumer complaints shall maintain a toll-free  
22 telephone number for the purpose of this subsection  
23 and, as practicable, other alternative means of com-  
24 munication with consumers, such as an Internet  
25 home page.

1 **SEC. 326. BOARD OF DIRECTORS.**

2 (a) ESTABLISHMENT.—There is established the  
3 board of directors of the Association (hereafter in this sub-  
4 title referred to as the “Board”) for the purpose of govern-  
5 ing and supervising the activities of the Association and  
6 the members of the Association.

7 (b) POWERS.—The Board shall have such powers and  
8 authority as may be specified in the bylaws of the Associa-  
9 tion.

10 (c) COMPOSITION.—

11 (1) MEMBERS.—The Board shall be composed  
12 of 7 members appointed by the NAIC.

13 (2) REQUIREMENT.—At least 4 of the members  
14 of the Board shall have significant experience with  
15 the regulation of commercial lines of insurance in at  
16 least 1 of the 20 States in which the greatest total  
17 dollar amount of commercial-lines insurance is  
18 placed in the United States.

19 (3) INITIAL BOARD MEMBERSHIP.—

20 (A) IN GENERAL.—If, by the end of the 2-  
21 year period beginning on the date of enactment  
22 of this Act, the NAIC has not appointed the  
23 initial 7 members of the Board of the Associa-  
24 tion, the initial Board shall consist of the 7  
25 State insurance regulators of the 7 States with  
26 the greatest total dollar amount of commercial-

1 lines insurance in place as of the end of such  
2 period.

3 (B) ALTERNATE COMPOSITION.—If any of  
4 the State insurance regulators described in sub-  
5 paragraph (A) declines to serve on the Board,  
6 the State insurance regulator with the next  
7 greatest total dollar amount of commercial-lines  
8 insurance in place, as determined by the NAIC  
9 as of the end of such period, shall serve as a  
10 member of the Board.

11 (C) INOPERABILITY.—If fewer than 7  
12 State insurance regulators accept appointment  
13 to the Board, the Association shall be estab-  
14 lished without NAIC oversight pursuant to sec-  
15 tion 332.

16 (d) TERMS.—The term of each director shall, after  
17 the initial appointment of the members of the Board, be  
18 for 3 years, with  $\frac{1}{3}$  of the directors to be appointed each  
19 year.

20 (e) BOARD VACANCIES.—A vacancy on the Board  
21 shall be filled in the same manner as the original appoint-  
22 ment of the initial Board for the remainder of the term  
23 of the vacating member.

1 (f) MEETINGS.—The Board shall meet at the call of  
2 the chairperson, or as otherwise provided by the bylaws  
3 of the Association.

4 **SEC. 327. OFFICERS.**

5 (a) IN GENERAL.—

6 (1) POSITIONS.—The officers of the Association  
7 shall consist of a chairperson and a vice chairperson  
8 of the Board, a president, secretary, and treasurer  
9 of the Association, and such other officers and as-  
10 sistant officers as may be deemed necessary.

11 (2) MANNER OF SELECTION.—Each officer of  
12 the Board and the Association shall be elected or ap-  
13 pointed at such time and in such manner and for  
14 such terms not exceeding 3 years as may be pre-  
15 scribed in the bylaws of the Association.

16 (b) CRITERIA FOR CHAIRPERSON.—Only individuals  
17 who are members of the NAIC shall be eligible to serve  
18 as the chairperson of the board of directors.

19 **SEC. 328. BYLAWS, RULES, AND DISCIPLINARY ACTION.**

20 (a) ADOPTION AND AMENDMENT OF BYLAWS.—

21 (1) COPY REQUIRED TO BE FILED WITH THE  
22 NAIC.—The board of directors of the Association  
23 shall file with the NAIC a copy of the proposed by-  
24 laws or any proposed amendment to the bylaws, ac-

1        accompanied by a concise general statement of the  
2        basis and purpose of such proposal.

3            (2) EFFECTIVE DATE.—Except as provided in  
4        paragraph (3), any proposed bylaw or proposed  
5        amendment shall take effect—

6            (A) 30 days after the date of the filing of  
7        a copy with the NAIC;

8            (B) upon such later date as the Associa-  
9        tion may designate; or

10          (C) upon such earlier date as the NAIC  
11        may determine.

12          (3) DISAPPROVAL BY THE NAIC.—Notwith-  
13        standing paragraph (2), a proposed bylaw or amend-  
14        ment shall not take effect if, after public notice and  
15        opportunity to participate in a public hearing—

16          (A) the NAIC disapproves such proposal as  
17        being contrary to the public interest or contrary  
18        to the purposes of this subtitle and provides no-  
19        tice to the Association setting forth the reasons  
20        for such disapproval; or

21          (B) the NAIC finds that such proposal in-  
22        volves a matter of such significant public inter-  
23        est that public comment should be obtained, in  
24        which case it may, after notifying the Associa-  
25        tion in writing of such finding, require that the

1 procedures set forth in subsection (b) be fol-  
2 lowed with respect to such proposal, in the  
3 same manner as if such proposed bylaw change  
4 were a proposed rule change within the mean-  
5 ing of such subsection.

6 (b) ADOPTION AND AMENDMENT OF RULES.—

7 (1) FILING PROPOSED REGULATIONS WITH THE  
8 NAIC.—

9 (A) IN GENERAL.—The board of directors  
10 of the Association shall file with the NAIC a  
11 copy of any proposed rule or any proposed  
12 amendment to a rule of the Association which  
13 shall be accompanied by a concise general state-  
14 ment of the basis and purpose of such proposal.

15 (B) OTHER RULES AND AMENDMENTS IN-  
16 EFFECTIVE.—No proposed rule or amendment  
17 shall take effect unless approved by the NAIC  
18 or otherwise permitted in accordance with this  
19 paragraph.

20 (2) INITIAL CONSIDERATION BY THE NAIC.—

21 Not later than 35 days after the date of publication  
22 of notice of filing of a proposal, or before the end  
23 of such longer period not to exceed 90 days as the  
24 NAIC may designate after such date, if the NAIC  
25 finds such longer period to be appropriate and sets

1       forth its reasons for so finding, or as to which the  
2       Association consents, the NAIC shall—

3               (A) by order approve such proposed rule or  
4       amendment; or

5               (B) institute proceedings to determine  
6       whether such proposed rule or amendment  
7       should be modified or disapproved.

8       (3) NAIC PROCEEDINGS.—

9               (A) IN GENERAL.—Proceedings instituted  
10      by the NAIC with respect to a proposed rule or  
11      amendment pursuant to paragraph (2) shall—

12              (i) include notice of the grounds for  
13      disapproval under consideration;

14              (ii) provide opportunity for hearing;  
15      and

16              (iii) be concluded not later than 180  
17      days after the date of the Association's fil-  
18      ing of such proposed rule or amendment.

19              (B) DISPOSITION OF PROPOSAL.—At the  
20      conclusion of any proceeding under subpara-  
21      graph (A), the NAIC shall, by order, approve or  
22      disapprove the proposed rule or amendment.

23              (C) EXTENSION OF TIME FOR CONSIDER-  
24      ATION.—The NAIC may extend the time for

1 concluding any proceeding under subparagraph

2 (A) for—

3 (i) not more than 60 days if the  
4 NAIC finds good cause for such extension  
5 and sets forth its reasons for so finding; or

6 (ii) for such longer period as to which  
7 the Association consents.

8 (4) STANDARDS FOR REVIEW.—

9 (A) GROUNDS FOR APPROVAL.—The NAIC  
10 shall approve a proposed rule or amendment if  
11 the NAIC finds that the rule or amendment is  
12 in the public interest and is consistent with the  
13 purposes of this Act.

14 (B) APPROVAL BEFORE END OF NOTICE  
15 PERIOD.—The NAIC shall not approve any pro-  
16 posed rule before the end of the 30-day period  
17 beginning on the date on which the Association  
18 files proposed rules or amendments in accord-  
19 ance with paragraph (1), unless the NAIC finds  
20 good cause for so doing and sets forth the rea-  
21 sons for so finding.

22 (5) ALTERNATE PROCEDURE.—

23 (A) IN GENERAL.—Notwithstanding any  
24 provision of this subsection other than subpara-  
25 graph (B), a proposed rule or amendment relat-

1           ing to the administration or organization of the  
2           Association shall take effect—

3                   (i) upon the date of filing with the  
4                   NAIC, if such proposed rule or amendment  
5                   is designated by the Association as relating  
6                   solely to matters which the NAIC, consist-  
7                   ent with the public interest and the pur-  
8                   poses of this subsection, determines by rule  
9                   do not require the procedures set forth in  
10                  this paragraph; or

11                  (ii) upon such date as the NAIC shall  
12                  for good cause determine.

13           (B) ABROGATION BY THE NAIC.—

14                   (i) IN GENERAL.—At any time within  
15                   60 days after the date of filing of any pro-  
16                   posed rule or amendment under subpara-  
17                   graph (A)(i) or clause (ii) of this subpara-  
18                   graph, the NAIC may repeal such rule or  
19                   amendment and require that the rule or  
20                   amendment be refiled and reviewed in ac-  
21                   cordance with this paragraph, if the NAIC  
22                   finds that such action is necessary or ap-  
23                   propriate in the public interest, for the  
24                   protection of insurance producers or policy-

1 holders, or otherwise in furtherance of the  
2 purposes of this subtitle.

3 (ii) EFFECT OF RECONSIDERATION BY  
4 THE NAIC.—Any action of the NAIC pur-  
5 suant to clause (i) shall—

6 (I) not affect the validity or force  
7 of a rule change during the period  
8 such rule or amendment was in effect;  
9 and

10 (II) not be considered to be a  
11 final action.

12 (c) ACTION REQUIRED BY THE NAIC.—The NAIC  
13 may, in accordance with such rules as the NAIC deter-  
14 mines to be necessary or appropriate to the public interest  
15 or to carry out the purposes of this subtitle, require the  
16 Association to adopt, amend, or repeal any bylaw, rule or  
17 amendment of the Association, whenever adopted.

18 (d) DISCIPLINARY ACTION BY THE ASSOCIATION.—

19 (1) SPECIFICATION OF CHARGES.—In any pro-  
20 ceeding to determine whether membership shall be  
21 denied, suspended, revoked, or not renewed (here-  
22 after in this section referred to as a “disciplinary ac-  
23 tion”), the Association shall bring specific charges,  
24 notify such member of such charges, give the mem-

1 ber an opportunity to defend against the charges,  
2 and keep a record.

3 (2) SUPPORTING STATEMENT.—A determina-  
4 tion to take disciplinary action shall be supported by  
5 a statement setting forth—

6 (A) any act or practice in which such  
7 member has been found to have been engaged;

8 (B) the specific provision of this subtitle,  
9 the rules or regulations under this subtitle, or  
10 the rules of the Association which any such act  
11 or practice is deemed to violate; and

12 (C) the sanction imposed and the reason  
13 for such sanction.

14 (e) NAIC REVIEW OF DISCIPLINARY ACTION.—

15 (1) NOTICE TO THE NAIC.—If the Association  
16 orders any disciplinary action, the Association shall  
17 promptly notify the NAIC of such action.

18 (2) REVIEW BY THE NAIC.—Any disciplinary  
19 action taken by the Association shall be subject to  
20 review by the NAIC—

21 (A) on the NAIC's own motion; or

22 (B) upon application by any person ag-  
23 grieved by such action if such application is  
24 filed with the NAIC not more than 30 days  
25 after the later of—

- 1 (i) the date the notice was filed with  
2 the NAIC pursuant to paragraph (1); or  
3 (ii) the date the notice of the discipli-  
4 nary action was received by such aggrieved  
5 person.

6 (f) EFFECT OF REVIEW.—The filing of an applica-  
7 tion to the NAIC for review of a disciplinary action, or  
8 the institution of review by the NAIC on the NAIC's own  
9 motion, shall not operate as a stay of disciplinary action  
10 unless the NAIC otherwise orders.

11 (g) SCOPE OF REVIEW.—

12 (1) IN GENERAL.—In any proceeding to review  
13 such action, after notice and the opportunity for  
14 hearing, the NAIC shall—

15 (A) determine whether the action should be  
16 taken;

17 (B) affirm, modify, or rescind the discipli-  
18 nary sanction; or

19 (C) remand to the Association for further  
20 proceedings.

21 (2) DISMISSAL OF REVIEW.—The NAIC may  
22 dismiss a proceeding to review disciplinary action if  
23 the NAIC finds that—

24 (A) the specific grounds on which the ac-  
25 tion is based exist in fact;

1 (B) the action is in accordance with appli-  
2 cable rules and regulations; and

3 (C) such rules and regulations are, and  
4 were, applied in a manner consistent with the  
5 purposes of this subtitle.

6 **SEC. 329. ASSESSMENTS.**

7 (a) **INSURANCE PRODUCERS SUBJECT TO ASSESS-**  
8 **MENT.**—The Association may establish such application  
9 and membership fees as the Association finds necessary  
10 to cover the costs of its operations, including fees made  
11 reimbursable to the NAIC under subsection (b), except  
12 that, in setting such fees, the Association may not dis-  
13 criminate against smaller insurance producers.

14 (b) **NAIC ASSESSMENTS.**—The NAIC may assess the  
15 Association for any costs that the NAIC incurs under this  
16 subtitle.

17 **SEC. 330. FUNCTIONS OF THE NAIC.**

18 (a) **ADMINISTRATIVE PROCEDURE.**—Determinations  
19 of the NAIC, for purposes of making rules pursuant to  
20 section 328, shall be made after appropriate notice and  
21 opportunity for a hearing and for submission of views of  
22 interested persons.

23 (b) **EXAMINATIONS AND REPORTS.**—

24 (1) **EXAMINATIONS.**—The NAIC may make  
25 such examinations and inspections of the Association

1 and require the Association to furnish to the NAIC  
2 such reports and records or copies thereof as the  
3 NAIC may consider necessary or appropriate in the  
4 public interest or to effectuate the purposes of this  
5 subtitle.

6 (2) REPORT BY ASSOCIATION.—As soon as  
7 practicable after the close of each fiscal year, the As-  
8 sociation shall submit to the NAIC a written report  
9 regarding the conduct of its business, and the exer-  
10 cise of the other rights and powers granted by this  
11 subtitle, during such fiscal year. Such report shall  
12 include financial statements setting forth the finan-  
13 cial position of the Association at the end of such  
14 fiscal year and the results of its operations (includ-  
15 ing the source and application of its funds) for such  
16 fiscal year. The NAIC shall transmit such report to  
17 the President and the Congress with such comment  
18 thereon as the NAIC determines to be appropriate.

19 **SEC. 331. LIABILITY OF THE ASSOCIATION AND THE DIREC-**  
20 **TORS, OFFICERS, AND EMPLOYEES OF THE**  
21 **ASSOCIATION.**

22 (a) IN GENERAL.—The Association shall not be  
23 deemed to be an insurer or insurance producer within the  
24 meaning of any State law, rule, regulation, or order regu-  
25 lating or taxing insurers, insurance producers, or other en-

1 tities engaged in the business of insurance, including pro-  
2 visions imposing premium taxes, regulating insurer sol-  
3 vency or financial condition, establishing guaranty funds  
4 and levying assessments, or requiring claims settlement  
5 practices.

6 (b) LIABILITY OF THE ASSOCIATION, ITS DIREC-  
7 TORS, OFFICERS, AND EMPLOYEES.—Neither the Associa-  
8 tion nor any of its directors, officers, or employees shall  
9 have any liability to any person for any action taken or  
10 omitted in good faith under or in connection with any mat-  
11 ter subject to this subtitle.

12 **SEC. 332. ELIMINATION OF NAIC OVERSIGHT.**

13 (a) IN GENERAL.—The Association shall be estab-  
14 lished without NAIC oversight and the provisions set forth  
15 in section 324, subsections (a), (b), (c), and (e) of section  
16 328, and sections 329(b) and 330 of this subtitle shall  
17 cease to be effective if, at the end of the 2-year period  
18 beginning on the date on which the provisions of this sub-  
19 title take effect pursuant to section 321—

20 (1) at least a majority of the States represent-  
21 ing at least 50 percent of the total United States  
22 commercial-lines insurance premiums have not satis-  
23 fied the uniformity or reciprocity requirements of  
24 subsections (a), (b), and (c) of section 321; and

1           (2) the NAIC has not approved the Associa-  
2           tion's bylaws as required by section 328 or is unable  
3           to operate or supervise the Association, or the Asso-  
4           ciation is not conducting its activities as required  
5           under this Act.

6           (b) BOARD APPOINTMENTS.—If the repeals required  
7           by subsection (a) are implemented, the following shall  
8           apply:

9           (1) GENERAL APPOINTMENT POWER.—The  
10          President, with the advice and consent of the Sen-  
11          ate, shall appoint the members of the Association's  
12          Board established under section 326 from lists of  
13          candidates recommended to the President by the  
14          National Association of Insurance Commissioners.

15          (2) PROCEDURES FOR OBTAINING NATIONAL  
16          ASSOCIATION OF INSURANCE COMMISSIONERS AP-  
17          POINTMENT RECOMMENDATIONS.—

18                (A) INITIAL DETERMINATION AND REC-  
19                COMMENDATIONS.—After the date on which the  
20                provisions of subsection (a) take effect, the  
21                NAIC shall, not later than 60 days thereafter,  
22                provide a list of recommended candidates to the  
23                President. If the NAIC fails to provide a list by  
24                that date, or if any list that is provided does  
25                not include at least 14 recommended candidates

1 or comply with the requirements of section  
2 326(c), the President shall, with the advice and  
3 consent of the Senate, make the requisite ap-  
4 pointments without considering the views of the  
5 NAIC.

6 (B) SUBSEQUENT APPOINTMENTS.—After  
7 the initial appointments, the NAIC shall pro-  
8 vide a list of at least 6 recommended candidates  
9 for the Board to the President by January 15  
10 of each subsequent year. If the NAIC fails to  
11 provide a list by that date, or if any list that  
12 is provided does not include at least 6 rec-  
13 ommended candidates or comply with the re-  
14 quirements of section 326(c), the President,  
15 with the advice and consent of the Senate, shall  
16 make the requisite appointments without con-  
17 sidering the views of the NAIC.

18 (C) PRESIDENTIAL OVERSIGHT.—

19 (i) REMOVAL.—If the President deter-  
20 mines that the Association is not acting in  
21 the interests of the public, the President  
22 may remove the entire existing Board for  
23 the remainder of the term to which the  
24 members of the Board were appointed and  
25 appoint, with the advice and consent of the

1 Senate, new members to fill the vacancies  
2 on the Board for the remainder of such  
3 terms.

4 (ii) SUSPENSION OF RULES OR AC-  
5 TIONS.—The President, or a person des-  
6 ignated by the President for such purpose,  
7 may suspend the effectiveness of any rule,  
8 or prohibit any action, of the Association  
9 which the President or the designee deter-  
10 mines is contrary to the public interest.

11 (c) ANNUAL REPORT.—As soon as practicable after  
12 the close of each fiscal year, the Association shall submit  
13 to the President and to the Congress a written report rel-  
14 ative to the conduct of its business, and the exercise of  
15 the other rights and powers granted by this subtitle, dur-  
16 ing such fiscal year. Such report shall include financial  
17 statements setting forth the financial position of the Asso-  
18 ciation at the end of such fiscal year and the results of  
19 its operations (including the source and application of its  
20 funds) for such fiscal year.

21 **SEC. 333. RELATIONSHIP TO STATE LAW.**

22 (a) PREEMPTION OF STATE LAWS.—State laws, reg-  
23 ulations, provisions, or other actions purporting to regu-  
24 late insurance producers shall be preempted as provided  
25 in subsection (b).

1 (b) PROHIBITED ACTIONS.—No State shall—

2 (1) impede the activities of, take any action  
3 against, or apply any provision of law or regulation  
4 to, any insurance producer because that insurance  
5 producer or any affiliate plans to become, has ap-  
6 plied to become, or is a member of the Association;

7 (2) impose any requirement upon a member of  
8 the Association that it pay different fees to be li-  
9 censed or otherwise qualified to do business in that  
10 State, including bonding requirements, based on its  
11 residency;

12 (3) impose any licensing, appointment, integ-  
13 rity, personal or corporate qualifications, education,  
14 training, experience, residency, or continuing edu-  
15 cation requirement upon a member of the Associa-  
16 tion that is different from the criteria for member-  
17 ship in the Association or renewal of such member-  
18 ship, except that counter-signature requirements im-  
19 posed on nonresident producers shall not be deemed  
20 to have the effect of limiting or conditioning a pro-  
21 ducer's activities because of its residence or place of  
22 operations under this section; or

23 (4) implement the procedures of such State's  
24 system of licensing or renewing the licenses of insur-

1       ance producers in a manner different from the au-  
2       thority of the Association under section 325.

3       (c) SAVINGS PROVISION.—Except as provided in sub-  
4       sections (a) and (b), no provision of this section shall be  
5       construed as altering or affecting the continuing effective-  
6       ness of any law, regulation, provision, or other action of  
7       any State which purports to regulate insurance producers,  
8       including any such law, regulation, provision, or action  
9       which purports to regulate unfair trade practices or estab-  
10      lish consumer protections, including countersignature  
11      laws.

12      **SEC. 334. COORDINATION WITH OTHER REGULATORS.**

13      (a) COORDINATION WITH STATE INSURANCE REGU-  
14      LATORS.—The Association shall have the authority to—

15              (1) issue uniform insurance producer applica-  
16              tions and renewal applications that may be used to  
17              apply for the issuance or removal of State licenses,  
18              while preserving the ability of each State to impose  
19              such conditions on the issuance or renewal of a li-  
20              cense as are consistent with section 333;

21              (2) establish a central clearinghouse through  
22              which members of the Association may apply for the  
23              issuance or renewal of licenses in multiple States;  
24              and

1           (3) establish or utilize a national database for  
2           the collection of regulatory information concerning  
3           the activities of insurance producers.

4           (b) COORDINATION WITH THE NATIONAL ASSOCIA-  
5           TION OF SECURITIES DEALERS.—The Association shall  
6           coordinate with the National Association of Securities  
7           Dealers in order to ease any administrative burdens that  
8           fall on persons that are members of both associations, con-  
9           sistent with the purposes of this subtitle and the Federal  
10          securities laws.

11       **SEC. 335. JUDICIAL REVIEW.**

12          (a) JURISDICTION.—The appropriate United States  
13          district court shall have exclusive jurisdiction over litiga-  
14          tion involving the Association, including disputes between  
15          the Association and its members that arise under this sub-  
16          title. Suits brought in State court involving the Associa-  
17          tion shall be deemed to have arisen under Federal law and  
18          therefore be subject to jurisdiction in the appropriate  
19          United States district court.

20          (b) EXHAUSTION OF REMEDIES.—An aggrieved per-  
21          son shall be required to exhaust all available administra-  
22          tive remedies before the Association and the NAIC before  
23          it may seek judicial review of an Association decision.

24          (c) STANDARDS OF REVIEW.—The standards set  
25          forth in section 553 of title 5, United States Code, shall

1 be applied whenever a rule or bylaw of the Association is  
2 under judicial review, and the standards set forth in sec-  
3 tion 554 of title 5, United States Code, shall be applied  
4 whenever a disciplinary action of the Association is judi-  
5 cially reviewed.

6 **SEC. 336. DEFINITIONS.**

7 For purposes of this subtitle, the following definitions  
8 shall apply:

9 (1) HOME STATE.—The term “home State”  
10 means the State in which the insurance producer  
11 maintains its principal place of residence and is li-  
12 censed to act as an insurance producer.

13 (2) INSURANCE.—The term “insurance” means  
14 any product, other than title insurance, defined or  
15 regulated as insurance by the appropriate State in-  
16 surance regulatory authority.

17 (3) INSURANCE PRODUCER.—The term “insur-  
18 ance producer” means any insurance agent or  
19 broker, surplus lines broker, insurance consultant,  
20 limited insurance representative, and any other per-  
21 son that solicits, negotiates, effects, procures, deliv-  
22 ers, renews, continues or binds policies of insurance  
23 or offers advice, counsel, opinions or services related  
24 to insurance.

1           (4) STATE.—The term “State” includes any  
2 State, the District of Columbia, American Samoa,  
3 Guam, Puerto Rico, and the United States Virgin  
4 Islands.

5           (5) STATE LAW.—The term “State law” in-  
6 cludes all laws, decisions, rules, regulations, or other  
7 State action having the effect of law, of any State.  
8 A law of the United States applicable only to the  
9 District of Columbia shall be treated as a State law  
10 rather than a law of the United States.

11 **TITLE IV—UNITARY SAVINGS**  
12 **AND LOAN HOLDING COMPA-**  
13 **NIES**

14 **SEC. 401. PREVENTION OF CREATION OF NEW S&L HOLD-**  
15 **ING COMPANIES WITH COMMERCIAL AFFILI-**  
16 **ATES.**

17           (a) IN GENERAL.—Section 10(c) of the Home Own-  
18 ers’ Loan Act (12 U.S.C. 1467a(c)) is amended by adding  
19 at the end the following new paragraph:

20           “(9) PREVENTION OF NEW AFFILIATIONS BE-  
21 TWEEN S&L HOLDING COMPANIES AND COMMERCIAL  
22 FIRMS.—

23           “(A) IN GENERAL.—Notwithstanding para-  
24 graph (3), no company may directly or indi-  
25 rectly, including through any merger, consolida-

1           tion, or other type of business combination, ac-  
2           quire control of a savings association after Oc-  
3           tober 7, 1998, unless the company is engaged,  
4           directly or indirectly (including through a sub-  
5           sidiary other than a savings association), only  
6           in activities that are permitted—

7                   “(i) under paragraph (1)(C) or (2); or

8                   “(ii) for financial holding companies  
9                   under section 6(c) of the Bank Holding  
10                  Company Act of 1956.

11               “(B) PREVENTION OF NEW COMMERCIAL  
12               AFFILIATIONS.—Notwithstanding paragraph  
13               (3), no savings and loan holding company may  
14               engage directly or indirectly (including through  
15               a subsidiary other than a savings association)  
16               in any activity other than as described in  
17               clauses (i) and (ii) of subparagraph (A).

18               “(C) PRESERVATION OF AUTHORITY OF  
19               EXISTING UNITARY S&L HOLDING COMPA-  
20               NIES.—Subparagraphs (A) and (B) do not  
21               apply with respect to any company that was a  
22               savings and loan holding company on October  
23               7, 1998, or that becomes a savings and loan  
24               holding company pursuant to an application

1 pending before the Office of Thrift Supervision  
2 on or before that date, and that—

3 “(i) meets and continues to meet the  
4 requirements of paragraph (3); and

5 “(ii) continues to control not fewer  
6 than 1 savings association that it con-  
7 trolled on October 7, 1998, or that it ac-  
8 quired pursuant to an application pending  
9 before the Office of Thrift Supervision on  
10 or before that date, or the successor to  
11 such savings association.

12 “(D) CORPORATE REORGANIZATIONS PER-  
13 MITTED.—This paragraph does not prevent a  
14 transaction that—

15 “(i) involves solely a company under  
16 common control with a savings and loan  
17 holding company from acquiring, directly  
18 or indirectly, control of the savings and  
19 loan holding company or any savings asso-  
20 ciation that is already a subsidiary of the  
21 savings and loan holding company; or

22 “(ii) involves solely a merger, consoli-  
23 dation, or other type of business combina-  
24 tion as a result of which a company under  
25 common control with the savings and loan

1 holding company acquires, directly or indi-  
2 rectly, control of the savings and loan hold-  
3 ing company or any savings association  
4 that is already a subsidiary of the savings  
5 and loan holding company.

6 “(E) AUTHORITY TO PREVENT EVA-  
7 SIONS.—The Director may issue interpreta-  
8 tions, regulations, or orders that the Director  
9 determines necessary to administer and carry  
10 out the purpose and prevent evasions of this  
11 paragraph, including a determination that, not-  
12 withstanding the form of a transaction, the  
13 transaction would in substance result in a com-  
14 pany acquiring control of a savings association.

15 “(F) PRESERVATION OF AUTHORITY FOR  
16 FAMILY TRUSTS.—Subparagraphs (A) and (B)  
17 do not apply with respect to any trust that be-  
18 comes a savings and loan holding company with  
19 respect to a savings association, if—

20 “(i) not less than 85 percent of the  
21 beneficial ownership interests in the trust  
22 are continuously owned, directly or indi-  
23 rectly, by or for the benefit of members of  
24 the same family, or their spouses, who are  
25 lineal descendants of common ancestors

1 who controlled, directly or indirectly, such  
2 savings association on October 7, 1998, or  
3 a subsequent date pursuant to an applica-  
4 tion pending before the Office of Thrift  
5 Supervision on or before October 7, 1998;  
6 and

7 “(ii) at the time at which such trust  
8 becomes a savings and loan holding com-  
9 pany, such ancestors or lineal descendants,  
10 or spouses of such descendants, have di-  
11 rectly or indirectly controlled the savings  
12 association continuously since October 7,  
13 1998, or a subsequent date pursuant to an  
14 application pending before the Office of  
15 Thrift Supervision on or before October 7,  
16 1998.”.

17 (b) CONFORMING AMENDMENT.—Section 10(o)(5) of  
18 the Home Owners’ Loan Act (15 U.S.C. 1467a(o)(5)) is  
19 amended—

20 (1) in subparagraph (E), by striking “, except  
21 subparagraph (B)”;

22 (2) by adding at the end the following new sub-  
23 paragraph:

24 “(F) In the case of a mutual holding com-  
25 pany which is a savings and loan holding com-

1           pany described in subsection (c)(3), engaging in  
2           the activities permitted under subsection  
3           (c)(9)(A)(ii).”.

4 **SEC. 402. RETENTION OF “FEDERAL” IN NAME OF CON-**  
5 **VERTED FEDERAL SAVINGS ASSOCIATION.**

6           Section 2 of the Act entitled “An Act to enable na-  
7           tional banking associations to increase their capital stock  
8           and to change their names or locations”, approved May  
9           1, 1886 (12 U.S.C. 30), is amended by adding at the end  
10          the following new subsection:

11          “(d) RETENTION OF ‘FEDERAL’ IN NAME OF CON-  
12          VERTED FEDERAL SAVINGS ASSOCIATION.—

13                 “(1) IN GENERAL.—Notwithstanding subsection  
14                 (a) or any other provision of law, any depository in-  
15                 stitution the charter of which is converted from that  
16                 of a Federal savings association to a national bank  
17                 or a State bank after the date of the enactment of  
18                 the Financial Services Act of 1999 may retain the  
19                 term ‘Federal’ in the name of such institution if  
20                 such depository institution remains an insured de-  
21                 pository institution.

22                 “(2) DEFINITIONS.—For purposes of this sub-  
23                 section, the terms ‘depository institution’, ‘insured  
24                 depository institution’, ‘national bank’, and ‘State

1 bank' have the same meanings as in section 3 of the  
2 Federal Deposit Insurance Act.”.

○