

106TH CONGRESS
1ST SESSION

H. R. 665

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 1999

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

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Financial Services
5 Modernization Act”.

1 **SEC. 2. TABLE OF CONTENTS.**

2 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—FINANCIAL SERVICES MODERNIZATION

Subtitle A—Affiliations

- Sec. 101. Anti-affiliation provisions of “Glass-Steagall Act” repealed.
- Sec. 102. Financial activities.
- Sec. 103. Limited nonfinancial activities and affiliations permitted.
- Sec. 104. Operation of State law.
- Sec. 105. Mutual bank holding companies authorized.
- Sec. 106. Amendments relating to limited purpose banks.

Subtitle B—Streamlining Supervision of Bank Holding Companies

- Sec. 111. Streamlining bank holding company supervision.
- Sec. 112. Authority of State insurance regulator and securities and exchange commission.
- Sec. 113. Limitation on rulemaking, prudential, supervisory, and enforcement authority of the Board.
- Sec. 114. Examination of investment companies.
- Sec. 115. Equivalent regulation and supervision.

Subtitle C—Subsidiaries of National Banks

- Sec. 121. Subsidiaries of national banks authorized to engage in financial activities.
- Sec. 122. Safety and soundness firewalls between banks and their financial subsidiaries.
- Sec. 123. Functional regulation.

Subtitle D—Review of Bank Mergers and Acquisitions

- Sec. 131. Amendment to the Bank Holding Company Act of 1956 to modify notification and post-approval waiting period for section 3 transactions.
- Sec. 132. Interagency data sharing.
- Sec. 133. Clarification of status of subsidiaries and affiliates.
- Sec. 134. Annual GAO report.

Subtitle E—Direct Activities of Banks

- Sec. 141. Authority of national banks to underwrite certain municipal bonds.

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. Information sharing.
- Sec. 205. Definition and treatment of banking products.

- Sec. 206. Derivative instrument and qualified investor defined.
- Sec. 207. Government securities defined.
- Sec. 208. Effective date.
- Sec. 209. 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

- 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 dispute resolution for Federal regulators.
- Sec. 307. Certain State affiliation laws preempted for insurance companies and affiliates.

TITLE IV—CUSTOMER SERVICE AND EDUCATION

- Sec. 401. Customer service and education regulations.

1 **TITLE I—FINANCIAL SERVICES**
2 **MODERNIZATION**
3 **Subtitle A—Affiliations**

4 **SEC. 101. ANTI-AFFILIATION PROVISIONS OF “GLASS-**
5 **STEAGALL ACT” REPEALED.**

6 (a) SECTION 20 REPEALED.—Section 20 of the
7 Banking Act of 1933 (12 U.S.C. 377) is repealed.

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

10 **SEC. 102. FINANCIAL ACTIVITIES.**

11 (a) ENGAGING IN ACTIVITIES FINANCIAL IN NA-
12 TURE.—Section 4 of the Bank Holding Company Act of
13 1956 (12 U.S.C. 1843) is amended by adding at the end
14 the following new subsections:

15 “(k) ENGAGING IN ACTIVITIES FINANCIAL IN NA-
16 TURE.—

17 “(1) IN GENERAL.—Notwithstanding subsection
18 (a) and subject to subsection (l) and (m), a bank
19 holding company may engage in any activity, and ac-
20 quire and retain the shares of any company engaged
21 in any activity, which the Board and the Secretary
22 of the Treasury have jointly determined (by regula-
23 tion or order) to be financial in nature or incidental
24 to such financial activities.

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

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

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

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

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

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

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

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

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

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

10 “(B) Insuring, guaranteeing, or indemnify-
11 ing against loss, harm, damage, illness, disabil-
12 ity, or death, or providing and issuing annu-
13 ities, and acting as principal, agent, or broker
14 for purposes of the foregoing, in any State, in
15 full compliance with the laws and regulations of
16 such State that apply to each type of insurance
17 license or authorization in such State, except
18 that—

19 “(i) in no event shall the bank holding
20 company or any affiliate of the bank hold-
21 ing company be subject to any State law or
22 regulation that restricts a bank from hav-
23 ing an affiliate, agent, or employee in such
24 State licensed to provide insurance as prin-
25 cipal, agent, or broker; and

1 “(ii) the Board shall prescribe regula-
2 tions concerning insurance affiliations that
3 provide equivalent treatment for all stock
4 and mutual insurance companies that con-
5 trol or are otherwise affiliated with a bank
6 and fully accommodate and are consistent
7 with State law.

8 “(C) Providing financial, investment, or
9 economic advisory services, including advising
10 an investment company (as defined in section 3
11 of the Investment Company Act of 1940).

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

15 “(E) Underwriting, dealing in, or making
16 a market in securities.

17 “(F) Engaging in any activity that the
18 Board has determined, by order or regulation
19 that is in effect on the date of enactment of the
20 Financial Services Modernization Act, to be so
21 closely related to banking or managing or con-
22 trolling banks as to be a proper incident thereto
23 (subject to the same terms and conditions con-
24 tained in such order or regulation, unless modi-
25 fied by the Board).

1 “(G) Engaging, in the United States, in
2 any activity that—

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

5 “(ii) the Board has determined, under
6 regulations issued pursuant to subsection
7 (c)(13) (as in effect on the day before the
8 date of enactment of the Financial Services
9 Modernization Act) to be usual in connec-
10 tion with the transaction of banking or
11 other financial operations abroad.

12 “(H) Directly or indirectly acquiring or
13 controlling, whether as principal, on behalf of 1
14 or more entities (including entities, other than
15 a depository institution or subsidiary of a de-
16 pository institution, that the bank holding com-
17 pany controls) or otherwise, shares, assets, or
18 ownership interests (including without limita-
19 tion debt or equity securities, partnership inter-
20 ests, trust certificates or other instruments rep-
21 resenting ownership) of a company or other en-
22 tity, whether or not constituting control of such
23 company or entity, engaged in any activity not
24 authorized pursuant to this section if—

1 “(i) the shares, assets, or ownership
2 interests are not acquired or held by a de-
3 pository institution;

4 “(ii) such shares, assets, or ownership
5 interests are acquired and held as part of
6 a bona fide underwriting or merchant
7 banking activity, including investment ac-
8 tivities engaged in for the purpose of ap-
9 preciation and ultimate resale or disposi-
10 tion of the investment;

11 “(iii) such shares, assets, or owner-
12 ship interests, are held for such a period of
13 time as will permit the sale or disposition
14 thereof on a reasonable basis consistent
15 with the nature of the activities described
16 in clause (ii); and

17 “(iv) during the period such shares,
18 assets, or ownership interests are held, the
19 bank holding company does not actively
20 participate, directly or indirectly, in the
21 day to day management or operation of
22 such company or entity, except insofar as
23 necessary to achieve the objectives of
24 clause (ii).

1 “(I) Directly or indirectly acquiring or con-
2 trolling, whether as principal, on behalf of 1 or
3 more entities (including any subsidiary of the
4 holding company which is not a depository in-
5 stitution or subsidiary of a depository institu-
6 tion) or otherwise, shares, assets, or ownership
7 interests (including without limitation debt or
8 equity securities, partnership interests, trust
9 certificates or other instruments representing
10 ownership) of a company or other entity, wheth-
11 er or not constituting control of such company
12 or entity, engaged in any activity not authorized
13 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 a subsidiary of a de-
17 pository institution;

18 “(ii) such shares, assets, or ownership
19 interests are acquired and held by an in-
20 surance company that is predominantly en-
21 gaged in underwriting life, accident and
22 health, or property and casualty insurance
23 (other than credit-related insurance);

24 “(iii) such shares, assets, or owner-
25 ship interests represent an investment

1 made in the ordinary course of business of
2 such insurance company in accordance
3 with relevant State law governing such in-
4 vestments; and

5 “(iv) during the period such shares,
6 assets, or ownership interests are held, the
7 bank holding company does not directly or
8 indirectly participate in the day-to-day
9 management or operation of the company
10 or entity except insofar as necessary to
11 achieve the objectives of clause (iii).

12 “(4) ACTIONS REQUIRED.—

13 “(A) REGULATION OF MERCHANT BANK-
14 ING.—The Board may prescribe regulations and
15 issue interpretations to implement paragraph
16 3(H);

17 “(B) REGULATION OF OTHER ACTIVI-
18 TIES.—The Board and the Secretary—

19 “(i) may jointly prescribe regulations and
20 issue interpretations under paragraph (3), other
21 than subparagraph (H); and

22 “(ii) shall jointly define by regulation the
23 following activities, to the extent they are con-
24 sistent with the purposes of this Act, as finan-

1 cial in nature or incidental to activities that are
2 financial in nature:

3 “(I) Lending, exchanging, trans-
4 ferring, investing for others, or safe-
5 guarding financial assets other than
6 money or securities.

7 “(II) Providing any device or
8 other instrumentality for transferring
9 money or other financial assets;

10 “(III) Arranging, effecting, or fa-
11 cilitating financial transactions for the
12 account of third parties.

13 “(5) NOTIFICATION.—

14 “(A) COMMENCEMENT OF NEW ACTIV-
15 ITY.—A bank holding company that commences
16 any activity pursuant to this subsection shall
17 provide written notice to the Board describing
18 the activity commenced or conducted by the
19 company acquired no later than 30 calendar
20 days after commencing the activity or con-
21 summing the acquisition.

22 “(B) NOTICE REQUIRED FOR ACQUI-
23 TIONS.—

24 “(i) IN GENERAL.—At least 12 busi-
25 ness days before acquiring shares or assets

1 of any going concern pursuant to para-
2 graphs (3), (4), or (5), a bank holding
3 company shall provide written notice of the
4 proposal to the Board, unless the Board
5 determines that no notice or a shorter no-
6 tice period is appropriate.

7 “(ii) GROUNDS FOR DISAPPROVAL
8 THE BOARD SHALL NOT APPROVE—

9 “(I) any acquisition which would
10 result in a monopoly, or which would
11 be in furtherance of any combination
12 or conspiracy to monopolize or at-
13 tempt to monopolize the business of
14 financial intermediation in any part of
15 the United States, or

16 “(II) any other proposed acquisi-
17 tion whose effect in any section of the
18 country may be substantially to lessen
19 competition, or to tend to create a
20 monopoly, or which in any other man-
21 ner would be in restraint of trade, un-
22 less it finds that the anticompetitive
23 effects of the proposed transaction are
24 clearly outweighed in the public inter-
25 est by the probable effect of the trans-

1 action in meeting the convenience and
2 needs of the community to be served.

3 “(iii) ADDITIONAL INFORMATION AND
4 EXTENSION OF PERIOD.—Before the expi-
5 ration of the 12-day period referred to in
6 clause (i), the Board may require the sub-
7 mission of additional information and may
8 extend the 12-day period for no more than
9 60 calendar days to consider such addi-
10 tional information.

11 “(iv) DISAPPROVAL BEFORE END OF
12 PERIOD.—If, at the end of the 12-day pe-
13 riod referred to in clause (i) or the end of
14 any extension of such period pursuant to
15 clause (iii), as the case may be, the Board
16 has not issued an order disapproving the
17 notice, the notice shall be deemed ap-
18 proved.”

19 “(C) APPROVAL NOT REQUIRED FOR CER-
20 TAIN FINANCIAL ACTIVITIES.—Except as pro-
21 vided in subsection (j) with regard to the acqui-
22 sition of a savings association, a bank holding
23 company may commence any activity pursuant
24 to paragraph (3) or any regulation prescribed

1 under paragraph (4), without prior approval of
2 the Board.

3 “(1) CONDITIONS FOR ENGAGING IN BROAD RANGE
4 OF FINANCIAL ACTIVITIES.—Notwithstanding subsection
5 (k), a bank holding company may not engage in any activ-
6 ity, or directly or indirectly acquire or retain shares of any
7 company engaged in any activity, under subsection (k),
8 other than activities permissible for a bank holding com-
9 pany under subsection (c)(8), unless the bank holding
10 company meets the following requirements:

11 “(1) All of the subsidiary depository institutions
12 of the bank holding company are well capitalized, as
13 determined pursuant to section 38 of the Federal
14 Deposit Insurance Act.

15 “(2) All of the subsidiary depository institutions
16 of the bank holding company are well managed, as
17 determined by the appropriate Federal banking
18 agency.

19 “(3) All of the subsidiary depository institutions
20 of the bank holding company have achieved a rating
21 of ‘satisfactory record of meeting community credit
22 needs’, or better, at the most recent examination of
23 each such institution under the Community Rein-
24 vestment Act of 1977.

25 “(4) The company has filed with the Board—

1 “(A) a declaration that the company elects
2 to engage in activities or acquire and retain
3 shares of a company which were not permissible
4 for a bank holding company to engage in or ac-
5 quire before the enactment of the Financial
6 Services Modernization Act; and

7 “(B) a certification that the company
8 meets the requirements of paragraphs (1), (2),
9 and (3).

10 “(m) PROVISIONS APPLICABLE TO BANK HOLDING
11 COMPANIES THAT FAIL TO MEET CERTAIN REQUIRE-
12 MENTS.—

13 “(1) IN GENERAL.—If—

14 “(A) a bank holding company is engaged,
15 directly or indirectly, in any activity under sub-
16 section (k), other than activities permissible for
17 a bank holding company under subsection
18 (c)(8); and

19 “(B) such company is not in compliance
20 with the requirements of subsection (l),
21 the Board shall give notice to the company to that
22 effect, describing the conditions giving rise to the
23 notice.

24 “(2) AGREEMENT TO CORRECT CONDITIONS RE-
25 QUIRED.—Within 45 days of receipt by a bank hold-

1 ing company of a notice given under paragraph (1)
2 (or such additional period as the Board may per-
3 mit), the company shall execute an agreement with
4 the Board to comply with the requirements applica-
5 ble to a bank holding company under subsection (l).

6 “(3) APPROPRIATE FEDERAL BANKING AGENCY
7 MAY IMPOSE LIMITATIONS.—Until the conditions de-
8 scribed in a notice to a bank holding company under
9 paragraph (1) are corrected, the appropriate Federal
10 banking agency may impose such limitations on the
11 conduct or activities of the company or any affiliate
12 of the company as the agency determines to be ap-
13 propriate under the circumstances.

14 “(4) FAILURE TO CORRECT.—If the conditions
15 described in a notice to a bank holding company
16 under paragraph (1) are not corrected within 180
17 days after receipt by the company of notice under
18 paragraph (1), the Board may require such com-
19 pany, under such terms and conditions as may be
20 imposed by the Board and subject to such extension
21 of time as may be granted in the Board’s discretion,
22 either—

23 “(A) to divest control of any subsidiary in-
24 sured depository institutions; or

1 “(B) to cease to engage in any activity
2 conducted by such company or its subsidiaries
3 (other than a depository institution or a sub-
4 sidiary of a depository institution) that is not
5 an activity that is permissible for a bank hold-
6 ing company under subsection (c)(8).”.

7 (b) FINANCIAL ACTIVITIES OF BANK HOLDING COM-
8 PANIES INELIGIBLE FOR SUBSECTION (k) POWERS.—

9 (1) IN GENERAL.—Section 4(c)(8) of the Bank
10 Holding Company Act of 1956 (12 U.S.C.
11 1843(c)(8)) is amended to read as follows:

12 “(8) shares of any company the activities of
13 which had been determined by the Board by regula-
14 tion under this paragraph as of the day before the
15 date of the enactment of the Financial Services
16 Modernization Act, to be so closely related to bank-
17 ing as to be a proper incident thereto (subject to
18 such terms and conditions contained in such regula-
19 tion, unless modified by the Board);”.

20 (2) CONFORMING CHANGES TO OTHER STAT-
21 UTES.—

22 (A) AMENDMENT TO THE BANK HOLDING
23 COMPANY ACT AMENDMENTS OF 1970.—Section
24 105 of the Bank Holding Company Act Amend-
25 ments of 1970 (12 U.S.C. 1850) is amended by

1 striking “, to engage directly or indirectly in a
 2 nonbanking activity pursuant to section 4 of
 3 such Act,”.

4 (B) AMENDMENTS TO THE HOMEOWNERS
 5 LOAN ACT.—

6 (i) Section 10(c)(2)(F)(i) of the Home
 7 Owners Loan Act is amended—

8 (I) by inserting “is permitted for
 9 bank holding companies under sub-
 10 sections (c) or (k) of section 4 of the
 11 Bank Holding company Act of 1956,
 12 or which” after “(i) which”; and

13 (II) by striking “section 4(c)”
 14 and inserting “such subsections”.

15 (ii) Section 10(o)(5) of the Home
 16 Owners Loan Act is amended by striking
 17 “, except subparagraph (B)”.

18 **SEC. 103. LIMITED NONFINANCIAL ACTIVITIES AND AFFILI-**
 19 **ATIONS PERMITTED.**

20 Section 4 of the Bank Holding Company Act of 1956
 21 (12 U.S.C. 1843) is amended by inserting after subsection
 22 (m) (as added by section 3(a) of this Act) the following
 23 new subsection:

24 “(n) NONFINANCIAL ACTIVITIES.—

1 “(1) IN GENERAL.—Notwithstanding subsection
2 (a), a bank holding company may engage in activi-
3 ties which are not (or have not been determined to
4 be) financial in nature or incidental to activities
5 which are financial in nature, or acquire and retain
6 ownership and control of the shares of a company
7 engaged in such activities, if—

8 “(A) the aggregate annual gross revenues
9 derived from all such activities and all such
10 companies does not exceed 15 percent of the
11 consolidated annual gross revenues of the bank
12 holding company;

13 “(B) the consolidated total assets of any
14 company the shares of which are acquired by
15 the bank holding company pursuant to this
16 paragraph are less than \$750,000,000 at the
17 time the shares are acquired by the holding
18 company; and

19 “(C) the holding company provides notice
20 to the Board within 30 days of commencing the
21 activity or acquiring the ownership or control.

22 “(2) FOREIGN BANKS.—In lieu of the limitation
23 contained in paragraph (1)(A) in the case of a for-
24 eign bank or a company that owns or controls a for-
25 eign bank which engages in any activity or acquires

1 or retains ownership or control of shares of any
2 company pursuant to paragraph (1), the aggregate
3 annual gross revenues derived from all such activi-
4 ties and all such companies in the United States
5 shall not exceed 15 percent of the consolidated an-
6 nual gross revenues of the foreign bank or company
7 in the United States derived from any branch, agen-
8 cy, commercial lending company, or depository insti-
9 tution controlled by the foreign bank or company
10 and any subsidiary engaged in the United States in
11 activities permissible under this section.

12 “(3) NONAPPLICABILITY OF OTHER EXEMP-
13 TION.—Any foreign bank or company that owns or
14 controls a foreign bank which engages in any activi-
15 ty or acquires or retains ownership or control of
16 shares of any company pursuant to this subsection
17 shall not be eligible for any exception described in
18 section 2(h).

19 “(4) TRANSACTIONS WITH NONFINANCIAL AF-
20 FILLATES.—An insured depository institution con-
21 trolled by a bank holding company may not engage
22 in a covered transaction (as defined by section
23 23A(b)(7) of the Federal Reserve Act) with any af-
24 filiate controlled by the company pursuant to this

1 subsection or subparagraph (H) or (I) of subsection
2 (k)(3).”.

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

4 (a) AFFILIATIONS.—

5 (1) IN GENERAL.—Except as provided in para-
6 graph (2), no State may, by statute, regulation,
7 order, interpretation, or other action, prevent or re-
8 strict an insured depository institution, or a subsidi-
9 ary or affiliate thereof, from being affiliated directly
10 or indirectly or associated with any person or entity,
11 as authorized or permitted by this Act or any other
12 provision of Federal law.

13 (2) INSURANCE.—With respect to affiliations
14 between insured depository institutions, or any sub-
15 sidiary or affiliate thereof, and persons or entities
16 engaged in the business of insurance, paragraph (1)
17 does not prohibit any State from—

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

1 (i) the name and address of each per-
2 son by whom, or on whose behalf, the af-
3 filiation referred to in this subparagraph is
4 to be effected (hereafter in this subpara-
5 graph referred to as the “acquiring
6 party”);

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

14 (iii) if the acquiring party is not an
15 individual—

16 (I) a report of the nature of its
17 business operations during the 5 years
18 preceding the date of notification, or
19 for such shorter period as such person
20 and any predecessors thereof shall
21 have been in existence;

22 (II) an informative description of
23 the business intended to be done by
24 the acquiring party and any subsidi-
25 ary thereof; and

1 (III) a list of all individuals who
2 are, or who have been selected to be-
3 come, directors or executive officers of
4 the acquiring party or who perform,
5 or will perform, functions appropriate
6 to such positions, including, for each
7 such individual, the information re-
8 quired by clause (ii);

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

21 (v) fully audited financial information
22 as to the earnings and financial condition
23 of each acquiring party for the 5 fiscal
24 years preceding the date of notification of
25 each such acquiring party, or for such less-

1 er period as such acquiring party and any
2 predecessors thereof shall have been in ex-
3 istence, and similar unaudited information
4 as of a date not earlier than 90 days be-
5 fore the date of notification, except that, in
6 the case of an acquiring party that is an
7 insurer actively engaged in the business of
8 insurance, the financial statements of such
9 insurer need not be audited, but such audit
10 may be required if the need therefor is de-
11 termined by the insurance regulatory au-
12 thority of the State;

13 (vi) any plans or proposals that each
14 acquiring party may have to liquidate such
15 insurer, to sell its assets, or to merge or
16 consolidate it with any person or to make
17 any other material change in its business
18 or corporate structure or management;

19 (vii) the number of shares of any se-
20 curity of the insurer that each acquiring
21 party proposes to acquire, the terms of any
22 offer, request, invitation, agreement, or ac-
23 quisition, and a statement as to the meth-
24 od by which the fairness of the proposal
25 was arrived at;

1 (viii) the amount of each class of any
2 security of the insurer that is beneficially
3 owned or concerning which there is a right
4 to acquire beneficial ownership by each ac-
5 quiring party;

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

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

1 (xi) a description of any recommenda-
2 tions to purchase any security of the in-
3 surer made during the 12-month period
4 preceding the date of notification by any
5 acquiring party or by any person based
6 upon interviews or at the suggestion of
7 such acquiring party;

8 (xii) copies of all tender offers for, re-
9 quests or invitations for tenders of, ex-
10 change offers for and agreements to ac-
11 quire or exchange any securities of the in-
12 surer and, if distributed, of additional so-
13 liciting material relating thereto; and

14 (xiii) the terms of any agreement,
15 contract, or understanding made with any
16 broker-dealer as to solicitation of securities
17 of the insurer for tender and the amount
18 of any fees, commissions, or other com-
19 pensation to be paid to broker-dealers with
20 regard thereto;

21 (B) requiring an entity that is acquiring
22 control of an entity that is engaged in the busi-
23 ness of insurance and domiciled in that State to
24 maintain or restore the capital requirements of
25 that insurance entity to the level required under

1 the capital regulations of general applicability
2 in that State to avoid the requirement of pre-
3 paring and filing with the insurance regulatory
4 authority of that State a plan to increase the
5 capital of the entity, except that any determina-
6 tion by the State insurance regulatory authority
7 with respect to such requirement shall be made
8 not later than 60 days after the date of notifi-
9 cation under subparagraph (A);

10 (C) taking actions with respect to the re-
11 ceivership or conservatorship of any insurance
12 company; or

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

20 (3) PRESERVATION OF STATE ANTITRUST AND
21 GENERAL CORPORATE LAWS.—

22 (A) IN GENERAL.—Nothing in paragraph
23 (1) shall be construed as affecting State laws,
24 regulations, orders, interpretations, or other ac-
25 tions of general applicability relating to the gov-

1 ernance of corporations, partnerships, limited li-
2 ability companies or other business associations
3 incorporated or formed under the laws of that
4 State or domiciled in that State, or the applica-
5 bility of the antitrust laws of any State or any
6 State law that is similar to the antitrust laws.

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

13 (b) ACTIVITIES.—

14 (1) IN GENERAL.—Except as provided in para-
15 graphs (2) and (3), no State may, by statute, regu-
16 lation, order, interpretation, or other action, prevent
17 or restrict an insured depository institution or any
18 subsidiary or affiliate of an insured depository insti-
19 tution from engaging directly or indirectly, either by
20 itself or in conjunction with a subsidiary, affiliate, or
21 any other entity or person, in any activity authorized
22 or permitted under this Act.

23 (2) INSURANCE ACTIVITIES OTHER THAN
24 SALES.—State statutes, regulations, interpretations,

1 orders, and other actions shall not be preempted
2 under subsection (b)(1) to the extent that they—

3 (A) relate to, or are issued, adopted, or en-
4 acted for the purpose of regulating the business
5 of insurance in accordance with the Act of
6 March 9, 1945 (commonly known as the
7 “McCarran-Ferguson Act”);

8 (B) apply only to persons or entities that
9 are not insured depository institutions, but that
10 are directly engaged in the business of insur-
11 ance (except that they may apply to depository
12 institutions engaged in providing savings bank
13 life insurance as principal to the extent of regu-
14 lating such insurance);

15 (C) do not relate to or directly or indirectly
16 regulate insurance sales, solicitations, or cross-
17 marketing activities; and

18 (D) are not prohibited under subsection
19 (c).

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

24 (A) it does not relate to, and is not issued
25 and adopted, or enacted for the purpose of reg-

1 ulating, directly or indirectly, insurance sales,
2 solicitations, or cross marketing activities;

3 (B) it does not relate to, and is not issued
4 and adopted, or enacted for the purpose of reg-
5 ulating, directly or indirectly, the business of in-
6 surance activities other than sales, solicitations,
7 or cross marketing activities;

8 (C) it does not relate to securities inves-
9 tigations or enforcement actions referred to in
10 subsection (d); and

11 (D) it—

12 (i) does not distinguish by its terms
13 between insured depository institutions and
14 subsidiaries and affiliates thereof engaged
15 in the activity at issue and other persons
16 or entities engaged in the same activity in
17 a manner that is in any way adverse with
18 respect to the conduct of the activity by
19 any such insured depository institution or
20 subsidiary or affiliate thereof engaged in
21 the activity at issue;

22 (ii) as interpreted or applied, does not
23 have, and will not have, an impact on de-
24 pository institutions or subsidiaries or af-
25 filiates thereof engaged in the activity at

1 issue, or any person or entity affiliated
2 therewith, that is substantially more ad-
3 verse than its impact on other persons or
4 entities engaged in the same activity that
5 are not insured depository institutions, or
6 subsidiaries or affiliates thereof, or persons
7 or entities affiliated therewith;

8 (iii) does not effectively prevent a de-
9 pository institution, or a subsidiary or af-
10 filiate thereof, from engaging in activities
11 authorized or permitted by this Act or any
12 other provision of Federal law; and

13 (iv) does not conflict with the intent
14 of this Act generally to permit affiliations
15 that are authorized or permitted by Fed-
16 eral law.

17 (4) CONSTRUCTION.—No provision of this sub-
18 section shall be construed to limit the applicability of
19 the decision of the Supreme Court in *Barnett Bank*
20 *of Marion County N.A. v. Nelson*, 116 S. Ct. 1103
21 (1996) with respect to a State statute, regulation,
22 order, interpretation, or other action.

23 (c) NONDISCRIMINATION.—No State may, by statute,
24 regulation, order, interpretation, or other action, regulate
25 the insurance activities authorized or permitted under this

1 Act or any other provision of Federal law of an insured
2 depository institution, or a subsidiary or affiliate thereof,
3 to the extent that such statute, regulation, order, interpre-
4 tation, or other action—

5 (1) distinguishes by its terms between insured
6 depository institutions, or subsidiaries or affiliates
7 thereof, and other persons or entities engaged in
8 such activities, in a manner that is in any way ad-
9 verse to any such insured depository institution, or
10 subsidiary or affiliate thereof;

11 (2) as interpreted or applied, has or will have
12 an impact on depository institutions, or subsidiaries
13 or affiliates thereof, that is substantially more ad-
14 verse than its impact on other persons or entities
15 providing the same products or services or engaged
16 in the same activities that are not insured depository
17 institutions, or subsidiaries or affiliates thereof, or
18 persons or entities affiliated therewith;

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

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

1 institutions, or subsidiaries or affiliates thereof, and
2 persons and entities engaged in the business of in-
3 surance.

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

12 (e) DEFINITION.—For purposes of this section, the
13 term “State” means any State of the United States, the
14 District of Columbia, any territory of the United States,
15 Puerto Rico, Guam, American Samoa, the Trust Territory
16 of the Pacific Islands, the Virgin Islands, and the North-
17 ern Mariana Islands.

18 **SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHOR-**
19 **IZED.**

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

23 “(2) REGULATIONS.—A bank holding company
24 organized as a mutual holding company shall be reg-
25 ulated on terms, and shall be subject to limitations,

1 comparable to those applicable to any other bank
2 holding company.”.

3 **SEC. 106. AMENDMENTS RELATING TO LIMITED PURPOSE**
4 **BANKS.**

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

7 (1) in paragraph (2)(A)(ii)—

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

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

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

14 “(XI) consumer loan assets that
15 are derived from, or are incidental to,
16 activities in which institutions de-
17 scribed in subparagraph (F) or (H) of
18 section 2(c)(2) are permitted to en-
19 gage,”;

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

22 “(B) any bank subsidiary of such company
23 engages in any activity in which the bank was
24 not lawfully engaged as of March 5, 1987, un-

1 less the bank is well managed and well capital-
2 ized;

3 “(C) any bank subsidiary of such company
4 both—

5 “(i) accepts demand deposits or de-
6 posits that the depositor may withdraw by
7 check or similar means for payment to
8 third parties; and

9 “(ii) engages in the business of mak-
10 ing commercial loans (and, for purposes of
11 this clause, loans made in the ordinary
12 course of a credit card operation shall not
13 be treated as commercial loans); or

14 “(D) after the date of the enactment of the
15 Competitive Equality Amendments of 1987, any
16 bank subsidiary of such company permits any
17 overdraft (including any intraday overdraft), or
18 incurs any such overdraft in such bank’s ac-
19 count at a Federal reserve bank, on behalf of
20 an affiliate, other than an overdraft described
21 in paragraph (3).”; and

22 (3) by striking paragraphs (3) and (4) and in-
23 serting the following new paragraphs:

1 “(3) PERMISSIBLE OVERDRAFTS DESCRIBED.—

2 For purposes of paragraph (2)(D), an overdraft is
3 described in this paragraph if—

4 “(A) such overdraft results from an inad-
5 vertent computer or accounting error that is be-
6 yond the control of both the bank and the affili-
7 ate; or

8 “(B) such overdraft—

9 “(i) is permitted or incurred on behalf
10 of an affiliate which is monitored by, re-
11 ports to, and is recognized as a primary
12 dealer by the Federal Reserve Bank of
13 New York; and

14 “(ii) is fully secured, as required by
15 the Board, by bonds, notes, or other obli-
16 gations which are direct obligations of the
17 United States or on which the principal
18 and interest are fully guaranteed by the
19 United States or by securities and obliga-
20 tions eligible for settlement on the Federal
21 Reserve book entry system.

22 “(4) DIVESTITURE IN CASE OF LOSS OF EX-
23 EMPTION.—If any company described in paragraph
24 (1) fails to qualify for the exemption provided under
25 such paragraph by operation of paragraph (2), such

1 exemption shall cease to apply to such company and
2 such company shall divest control of each bank it
3 controls before the end of the 180-day period begin-
4 ning on the date that the company receives notice
5 from the Board that the company has failed to con-
6 tinue to qualify for such exemption, unless before
7 the end of such 180-day period, the company has—

8 “(A) corrected the condition or ceased the
9 activity that caused the company to fail to con-
10 tinue to qualify for the exemption; and

11 “(B) implemented procedures that are rea-
12 sonably adapted to avoid the reoccurrence of
13 such condition or activity.”.

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

1 **Subtitle B—Streamlining Super-**
2 **vision of Bank Holding Compa-**
3 **nies**

4 **SEC. 111. STREAMLINING BANK HOLDING COMPANY SU-**
5 **PERVISION.**

6 Section 5(c) of the Bank Holding Company Act of
7 1956 (12 U.S.C. 1844(c)) is amended to read as follows:

8 “(c) REPORTS AND EXAMINATIONS.—

9 “(1) REPORTS.—

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

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

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

23 “(B) USE OF EXISTING REPORTS.—

24 “(i) IN GENERAL.—The Board shall,
25 to the fullest extent possible, accept re-

1 ports in fulfillment of the Board’s report-
2 ing requirements under this paragraph
3 that a bank holding company or any sub-
4 sidiary of such company has provided or
5 been required to provide to other Federal
6 and State supervisors or to appropriate
7 self-regulatory organizations.

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

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

21 “(iv) REPORTS FILED WITH OTHER
22 AGENCIES.—In the event the Board re-
23 quires a report from a functionally regu-
24 lated nondepository institution subsidiary
25 of a bank holding company of a kind that

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

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

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

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

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

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

9 “(2) EXAMINATIONS.—

10 “(A) EXAMINATION AUTHORITY.—

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

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

22 “(I) the Board has reasonable
23 cause to believe that such subsidiary
24 is engaged in activities that pose a

1 material risk to an affiliated depository institution, or

2
3 “(II) based on reports and other
4 available information, the Board has
5 reasonable cause to believe that a subsidiary is not in compliance with this
6 Act or with provisions relating to
7 transactions with an affiliated depository institution and the Board cannot
8 make such determination through examination of the affiliated depository
9 institution or bank holding company.
10
11
12

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

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

23 “(ii) inform the Board of—

24 “(I) the financial and operational
25 risks within the holding company sys-

1 tem that may pose a threat to the
2 safety and soundness of any subsidi-
3 ary depository institution of such
4 holding company; and

5 “(II) the systems for monitoring
6 and controlling such risks; and

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

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

16 “(i) the bank holding company; and

17 “(ii) any subsidiary of the holding
18 company that, because of—

19 “(I) the size, condition, or activi-
20 ties of the subsidiary;

21 “(II) the nature or size of trans-
22 actions between such subsidiary and
23 any depository institution which is
24 also a subsidiary of such holding com-
25 pany; or

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

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

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

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

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

24 “(ii) any registered investment adviser
25 properly registered by or on behalf of ei-

1 ther the Securities and Exchange Commis-
2 sion or any State;

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

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

10 “(3) CAPITAL.—

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

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

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

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

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.”.

1 **SEC. 112. AUTHORITY OF STATE INSURANCE REGULATOR**
2 **AND SECURITIES AND EXCHANGE COMMIS-**
3 **SION.**

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

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

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

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

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

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

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

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

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

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

1 gard to a bank holding company or affiliate referred
2 to in such paragraph, the Board may order the bank
3 holding company to divest the insured depository in-
4 stitution within 180 days of receiving notice or such
5 longer period as the Board determines consistent
6 with the safe and sound operation of the insured de-
7 pository institution.

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

19 **SEC. 113. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-**
20 **PERVISORY, AND ENFORCEMENT AUTHORITY**
21 **OF THE BOARD.**

22 The Bank Holding Company Act of 1956 (12 U.S.C.
23 1841 et seq.) is amended by inserting after section 10 the
24 following new section:

1 **“SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-**
2 **PERVISORY, AND ENFORCEMENT AUTHORITY**
3 **OF THE BOARD.**

4 “(a) LIMITATION ON DIRECT ACTION.—

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

16 “(A) the financial safety, soundness, or
17 stability of an affiliated depository institution;
18 or

19 “(B) the domestic or international pay-
20 ment system.

21 “(2) CRITERIA FOR BOARD ACTION.—The
22 Board shall not take action otherwise permitted
23 under paragraph (1) unless the Board finds that it
24 is not reasonably possible to effectively protect
25 against the material risk at issue through action di-

1 rected at or against the affiliated depository institu-
2 tion or against depository institutions generally.

3 “(b) LIMITATION ON INDIRECT ACTION.—The Board
4 may not prescribe regulations, issue or seek entry of or-
5 ders, impose restraints, restrictions, guidelines, require-
6 ments, safeguards, or standards, or otherwise take any ac-
7 tion under or pursuant to any provision of this Act or sec-
8 tion 8 of the Federal Deposit Insurance Act against or
9 with respect to a bank holding company where the purpose
10 or effect of doing so would be to take action indirectly
11 against or with respect to a regulated subsidiary that may
12 not be taken directly against or with respect to such sub-
13 sidiary in accordance with subsection (a).

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

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

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

1 “(2) an investment adviser registered under the
2 Investment Advisers Act of 1940, with respect to the
3 investment advisory activities of such investment ad-
4 viser and activities incidental to such investment ad-
5 visory activities;

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

8 “(4) an insurance company or an insurance
9 agency subject to supervision by a State insurance
10 commission, agency, or similar authority; or

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

15 **SEC. 114. EXAMINATION OF INVESTMENT COMPANIES.**

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

17 (1) **IN GENERAL.**—Except as provided in para-
18 graph (3), the Commission shall be the sole Federal
19 agency with authority to inspect and examine any
20 registered investment company that is not a bank
21 holding company or a savings and loan holding com-
22 pany.

23 (2) **PROHIBITION ON BANKING AGENCIES.**—Ex-
24 cept as provided in paragraph (3), a Federal bank-
25 ing agency may not inspect or examine any reg-

1 istered investment company that is not a bank hold-
2 ing company or a savings and loan holding company.

3 (3) CERTAIN EXAMINATIONS AUTHORIZED.—

4 Nothing in this subsection prevents the Federal De-
5 posit Insurance Corporation, if the Corporation finds
6 it necessary to determine the condition of an insured
7 depository institution for insurance purposes, from
8 examining an affiliate of any insured depository in-
9 stitution, pursuant to its authority under section
10 10(b)(4) of the Federal Deposit Insurance Act, as
11 may be necessary to disclose fully the relationship
12 between the depository institution and the affiliate,
13 and the effect of such relationship on the depository
14 institution.

15 (b) EXAMINATION RESULTS AND OTHER INFORMA-

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

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

24 (1) BANK HOLDING COMPANY.—The term

25 “bank holding company” has the same meaning as

1 in section 2 of the Bank Holding Company Act of
2 1956.

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

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

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

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

16 **SEC. 115. EQUIVALENT REGULATION AND SUPERVISION.**

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

19 (1) section 5(c) of the Bank Holding Company
20 Act of 1956 (as amended by this Act) that limit the
21 authority of the Board of Governors of the Federal
22 Reserve System to require reports from, to make ex-
23 aminations of, or to impose capital requirements on
24 bank holding companies and their nonbank subsidi-
25 aries; and

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

15 (b) CERTAIN EXAMINATIONS AUTHORIZED.—Noth-
16 ing in this section shall prevent the Federal Deposit Insur-
17 ance Corporation, if the Corporation finds it necessary to
18 determine the condition of an insured depository institu-
19 tion for insurance purposes, from examining an affiliate
20 of any insured depository institution, pursuant to its au-
21 thority under section 10(b)(4) of the Federal Deposit In-
22 surance Act, as may be necessary to disclose fully the rela-
23 tionship between the depository institution and the affili-
24 ate, and the effect of such relationship on the depository
25 institution.

1 **Subtitle C—Subsidiaries of**
2 **National Banks**

3 **SEC. 121. SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED**
4 **TO ENGAGE IN FINANCIAL ACTIVITIES.**

5 Chapter one of title LXII of the revised statutes of
6 United States (12 U.S.C. 21 et seq.) is amended—

- 7 (1) by redesignating section 5136A (12 U.S.C.
8 25a) as section 5136C; and
9 (2) by inserting after section 5136 (12 U.S.C.
10 24) the following new section:

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

12 “(a) **ACTIVITIES PERMISSIBLE.—**

13 “(1) **IN GENERAL.—**A subsidiary of a national
14 bank may—

15 “(A) engage in any activity that is permis-
16 sible for the parent national bank; and

17 “(B) engage in any activity permissible for
18 a bank holding company under any provision of
19 section 4(k) of the Bank Holding Company Act
20 of 1956 other than—

21 “(i) paragraph (3)(B) of such section
22 (relating to insurance activities) insofar as
23 such paragraph permits a bank holding
24 company to engage as principal in insur-
25 ing, guaranteeing, or indemnifying against

1 loss, harm, damage, illness, disability, or
2 death, on in providing or issuing annuities;
3 and

4 “(ii) paragraph (3)(I) of such section
5 (relating to insurance company invest-
6 ments).

7 “(2) LIMITATIONS.—A subsidiary of a national
8 bank—

9 “(A) may not, pursuant to subparagraph
10 (C) of paragraph (1)—

11 “(i) underwrite insurance other than
12 credit-related insurance;

13 “(ii) engage in real estate investment
14 or development activities (except to the ex-
15 tent that a Federal statute expressly au-
16 thorizes a national bank to engage directly
17 in such an activity); and

18 “(B) may not engage in any activity
19 not permissible under paragraph (1).

20 “(b) REQUIREMENTS APPLICABLE TO NATIONAL
21 BANKS WITH FINANCIAL SUBSIDIARIES.—

22 “(1) IN GENERAL.—A financial subsidiary of a
23 national bank may engage in activities pursuant to
24 subsection (a)(1)(C) only if—

1 “(A) the national bank is well capitalized,
2 is well managed, and achieved the rating de-
3 scribed in section 4(1)(3) of the Bank Holding
4 Company Act of 1956 during the most recent
5 examination of the bank by the Comptroller of
6 the Currency;

7 “(B) each insured depository institution
8 affiliate of the national bank is well capitalized,
9 is well managed, and achieved the rating de-
10 scribed in section 4(1)(3) of the Bank Holding
11 Company Act of 1956 during the most recent
12 examination of the institution by the appro-
13 priate Federal banking agency; and

14 “(C) the national bank has received the
15 approval of the Comptroller of the Currency by
16 regulation or order.

17 “(2) CORRECTIVE PROCEDURES.—

18 “(A) IN GENERAL.—The Comptroller of
19 the Currency shall, by regulation prescribe pro-
20 cedures to enforce paragraph (1).

21 “(B) STRINGENCY.—The regulation pre-
22 scribed under subparagraph (A) shall be no less
23 stringent than the corresponding restrictions
24 and requirements of section 4(m) of the Bank
25 Holding Company Act of 1956.

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

3 “(1) AFFILIATE.—The term ‘affiliate’ has the
4 same meaning in section 3 of the Federal Deposit
5 Insurance Act.

6 “(2) FINANCIAL SUBSIDIARY.—The term ‘fi-
7 nancial subsidiary’ means a company that—

8 “(A) is a subsidiary of an insured bank;
9 and

10 “(B) is engaged as principal in any finan-
11 cial activity that is not permissible under sub-
12 paragraph (A) or (B) of subsection (a)(1) of
13 this section.

14 “(3) SUBSIDIARY.—The term ‘subsidiary’ has
15 the same meaning as in section 2 of the Bank Hold-
16 ing Company Act of 1956.

17 “(4) WELL CAPITALIZED.—The term ‘well cap-
18 italized’ has the same meaning as in section 38 of
19 the Federal Deposit Insurance Act.

20 “(5) WELL MANAGED.—The term ‘well man-
21 aged’ means—

22 “(A) in the case of an insured depository
23 institution that has been examined, the achieve-
24 ment of—

1 (1) to protect the safety and soundness of any
2 insured bank that has a financial subsidiary;

3 (2) to apply to any transaction between the
4 bank and the financial subsidiary (including a loan,
5 extension of credit, guarantee, or purchase of as-
6 sets), other than an equity investment, the same re-
7 strictions and requirements as would apply if the fi-
8 nancial subsidiary were a subsidiary of a bank hold-
9 ing company having control of the bank; and

10 (3) to apply to any equity investment of the
11 bank in the financial subsidiary restrictions and re-
12 quirements equivalent to those that would apply if—

13 (A) the bank paid a dividend in the same
14 dollar amount to a bank holding company hav-
15 ing control of the bank; and

16 (B) the bank holding company used the
17 proceeds of the dividend to make an equity in-
18 vestment in a subsidiary that was engaged in
19 the same activities as the financial subsidiary of
20 the bank.

21 (b) SAFETY AND SOUNDNESS FIREWALLS APPLICA-
22 BLE TO SUBSIDIARIES OF BANKS.—The Federal Deposit
23 Insurance Act (12 U.S.C. 1811 et seq.) is amended by
24 adding at the end the following new section:

1 **“SEC. 45. SAFETY AND SOUNDNESS FIREWALLS APPLICA-**
2 **BLE TO SUBSIDIARIES OF BANKS.**

3 “(a) **LIMITING THE EQUITY INVESTMENT OF A BANK**
4 **IN A SUBSIDIARY.—**

5 “(1) **CAPITAL DEDUCTION.—**In determining
6 whether an insured bank complies with applicable
7 regulatory capital standards—

8 “(A) the appropriate Federal banking
9 agency shall deduct from the assets and tan-
10 gible equity of the bank the aggregate amount
11 of the outstanding equity investments of the
12 bank in financial subsidiaries of the bank; and

13 “(B) the assets and liabilities of such fi-
14 nancial subsidiaries shall not be consolidated
15 with those of the bank.

16 “(2) **INVESTMENT LIMITATION.—**An insured
17 bank shall not, without the prior approval of the ap-
18 propriate Federal banking agency, make any equity
19 investment in a financial subsidiary of the bank if
20 that investment would, when made, exceed the
21 amount that the bank could pay as a dividend with-
22 out obtaining prior regulatory approval.

23 “(b) **OPERATIONAL AND FINANCIAL SAFEGUARDS**
24 **FOR THE BANK.—**An insured bank that has a financial
25 subsidiary shall maintain procedures for identifying and

1 managing any financial and operational risks posed by the
2 financial subsidiary.

3 “(c) MAINTENANCE OF SEPARATE CORPORATE
4 IDENTITY AND SEPARATE LEGAL STATUS.—

5 “(1) IN GENERAL.—Each insured bank shall
6 ensure that the bank maintains and complies with
7 reasonable policies and procedures to preserve the
8 separate corporate identity and legal status of the
9 bank and any financial subsidiary or affiliate of the
10 bank.

11 “(2) EXAMINATIONS.—The appropriate Federal
12 banking agency, as part of each examination, shall
13 review whether an insured bank is observing the sep-
14 arate corporate identity and separate legal status of
15 any subsidiaries and affiliates of the bank.

16 “(d) FINANCIAL SUBSIDIARY DEFINED.—For pur-
17 poses of this section, the term ‘financial subsidiary’ has
18 the same meaning as section 5136A(c)(2)(B) of the Re-
19 vised Statutes of the United States.

20 “(e) REGULATIONS.—The appropriate Federal bank-
21 ing agencies shall jointly prescribe regulations implement-
22 ing this section.”.

23 (c) LIMITING A BANK’S CREDIT EXPOSURE TO A FI-
24 NANCIAL SUBSIDIARY TO THE AMOUNT OF PERMISSIBLE

1 CREDIT EXPOSURE TO AN AFFILIATE.—Section 23A of
2 the Federal Reserve Act (12 U.S.C. 371c) is amended—

3 (1) by redesignating subsection (e) as sub-
4 section (f); and

5 (2) by inserting after subsection (d), the follow-
6 ing new subsection:

7 “(e) RULES RELATING TO BANKS WITH FINANCIAL
8 SUBSIDIARIES.—

9 “(1) FINANCIAL SUBSIDIARY DEFINED.—For
10 purposes of this section and section 23B, the term
11 ‘financial subsidiary’ has the same meaning as sec-
12 tion 5136A(c)(2)(B) of the revised statutes of the
13 United States.

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

23 “(A) the financial subsidiary of the bank—

24 “(i) shall be deemed to be an affiliate
25 of the bank and of any other subsidiary of

1 the bank that is not a financial subsidiary;
2 and

3 “(ii) shall not be deemed a subsidiary
4 of the bank; and

5 “(B) a purchase of or investment in equity
6 securities issued by the financial subsidiary
7 shall not be deemed to be a covered transaction.

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

11 “(A) IN GENERAL.—A transaction between
12 a financial subsidiary and an affiliate of the fi-
13 nancial subsidiary (that is not a subsidiary of
14 a bank) shall not be deemed to be a transaction
15 between a subsidiary of a bank and an affiliate
16 of the bank for purposes of section 23A or sec-
17 tion 23B of this Act.

18 “(B) CERTAIN AFFILIATES EXCLUDED.—
19 For purposes of this paragraph, the term ‘affili-
20 ate’ shall not include a bank, or a subsidiary of
21 a bank that is engaged exclusively in activities
22 permissible for a national bank to engage in di-
23 rectly or activities described in clause (ii) of
24 paragraph (1)(B).”.

1 **SEC. 123. FUNCTIONAL REGULATION.**

2 (a) PURPOSE.—The purpose of this section is to en-
3 sure that—

4 (1) securities activities conducted in a subsidi-
5 ary of a bank are functionally regulated by the Secu-
6 rities and Exchange Commission to the same extent
7 as if they were conducted in a nondepository subsidi-
8 ary of a bank holding company; and

9 (2) insurance agency and brokerage activities
10 conducted in a subsidiary of a bank are functionally
11 regulated by a State insurance authority to the same
12 extent as if they were conducted in a nondepository
13 subsidiary of a bank holding company.

14 (b) FUNCTIONAL REGULATION OF FINANCIAL SUB-
15 SIDIARIES.—The Federal Deposit Insurance Act (12
16 U.S.C. 1811 et seq.), is amended by inserting after section
17 45 (as added by section 122 of this subtitle) the following
18 new section:

19 **“SEC. 46. FUNCTIONAL REGULATION OF SECURITIES SUB-**
20 **SIDIARIES AND INSURANCE AGENCY SUBSIDI-**
21 **ARIES OF INSURED DEPOSITORY INSTITU-**
22 **TIONS.**

23 “(a) BROKER OR DEALER SUBSIDIARY.—A broker or
24 dealer that is a subsidiary of an insured depository institu-
25 tion shall be subject to regulation under the Securities Ex-

1 change Act of 1934 in the same manner and to the same
2 extent as a broker or dealer that—

3 “(1) is controlled by the same bank holding
4 company as controls the insured depository institu-
5 tion; and

6 “(2) is not an insured depository institution or
7 a subsidiary of an insured depository institution.

8 “(b) INSURANCE AGENCY SUBSIDIARY.—An insur-
9 ance agency or brokerage that is a subsidiary of an in-
10 sured depository institution shall be subject to regulation
11 by a State insurance authority in the same manner and
12 to the same extent as an insurance agency or brokerage
13 that—

14 “(1) is controlled by the same bank holding
15 company as controls the insured depository institu-
16 tion; and

17 “(2) is not an insured depository institution or
18 a subsidiary of an insured depository institution.

19 “(c) DEFINITIONS.—For purposes of this section, the
20 terms ‘broker’ and ‘dealer’ have the same meanings as in
21 section 3 of the Securities Exchange Act of 1934.”.

1 **Subtitle D—Review of Bank**
2 **Mergers and Acquisitions**

3 **SEC. 131. AMENDMENT TO THE BANK HOLDING COMPANY**
4 **ACT OF 1956 TO MODIFY NOTIFICATION AND**
5 **POST-APPROVAL WAITING PERIOD FOR SEC-**
6 **TION 3 TRANSACTIONS.**

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

13 **SEC. 132. INTERAGENCY DATA SHARING.**

14 To the extent not prohibited by other law, the Comp-
15 troller of the Currency, the Director of the Office of Thrift
16 Supervision, the Federal Deposit Insurance Corporation,
17 and the Board of Governors of the Federal Reserve Sys-
18 tem shall make available to the Attorney General and the
19 Federal Trade Commission any data in the possession of
20 any such banking agency that the antitrust agency deems
21 necessary for antitrust review of any transaction requiring
22 notice to any such antitrust agency or the approval of such
23 agency under section 3, 4, or 6 of the Bank Holding Com-
24 pany Act of 1956, section 18(e) of the Federal Deposit
25 Insurance Act, the National Bank Consolidation and

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

3 **SEC. 133. CLARIFICATION OF STATUS OF SUBSIDIARIES**
4 **AND AFFILIATES.**

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

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

21 (c) HART-SCOTT-RODINO AMENDMENT.—Section
22 7A(c)(7) of the Clayton Act (15 U.S.C. 18a(c)) is amend-
23 ed by inserting before the semicolon at the end the follow-
24 ing: “, except that a portion of a transaction is not exempt
25 under this paragraph if such portion of the transaction

1 (A) requires notice under section 4 of the Bank Holding
2 Company Act of 1956; and (B) does not require approval
3 under section 3 or 4 of the Bank Holding Company Act
4 of 1956”.

5 **SEC. 134. ANNUAL GAO REPORT.**

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

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

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

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

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

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

9 **Subtitle E—Direct Activities of** 10 **Banks**

11 **SEC. 141. AUTHORITY OF NATIONAL BANKS TO UNDER-** 12 **WRITE CERTAIN MUNICIPAL BONDS.**

13 The paragraph designated the Seventh of section
14 5136 of the Revised Statutes of the United States (12
15 U.S.C. 24(7)) is amended by adding at the end the follow-
16 ing new sentence: “In addition to the provisions in this
17 paragraph for dealing in, underwriting or purchasing secu-
18 rities, the limitations and restrictions contained in this
19 paragraph as to dealing in, underwriting, and purchasing
20 investment securities for the national bank’s own account
21 shall not apply to obligations (including limited obligation
22 bonds, revenue bonds, and obligations that satisfy the re-
23 quirements of section 142(b)(1) of the Internal Revenue
24 Code of 1986) issued by or on behalf of any state or politi-
25 cal subdivision of a state, including any municipal cor-

1 porate instrumentality of 1 or more states, or any public
 2 agency or authority of any state or political subdivision
 3 of a state, if the national banking association is well cap-
 4 italized (as defined in section 38 of the Federal Deposit
 5 Insurance Act).”.

6 **TITLE II—FUNCTIONAL**
 7 **REGULATION**
 8 **Subtitle A—Brokers and Dealers**

9 **SEC. 201. DEFINITION OF BROKER.**

10 Section 3(a)(4) of the Securities Exchange Act of
 11 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

12 “(4) BROKER.—

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

17 “(B) EXCEPTION FOR CERTAIN BANK AC-
 18 TIVITIES.—A bank shall not be considered to be
 19 a broker because the bank engages in any of
 20 the following activities under the conditions de-
 21 scribed:

22 “(i) THIRD PARTY BROKERAGE AR-
 23 RANGEMENTS.—The bank enters into a
 24 contractual or other arrangement with a
 25 broker or dealer registered under this title

1 under which the broker or dealer offers
2 brokerage services on or off the premises
3 of the bank if—

4 “(I) such broker or dealer is
5 clearly identified as the person per-
6 forming the brokerage services;

7 “(II) the broker or dealer per-
8 forms brokerage services in an area
9 that is clearly marked and, to the ex-
10 tent practicable, physically separate
11 from the routine deposit-taking activi-
12 ties of the bank;

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

21 “(IV) any materials used by the
22 bank to advertise or promote generally
23 the availability of brokerage services
24 under the contractual or other ar-
25 rangement are in compliance with the

1 Federal securities laws before dis-
2 tribution;

3 “(V) bank employees (other than
4 associated persons of a broker or deal-
5 er who are qualified pursuant to the
6 rules of a self-regulatory organization)
7 perform only clerical or ministerial
8 functions in connection with broker-
9 age transactions including scheduling
10 appointments with the associated per-
11 sons of a broker or dealer, except that
12 bank employees may forward cus-
13 tomer funds or securities and may de-
14 scribe in general terms the range of
15 investment vehicles available from the
16 bank and the broker or dealer under
17 the contractual or other arrangement;

18 “(VI) bank employees do not di-
19 rectly receive incentive compensation
20 for any brokerage transaction unless
21 such employees are associated persons
22 of a broker or dealer and are qualified
23 pursuant to the rules of a self-regu-
24 latory organization, except that the
25 bank employees may receive com-

1 compensation for the referral of any cus-
2 tomer if the compensation is a nomi-
3 nal one-time cash fee of a fixed dollar
4 amount and the payment of the fee is
5 not contingent on whether the referral
6 results in a transaction;

7 “(VII) such services are provided
8 by the broker or dealer on a basis in
9 which all customers which receive any
10 services are fully disclosed to the
11 broker or dealer;

12 “(VIII) the bank does not carry
13 a securities account of the customer
14 except in a customary custodian or
15 trustee capacity; and

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

1 “(ii) TRUST ACTIVITIES.—The bank
2 effects transactions in a trustee capacity,
3 or effects transactions in a fiduciary capac-
4 ity in its trust department or other depart-
5 ment that is regularly examined by bank
6 examiners for compliance with fiduciary
7 principles and standards, and (in either
8 case)—

9 “(I) is primarily compensated for
10 such transactions on the basis of an
11 administration or annual fee (payable
12 on a monthly, quarterly, or other
13 basis), a percentage of assets under
14 management, or a flat or capped per
15 order processing fee equal to not more
16 than the cost incurred by the bank in
17 connection with executing securities
18 transactions for trustee and fiduciary
19 customers, or any combination of such
20 fees, consistent with fiduciary prin-
21 ciples and standards; and

22 “(II) does not publicly solicit bro-
23 kerage business, other than by adver-
24 tising that it effects transactions in

1 securities in conjunction with advertis-
2 ing its other trust activities.

3 “(iii) PERMISSIBLE SECURITIES
4 TRANSACTIONS.—The bank effects trans-
5 actions in—

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, in con-
12 formity with section 15C of this title
13 and the rules and regulations there-
14 under, or obligations of the North
15 American Development Bank; or

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

23 “(iv) CERTAIN STOCK PURCHASE
24 PLANS.—

1 “(I) EMPLOYEE BENEFIT
2 PLANS.—The bank effects trans-
3 actions, as part of its transfer agency
4 activities, in the securities of an issuer
5 as part of any pension, retirement,
6 profit-sharing, bonus, thrift, savings,
7 incentive, or other similar benefit plan
8 for the employees of that issuer or its
9 subsidiaries, if—

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

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

20 “(II) DIVIDEND REINVESTMENT
21 PLANS.—The bank effects trans-
22 actions, as part of its transfer agency
23 activities, in the securities of an issuer
24 as part of that issuer’s dividend rein-
25 vestment plan, if—

1 “(aa) the bank does not so-
2 licit transactions or provide in-
3 vestment advice with respect to
4 the purchase or sale of securities
5 in connection with the plan;

6 “(bb) the bank does not net
7 shareholders’ buy and sell orders,
8 other than for programs for odd-
9 lot holders or plans registered
10 with the Commission; and

11 “(cc) the bank’s compensa-
12 tion for such plan or program
13 consists primarily of administra-
14 tion fees, or flat or capped per
15 order processing fees, or both.

16 “(III) ISSUER PLANS.—The bank
17 effects transactions, as part of its
18 transfer agency activities, in the secu-
19 rities of an issuer as part of a plan or
20 program for the purchase or sale of
21 that issuer’s shares, if—

22 “(aa) the bank does not so-
23 licit transactions or provide in-
24 vestment advice with respect to
25 the purchase or sale of securities

1 in connection with the plan or
2 program;

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 “(IV) PERMISSIBLE DELIVERY
14 OF MATERIALS.—The exception to
15 being considered a broker for a bank
16 engaged in activities described in sub-
17 clauses (I), (II), and (III) will not be
18 affected by a bank’s delivery of writ-
19 ten or electronic plan materials to em-
20 ployees of the issuer, shareholders of
21 the issuer, or members of affinity
22 groups of the issuer, so long as such
23 materials are—

24 “(aa) comparable in scope or
25 nature to that permitted by the

1 Commission as of the date of the
2 enactment of the Financial Serv-
3 ices Modernization Act of 1999;
4 or

5 “(bb) otherwise permitted by
6 the Commission.

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

15 “(vi) AFFILIATE TRANSACTIONS.—
16 The bank effects transactions for the ac-
17 count of any affiliate of the bank (as de-
18 fined in section 2 of the Bank Holding
19 Company Act of 1956) other than—

20 “(I) a registered broker or deal-
21 er; or

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

1 “(vii) PRIVATE SECURITIES OFFER-
2 INGS.—The bank—

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

9 “(II) at any time after the date
10 that is 1 year after the date of enact-
11 ment of the Financial Services Mod-
12 ernization Act of 1999, is not affili-
13 ated with a broker or dealer that has
14 been registered for more than 1 year
15 in accordance with this Act, and en-
16 engages in dealing, market making, or
17 underwriting activities, other than
18 with respect to exempted securities;
19 and

20 “(III) effects transactions exclu-
21 sively with qualified investors.

22 “(viii) SAFEKEEPING AND CUSTODY
23 ACTIVITIES.—

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

1 “(aa) provides safekeeping
2 or custody services with respect
3 to securities, including the exer-
4 cise of warrants and other rights
5 on behalf of customers;

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

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

20 “(dd) holds securities
21 pledged by a customer to another
22 person or securities subject to
23 purchase or resale agreements in-
24 volving a customer, or facilitates
25 the pledging or transfer of such

1 securities by book entry or as
2 otherwise provided under applica-
3 ble law.

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

20 “(ix) BANKING PRODUCTS.—The bank
21 effects transactions in traditional banking
22 products, as defined in section 205(a) of
23 the Financial Services Modernization Act
24 of 1999.

1 “(x) DE MINIMIS EXCEPTION.—The
2 bank effects, other than in transactions re-
3 ferred to in clauses (i) through (ix), not
4 more than 500 transactions in securities in
5 any calendar year, and such transactions
6 are not effected by an employee of the
7 bank who is also an employee of a broker
8 or dealer.

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

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

19 “(ii) the trade is a cross trade or
20 other substantially similar trade of a secu-
21 rity that—

22 “(I) is made by the bank or be-
23 tween the bank and an affiliated fidu-
24 ciary; and

1 “(II) is not in contravention of
2 fiduciary principles established under
3 applicable Federal or State law; or

4 “(iii) the trade is conducted in some
5 other manner permitted under rules, regu-
6 lations, or orders as the Commission may
7 prescribe or issue.

8 “(D) NO EFFECT OF BANK EXEMPTIONS
9 ON OTHER COMMISSION AUTHORITY.—The ex-
10 ception to being considered a broker for a bank
11 engaged in activities described in subpara-
12 graphs (B) and (C) shall not affect the author-
13 ity of the Commission under any other provi-
14 sion of this Act or any other securities law.

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

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

1 “(ii) in any capacity in which the
2 bank possesses investment discretion on
3 behalf of another; or

4 “(iii) in any other similar capacity.

5 “(F) EXCEPTION FOR ENTITIES SUBJECT
6 TO SECTION 15(e).—The term ‘broker’ does not
7 include a bank that—

8 “(i) was, immediately prior to the en-
9 actment of the Financial Services Mod-
10 ernization Act of 1999, subject to section
11 15(e); and

12 “(ii) is subject to such restrictions
13 and requirements as the Commission con-
14 siders appropriate.”.

15 **SEC. 202. DEFINITION OF DEALER.**

16 Section 3(a)(5) of the Securities Exchange Act of
17 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

18 “(5) DEALER.—

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

23 “(B) EXCEPTION FOR PERSON NOT EN-
24 GAGED IN THE BUSINESS OF DEALING.—The
25 term ‘dealer’ does not include a person that

1 buys or sells securities for such person's own
2 account, either individually or in a fiduciary ca-
3 pacity, but not as a part of a regular business.

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

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

11 “(I) commercial paper, bankers
12 acceptances, or commercial bills;

13 “(II) exempted securities;

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

22 “(IV) any standardized, credit
23 enhanced debt security issued by a
24 foreign government pursuant to the
25 March 1989 plan of then Secretary of

1 the Treasury Brady, used by such for-
2 eign government to retire outstanding
3 commercial bank loans.

4 “(ii) INVESTMENT, TRUSTEE, AND FI-
5 DUCIARY TRANSACTIONS.—The bank buys
6 or sells securities for investment
7 purposes—

8 “(I) for the bank; or

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

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

23 “(iv) BANKING PRODUCTS.—The bank
24 buys or sells traditional banking products,

1 as defined in section 205(a) of the Finan-
2 cial Services Modernization Act of 1999.

3 “(v) DERIVATIVE INSTRUMENTS.—

4 The bank issues, buys, or sells any deriva-
5 tive instrument to which the bank is a
6 party—

7 “(I) to or from a qualified inves-
8 tor, except that if the instrument pro-
9 vides for the delivery of one or more
10 securities (other than a derivative in-
11 strument or government security), the
12 transaction shall be effected with or
13 through a registered broker or dealer;

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

23 “(III) to or from any person if
24 the instrument is neither a security
25 nor provides for the delivery of one or

1 more securities (other than a deriva-
2 tive instrument).”.

3 **SEC. 203. REGISTRATION FOR SALES OF PRIVATE SECURI-**
4 **TIES OFFERINGS.**

5 Section 15A of the Securities Exchange Act of 1934
6 (15 U.S.C. 78o-3) is amended by inserting after sub-
7 section (i) the following new subsection:

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

19 **SEC. 204. INFORMATION SHARING.**

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

23 “(t) RECORDKEEPING REQUIREMENTS.—

24 “(1) REQUIREMENTS.—Each appropriate Fed-
25 eral banking agency, after consultation with and

1 consideration of the views of the Commission, shall
2 establish recordkeeping requirements for banks rely-
3 ing on exceptions contained in paragraphs (4) and
4 (5) of section 3(a) of the Securities Exchange Act of
5 1934. Such recordkeeping requirements shall be suf-
6 ficient to demonstrate compliance with the terms of
7 such exceptions and be designed to facilitate compli-
8 ance with such exceptions. Each appropriate Federal
9 banking agency shall make any such information
10 available to the Commission upon request.

11 “(2) DEFINITIONS.—As used in this subsection
12 the term ‘Commission’ means the Securities and Ex-
13 change Commission.”.

14 **SEC. 205. DEFINITION AND TREATMENT OF BANKING PROD-**
15 **UCTS.**

16 (a) DEFINITION OF TRADITIONAL BANKING PROD-
17 UCT.—For purposes of paragraphs (4) and (5) of section
18 3(a) of the Securities Exchange Act of 1934 (15 U.S.C.
19 78c(a) (4), (5)), the term “traditional banking product”
20 means—

- 21 (1) a deposit account, savings account, certifi-
22 cate of deposit, or other deposit instrument issued
23 by a bank;
- 24 (2) a banker’s acceptance;

1 (3) a letter of credit issued or loan made by a
2 bank;

3 (4) a debit account at a bank arising from a
4 credit card or similar arrangement;

5 (5) a participation in a loan which the bank or
6 an affiliate of the bank (other than a broker or deal-
7 er) funds, participates in, or owns that is sold—

8 (A) to qualified investors; or

9 (B) to other persons that—

10 (i) have the opportunity to review and
11 assess any material information, including
12 information regarding the borrower's cred-
13 itworthiness; and

14 (ii) based on such factors as financial
15 sophistication, net worth, and knowledge
16 and experience in financial matters, have
17 the capability to evaluate the information
18 available, as determined under generally
19 applicable banking standards or guidelines;
20 and

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

23 (A) foreign currencies, except options on
24 foreign currencies that trade on a national se-
25 curities exchange;

1 (B) interest rates, except interest rate de-
2 rivative instruments that—

3 (i) are based on a security or a group
4 or index of securities (other than govern-
5 ment securities or a group or index of gov-
6 ernment securities);

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

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

12 (C) commodities, other rates, indices, or
13 other assets, except derivative instruments
14 that—

15 (i) are securities or that are based on
16 a group or index of securities (other than
17 government securities or a group or index
18 of government securities);

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

22 (iii) trade on a national securities ex-
23 change.

24 (b) AMENDMENT TO THE SECURITIES EXCHANGE
25 ACT OF 1934.—Section 15 of the Securities Exchange Act

1 of 1934 (15 U.S.C. 78o) is amended by adding at the end
2 the following new subsection:

3 “(i) TRANSACTIONS INVOLVING HYBRID PROD-
4 UCTS.—

5 “(1) COMMISSION AUTHORITY.—

6 “(A) IN GENERAL.—The Commission may,
7 after consultation with the Board, determine,
8 by regulation published in the Federal Register,
9 that a bank that effects transactions in, or buys
10 or sells, a new product should be subject to the
11 registration requirements of this section.

12 “(B) LIMITATION.—The Commission may
13 not impose the registration requirements of this
14 section on any bank that effects transactions in,
15 or buys or sells, a product under this subsection
16 unless the Commission determines in the regu-
17 lations described in subparagraph (A) that—

18 “(i) the subject product is a new prod-
19 uct;

20 “(ii) the subject product is a security;
21 and

22 “(iii) imposing the registration re-
23 quirements of this section is necessary or
24 appropriate in the public interest and for
25 the protection of investors.

1 “(2) OBJECTION TO COMMISSION REGULA-
2 TION.—

3 “(A) FILING OF PETITION FOR REVIEW.—

4 The Board, or any aggrieved party, may obtain
5 review of any final regulation described in para-
6 graph (1) in the United States Court of Ap-
7 peals for the District of Columbia Circuit by fil-
8 ing in such court, not later than 60 days after
9 the date of publication of the final regulation,
10 a written petition requesting that the regulation
11 be set aside.

12 “(B) TRANSMITTAL OF PETITION AND

13 RECORD.—A copy of a petition described in
14 subparagraph (A) shall be transmitted as soon
15 as possible by the Clerk of the Court to an offi-
16 cer or employee of the Commission designated
17 for that purpose. Upon receipt of the petition,
18 the Commission shall file with the court the
19 regulation under review and any documents re-
20 ferred to therein, and any other relevant mate-
21 rials prescribed by the court.

22 “(C) EXCLUSIVE JURISDICTION.—On the

23 date of the filing of the petition under subpara-
24 graph (A), the court has jurisdiction, which be-
25 comes exclusive on the filing of the materials

1 set forth in subparagraph (B), to affirm and
2 enforce or to set aside the regulation at issue.

3 “(D) STANDARD OF REVIEW.—

4 “(i) IN GENERAL.—The court shall
5 determine to affirm and enforce or set
6 aside a regulation of the Commission
7 under this subsection, based on the deter-
8 mination of the court as to whether the
9 subject product—

10 “(I) is a new product, as defined
11 in this subsection;

12 “(II) is a security; and

13 “(III) would be more appro-
14 priately regulated under the Federal
15 securities laws or the Federal banking
16 laws, giving equal deference to the
17 views of the Commission and the
18 Board.

19 “(ii) CONSIDERATIONS.—In making a
20 determination under clause (i)(III), the
21 court shall consider—

22 “(I) the nature of the subject
23 new product;

24 “(II) the history, purpose, extent,
25 and appropriateness of the regulation

1 of the new product under the Federal
2 securities laws; and

3 “(III) the history, purpose, ex-
4 tent, and appropriateness of the regu-
5 lation of the new product under the
6 Federal banking laws.

7 “(E) JUDICIAL STAY.—The filing of a peti-
8 tion by the Board or an aggrieved party pursu-
9 ant to subparagraph (A) shall operate as a judi-
10 cial stay, until the date on which the court
11 makes a final determination under this para-
12 graph, of—

13 “(i) any Commission requirement that
14 a bank register as a broker or dealer under
15 this section, because the bank engages in
16 any transaction in, or buys or sells, the
17 new product that is the subject of the peti-
18 tion; and

19 “(ii) any Commission action against a
20 bank for a failure to comply with a re-
21 quirement described in clause (i).

22 “(3) DEFINITIONS.—For purposes of this
23 subsection—

24 “(A) the term ‘Board’ means the Board of
25 Governors of the Federal Reserve System; and

1 “(B) the term ‘new product’ means a prod-
2 uct or instrument offered or provided by a bank
3 that—

4 “(i) was not subject to regulation by
5 the Commission as a security under this
6 Act before the date of enactment of this
7 subsection; and

8 “(ii) is not a traditional banking prod-
9 uct, as defined in paragraphs (1) through
10 (6) of section 205(a) of the Financial Serv-
11 ices Modernization Act of 1999.”.

12 (c) CLASSIFICATION LIMITED.—Classification of a
13 particular product or instrument as a traditional banking
14 product pursuant to this section or the amendments made
15 by this section shall not be construed as finding or imply-
16 ing that such product or instrument is or is not a security
17 for any purpose under the securities laws, or is or is not
18 an account, agreement, contract, or transaction for any
19 purpose under the Commodity Exchange Act.

20 (d) NO LIMITATION ON OTHER AUTHORITY TO
21 CHALLENGE.—Nothing in this section or the amendments
22 made by this section shall affect the right or authority
23 of the Board of Governors of the Federal Reserve System,
24 any appropriate Federal banking agency, or any interested
25 party under any other provision of law to object to or seek

1 judicial review as to whether a product or instrument is
2 or is not appropriately classified as a traditional banking
3 product under paragraphs (1) through (6) of section
4 205(a).

5 (e) INCORPORATED DEFINITIONS.—For purposes of
6 this section—

7 (1) the term “appropriate Federal banking
8 agency” has the same meaning as in section 3 of the
9 Federal Deposit Insurance Act;

10 (2) the term “bank” has the same meaning as
11 in section 3(a)(6) of the Securities Exchange Act of
12 1934;

13 (3) the term “Board” means the Board of Gov-
14 ernors of the Federal Reserve System;

15 (4) the term “government securities” has the
16 same meaning as in section 3(a)(42) of the Securi-
17 ties Exchange Act of 1934, and, for purposes of this
18 subsection, commercial paper, bankers acceptances,
19 and commercial bills shall be treated in the same
20 manner as government securities; and

21 (5) the term “qualified investor” has the same
22 meaning as in section 3(a)(55) of the Securities Ex-
23 change Act of 1934, as amended by this Act.

1 **SEC. 206. DERIVATIVE INSTRUMENT AND QUALIFIED IN-**
2 **VESTOR DEFINED.**

3 Section 3(a) of the Securities Exchange Act of 1934
4 (15 U.S.C. 78c(a)) is amended by adding at the end the
5 following new paragraphs:

6 “(54) DERIVATIVE INSTRUMENT.—

7 “(A) DEFINITION.—The term ‘derivative
8 instrument’ means any individually negotiated
9 contract, agreement, warrant, note, or option
10 that is based, in whole or in part, on the value
11 of, any interest in, or any quantitative measure
12 or the occurrence of any event relating to, one
13 or more commodities, securities, currencies, in-
14 terest or other rates, indices, or other assets,
15 but does not include a traditional banking prod-
16 uct, as defined in section 205(a) of the Finan-
17 cial Services Modernization Act of 1999.

18 “(B) CLASSIFICATION LIMITED.—Classi-
19 fication of a particular contract as a derivative
20 instrument pursuant to this paragraph shall not
21 be construed as finding or implying that such
22 instrument is or is not a security for any pur-
23 pose under the securities laws, or is or is not
24 an account, agreement, contract, or transaction
25 for any purpose under the Commodity Ex-
26 change Act.

1 “(55) QUALIFIED INVESTOR.—

2 “(A) DEFINITION.—For purposes of this
3 title, the term ‘qualified investor’ means—

4 “(i) any investment company reg-
5 istered with the Commission under section
6 8 of the Investment Company Act of 1940;

7 “(ii) any issuer eligible for an exclu-
8 sion from the definition of investment com-
9 pany pursuant to section 3(c)(7) of the In-
10 vestment Company Act of 1940;

11 “(iii) any bank (as defined in para-
12 graph (6) of this subsection), savings asso-
13 ciation (as defined in section 3(b) of the
14 Federal Deposit Insurance Act), broker,
15 dealer, insurance company (as defined in
16 section 2(a)(13) of the Securities Act of
17 1933), or business development company
18 (as defined in section 2(a)(48) of the In-
19 vestment Company Act of 1940);

20 “(iv) any small business investment
21 company licensed by the United States
22 Small Business Administration under sec-
23 tion 301 (c) or (d) of the Small Business
24 Investment Act of 1958;

1 “(v) any State sponsored employee
2 benefit plan, or any other employee benefit
3 plan, within the meaning of the Employee
4 Retirement Income Security Act of 1974,
5 other than an individual retirement ac-
6 count, if the investment decisions are made
7 by a plan fiduciary, as defined in section
8 3(21) of that Act, which is either a bank,
9 savings and loan association, insurance
10 company, or registered investment adviser;

11 “(vi) any trust whose purchases of se-
12 curities are directed by a person described
13 in clauses (i) through (v) of this subpara-
14 graph;

15 “(vii) any market intermediary ex-
16 empt under section 3(c)(2) of the Invest-
17 ment Company Act of 1940;

18 “(viii) any associated person of a
19 broker or dealer other than a natural per-
20 son;

21 “(ix) any foreign bank (as defined in
22 section 1(b)(7) of the International Bank-
23 ing Act of 1978);

24 “(x) the government of any foreign
25 country;

1 “(xi) any corporation, company, or
2 partnership that owns and invests on a dis-
3 cretionary basis, not less than \$10,000,000
4 in investments;

5 “(xii) any natural person who owns
6 and invests on a discretionary basis, not
7 less than \$10,000,000 in investments;

8 “(xiii) any government or political
9 subdivision, agency, or instrumentality of a
10 government who owns and invests on a dis-
11 cretionary basis not less than \$50,000,000
12 in investments; or

13 “(xiv) any multinational or supra-
14 national entity or any agency or instru-
15 mentality thereof.

16 “(B) ADDITIONAL AUTHORITY.—The Com-
17 mission may, by rule or order, define a ‘quali-
18 fied investor’ as any other person, taking into
19 consideration such factors as the financial so-
20 phistication of the person, net worth, and
21 knowledge and experience in financial mat-
22 ters.”.

23 **SEC. 207. GOVERNMENT SECURITIES DEFINED.**

24 Section 3(a)(42) of the Securities Exchange Act of
25 1934 (15 U.S.C. 78c(a)(42)) is amended—

1 (1) by striking “or” at the end of subparagraph
2 (C);

3 (2) by striking the period at the end of sub-
4 paragraph (D) and inserting “; or”; and

5 (3) by adding at the end the following new sub-
6 paragraph:

7 “(E) for purposes of section 15C as ap-
8 plied to a bank, a qualified Canadian govern-
9 ment obligation as defined in section 5136 of
10 the Revised Statutes.”.

11 **SEC. 208. EFFECTIVE DATE.**

12 This subtitle shall take effect at the end of the 270-
13 day period beginning on the date of the enactment of this
14 Act.

15 **SEC. 209. RULE OF CONSTRUCTION.**

16 Nothing in this Act shall supersede, affect, or other-
17 wise limit the scope and applicability of the Commodity
18 Exchange Act (7 U.S.C. 1 et seq.).

19 **Subtitle B—Bank Investment**
20 **Company Activities**

21 **SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY**
22 **AFFILIATED BANK.**

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

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

3 (2) by striking “(f) Every registered” and in-
4 serting the following:

5 “(f) CUSTODY OF SECURITIES.—

6 “(1) Every registered”;

7 (3) by redesignating the second, third, fourth,
8 and fifth sentences of such subsection as paragraphs
9 (2) through (5), respectively, and indenting the left
10 margin of such paragraphs appropriately; and

11 (4) by adding at the end the following new
12 paragraph:

13 “(6) SERVICES AS TRUSTEE OR CUSTODIAN.—

14 The Commission may adopt rules and regulations,
15 and issue orders, consistent with the protection of
16 investors, prescribing the conditions under which a
17 bank, or an affiliated person of a bank, either of
18 which is an affiliated person, promoter, organizer, or
19 sponsor of, or principal underwriter for, a registered
20 management company may serve as custodian of
21 that registered management company.”.

22 (b) UNIT INVESTMENT TRUSTS.—Section 26 of the
23 Investment Company Act of 1940 (15 U.S.C. 80a–26) is
24 amended—

1 (1) by striking “or” at the end of paragraph
2 (2);

3 (2) by striking the period at the end of para-
4 graph (3) and inserting “; or”; and

5 (3) by adding at the end the following new
6 paragraph:

7 “(4) to loan money or other property to such
8 registered company, or to any company controlled by
9 such registered company, in contravention of such
10 rules, regulations, or orders as the Commission may
11 prescribe or issue consistent with the protection of
12 investors.”.

13 **SEC. 213. INDEPENDENT DIRECTORS.**

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

17 (1) by striking clause (v) and inserting the fol-
18 lowing new clause:

19 “(v) any person or any affiliated per-
20 son of a person (other than a registered in-
21 vestment company) that, at any time dur-
22 ing the 6-month period preceding the date
23 of the determination of whether that per-
24 son or affiliated person is an interested
25 person, has executed any portfolio trans-

1 actions for, engaged in any principal trans-
2 actions with, or distributed shares for—

3 “(I) the investment company;

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

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

14 (2) by redesignating clause (vi) as clause (vii);

15 and

16 (3) by inserting after clause (v) the following
17 new clause:

18 “(vi) any person or any affiliated per-
19 son of a person (other than a registered in-
20 vestment company) that, at any time dur-
21 ing the 6-month period preceding the date
22 of the determination of whether that per-
23 son or affiliated person is an interested
24 person, has loaned money or other prop-
25 erty to—

1 “(I) the investment company;

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

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

11 (b) CONFORMING AMENDMENT.—Section
12 2(a)(19)(B) of the Investment Company Act of 1940 (15
13 U.S.C. 80a-2(a)(19)(B)) is amended—

14 (1) by striking clause (v) and inserting the fol-
15 lowing new clause:

16 “(v) any person or any affiliated per-
17 son of a person (other than a registered in-
18 vestment company) that, at any time dur-
19 ing the 6-month period preceding the date
20 of the determination of whether that per-
21 son or affiliated person is an interested
22 person, has executed any portfolio trans-
23 actions for, engaged in any principal trans-
24 actions with, or distributed shares for—

1 “(I) any investment company for
2 which the investment adviser or prin-
3 cipal underwriter serves as such;

4 “(II) any investment company
5 holding itself out to investors, for pur-
6 poses of investment or investor serv-
7 ices, as a company related to any in-
8 vestment company for which the in-
9 vestment adviser or principal under-
10 writer serves as such; or

11 “(III) any account over which the
12 investment adviser has brokerage
13 placement discretion,”;

14 (2) by redesignating clause (vi) as clause (vii);

15 and

16 (3) by inserting after clause (v) the following
17 new clause:

18 “(vi) any person or any affiliated per-
19 son of a person (other than a registered in-
20 vestment company) that, at any time dur-
21 ing the 6-month period preceding the date
22 of the determination of whether that per-
23 son or affiliated person is an interested
24 person, has loaned money or other prop-
25 erty to—

1 “(I) any investment company for
2 which the investment adviser or prin-
3 cipal underwriter serves as such;

4 “(II) any investment company
5 holding itself out to investors, for pur-
6 poses of investment or investor serv-
7 ices, as a company related to any in-
8 vestment company for which the in-
9 vestment adviser or principal under-
10 writer serves as such; or

11 “(III) any account for which the
12 investment adviser has borrowing au-
13 thority,”.

14 (c) AFFILIATION OF DIRECTORS.—Section 10(c) of
15 the Investment Company Act of 1940 (15 U.S.C. 80a-
16 10(c)) is amended by striking “bank, except” and insert-
17 ing “bank (together with its affiliates and subsidiaries) or
18 any one bank holding company (together with its affiliates
19 and subsidiaries) (as such terms are defined in section 2
20 of the Bank Holding Company Act of 1956), except”.

21 (d) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect at the end of the 1-year period
23 beginning on the date of enactment of this subtitle.

1 **SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

2 Section 35(a) of the Investment Company Act of
3 1940 (15 U.S.C. 80a–34(a)) is amended to read as fol-
4 lows:

5 “(a) MISREPRESENTATION OF GUARANTEES.—

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

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

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

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

20 “(2) DISCLOSURES.—Any person issuing or
21 selling the securities of a registered investment com-
22 pany that is advised by, or sold through, a bank
23 shall prominently disclose that an investment in the
24 company is not insured by the Federal Deposit In-
25 surance Corporation or any other government agen-
26 cy. The Commission may adopt rules and regula-

1 tions, and issue orders, consistent with the protec-
2 tion of investors, prescribing the manner in which
3 the disclosure under this paragraph shall be pro-
4 vided.

5 “(3) DEFINITIONS.—The terms ‘insured deposi-
6 tory institution’ and ‘appropriate Federal banking
7 agency’ have the same meanings as in section 3 of
8 the Federal Deposit Insurance Act.”.

9 **SEC. 215. DEFINITION OF BROKER UNDER THE INVEST-**
10 **MENT COMPANY ACT OF 1940.**

11 Section 2(a)(6) of the Investment Company Act of
12 1940 (15 U.S.C. 80a-2(a)(6)) is amended to read as fol-
13 lows:

14 “(6) The term ‘broker’ has the same meaning
15 as in section 3 of the Securities Exchange Act of
16 1934, except that such term does not include any
17 person solely by reason of the fact that such person
18 is an underwriter for one or more investment compa-
19 nies.”.

20 **SEC. 216. DEFINITION OF DEALER UNDER THE INVEST-**
21 **MENT COMPANY ACT OF 1940.**

22 Section 2(a)(11) of the Investment Company Act of
23 1940 (15 U.S.C. 80a-2(a)(11)) is amended to read as fol-
24 lows:

1 “(11) The term ‘dealer’ has the same meaning
2 as in section 3 of the Securities Exchange Act of
3 1934, but does not include an insurance company or
4 investment company.”.

5 **SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINI-**
6 **TION OF INVESTMENT ADVISER FOR BANKS**
7 **THAT ADVISE INVESTMENT COMPANIES.**

8 (a) INVESTMENT ADVISER.—Section 202(a)(11) of
9 the Investment Advisers Act of 1940 (15 U.S.C. 80b–
10 2(a)(11)) is amended in subparagraph (A), by striking
11 “investment company” and inserting “investment com-
12 pany, except that the term ‘investment adviser’ includes
13 any bank or bank holding company to the extent that such
14 bank or bank holding company serves or acts as an invest-
15 ment adviser to a registered investment company, but if,
16 in the case of a bank, such services or actions are per-
17 formed through a separately identifiable department or di-
18 vision, the department or division, and not the bank itself,
19 shall be deemed to be the investment adviser”.

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

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

1 “(A) that is under the direct supervision of
2 an officer or officers designated by the board of
3 directors of the bank as responsible for the day-
4 to-day conduct of the bank’s investment adviser
5 activities for one or more investment companies,
6 including the supervision of all bank employees
7 engaged in the performance of such activities;
8 and

9 “(B) for which all of the records relating
10 to its investment adviser activities are sepa-
11 rately maintained in or extractable from such
12 unit’s own facilities or the facilities of the bank,
13 and such records are so maintained or other-
14 wise accessible as to permit independent exam-
15 ination and enforcement by the Commission of
16 this Act or the Investment Company Act of
17 1940 and rules and regulations promulgated
18 under this Act or the Investment Company Act
19 of 1940.”.

20 **SEC. 218. DEFINITION OF BROKER UNDER THE INVEST-**
21 **MENT ADVISERS ACT OF 1940.**

22 Section 202(a)(3) of the Investment Advisers Act of
23 1940 (15 U.S.C. 80b-2(a)(3)) is amended to read as fol-
24 lows:

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

4 **SEC. 219. DEFINITION OF DEALER UNDER THE INVEST-**
5 **MENT ADVISERS ACT OF 1940.**

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

9 “(7) The term ‘dealer’ has the same meaning as
10 in section 3 of the Securities Exchange Act of 1934,
11 but does not include an insurance company or in-
12 vestment company.”.

13 **SEC. 220. INTERAGENCY CONSULTATION.**

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

17 **“SEC. 210A. CONSULTATION.**

18 “(a) EXAMINATION RESULTS AND OTHER INFORMA-
19 TION.—

20 “(1) The appropriate Federal banking agency
21 shall provide the Commission upon request the re-
22 sults of any examination, reports, records, or other
23 information to which such agency may have access
24 with respect to the investment advisory activities—

25 “(A) of any—

1 “(i) bank holding company;

2 “(ii) bank; or

3 “(iii) separately identifiable depart-
4 ment or division of a bank, that is reg-
5 istered under section 203 of this title; and

6 “(B) in the case of a bank holding com-
7 pany or bank that has a subsidiary or a sepa-
8 rately identifiable department or division reg-
9 istered under that section, of such bank or bank
10 holding company.

11 “(2) The Commission shall provide to the ap-
12 propriate Federal banking agency upon request the
13 results of any examination, reports, records, or other
14 information with respect to the investment advisory
15 activities of any bank holding company, bank, or
16 separately identifiable department or division of a
17 bank, any of which is registered under section 203
18 of this title.

19 “(b) EFFECT ON OTHER AUTHORITY.—Nothing in
20 this section shall limit in any respect the authority of the
21 appropriate Federal banking agency with respect to such
22 bank holding company, bank, or department or division
23 under any provision of law.

24 “(c) DEFINITION.—For purposes of this section, the
25 term ‘appropriate Federal banking agency’ has the same

1 meaning as in section 3 of the Federal Deposit Insurance
2 Act.”.

3 **SEC. 221. TREATMENT OF BANK COMMON TRUST FUNDS.**

4 (a) SECURITIES ACT OF 1933.—Section 3(a)(2) of
5 the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is
6 amended by striking “or any interest or participation in
7 any common trust fund or similar fund maintained by a
8 bank exclusively for the collective investment and reinvest-
9 ment of assets contributed thereto by such bank in its ca-
10 pacity as trustee, executor, administrator, or guardian”
11 and inserting “or any interest or participation in any com-
12 mon trust fund or similar fund that is excluded from the
13 definition of the term ‘investment company’ under section
14 3(c)(3) of the Investment Company Act of 1940”.

15 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
16 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934
17 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as fol-
18 lows:

19 “(iii) any interest or participation in any
20 common trust fund or similar fund that is ex-
21 cluded from the definition of the term ‘invest-
22 ment company’ under section 3(c)(3) of the In-
23 vestment Company Act of 1940;”.

24 (c) INVESTMENT COMPANY ACT OF 1940.—Section
25 3(c)(3) of the Investment Company Act of 1940 (15

1 U.S.C. 80a-3(c)(3)) is amended by inserting before the
 2 period the following: “, if—

3 “(A) such fund is employed by the bank
 4 solely as an aid to the administration of trusts,
 5 estates, or other accounts created and main-
 6 tained for a fiduciary purpose;

7 “(B) except in connection with the ordi-
 8 nary advertising of the bank’s fiduciary serv-
 9 ices, interests in such fund are not—

10 “(i) advertised; or

11 “(ii) offered for sale to the general
 12 public; and

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

17 **SEC. 222. INVESTMENT ADVISERS PROHIBITED FROM HAV-**
 18 **ING CONTROLLING INTEREST IN REG-**
 19 **ISTERED INVESTMENT COMPANY.**

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

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

1 “(1) IN GENERAL.—If an investment adviser to
2 a registered investment company, or an affiliated
3 person of that investment adviser, holds a control-
4 ling interest in that registered investment company
5 in a trustee or fiduciary capacity, such person
6 shall—

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

16 “(B) if it holds the shares in a trustee or
17 fiduciary capacity with respect to any person or
18 entity other than an employee benefit plan sub-
19 ject to the Employee Retirement Income Secu-
20 rity Act of 1974—

21 “(i) transfer the power to vote the
22 shares of the investment company through
23 to—

24 “(I) the beneficial owners of the
25 shares;

1 “(II) another person acting in a
2 fiduciary capacity who is not an affili-
3 ated person of that investment adviser
4 or any affiliated person thereof; or

5 “(III) any person authorized to
6 receive statements and information
7 with respect to the trust who is not an
8 affiliated person of that investment
9 adviser or any affiliated person there-
10 of;

11 “(ii) vote the shares of the investment
12 company held by it in the same proportion
13 as shares held by all other shareholders of
14 the investment company; or

15 “(iii) vote the shares of the invest-
16 ment company as otherwise permitted
17 under such rules, regulations, or orders as
18 the Commission may prescribe or issue
19 consistent with the protection of investors.

20 “(2) EXEMPTION.—Paragraph (1) shall not
21 apply to any investment adviser to a registered in-
22 vestment company, or any affiliated person of that
23 investment adviser, that holds shares of the invest-
24 ment company in a trustee or fiduciary capacity if

1 that registered investment company consists solely of
2 assets held in such capacities.

3 “(3) SAFE HARBOR.—No investment adviser to
4 a registered investment company or any affiliated
5 person of such investment adviser shall be deemed to
6 have acted unlawfully or to have breached a fidu-
7 ciary duty under State or Federal law solely by rea-
8 son of acting in accordance with clause (i), (ii), or
9 (iii) of paragraph (1)(B).”.

10 **SEC. 223. CONFORMING CHANGE IN DEFINITION.**

11 Section 2(a)(5) of the Investment Company Act of
12 1940 (15 U.S.C. 80a–2(a)(5)) is amended by striking
13 “(A) a banking institution organized under the laws of the
14 United States” and inserting “(A) a depository institution
15 (as defined in section 3 of the Federal Deposit Insurance
16 Act) or a branch or agency of a foreign bank (as such
17 terms are defined in section 1(b) of the International
18 Banking Act of 1978)”.

19 **SEC. 224. CONFORMING AMENDMENT.**

20 Section 202 of the Investment Advisers Act of 1940
21 (15 U.S.C. 80b–2) is amended by adding at the end the
22 following new subsection:

23 “(c) CONSIDERATION OF PROMOTION OF EFFI-
24 CIENCY, COMPETITION, AND CAPITAL FORMATION.—
25 Whenever pursuant to this title the Commission is en-

1 gaged in rulemaking and is required to consider or deter-
 2 mine whether an action is necessary or appropriate in the
 3 public interest, the Commission shall also consider, in ad-
 4 dition to the protection of investors, whether the action
 5 will promote efficiency, competition, and capital forma-
 6 tion.”.

7 **SEC. 225. EFFECTIVE DATE.**

8 This subtitle shall take effect 90 days after the date
 9 of the enactment of this Act.

10 **Subtitle C—Securities and Ex-**
 11 **change Commission Supervision**
 12 **of Investment Bank Holding**
 13 **Companies**

14 **SEC. 231. SUPERVISION OF INVESTMENT BANK HOLDING**
 15 **COMPANIES BY THE SECURITIES AND EX-**
 16 **CHANGE COMMISSION.**

17 (a) AMENDMENT.—Section 17 of the Securities Ex-
 18 change Act of 1934 (15 U.S.C. 78q) is amended—

19 (1) by redesignating subsection (i) as subsection
 20 (k); and

21 (2) by inserting after subsection (h) the follow-
 22 ing new subsections:

23 “(i) INVESTMENT BANK HOLDING COMPANIES.—

1 “(1) ELECTIVE SUPERVISION OF AN INVEST-
2 MENT BANK HOLDING COMPANY NOT HAVING A
3 BANK OR SAVINGS ASSOCIATION AFFILIATE.—

4 “(A) IN GENERAL.—An investment bank
5 holding company that is not—

6 “(i) an affiliate of an insured bank
7 (other than an institution described in sub-
8 paragraph (D), (F), or (G) of section
9 2(c)(2), or held under section 4(f), of the
10 Bank Holding Company Act of 1956) or a
11 savings association;

12 “(ii) a foreign bank, foreign company,
13 or company that is described in section
14 8(a) of the International Banking Act of
15 1978; or

16 “(iii) a foreign bank that controls, di-
17 rectly or indirectly, a corporation chartered
18 under section 25A of the Federal Reserve
19 Act,

20 may elect to become supervised by filing with
21 the Commission a notice of intention to become
22 supervised, pursuant to subparagraph (B) of
23 this paragraph. Any investment bank holding
24 company filing such a notice shall be supervised
25 in accordance with this section and comply with

1 the rules promulgated by the Commission appli-
2 cable to supervised investment bank holding
3 companies.

4 “(B) NOTIFICATION OF STATUS AS A SU-
5 PERVISED INVESTMENT BANK HOLDING COM-
6 PANY.—An investment bank holding company
7 that elects under subparagraph (A) to become
8 supervised by the Commission shall file with the
9 Commission a written notice of intention to be-
10 come supervised by the Commission in such
11 form and containing such information and doc-
12 uments concerning such investment bank hold-
13 ing company as the Commission, by rule, may
14 prescribe as necessary or appropriate in fur-
15 therance of the purposes of this section. Unless
16 the Commission finds that such supervision is
17 not necessary or appropriate in furtherance of
18 the purposes of this section, such supervision
19 shall become effective 45 days after the date of
20 receipt of such written notice by the Commis-
21 sion, or within such shorter time period as the
22 Commission, by rule or order, may determine.

23 “(2) ELECTION NOT TO BE SUPERVISED BY
24 THE COMMISSION AS AN INVESTMENT BANK HOLD-
25 ING COMPANY.—

1 “(A) VOLUNTARY WITHDRAWAL.—A su-
2 pervised investment bank holding company that
3 is supervised pursuant to paragraph (1) may,
4 upon such terms and conditions as the Commis-
5 sion deems necessary or appropriate, elect not
6 to be supervised by the Commission by filing a
7 written notice of withdrawal from Commission
8 supervision. Such notice shall not become effec-
9 tive until one year after receipt by the Commis-
10 sion, or such shorter or longer period as the
11 Commission deems necessary or appropriate to
12 ensure effective supervision of the material
13 risks to the supervised investment bank holding
14 company and to the affiliated broker or dealer,
15 or to prevent evasion of the purposes of this
16 section.

17 “(B) DISCONTINUATION OF COMMISSION
18 SUPERVISION.—If the Commission finds that
19 any supervised investment bank holding com-
20 pany that is supervised pursuant to paragraph
21 (1) is no longer in existence or has ceased to be
22 an investment bank holding company, or if the
23 Commission finds that continued supervision of
24 such a supervised investment bank holding com-
25 pany is not consistent with the purposes of this

1 section, the Commission may discontinue the
2 supervision pursuant to a rule or order, if any,
3 promulgated by the Commission under this sec-
4 tion.

5 “(3) SUPERVISION OF INVESTMENT BANK
6 HOLDING COMPANIES.—

7 “(A) RECORDKEEPING AND REPORTING.—

8 “(i) IN GENERAL.—Every supervised
9 investment bank holding company and
10 each affiliate thereof shall make and keep
11 for prescribed periods such records, furnish
12 copies thereof, and make such reports, as
13 the Commission may require by rule, in
14 order to keep the Commission informed as
15 to—

16 “(I) the company’s or affiliate’s
17 activities, financial condition, policies,
18 systems for monitoring and control-
19 ling financial and operational risks,
20 and transactions and relationships be-
21 tween any broker or dealer affiliate of
22 the supervised investment bank hold-
23 ing company; and

24 “(II) the extent to which the
25 company or affiliate has complied with

1 the provisions of this Act and regula-
2 tions prescribed and orders issued
3 under this Act.

4 “(ii) FORM AND CONTENTS.—Such
5 records and reports shall be prepared in
6 such form and according to such specifica-
7 tions (including certification by an inde-
8 pendent public accountant), as the Com-
9 mission may require and shall be provided
10 promptly at any time upon request by the
11 Commission. Such records and reports may
12 include—

13 “(I) a balance sheet and income
14 statement;

15 “(II) an assessment of the con-
16 solidated capital of the supervised in-
17 vestment bank holding company;

18 “(III) an independent auditor’s
19 report attesting to the supervised in-
20 vestment bank holding company’s
21 compliance with its internal risk man-
22 agement and internal control objec-
23 tives; and

24 “(IV) reports concerning the ex-
25 tent to which the company or affiliate

1 has complied with the provisions of
2 this title and any regulations pre-
3 scribed and orders issued under this
4 title.

5 “(B) USE OF EXISTING REPORTS.—

6 “(i) IN GENERAL.—The Commission
7 shall, to the fullest extent possible, accept
8 reports in fulfillment of the requirements
9 under this paragraph that the supervised
10 investment bank holding company or its af-
11 filiates have been required to provide to
12 another appropriate regulatory agency or
13 self-regulatory organization.

14 “(ii) AVAILABILITY.—A supervised in-
15 vestment bank holding company or an af-
16 filiate of such company shall provide to the
17 Commission, at the request of the Commis-
18 sion, any report referred to in clause (i).

19 “(C) EXAMINATION AUTHORITY.—

20 “(i) FOCUS OF EXAMINATION AU-
21 THORITY.—The Commission may make ex-
22 aminations of any supervised investment
23 bank holding company and any affiliate of
24 such company in order to—

1 “(I) inform the Commission
2 regarding—

3 “(aa) the nature of the oper-
4 ations and financial condition of
5 the supervised investment bank
6 holding company and its affili-
7 ates;

8 “(bb) the financial and oper-
9 ational risks within the super-
10 vised investment bank holding
11 company that may affect any
12 broker or dealer controlled by
13 such supervised investment bank
14 holding company; and

15 “(cc) the systems of the su-
16 pervised investment bank holding
17 company and its affiliates for
18 monitoring and controlling those
19 risks; and

20 “(II) monitor compliance with
21 the provisions of this subsection, pro-
22 visions governing transactions and re-
23 lationships between any broker or
24 dealer affiliated with the supervised
25 investment bank holding company and

1 any of the company's other affiliates,
2 and applicable provisions of sub-
3 chapter II of chapter 53, title 31,
4 United States Code (commonly re-
5 ferred to as the 'Bank Secrecy Act')
6 and regulations thereunder.

7 “(ii) RESTRICTED FOCUS OF EXAMI-
8 NATIONS.—The Commission shall limit the
9 focus and scope of any examination of a
10 supervised investment bank holding com-
11 pany to—

12 “(I) the company; and

13 “(II) any affiliate of the company
14 that, because of its size, condition, or
15 activities, the nature or size of the
16 transactions between such affiliate
17 and any affiliated broker or dealer, or
18 the centralization of functions within
19 the holding company system, could, in
20 the discretion of the Commission,
21 have a materially adverse effect on the
22 operational or financial condition of
23 the broker or dealer.

24 “(iii) DEFERENCE TO OTHER EXAMI-
25 NATIONS.—For purposes of this subpara-

1 graph, the Commission shall, to the fullest
2 extent possible, use the reports of examina-
3 tion of an institution described in subpara-
4 graph (D), (F), or (G) of section 2(c)(2),
5 or held under section 4(f), of the Bank
6 Holding Company Act of 1956 made by
7 the appropriate regulatory agency, or of a
8 licensed insurance company made by the
9 appropriate State insurance regulator.

10 “(4) HOLDING COMPANY CAPITAL.—

11 “(A) AUTHORITY.—If the Commission
12 finds that it is necessary to adequately super-
13 vise investment bank holding companies and
14 their broker or dealer affiliates consistent with
15 the purposes of this subsection, the Commission
16 may adopt capital adequacy rules for supervised
17 investment bank holding companies.

18 “(B) METHOD OF CALCULATION.—In de-
19 veloping rules under this paragraph:

20 “(i) DOUBLE LEVERAGE.—The Com-
21 mission shall consider the use by the su-
22 pervised investment bank holding company
23 of debt and other liabilities to fund capital
24 investments in affiliates.

1 “(ii) NO UNWEIGHTED CAPITAL
2 RATIO.—The Commission shall not impose
3 under this section a capital ratio that is
4 not based on appropriate risk-weighting
5 considerations.

6 “(iii) NO CAPITAL REQUIREMENT ON
7 REGULATED ENTITIES.—The Commission
8 shall not, by rule, regulation, guideline,
9 order or otherwise, impose any capital ade-
10 quacy provision on a nonbanking affiliate
11 (other than a broker or dealer) that is in
12 compliance with applicable capital require-
13 ments of another Federal regulatory au-
14 thority or State insurance authority.

15 “(iv) APPROPRIATE EXCLUSIONS.—
16 The Commission shall take full account of
17 the applicable capital requirements of an-
18 other Federal regulatory authority or State
19 insurance regulator.

20 “(C) INTERNAL RISK MANAGEMENT MOD-
21 ELS.—The Commission may incorporate inter-
22 nal risk management models into its capital
23 adequacy rules for supervised investment bank
24 holding companies.

1 “(5) FUNCTIONAL REGULATION OF BANKING
2 AND INSURANCE ACTIVITIES OF SUPERVISED IN-
3 VESTMENT BANK HOLDING COMPANIES.—The Com-
4 mission shall defer to—

5 “(A) the appropriate regulatory agency
6 with regard to all interpretations of, and the
7 enforcement of, applicable banking laws relating
8 to the activities, conduct, ownership, and oper-
9 ations of banks, and institutions described in
10 subparagraph (D), (F), and (G) of section
11 2(e)(2), or held under section 4(f), of the Bank
12 Holding Company Act of 1956; and

13 “(B) the appropriate State insurance regu-
14 lators with regard to all interpretations of, and
15 the enforcement of, applicable State insurance
16 laws relating to the activities, conduct, and op-
17 erations of insurance companies and insurance
18 agents.

19 “(6) DEFINITIONS.—For purposes of this sub-
20 section and subsection (j)—

21 “(A) the term ‘investment bank holding
22 company’ means—

23 “(i) any person other than a natural
24 person that owns or controls one or more
25 brokers or dealers; and

1 “(ii) the associated persons of the in-
2 vestment bank holding company;

3 “(B) the term ‘supervised investment bank
4 holding company’ means any investment bank
5 holding company that is supervised by the Com-
6 mission pursuant to this subsection;

7 “(C) the terms ‘affiliate’, ‘bank’, ‘bank
8 holding company’, ‘company’, ‘control’, and
9 ‘savings association’ have the same meanings as
10 in section 2 of the Bank Holding Company Act
11 of 1956;

12 “(D) the term ‘insured bank’ has the same
13 meaning as in section 3 of the Federal Deposit
14 Insurance Act;

15 “(E) the term ‘foreign bank’ has the same
16 meaning as in section 1(b)(7) of the Inter-
17 national Banking Act of 1978; and

18 “(F) the terms ‘person associated with an
19 investment bank holding company’ and ‘associ-
20 ated person of an investment bank holding com-
21 pany’ mean any person directly or indirectly
22 controlling, controlled by, or under common
23 control with, an investment bank holding com-
24 pany.

1 “(j) AUTHORITY TO LIMIT DISCLOSURE OF INFOR-
2 MATION.—Notwithstanding any other provision of law, the
3 Commission shall not be compelled to disclose any infor-
4 mation required to be reported under subsection (h) or
5 (i) or any information supplied to the Commission by any
6 domestic or foreign regulatory agency that relates to the
7 financial or operational condition of any associated person
8 of a broker or dealer, investment bank holding company,
9 or any affiliate of an investment bank holding company.
10 Nothing in this subsection shall authorize the Commission
11 to withhold information from Congress, or prevent the
12 Commission from complying with a request for informa-
13 tion from any other Federal department or agency or any
14 self-regulatory organization requesting the information for
15 purposes within the scope of its jurisdiction, or complying
16 with an order of a court of the United States in an action
17 brought by the United States or the Commission. For pur-
18 poses of section 552 of title 5, United States Code, this
19 subsection shall be considered a statute described in sub-
20 section (b)(3)(B) of such section 552. In prescribing regu-
21 lations to carry out the requirements of this subsection,
22 the Commission shall designate information described in
23 or obtained pursuant to subparagraphs (A), (B), and (C)
24 of subsection (i)(5) as confidential information for pur-
25 poses of section 24(b)(2) of this title.”.

1 (b) CONFORMING AMENDMENTS.—

2 (1) Section 3(a)(34) of the Securities Exchange
3 Act of 1934 (15 U.S.C. 78c(a)(34)) is amended by
4 adding at the end the following new subparagraphs:

5 “(H) When used with respect to an institu-
6 tion described in subparagraph (D), (F), or (G)
7 of section 2(c)(2), or held under section 4(f), of
8 the Bank Holding Company Act of 1956—

9 “(i) the Comptroller of the Currency,
10 in the case of a national bank or a bank
11 in the District of Columbia examined by
12 the Comptroller of the Currency;

13 “(ii) the Board of Governors of the
14 Federal Reserve System, in the case of a
15 State member bank of the Federal Reserve
16 System or any corporation chartered under
17 section 25A of the Federal Reserve Act;

18 “(iii) the Federal Deposit Insurance
19 Corporation, in the case of any other bank
20 the deposits of which are insured in ac-
21 cordance with the Federal Deposit Insur-
22 ance Act; or

23 “(iv) the Commission in the case of all
24 other such institutions.”.

1 (2) Section 1112(e) of the Right to Financial
2 Privacy Act of 1978 (12 U.S.C. 3412(e)) is
3 amended—

4 (A) by striking “this title” and inserting
5 “law”; and

6 (B) by inserting “, examination reports”
7 after “financial records”.

8 **Subtitle D—Studies**

9 **SEC. 241. STUDY OF METHODS TO INFORM INVESTORS AND** 10 **CONSUMERS OF UNINSURED PRODUCTS.**

11 Not later than 1 year after the date of enactment
12 of this Act, the Comptroller General of the United States
13 shall submit a report to the Congress regarding the effi-
14 cacy, costs, and benefits of requiring that any depository
15 institution that accepts federally insured deposits and
16 that, directly or through a contractual or other arrange-
17 ment with a broker, dealer, or agent, buys from, sells to,
18 or effects transactions for retail investors in securities or
19 consumers of insurance to inform such investors and con-
20 sumers through the use of a logo or seal that the security
21 or insurance is not insured by the Federal Deposit Insur-
22 ance Corporation.

1 **SEC. 242. STUDY OF LIMITATION ON FEES ASSOCIATED**
2 **WITH ACQUIRING FINANCIAL PRODUCTS.**

3 Not later than 1 year after the date of enactment
4 of this Act, the Comptroller General of the United States
5 shall submit a report to the Congress regarding the effi-
6 cacy and benefits of uniformly limiting any commissions,
7 fees, markups, or other costs incurred by customers in the
8 acquisition of financial products.

9 **TITLE III—INSURANCE**

10 **SEC. 301. STATE REGULATION OF THE BUSINESS OF INSUR-**
11 **ANCE.**

12 The Act entitled “An Act to express the intent of the
13 Congress with reference to the regulation of the business
14 of insurance” and approved March 9, 1945 (15 U.S.C.
15 1011 et seq.), commonly referred to as the “McCarran-
16 Ferguson Act” remains the law of the United States.

17 **SEC. 302. MANDATORY INSURANCE LICENSING REQUIRE-**
18 **MENTS.**

19 No person or entity shall provide insurance in a State
20 as principal or agent unless such person or entity is li-
21 censed as required by the appropriate insurance regulator
22 of such State in accordance with the relevant State insur-
23 ance law, subject to section 104.

1 **SEC. 303. FUNCTIONAL REGULATION OF INSURANCE.**

2 The insurance sales activity of any person or entity
3 shall be functionally regulated by the States, subject to
4 section 104.

5 **SEC. 304. INSURANCE UNDERWRITING IN NATIONAL**
6 **BANKS.**

7 (a) IN GENERAL.—Except as provided in section 305,
8 a national bank and the subsidiaries of a national bank
9 may not provide insurance in a State as principal except
10 that this prohibition shall not apply to authorized prod-
11 ucts.

12 (b) AUTHORIZED PRODUCTS.—For the purposes of
13 this section, a product is authorized if—

14 (1) as of January 1, 1997, the Comptroller of
15 the Currency had determined in writing that na-
16 tional banks may provide such product as principal,
17 or national banks were in fact lawfully providing
18 such product as principal;

19 (2) no court of relevant jurisdiction had, by
20 final judgment, overturned a determination of the
21 Comptroller of the Currency that national banks
22 may provide such product as principal; and

23 (3) the product is not title insurance, or an an-
24 nuity contract the income of which is subject to tax
25 treatment under section 72 of the Internal Revenue
26 Code of 1986.

1 (c) DEFINITION.—For purposes of this section, the
2 term “insurance” means—

3 (1) any product regulated as insurance as of
4 January 1, 1997, in accordance with the relevant
5 State insurance law, in the State in which the prod-
6 uct is provided;

7 (2) any product first offered after January 1,
8 1997, which—

9 (A) a State insurance regulator determines
10 shall be regulated as insurance in the State in
11 which the product is provided because the prod-
12 uct insures, guarantees, or indemnifies against
13 liability, loss of life, loss of health, or loss
14 through damage to or destruction of property,
15 including, but not limited to, surety bonds, life
16 insurance, health insurance, title insurance, and
17 property and casualty insurance (such as pri-
18 vate passenger or commercial automobile,
19 homeowners, mortgage, commercial multiperil,
20 general liability, professional liability, workers’
21 compensation, fire and allied lines, farm owners
22 multiperil, aircraft, fidelity, surety, medical
23 malpractice, ocean marine, inland marine, and
24 boiler and machinery insurance); and

1 (B) is not a product or service of a bank
2 that is—

3 (i) a deposit product;

4 (ii) a loan, discount, letter of credit,
5 or other extension of credit;

6 (iii) a trust or other fiduciary service;

7 (iv) a qualified financial contract (as
8 defined in or determined pursuant to sec-
9 tion 11(e)(8)(D)(i) of the Federal Deposit
10 Insurance Act); or

11 (v) a financial guaranty, except that
12 this subparagraph (B) shall not apply to a
13 product that includes an insurance compo-
14 nent such that if the product is offered or
15 proposed to be offered by the bank as
16 principal—

17 (I) it would be treated as a life
18 insurance contract under section 7702
19 of the Internal Revenue Code of 1986;
20 or

21 (II) in the event that the product
22 is not a letter of credit or other simi-
23 lar extension of credit, a qualified fi-
24 nancial contract, or a financial guar-
25 anty, it would qualify for treatment

1 for losses incurred with respect to
2 such product under section 832(b)(5)
3 of the Internal Revenue Code of 1986,
4 if the bank were subject to tax as an
5 insurance company under section 831
6 of that Code; or

7 (3) any annuity contract, the income on which
8 is subject to tax treatment under section 72 of the
9 Internal Revenue Code of 1986.

10 **SEC. 305. TITLE INSURANCE ACTIVITIES OF NATIONAL**
11 **BANKS AND THEIR AFFILIATES.**

12 (a) **AUTHORITY.**—Notwithstanding any other provi-
13 sion of this Act or any other law, no national bank, and
14 no subsidiary of a national bank, may engage in any activ-
15 ity involving the underwriting of title insurance, other
16 than title insurance underwriting activities in which such
17 national bank or subsidiary was actively and lawfully en-
18 gaged before the date of the enactment of this Act.

19 (b) **INSURANCE AFFILIATE.**—In the case of a na-
20 tional bank which has an affiliate which provides insur-
21 ance as principal and is not a subsidiary of the bank, the
22 national bank and any subsidiary of the national bank
23 may not engage in any activity involving the underwriting
24 of title insurance pursuant to subsection (a).

1 (c) INSURANCE SUBSIDIARY.—In the case of a na-
2 tional bank which has a subsidiary which provides insur-
3 ance as principal and has no affiliate which provides insur-
4 ance as principal and is not a subsidiary, the national
5 bank may not engage in any activity involving the under-
6 writing of title insurance pursuant to subsection (a).

7 (d) “AFFILIATE” AND “SUBSIDIARY” DEFINED.—
8 For purposes of this section, the terms “affiliate” and
9 “subsidiary” have the same meanings as in section 2 of
10 the Bank Holding Company Act of 1956.

11 **SEC. 306. EXPEDITED DISPUTE RESOLUTION FOR FEDERAL**
12 **REGULATORS.**

13 (a) FILING IN COURT OF APPEALS.—In the case of
14 a regulatory conflict between a State insurance regulator
15 and a Federal regulator as to whether any product is or
16 is not insurance, as defined in section 304(e) of this Act,
17 either regulator may seek expedited judicial review of such
18 determination by the United States Court of Appeals for
19 the circuit in which the State is located or in the United
20 States Court of Appeals for the District of Columbia Cir-
21 cuit by filing a petition for review in such court.

22 (b) EXPEDITED REVIEW.—The United States Court
23 of Appeals in which a petition for review is filed in accord-
24 ance with subsection (a) shall complete all action on such
25 petition, including rendering a judgment, before the end

1 of the 60-day period beginning on the date on which such
2 petition is filed, unless all parties to such proceeding agree
3 to any extension of such period.

4 (c) SUPREME COURT REVIEW.—Any request for cer-
5 tiorari to the Supreme Court of the United States of any
6 judgment of a United States Court of Appeals with respect
7 to a petition for review under this section shall be filed
8 with the Supreme Court of the United States as soon as
9 practicable after such judgment is issued.

10 (d) STATUTE OF LIMITATION.—No action may be
11 filed under this section challenging an order, ruling, deter-
12 mination, or other action of a Federal regulator or State
13 insurance regulator after the later of—

14 (1) the end of the 12-month period beginning
15 on the date on which the first public notice is made
16 of such order, ruling, determination or other action
17 in its final form; or

18 (2) the end of the 6-month period beginning on
19 the date on which such order, ruling, determination,
20 or other action takes effect.

21 (e) STANDARD OF REVIEW.—The court shall decide
22 an action filed under this section based on its review on
23 the merits of all questions presented under State and Fed-
24 eral law, including the nature of the product or activity

1 and the history and purpose of its regulation under State
2 and Federal law.

3 **SEC. 307. CERTAIN STATE AFFILIATION LAWS PREEMPTED**
4 **FOR INSURANCE COMPANIES AND AFFILI-**
5 **ATES.**

6 Except as provided in section 104(a)(2), no State
7 may, by law, regulation, order, interpretation, or
8 otherwise—

9 (1) prevent or significantly interfere with the
10 ability of any insurer, or any affiliate of an insurer
11 (whether such affiliate is organized as a stock com-
12 pany, mutual holding company, or otherwise), to be-
13 come a bank holding company or to acquire control
14 of an insured depository institution;

15 (2) limit the amount of an insurer's assets that
16 may be invested in the voting securities of an in-
17 sured depository institution (or any company which
18 controls such institution), except that the laws of an
19 insurer's State of domicile may limit the amount of
20 such investment to an amount that is not less than
21 5 percent of the insurer's admitted assets; or

22 (3) prevent, significantly interfere with, or have
23 the authority to review, approve, or disapprove a
24 plan of reorganization by which an insurer proposes
25 to reorganize from mutual form to become a stock

1 insurer (whether as a direct or indirect subsidiary of
2 a mutual holding company or otherwise) unless such
3 State is the State of domicile of the insurer.

4 **TITLE IV—CUSTOMER SERVICE**
5 **AND EDUCATION**

6 **SEC. 401. CUSTOMER PROTECTION AND EDUCATION REGU-**
7 **LATIONS.**

8 The Federal Deposit Insurance Act (12 U.S.C. 1811
9 et seq.) is amended by inserting after section 46 (as added
10 by section 123 of this Act) the following new section:

11 **“SEC. 47. CUSTOMER SERVICE AND EDUCATION REGULA-**
12 **TIONS.**

13 “(a) REGULATIONS REQUIRED.—

14 “(1) IN GENERAL.—The Federal banking agen-
15 cies shall prescribe and publish in final form, before
16 the end of the 1-year period beginning on the date
17 of enactment of the Financial Services Moderniza-
18 tion Act, customer protection regulations (which the
19 agencies jointly determine to be appropriate) that—

20 “(A) apply to retail sales practices, solici-
21 tations, advertising, or offers of any nondeposit
22 product by any insured depository institution or
23 any person who is engaged in such activities at
24 an office of the institution or on behalf of the
25 institution; and

1 “(B) are consistent with the requirements
2 of this Act and provide such additional protec-
3 tions for customers to whom such sales, sollicita-
4 tions, advertising, or offers are directed as the
5 agency determines to be appropriate.

6 “(2) APPLICABILITY TO SUBSIDIARIES.—The
7 regulations prescribed pursuant to paragraph (1)
8 shall extend such protections to any subsidiary of an
9 insured depository institution, as deemed appro-
10 prium by the regulators referred to in paragraph (3),
11 where such extension is determined to be necessary
12 to ensure the customer protections provided by this
13 section.

14 “(3) CONSULTATION AND JOINT REGULA-
15 TIONS.—The Federal banking agencies shall consult
16 with each other and prescribe joint regulations pur-
17 suant to paragraph (1), after consultation with the
18 State insurance regulators, as appropriate.

19 “(4) NONDEPOSIT PRODUCT DEFINED.—For
20 purposes of this section, the term ‘nondeposit
21 product’—

22 “(A) means any investment and insurance
23 product which is not a deposit;

24 “(B) includes shares issued by a registered
25 investment company; and

1 “(C) does not include—

2 “(i) any loan or any other extension
3 of credit by an insured depository institu-
4 tion;

5 “(ii) any letter of credit;

6 “(iii) any trust services;

7 “(iv) any discount; or

8 “(v) any other instrument or insur-
9 ance or investment product specifically ex-
10 cluded from the definition of such term by
11 regulations prescribed jointly by the Fed-
12 eral banking agencies, to the extent nec-
13 essary to carry out the purpose of this Act.

14 “(5) INSURANCE PRODUCT DEFINED.—For pur-
15 poses of this section, the term ‘insurance product’
16 includes an annuity contract the income of which is
17 subject to tax treatment under section 72 of the In-
18 ternal Revenue Code of 1986.

19 “(b) SALES PRACTICES.—

20 “(1) ANTICOERCION RULES.—The regulations
21 prescribed pursuant to subsection (a) shall include
22 anticoercion rules applicable to the sale of non-
23 deposit products which prohibit an insured deposi-
24 tory institution from engaging in any practice that
25 would lead a customer to believe an extension of

1 credit, in violation of section 106(b) of the Bank
2 Holding Company Act Amendments of 1970, is con-
3 ditional upon—

4 “(A) the purchase of a nondeposit product
5 from the institution or any of its affiliates; or

6 “(B) an agreement by the customer not to
7 obtain, or a prohibition on the customer from
8 obtaining, a nondeposit product from an unaf-
9 filiated entity.

10 “(2) SUITABILITY OF PRODUCT.—

11 “(A) IN GENERAL.—The regulations pre-
12 scribed pursuant to subsection (a) with respect
13 to the sale of nondeposit products shall include
14 standards to ensure that an investment product
15 sold to a customer is suitable and any other
16 nondeposit product is appropriate for the cus-
17 tomer based on financial information disclosed
18 by the customer.

19 “(B) RULES OF FAIR PRACTICE.—In pre-
20 scribing the standards under subparagraph (A)
21 with respect to the sale of investments, the
22 Federal banking agencies shall take into ac-
23 count the Rules of Fair Practice of the Na-
24 tional Association of Securities Dealers.

1 “(c) DISCLOSURES AND ADVERTISING.—The regula-
2 tions prescribed pursuant to subsection (a) shall include
3 the following provisions relating to disclosures and adver-
4 tising in connection with the initial purchase of a non-
5 deposit product:

6 “(1) DISCLOSURES.—

7 “(A) IN GENERAL.—Requirements that the
8 following disclosures be made orally and in writ-
9 ing before the completion of the initial sale and,
10 in the case of clause (iii), at the time of applica-
11 tion for an extension of credit:

12 “(i) UNINSURED STATUS.—As appro-
13 priate, the product is not insured by the
14 Federal Deposit Insurance Corporation,
15 the United States Government, or the in-
16 sured depository institution.

17 “(ii) INSURANCE PRODUCT.—In the
18 case of an insurance policy which is sold by
19 the depository institution, or any affiliate
20 of the institution, as agent, the product is
21 not an obligation of or guaranteed by the
22 depository institution.

23 “(iii) INVESTMENT RISK.—In the case
24 of an investment product, variable annuity,
25 or other product which involves an invest-

1 ment risk, that there is an investment risk
2 associated with the product, including pos-
3 sible loss of value.

4 “(iv) COERCION.—The approval of an
5 extension of credit may not be conditioned
6 on—

7 “(I) the purchase of a nondeposit
8 product from the institution in which
9 the application for credit is pending or
10 any of affiliate of the institution; or

11 “(II) an agreement by the cus-
12 tomer not to obtain, or a prohibition
13 on the customer from obtaining, a
14 nondeposit product from an unaffili-
15 ated entity.

16 “(B) MAKING DISCLOSURE READILY UN-
17 DERSTANDABLE.—Regulations prescribed under
18 subparagraph (A) shall encourage the use of
19 disclosure that is conspicuous, simple, direct,
20 and readily understandable, such as the follow-
21 ing:

22 “(i) ‘NOT FDIC-INSURED’.

23 “(ii) ‘NOT GUARANTEED BY THE
24 BANK’.

25 “(iii) ‘MAY GO DOWN IN VALUE’.

1 “(C) ADJUSTMENTS FOR ALTERNATIVE
2 METHODS OF PURCHASE.—In prescribing the
3 requirements under subparagraphs (A) and
4 (D), necessary adjustments shall be made for
5 purchase in person, by telephone, or by elec-
6 tronic media to provide for the most appro-
7 priate and complete form of disclosure and ac-
8 knowledgments.

9 “(D) CUSTOMER ACKNOWLEDGMENT.—A
10 requirement that an insured depository institu-
11 tion shall require any person selling a non-
12 deposit product at any office of, or on behalf of,
13 the institution to obtain, at the time a customer
14 receives the disclosures required under this
15 paragraph or at the time of the initial purchase
16 by the customer of such product, an acknowl-
17 edgment by such customer of the receipt of the
18 disclosure required under this paragraph with
19 respect to such product.

20 “(2) PROHIBITION ON MISREPRESENTA-
21 TIONS.—A prohibition on any practice, or any adver-
22 tising, at any office of, or on behalf of, the insured
23 depository institution, or any subsidiary as appro-
24 priate, which could mislead any person or otherwise

1 cause a reasonable person to reach an erroneous be-
2 lief with respect to—

3 “(A) the uninsured nature of any non-
4 deposit product sold, or offered for sale, by the
5 institution or any subsidiary of the institution;
6 or

7 “(B) in the case of a nondeposit product
8 that involves an investment risk, the investment
9 risk associated with any such product.

10 “(d) SEPARATION OF BANKING AND NONBANKING
11 ACTIVITIES.—

12 “(1) REGULATIONS REQUIRED.—The regula-
13 tions prescribed pursuant to subsection (a) shall in-
14 clude such provisions as the Federal banking agen-
15 cies consider appropriate to ensure that the routine
16 acceptance of deposits is kept, to the extent prac-
17 ticable, physically segregated from nondeposit prod-
18 uct activity.

19 “(2) REQUIREMENTS.—Regulations prescribed
20 pursuant to paragraph (1) shall include the follow-
21 ing requirements:

22 “(A) SEPARATE SETTING.—A clear delin-
23 eation of the setting in which, and the cir-
24 cumstances under which, transactions involving
25 nondeposit products should be conducted in a

1 location physically segregated from an area
2 where retail deposits are routinely accepted.

3 “(B) REFERRALS.—Standards which per-
4 mit any person accepting deposits from the
5 public in an area where such transactions are
6 routinely conducted in an insured depository in-
7 stitution to refer a customer who seeks to pur-
8 chase any nondeposit product to a qualified per-
9 son who sells such product, only if the person
10 making the referral receives no more than a
11 one-time nominal fee of a fixed dollar amount
12 for each referral that does not depend on
13 whether the referral results in a transaction.

14 “(C) QUALIFICATION AND LICENSING RE-
15 QUIREMENTS.—Standards prohibiting any in-
16 sured depository institution from permitting
17 any person to sell or offer for sale any non-
18 deposit product in any part of any office of the
19 institution, or on behalf of the institution, un-
20 less such person is appropriately qualified and
21 licensed.

22 “(e) CUSTOMER GRIEVANCE PROCESS.—The Federal
23 banking agencies shall jointly establish a customer com-
24 plaint mechanism, for receiving and expeditiously address-

1 ing customer complaints alleging a violation of regulations
2 issued under this section, which mechanism shall—

3 “(1) establish a group within each regulatory
4 agency to receive such complaints;

5 “(2) develop procedures for investigating such
6 complaints;

7 “(3) develop procedures for informing cus-
8 tomers of rights they may have in connection with
9 such complaints; and

10 “(4) develop procedures for addressing concerns
11 raised by such complaints, as appropriate, including
12 procedures for the recovery of losses to the extent
13 appropriate.

14 “(f) EFFECT ON OTHER AUTHORITY.—

15 “(1) IN GENERAL.—No provision of this section
16 shall be construed as granting, limiting, or otherwise
17 affecting—

18 “(A) any authority of the Securities and
19 Exchange Commission, any self-regulatory or-
20 ganization, the Municipal Securities Rule-
21 making Board, or the Secretary of the Treasury
22 under any Federal securities law; or

23 “(B) except as provided in paragraph (2),
24 any authority of any State insurance commis-

1 sioner or other State authority under any State
2 law.

3 “(2) COORDINATION WITH STATE LAW.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (B), regulations prescribed by a
6 Federal banking agency under this section shall
7 not apply to retail sales, solicitations, advertis-
8 ing, or offers of any nondeposit product by any
9 insured depository institution or to any person
10 who is engaged in such activities at an office of
11 such institution or on behalf of the institution,
12 in a State where the State has in effect stat-
13 utes, regulations, orders, or interpretations,
14 that are inconsistent with or contrary to the
15 regulations prescribed by the Federal banking
16 agencies.

17 “(B) PREEMPTION.—If, with respect to
18 any provision of the regulations prescribed
19 under this section, the Board of Governors of
20 the Federal Reserve System, the Comptroller of
21 the Currency, the Director of the Office of
22 Thrift Supervision, and the Board of Directors
23 of the Federal Deposit Insurance Corporation
24 determine jointly that the protection afforded
25 by such provision for consumers is greater than

1 the protection provided by a comparable provi-
2 sion of the statutes, regulations, orders, or in-
3 terpretations referred to in subparagraph (A) of
4 any State, such provision of the regulations pre-
5 scribed under this section shall supersede the
6 comparable provision of such State statute, reg-
7 ulation, order, or interpretation.”.

○