104TH CONGRESS, 1st Session } HOUSE OF REPRESENTATIVES { REPT. 104–127, Part 3

FINANCIAL SERVICES COMPETITIVENESS ACT OF 1995

JUNE 22, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 1062]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 1062) to enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, and other financial service providers, having considered the same, report an amendment, but without recommendation on the bill as amended.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Financial Services Competitiveness Act of 1995".

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

Sec. 1. Short title; table of contents.

TITLE I—BANK SECURITIES ACTIVITIES AND AFFILIATIONS WITH SECURITIES FIRMS AND OTHER FINANCIAL COMPANIES

Subtitle A—Securities Activities

Sec. 101. Anti-affiliation provision of the Banking Act of 1933 repealed.
Sec. 102. Financial services holding companies authorized to have securities affiliates.
Sec. 103. Establishment and operations of securities affiliates.
Sec. 104. Safeguards relating to securities affiliates.
Sec. 105. Ownership of shares of certain companies by financial services holding companies.
Sec. 106. Provisions applicable to limited purpose banks.
Sec. 107. Securities company affiliations of FDIC—insured banks.
Sec. 108. Authority to terminate grandfather rights under the International Banking Act of 1978.
Sec. 109. Effect on State laws prohibiting the affiliation of banks and securities companies.
Sec. 110. Municipal securities.
Sec. 111. Interagency agreement relating to retail sales of certain nondeposit investment products.
Sec. 112. Effective date.

Subtitle B—Investment Bank Holding Companies

Sec. 116. Investment bank holding companies.
Sec. 117. Wholesale financial institutions.

Subtitle C—Financial Activities

Sec. 121. Financial activities.
Sec. 122. No prior approval required for well capitalized and well managed financial services holding companies.
Sec. 123. Streamlined examination and reporting requirements for all financial services holding companies.
Sec. 124. Holding company supervision for financial services holding companies engaged primarily in nonbanking activities.
Sec. 125. Conversion of unitary savings and loan holding companies to financial services holding companies.
Sec. 126. Financial services advisory committee.
Sec. 127. Coordination with State law.
Sec. 128. Conforming amendments to the Bank Holding Company Act of 1956.
Sec. 129. Conforming amendments to the Bank Holding Company Act Amendments of 1970.
Sec. 130. Credit cards for business purposes.

Subtitle D—Interagency Banking and Financial Services Advisory Committee

Sec. 141. Interagency banking and financial services advisory committee.

TITLE II—FUNCTIONAL REGULATION

Subtitle A—Brokers and Dealers

Sec. 201. Definition of broker.
Sec. 202. Definition of dealer.
Sec. 203. Power to exempt from the definitions of broker and dealer.
Sec. 204. Margin requirements.
Sec. 205. Effective date.

Subtitle B—Bank Investment Company Activities

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

TITLE I—BANK SECURITIES ACTIVITIES AND AFFILIATIONS WITH SECURITIES FIRMS AND OTHER FINANCIAL COMPANIES

Subtitle A—Securities Activities

SEC. 101. ANTI-AFFILIATION PROVISION OF THE BANKING ACT OF 1933 REPEALED.

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

(b) CONFORMING AMENDMENT TO SECTION 32.—Section 32 (12 U.S.C. 78) of the Banking Act of 1933 is amended by adding at the end the following sentence: "This section shall not apply so as to prohibit an officer, director, or employee of a securities affiliate (as defined in section 2 of the Financial Services Company Act of 1995) from serving at the same time as an officer, director, or employee of a member bank affiliated with that securities affiliate pursuant to section 10 of such Act. This section shall not apply so as to prohibit an officer, director, or employee of an investment company registered under the Investment Company Act of 1940 or an investment adviser registered under the Investment Advisers Act of 1940 from serving at the same time as an officer, director, or employee of a member bank.".

SEC. 102. FINANCIAL SERVICES HOLDING COMPANIES AUTHORIZED TO HAVE SECURITIES AFFILIATES.

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

(1) by striking "or" at the end of paragraph (13);

(2) by striking the period at the end of paragraph (14) and inserting "; or"; and

(3) by adding after paragraph (14) the following new paragraph:

"(15) shares of a securities affiliate in accordance with section 10.".

SEC. 103. ESTABLISHMENT AND OPERATIONS OF SECURITIES AFFILIATES.

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

"SEC. 10. SECURITIES ACTIVITIES.

"(a) ACTIVITIES PERMISSIBLE FOR SECURITIES AFFILIATES.—

"(1) IN GENERAL.—A securities affiliate may engage in 1 or more of the following activities:

"(A) Underwrite, deal in, broker, place, or distribute securities of any type, provide investment advice regarding securities of any type, and engage in other securities activities as determined by the Board.

"(B) Sponsor, organize, control, manage, and act as investment adviser to an investment company.

"(C) Engage in, or acquire the shares of a company engaged in, any activity if—

"(i) a provision of section 4(c) permits financial services holding companies generally to engage in that activity or acquire those shares; and

"(ii) either—

"(I) the Board permits the financial services holding company to engage in that activity or acquire those shares through the securities affiliate; or

"(II) a provision of section 4(c) permits the financial services holding company to engage in such activity or acquire such shares without the Board's approval.

"(2) FACTOR TO BE CONSIDERED.—In making determinations pursuant to this section, the Board shall take into account the need for securities firms affiliated with banks to be innovative and competitive.

"(b) ACQUIRING INTEREST IN SECURITIES AFFILIATE.—

"(1) NOTICE REQUIRED.—A financial services holding company shall not, without complying with and receiving approval pursuant to the notice procedure in section 4(j)(1), directly or indirectly acquire or retain more than 5 percent of the voting shares of, or all or substantially all of the assets of, a securities affiliate (or a company that would be a securities affiliate if the Board permitted the financial services holding company to acquire that company).

"(2) CRITERIA FOR APPROVAL.—The Board shall disapprove a notice required under paragraph (1) unless the Board determines that the requirements of the following subparagraphs have been met:

"(A) CAPITAL.—

"(i) DEPOSITORY INSTITUTIONS.—

"(I) The lead depository institution of the financial services holding company is well capitalized.

"(II) Well capitalized depository institutions control at least 80 percent of the aggregate total risk-weighted assets of depository institutions controlled by the financial services holding company.

"(III) All depository institutions controlled by the financial services holding company are well capitalized or adequately capitalized.

"(ii) RECENTLY ACQUIRED DEPOSITORY INSTITUTIONS.—Depository institutions acquired by a financial services holding company during the 12-month period preceding the submission of a notice under paragraph (1) may be excluded for purposes of clause (i)(II) if—

"(I) the financial services holding company has submitted a plan to the appropriate Federal banking agency to restore the capital of the institution and the plan has been accepted by such agency; and

"(II) all such institutions that are excluded for the purposes of clause (i)(II) represent, in the aggregate, less than 25 percent of the aggregate total risk-weighted assets of all depository institutions controlled by the financial services holding company.

"(iii) FINANCIAL SERVICES HOLDING COMPANY.—The financial services holding company is (and immediately after the acquisition of a securities affiliate would continue to be) adequately capitalized under the capital standards applicable, if any, to such financial services holding company.

"(iv) FOREIGN BANKS AND COMPANIES.—For purposes of applying this subsection and other provisions of this section, the Board shall establish and apply comparable capital standards for the acquisition, retention, and operation of a securities affiliate in the United States by a foreign bank that operates a branch or agency or owns or controls a bank or commercial lending company in the United States, and any company that owns or controls such a foreign bank, giving due regard to the principle of national treatment and equality of competitive opportunity.

"(B) ALTERNATIVE CAPITAL TREATMENT FOR WELL CAPITALIZED FINANCIAL SERVICES HOLDING COMPANIES.—

"(i) IN GENERAL.—A financial services holding company and the depository institution subsidiaries of such company shall be deemed to have met the capital requirements set forth in subparagraph (A) if—

"(I) the holding company files a written notice with the Board of such company's election to meet such capital requirements in the manner provided in this subparagraph;

"(II) all depository institutions controlled by the financial services holding company are at least adequately capitalized; and

"(III) the financial services holding company is (and immediately after the acquisition of a securities affiliate would continue to be) well capitalized.

"(ii) LOSSES INCURRED BY FDIC.—A financial services holding company which makes an election under clause (i) in connection with the acquisition of control of any securities affiliate shall be liable for any loss incurred by the Federal Deposit Insurance Corporation, or any loss which the Federal Deposit Insurance Corporation reasonably anticipates incurring in connection with—

"(I) the default of any insured depository institution controlled by the financial services holding company; or

"(II) any assistance provided by the Corporation to any insured depository institution in danger of default that is controlled by the financial services holding company.

"(C) MANAGERIAL RESOURCES.—

"(i) IN GENERAL.—The financial services holding company and each depository institution subsidiary of such company—

"(I) are well managed; and

"(II) were well managed during the 12-month period preceding the acquisition of a securities affiliate (but for purposes of this subparagraph the Board may disregard any depository institution ac-

quired by the financial services holding company during that period).

"(ii) SECURITIES ACTIVITIES.—The financial services holding company has the managerial resources to conduct the proposed securities activities safely and soundly.

"(D) INTERNAL CONTROLS.—The financial services holding company has established adequate policies and procedures to manage financial and operational risks, to provide reasonable assurance of compliance with this section and other applicable laws, and to provide reasonable assurance of maintenance of corporate separateness within the financial services holding company.

"(E) NO DETRIMENTAL EFFECT ON FINANCIAL SERVICES HOLDING COMPANY OR ITS SUBSIDIARY DEPOSITORY INSTITUTIONS.—The acquisition of a securities affiliate would not adversely affect the safety and soundness of—

"(i) the financial services holding company; or

"(ii) any depository institution subsidiary of the financial services holding company.

"(F) CONCENTRATION OF RESOURCES.—The acquisition of a securities affiliate would not result in an undue concentration of resources in the financial services business.

"(G) RESPONSIVENESS TO COMMUNITY NEEDS.—The lead insured depository institution subsidiary of the financial services holding company and insured depository institutions controlling at least 80 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by the financial services holding company have achieved a 'satisfactory record of meeting community credit needs', or better, during the most recent examination of such insured depository institutions.

"(3) LIMITED NOTICE PROCEDURES FOR PROPOSALS BY WELL CAPITALIZED AND WELL MANAGED COMPANIES TO ACQUIRE ADDITIONAL SECURITIES AFFILIATES.—A financial services holding company may, without providing the notice required under paragraph (1), directly or indirectly acquire the shares or substantially all of the assets of any company that is engaged in activities described in subparagraph (A) or (B) of subsection (a)(1), if—

"(A) the financial services holding company previously received the Board's approval under paragraph (1) to control a securities affiliate and continues to control the securities affiliate pursuant to that approval;

"(B) the acquisition proposal qualifies under section 4(j)(4);

"(C) the financial services holding company provides the written notification required in section 4(j)(5); and

"(D) the acquisition would not result in an undue concentration of resources in the financial services business.

"(c) ADDITIONAL INVESTMENT IN SECURITIES AFFILIATE.—

"(1) PRIOR NOTICE REQUIRED.—A financial services holding company that has acquired control of a securities affiliate under this section shall not, directly or indirectly, make any additional investment in the securities affiliate that is considered capital for purposes of any capital requirement imposed on the securities affiliate under the Securities Exchange Act of 1934 (other than an extension of credit under a revolving credit agreement approved by the Board), unless the financial services holding company gives the Board prior written notice of the proposed investment and the Board—

"(A) issues a written statement of the Board's intent not to disapprove the notice; or

"(B) does not disapprove the notice within 30 days after the notice is filed.

"(2) NO PRIOR NOTICE REQUIRED FOR CERTAIN FINANCIAL SERVICES HOLDING COMPANIES.—

"(A) IN GENERAL.—A financial services holding company shall not be required to provide prior notice under paragraph (1) if after making any investment described in paragraph (1)—

"(i) the financial services holding company would be adequately capitalized under the capital standards applicable, if any, to such financial services holding company and each of the financial services holding company's subsidiary depository institutions would be well capitalized; and

"(ii) the financial services holding company and each of its subsidiary depository institutions are well managed (but for purposes of this clause the Board may disregard any depository institution acquired by the financial services holding company during the previous 12-month period).

"(B) SUBSEQUENT NOTICE.—A financial services holding company that makes an investment pursuant to subparagraph (A) shall provide written notice to the Board of the additional investment within 10 days after making the investment.

"(3) CRITERIA FOR DISAPPROVING NOTICE.—The Board may disapprove a notice filed under paragraph (1) if—

"(A) any depository institution affiliate of the securities affiliate is undercapitalized; or

"(B) the Board determines that the financial services holding company would be undercapitalized under the capital standards applicable, if any, to such financial services holding company after making the investment or that the investment would otherwise be unsafe or unsound.

"(4) EMERGENCY APPROVAL.—Notwithstanding any provision of this subsection, in the event of adverse market conditions, or concerns regarding the financial or operational condition of the securities affiliate, the Board may approve any additional investment in the securities affiliate on an emergency basis if such additional investment does not adversely affect the safety and soundness of all insured depository institution affiliates of such securities affiliate and does not diminish the ability of the financial services holding company to maintain an appropriate amount of capital in all such insured depository institutions.

"(d) PROVISIONS APPLICABLE IF AFFILIATED DEPOSITORY INSTITUTION CEASES TO BE WELL CAPITALIZED.—

"(1) HOLDING COMPANY ACTION REQUIRED IF AFFILIATED INSTITUTIONS ARE NOT WELL CAPITALIZED.—

"(A) APPLICABILITY.—This paragraph shall apply if—

"(i) the lead depository institution of the financial services holding company is not well capitalized, or

"(ii) well capitalized depository institutions do not control at least 80 percent of the aggregate total risk-weighted assets of depository institutions affiliated with the securities affiliate.

"(B) CAPITAL MAINTENANCE AGREEMENT.—Within 30 days after subparagraph (A) becomes applicable with respect to any financial services holding company, such company shall execute an agreement with the Board—

"(i) to meet the capital requirements of subparagraph (A) within a reasonable period of time; or

"(ii) to divest control of the depository institution in an orderly manner within 180 days, or within such additional period of time as the Board may determine is reasonably required in order to effect such divestiture.

"(C) RESTRICTIONS ON CERTAIN SECURITIES ACTIVITIES.—If a financial services holding company fails to meet the requirements of, or comply with the agreement executed pursuant to, subparagraph (B), a securities affiliate of such financial services holding company shall not, beginning 180 days after subparagraph (A) becomes applicable with respect to such company, agree to underwrite or deal in, any securities other than—

"(i) securities expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in;

"(ii) securities backed by or representing interests in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations; or

"(iii) securities issued by an open-end investment company registered under the Investment Company Act of 1940.

"(D) EXCEPTION.—The Board may permit the securities affiliate of a financial services holding company described in subparagraph (C) to underwrite or deal in securities not described in clauses (i) through (iii) of such subparagraph for a period of 1 year from the date on which subparagraph (A) first becomes applicable with respect to such company, if—

"(i) the financial services holding company submits a capital restoration plan to the Board specifying the steps the financial services holding company will take to meet the requirements of subsection (b)(2)(A), and containing such other information as the Board may require; and

"(ii) the Board approves the plan.

"(E) EXTENSION OF PERIOD.—

"(i) IN GENERAL.—Upon application by a financial services holding company, the Board may extend, for not more than 1 year at a time, the period provided in subparagraph (C).

"(ii) MAXIMUM EXTENSION.—No extension under clause (i) of the period provided in subparagraph (C) shall, in the aggregate, exceed 2 years.

"(2) DIVESTITURE OF SECURITIES AFFILIATE.—

"(A) IN GENERAL.—A financial services holding company shall divest itself of the securities affiliate if any of the financial services holding company's subsidiary depository institutions has been undercapitalized for more than 6 months.

"(B) EXTENDING TIME.—The Board may provide additional time, not exceeding 18 months, for a divestiture under subparagraph (A) if—

"(i) the appropriate Federal banking agency or, in the case of a foreign bank or company that owns or controls a foreign bank, the Board, has approved the undercapitalized institution's capital restoration plan; and

"(ii) the Board determines that the securities affiliate poses no significant risk to any affiliated depository institution.

"(e) SECURITIES AFFILIATE EXCLUDED IN DETERMINING WHETHER FINANCIAL SERVICES HOLDING COMPANY IS ADEQUATELY CAPITALIZED.—

"(1) IN GENERAL.—In determining whether a financial services holding company is adequately capitalized—

"(A) the financial services holding company's capital and total assets shall each be reduced by—

"(i) an amount equal to the amount of the financial services holding company's equity investment in any securities affiliate; and

"(ii) an amount equal to the amount of any extensions of credit by the financial services holding company to any securities affiliate that are considered capital for purposes of any capital requirement imposed on the securities affiliate under section 15(c)(3) of the Securities Exchange Act of 1934; and

"(B) the securities affiliate's assets and liabilities shall not be consolidated with those of the financial services holding company.

"(2) EXCEPTION FOR NONSECURITIES ACTIVITIES.—Paragraph (1) shall not apply to the extent that the Board determines by regulation or order that—

"(A) an item described in such paragraph relates to activities which are not described in subparagraph (A) or (B) of subsection (a)(1); or

"(B) another method of adjusting capital is more appropriate to ensure the safety and soundness of depository institutions.

"(f) SAFEGUARDS.—Each financial services holding company and each subsidiary of any such company shall comply with all applicable safeguard requirements of section 11.

"(g) ACTIVITIES NOT PERMISSIBLE FOR DEPOSITORY INSTITUTIONS.—

"(1) IN GENERAL.—A financial services holding company that acquires control of a securities affiliate shall not, after the end of the 1-year period beginning on the date of such acquisition, permit any depository institution, or any subsidiary of any depository institution, which is controlled by such holding company—

"(A) to engage, directly or indirectly, in the United States—

"(i) in underwriting securities backed by or representing interests in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations originated or purchased by the institution or its affiliates, other than—

"(I) securities backed by or representing an interest in 1—4 family residential mortgages originated or purchased by the depository institution or any affiliate or subsidiary of the institution; or

"(II) securities backed by or representing an interest in consumer receivables or consumer leases originated or purchased by the depository institution or any affiliate or subsidiary of the institution; or

"(ii) in underwriting or dealing in any other securities, except securities expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in; or

"(B) to make an equity investment in any securities affiliate.

"(2) EXCEPTION FOR CERTAIN EDGE ACT AND AGREEMENT CORPORATIONS.—The limitations in paragraph (1)(A) shall not apply with respect to activities conducted by a subsidiary of a financial services holding company which is held pursuant to section 25 or 25A of the Federal Reserve Act or section 4(c)(13) of this Act.

"(3) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed as permitting a securities affiliate to accept deposits in contravention of section 21 of the Banking Act of 1933.

"(h) APPROVAL OF SECURITIES ACTIVITIES UNDER SECTION 4(c)(8) RESTRICTED.—The Board shall deny any notice or application by a financial services holding company under authority of section 4(c)(8) to engage in, or acquire the shares of a company engaged in, underwriting or dealing in securities in the United States, other than securities expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in.

"(i) BANKERS' BANKS.—

"(1) IN GENERAL.—For purposes of this section, each shareholder of or participant in a company that controls a depository institution described in section 5169(b)(1) of the Revised Statutes of the United States or in a similar statute of any State, and each subsidiary of such a shareholder or participant, shall be treated as if such shareholder, participant, or subsidiary were a subsidiary of that company.

"(2) EXCEPTION.—This subsection shall not apply with respect to a shareholder or participant in a company described in subparagraph (A) (or any subsidiary of such shareholder or participant) if the shareholder or participant, and the affiliates of any such shareholder or participant, do not, in the aggregate, control more than 5 percent of any class of voting shares of such company.

"(j) SHARES ACQUIRED IN CONNECTION WITH UNDERWRITING AND INVESTMENT BANKING ACTIVITIES.—

"(1) IN GENERAL.—Notwithstanding section 4(a), a financial services holding company may directly or indirectly acquire or control, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the financial services holding company controls), or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates, or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in activities not authorized pursuant to section 4 if—

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

"(B) such shares, assets, or ownership interests are acquired and held by a securities affiliate or an affiliate of a securities affiliate as part of a bona fide underwriting or investment banking activity, which includes investment activities engaged in for the purpose of appreciation and ultimate resale or other disposition of the investment, and such shares, assets, or ownership interests are held for such a period of time as will permit the sale or disposition thereof on a reasonable basis consistent with the nature of such activities; and

"(C) during the period such shares, assets, or ownership interests are held, the financial services holding company does not actively manage or operate the company or entity except insofar as necessary to achieve the objectives of subparagraph (B).

"(2) NO EXPANSION OF UNDERWRITING ACTIVITIES.—No provision of this subsection shall be construed as authorizing any financial services holding company, or any subsidiary of any such company, to underwrite or deal in any security.

"(k) DEFINITIONS.—For purposes of this section and sections 11 and 12, the following definitions shall apply:

"(1) CAPITAL STOCK AND SURPLUS.—The term 'capital stock and surplus' has the same meaning as in section 23A of the Federal Reserve Act.

"(2) COVERED TRANSACTION.—The term 'covered transaction' has the same meaning as in section 23A of the Federal Reserve Act.

"(3) SECURITY.—

"(A) IN GENERAL.—The term 'security' has the meaning given to such term in section 3(a)(10) of the Securities Exchange Act of 1934.

"(B) EXCEPTIONS.—For purposes of this section, other than subsection (a), the term 'security' does not include any of the following:

"(i) A contract of insurance.

"(ii) A deposit account, savings account, certificate of deposit, or other deposit instrument issued by a depository institution.

"(iii) A share account issued by a savings association if the account is insured by the Federal Deposit Insurance Corporation.

"(iv) A banker's acceptance.

"(v) A letter of credit issued by a depository institution.

"(vi) A debit account at a depository institution arising from a credit card or similar arrangement.

"(vii) A loan or loan participation (as determined by the Board).

"(C) BOARD'S AUTHORITY TO EXEMPT TRADITIONAL BANKING PRODUCTS.—The Board may, by regulation or order and after consultation with and consideration of the views of the Securities and Exchange Commission, exempt a banking product from the definition of security if the Board determines that—

"(i) the product is more appropriately regulated as a banking product; and

"(ii) the exemption is otherwise consistent with the purposes of this section.

"(D) DEFINITION FOR LIMITED PURPOSE.—The fact that a particular instrument is excluded pursuant to subparagraph (B) or (C) from the definition of security for purposes of this section shall not be construed as finding or implying that such instrument is or is not a security for purposes of Federal securities laws.".

(b) TRANSITION RULE FOR SECURITIES AFFILIATES APPROVED UNDER SECTION 4(c)(8).—

(1) CONVERSION TO (4)(C)(15) SUBSIDIARY.—

(A) IN GENERAL.—Except as provided in subparagraph (B) and paragraphs (3) and (4), effective 18 months after the date of enactment of this Act, no financial services holding company may engage in, or retain the shares of any company engaged in, underwriting or dealing in securities based on the approval of an application under section 4(c)(8) of the Bank Holding Company Act of 1956 (as in effect before the date of the enactment of the Financial Services Competitiveness Act of 1995) unless the financial services holding company has obtained the Board's approval to retain the shares of that company under section 10.

(B) EXCEPTION FOR BANK ELIGIBLE SECURITIES.—Subparagraph (A) shall not apply with respect to underwriting or dealing in securities expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in.

(2) EXTENDING TIME.—

(A) IN GENERAL.—The Board may, for good cause shown, extend the time provided under paragraph (1) for not more than 18 months.

(B) PENDING NOTICES.—If a financial services holding company has filed a notice under section 10(b) of the Bank Holding Company Act of 1956 not later than 180 days after the date of enactment of this Act, paragraph (1) shall not apply with respect to the company engaged in such underwriting or dealing until 180 days after the Board has acted on the notice.

(3) CONVERSION PROCEDURES FOR COMPANIES PREVIOUSLY AUTHORIZED TO CONDUCT SECURITIES ACTIVITIES.—Any financial services holding company that controls a company engaged in underwriting and dealing in corporate debt and equity securities pursuant to an order issued by the Board under section 4(c)(8) of the Bank Holding Company Act of 1956 before the date of enactment of the Financial Services Competitiveness Act of 1995 shall be treated as follows:

(A) REVENUE TEST AND CERTAIN OTHER RESTRICTIONS.—Upon filing the notice required under section 10(b) of the Financial Services Holding Company Act of 1995, the financial services holding company shall be relieved from—

(i) the limitation contained in such order on the amount of revenue that may be derived from securities underwriting and dealing activities; and

(ii) any other restriction contained in such order that would not be required under section 11 of such Act, as permitted by the Board.

(B) EXAMINATION OF INTERNAL CONTROLS.—The financial services holding company shall not, in connection with action on the notice submitted under section 10(b)(1) of the Financial Services Holding Company Act of 1995, be subject to an examination of internal controls under section 10(b)(2)(D) of such Act.

(4) RETENTION OF COMPANIES CONDUCTING LIMITED SECURITIES ACTIVITIES.—Notwithstanding paragraph (1), any financial services holding company that controls a company engaged in underwriting and dealing in securities (other than corporate debt or equity securities) pursuant to an order issued by the Board under section 4(c)(8) of the Bank Holding Company Act of 1956 before the date of enactment of the Financial Services Competitiveness Act of 1995 may retain control of such company, so long as such company complies with all

of the limitations, restrictions and conditions, including the limitation on the revenue that may be derived from such underwriting or dealing activities, contained in such order.

SEC. 104. SAFEGUARDS RELATING TO SECURITIES AFFILIATES.

(a) IN GENERAL.—The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended—

(1) by redesignating sections 11 and 12 as sections 13 and 14, respectively; and

(2) by inserting after section 10 (as added by section 103 of this Act) the following new section:

"SEC. 11. SAFEGUARDS RELATING TO SECURITIES AFFILIATES.

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

"(1) IN GENERAL.—No depository institution affiliated with a securities affiliate shall, directly or indirectly, do any of the following:

"(A) Extend credit in any manner to the securities affiliate.

"(B) Issue a guarantee, acceptance, or letter of credit, including an endorsement or a standby letter of credit, for the benefit of the securities affiliate.

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

"(2) EXCEPTION FOR CLEARING SECURITIES.—Paragraph (1)(A) shall not apply with respect to an extension of credit by a well capitalized depository institution to acquire or sell securities if the following conditions are met:

"(A) The extension of credit is incidental to clearing transactions in those securities through that depository institution.

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

"(C) Either—

"(i) the extension of credit is to be repaid before the close of business on the same business day; or

"(ii) all of the following conditions are satisfied:

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

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

"(III) Extensions of credit subject to this clause, when aggregated with all other covered transactions between the institution and all affiliated securities affiliates do not exceed 10 percent of the institution's capital stock and surplus.

"(D) Either—

"(i) the securities are securities expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in; or

"(ii) the Board permits transactions under this paragraph in securities not described in clause (i) and the securities affiliate provides the depository institution with such additional security or other assurance of performance, if any, as the Board shall require to prevent such transactions from posing any appreciable risk to the institution.

"(3) EXCEPTIONS FOR CERTAIN SECURITIES PURCHASED FOR A DEPOSITORY INSTITUTION'S OWN ACCOUNT.—Paragraph (1)(C) shall not apply with respect to purchases at the current market value (based on reliable and regularly available price quotations) of—

"(A) securities expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in; or

"(B) securities that—

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

"(ii) are rated investment grade by at least 1 nationally recognized statistical rating organization.

"(4) OTHER EXCEPTIONS.—The Board may make exceptions to paragraph (1) for well capitalized depository institutions if—

"(A) the transaction is fully secured in accordance with section 23A(c) of the Federal Reserve Act; and

"(B) the aggregate amount of covered transactions between the institution and all securities affiliates of the financial services holding company, ex-

cluding transactions permitted under paragraph (2)(C)(i) or (3)(A), does not exceed 10 percent of the institution's capital stock and surplus.

"(b) CREDIT ENHANCEMENT RESTRICTED.—

"(1) IN GENERAL.—No depository institution affiliated with a securities affiliate shall, directly or indirectly, extend credit, or issue or enter into a standby letter of credit, asset purchase agreement, indemnity, guarantee, insurance, or other facility, for the purpose of enhancing the marketability of a securities issue underwritten by the securities affiliate.

"(2) DEFINITION OF TERM BY BOARD.—The Board shall prescribe a definition for the term 'for the purpose of enhancing the marketability of a securities issue' for purposes of paragraph (1).

"(3) EXCEPTION FOR BANK ELIGIBLE SECURITIES.—Paragraph (1) shall not apply with regard to securities expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in.

"(4) APPLICATION TO WELL CAPITALIZED DEPOSITORY INSTITUTIONS.—

"(A) IN GENERAL.—A well capitalized depository institution may engage in a transaction described in paragraph (1) if—

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

"(ii) the institution and its securities affiliate have adopted appropriate procedures, including maintenance of necessary documentary records, to assure that any such extension of credit, standby letter of credit, asset purchase agreement, indemnity, guarantee, insurance or other facility, is on an arm's length basis.

"(B) ARM'S LENGTH TRANSACTION DESCRIBED.—An extension of credit may be considered to be on an arm's length basis if the terms and conditions are substantially the same as those prevailing at the time for comparable transactions involving securities that are not underwritten by the securities affiliate.

"(C) COMPLIANCE WITH PARAGRAPH (1).—The Board may require, by regulation or order, compliance with paragraph (1) by well capitalized depository institutions exempt under this paragraph in order to achieve any purpose specified in subsection (l).

"(c) PROHIBITION ON FINANCING PURCHASE OF SECURITY BEING UNDERWRITTEN.—

"(1) IN GENERAL.—No financial services holding company or subsidiary of a financial services holding company (other than a securities affiliate) shall knowingly extend or arrange for the extension of credit, directly or indirectly, secured by or for the purpose of purchasing any security while, or for 30 days after, that security is the subject of a distribution in which a securities affiliate of that financial services holding company participates as an underwriter or a member of a selling group.

"(2) RELIANCE ON ACKNOWLEDGEMENT.—For purposes of paragraph (1), a financial services holding company or subsidiary may rely on an express written acknowledgement signed by the borrower that the credit is not secured by or for the purpose of purchasing a security described in this subparagraph.

"(3) APPLICATION TO BANK ELIGIBLE SECURITIES.—Paragraph (1) shall not apply with regard to extensions of credit if the securities are securities expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in.

"(4) APPLICATION TO WELL CAPITALIZED DEPOSITORY INSTITUTIONS.—The Board may make exceptions, by regulation or order, to paragraph (1) for an extension of credit, after consultation with and considering the views of the Securities and Exchange Commission, if—

"(A) the financial services holding company is adequately capitalized;

"(B) the financial services holding company's lead depository institution is well capitalized;

"(C) well capitalized depository institutions control at least 80 percent of the assets of depository institutions controlled by the financial services holding company; and

"(D) all depository institutions controlled by the financial services holding company are well capitalized or adequately capitalized.

"(5) CONSISTENCY WITH THE FEDERAL SECURITIES LAWS.—No provision of this subsection shall be construed as permitting a securities affiliate to extend or maintain credit, or arrange for an extension of credit, except in compliance with applicable provisions of the Securities Exchange Act of 1934 and the regulations prescribed and interpretations issued under such Act.

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

"(1) IN GENERAL.—No depository institution affiliated with a securities affiliate shall, directly or indirectly, extend credit to an issuer of securities underwritten by the securities affiliate for the purpose of paying the principal of those securities or interest or dividends on those securities.

"(2) EXCEPTIONS FOR CERTAIN EXTENSIONS OF CREDIT.—Paragraph (1) shall not apply to an extension of credit for a documented purpose (other than paying principal, interest, or dividends) if the timing, maturity, and other terms of the credit, taken as a whole, are substantially different from those of the underwritten securities.

"(3) EXCEPTIONS FOR BANK ELIGIBLE SECURITIES.—Paragraph (1) shall not apply with respect to any security expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in.

"(4) APPLICATION TO WELL CAPITALIZED DEPOSITORY INSTITUTIONS.—

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

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

"(ii) the depository institution has adopted appropriate procedures, including maintenance of necessary documentary records, to assure that any extension of credit by the depository institution to an issuer for the purpose of paying the principal, interest or dividends on securities underwritten by the securities affiliate is on an arm's length basis.

"(B) ARM'S LENGTH TRANSACTION DESCRIBED.—An extension of credit may be considered to have been made on an arm's length basis if the terms and conditions are substantially the same as those prevailing at the time for comparable transactions with issuers whose securities are not underwritten by the securities affiliate.

"(C) COMPLIANCE WITH SUBPARAGRAPH (A).—The Board may require, by regulation or order, compliance with paragraph (1) by well capitalized depository institutions exempt under this paragraph in order to achieve any purpose specified in subsection (l).

"(e) COMMON DIRECTORS AND SENIOR EXECUTIVE OFFICERS.—

"(1) IN GENERAL.—The Board shall, by regulation or order, prescribe the circumstances under which directors and senior executive officers of a securities affiliate may serve at the same time as directors or senior executive officers of any affiliated depository institutions.

"(2) STANDARDS.—The Board, in issuing any regulation or order pursuant to paragraph (1), shall consider appropriate factors including—

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

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

"(C) unfair competition in securities activities;

"(D) improper exchange of customer information; or

"(E) harm to customers of securities affiliates or depository institutions that could reasonably result from director and senior officer interlocks.

"(3) EXCEPTION FOR SMALL FINANCIAL SERVICES HOLDING COMPANIES.—

"(A) IN GENERAL.—Notwithstanding paragraph (1), a director or senior executive officer of a securities affiliate may serve at the same time as a director or senior executive officer of an affiliated depository institution if that institution and all affiliated depository institutions have, in the aggregate, total assets of not more than $500,000,000.

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

"(4) EXCEPTION FOR CERTAIN REGULATION K AFFILIATES.—Paragraph (1) shall not prohibit a director or senior executive officer of a securities affiliate from serving at the same time as a director or senior executive officer of a depository institution which—

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

"(B) is an affiliate of such securities affiliate; and

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

"(f) DISCLOSURE REQUIRED BY SECURITIES AFFILIATE.—

"(1) IN GENERAL.—At the time a securities account is opened, a securities affiliate shall conspicuously disclose in writing to each of its customers that—

"(A) securities sold, offered, or recommended by the securities affiliate—

"(i) are not deposits;

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

"(iii) are not guaranteed by an affiliated insured depository institution;

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

"(v) with regard to any product that includes any investment component, are subject to investment risks including possible loss of principal invested;

"(B) the securities affiliate is not an insured depository institution, and is a corporation separate from any insured depository institution; and

"(C) the securities affiliate may be underwriting or dealing in the securities being sold, offered or recommended, and if so, would have a financial interest in the transaction.

"(2) FORM OF DISCLOSURE.—The disclosures required by paragraph (1) shall be made in clear and concise language that—

"(A) is readily comprehensible to customers of the securities affiliate, and

"(B) is designed to promote customer understanding that uninsured investment products are not deposits insured by the Federal Deposit Insurance Corporation.

"(3) BOARD AUTHORITY.—Subject to paragraph (2), the Board may, in the Board's discretion, prescribe disclosures in addition to the disclosures prescribed by paragraph (1).

"(g) DISCLOSURE REQUIRED BY INSURED DEPOSITORY INSTITUTIONS.—

"(1) IN GENERAL.—No insured depository institution shall knowingly express any opinion on the value of, or the advisability of purchasing or selling, nonbanking products (as defined by the Board) sold by the insured depository institution or any affiliate of an insured depository institution unless the insured depository institution conspicuously discloses in writing to the customer that—

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

"(B) the nonbanking products—

"(i) are not deposits;

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

"(iii) are not guaranteed by the institution or any other affiliated insured depository institution;

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

"(v) with regard to any nonbanking product that includes any investment component, are subject to investment risks including possible loss of principal invested; and

"(C) an affiliate, if involved, is not an insured depository institution (unless such is the case), and is a corporation separate from any insured depository institution (unless such is not the case).

"(2) FORM OF DISCLOSURE.—The disclosures required by paragraph (1) shall be made in clear and concise language that—

"(A) is readily comprehensible to customers of the insured depository institution, and

"(B) is designed to promote customer understanding that nonbanking products are not deposits insured by the Federal Deposit Insurance Corporation.

"(3) CUSTOMER ACKNOWLEDGEMENT OF DISCLOSURE.—

"(A) IN GENERAL.—Whenever any insured depository institution or securities affiliate opens an account for the purpose of selling a nondeposit investment product or products to a customer, such insured depository institution or securities affiliate as the case may be, shall obtain a 1-time acknowledgment of receipt by the customer of such disclosures, including the date of receipt with the customer's name, address, and the account number.

"(B) SPECIAL RULE FOR ACCREDITED INVESTORS.—In the case of any customer who is, or meets the requirements for, an accredited investor (as defined in section 2(15) of the Securities Act of 1933), the acknowledgment of the receipt of any disclosure described in subparagraph (A) may be obtained by the insured depository institution or securities affiliate at the time any account is opened by such customer.

"(4) BOARD AUTHORITY.—Subject to paragraph (2), the Board, after consultation with the other appropriate Federal banking agencies, may prescribe disclosures in addition to the disclosures required by paragraph (1).

"(h) IMPROPER DISCLOSURE OF CONFIDENTIAL CUSTOMER INFORMATION PROHIBITED.—

"(1) IN GENERAL.—No depository institution subsidiary of a financial services holding company shall disclose to any affiliate of such institution which is not a depository institution, and no affiliate of such company which is not a depository institution shall disclose to any other affiliate which is a depository institution or a subsidiary of such an institution, any nonpublic customer information (including an evaluation of the creditworthiness of an issuer or other customer of that institution or securities affiliate), unless it is clearly and conspicuously disclosed that such information may be communicated among such persons and the customer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons.

"(2) DEFINITION.—For purposes of paragraph (1), the term 'nonpublic customer information' does not include—

"(A) customers' names and addresses (unless a customer has specified otherwise);

"(B) information that could be obtained from unaffiliated credit bureaus or similar companies in the ordinary course of business; or

"(C) information that is customarily provided to unaffiliated credit bureaus or similar companies in the ordinary course of business by—

"(i) depository institutions not affiliated with securities affiliates; or

"(ii) brokers and dealers not affiliated with depository institutions.

"(i) UNDERWRITING SECURITIES REPRESENTING OBLIGATIONS ORIGINATED BY AFFILIATE RESTRICTED.—A securities affiliate shall not underwrite securities secured by or representing an interest in mortgages or other obligations originated or purchased by an affiliated depository institution or subsidiary of such an institution—

"(1) unless those securities—

"(A) are rated by at least 1 unaffiliated, nationally recognized statistical rating organization;

"(B) are issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association; or

"(C) represent interests in securities described in subparagraph (B); or

"(2) except as permitted by the Board.

"(j) RECIPROCAL ARRANGEMENTS PROHIBITED.—No financial services holding company and no subsidiary of a financial services holding company may enter into any agreement, understanding, or other arrangement under which—

"(1) 1 financial services holding company (or subsidiary of that financial services holding company) agrees to engage in a transaction with, or on behalf of, another financial services holding company (or subsidiary of that financial services holding company), in exchange for

"(2) the agreement of the second financial services holding company referred to in paragraph (1) (or a subsidiary of that financial services holding company) to engage in any transaction with, or on behalf of, the first financial services holding company referred to in such paragraph (or any subsidiary of that financial services holding company), for the purpose of evading any requirement or restriction of Federal law on transactions between, or for the benefit of, affiliates of financial services holding companies.

"(k) SAFEGUARDS APPLY TO CERTAIN SUBSIDIARIES.—Except as provided in this section—

"(1) SECURITIES AFFILIATE.—No subsidiary of a securities affiliate may do anything that this section prohibits the securities affiliate from doing.

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

"(l) AUTHORITY TO MODIFY AND IMPOSE ADDITIONAL SAFEGUARDS; INTERPRETIVE AUTHORITY.—

"(1) IN GENERAL.—The Board may, by regulation or order—

"(A) adopt additional limitations, restrictions or conditions on relationships or transactions among depository institutions, their affiliates, and their customers; and

"(B) make any modification to any limitation, restriction, or condition imposed under this section on relationships or transactions among depository institutions, the affiliates of insured depository institutions, and the cus-

tomers of such institutions or affiliates, including modifications in addition to those expressly provided for in this section.

"(2) STANDARDS.—The Board may not exercise authority under paragraph (1) unless the Board finds that such action is consistent with the purposes of this Act, including—

"(A) the avoidance of any significant risk to the safety and soundness of depository institutions or the Federal deposit insurance funds;

"(B) the enhancement of the financial stability of financial services holding companies;

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

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

"(E) the application of the principle of national treatment and equality of competitive opportunity between securities affiliates owned or controlled by domestic financial services holding companies and securities affiliates owned or controlled by foreign banks operating in the United States.

"(3) BIENNIAL REVIEW.—Beginning 2 years after the date of enactment of the Financial Services Competitiveness Act of 1995, the Board shall, on a biennial basis—

"(A) review all restrictions established pursuant to paragraph (1) to determine whether any such restrictions are required any longer to carry out the purposes of this Act; and

"(B) modify or eliminate any such restriction that the Board determines is no longer required to carry out the purposes of this Act.

"(m) COMPLIANCE PROGRAMS REQUIRED.—

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

"(A) sharing information concerning compliance with subtitle A of title I or subtitle A or B of title II of the Financial Services Competitiveness Act of 1995, and the amendments made by such subtitles, by—

"(i) brokers, dealers, investment advisers, or investment companies that are registered with the Securities and Exchange Commission that are affiliated with depository institutions, or are separately identifiable departments or divisions of depository institutions registered as brokers, dealers, or investment advisers; and

"(ii) depository institutions and their affiliates;

"(B) enforcing compliance with subtitle A of title I of the Financial Services Competitiveness Act of 1995, and the amendments made by such subtitle and paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934 by entities under its supervision; and

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

"(2) DATA COLLECTION.—

"(A) IN GENERAL.—The appropriate Federal banking agencies, after consultation with and consideration of the views of the Securities and Exchange Commission, may require any depository institution that has effected securities transactions pursuant to any exception enumerated in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934 to identify the exceptions relied upon and to submit such information necessary to monitor compliance under such paragraphs.

"(B) COMMISSION ACCESS.—The appropriate Federal banking agency shall make any information referred to in subparagraph (A) available to the Securities and Exchange Commission, upon the request of the Commission.

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

"(3) COMMISSION'S ENFORCEMENT AUTHORITY.—Without limiting in any way the authority of the appropriate Federal banking agencies under this section, the Securities and Exchange Commission shall have the authority to enforce any subsection of this section against a securities affiliate as if such subsection were a provision of the Securities Exchange Act of 1934 to the extent that the subsection applies with respect to the conduct or activities of the securities affiliate.

"(4) EXAMINATION REPORTS.—The appropriate Federal banking agencies shall, to the extent practicable, use the reports of examination of any broker, dealer, investment adviser, or investment company made by or on behalf of the Securities and Exchange Commission and reports made by or on behalf of a registered

securities association or national securities exchange, and shall defer to such examinations for compliance with the Federal securities laws.

"(5) INTERPRETATIONS OF THE FEDERAL SECURITIES LAWS.—The appropriate Federal banking agencies shall defer to the Securities and Exchange Commission regarding all interpretations and enforcement of the Federal securities laws relating to the application of the Federal securities laws to the activities and conduct of brokers, dealers, investment advisers, and investment companies.

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

"(A) any broker, dealer, or investment adviser that—

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

"(ii) is affiliated with, or is a separately identifiable department or division of, a depository institution;

"(B) any investment company registered with the Securities and Exchange Commission that is an affiliate of or is advised by an investment adviser affiliated with a depository institution or by a separately identifiable department or division of a depository institution that is a registered investment adviser; or

"(C) any financial services holding company, depository institution, or subsidiary of such company or institution, if the proposed action relates to subtitle A of title I or subtitle A or B of title II of the Financial Services Competitiveness Act of 1995.

"(7) NOTICE OF CERTAIN ACTIONS BY APPROPRIATE FEDERAL BANKING AGENCIES.—Upon the commencement of any disciplinary or law enforcement proceedings to enforce the provisions of subtitle A of title I of the Financial Services Competitiveness Act of 1995, or any amendment made by such subtitle, by an appropriate Federal banking agency against any broker, dealer, investment adviser, or investment company that is registered under the Federal securities laws and is affiliated with a depository institution or is a separately identifiable department or division of a depository institution, the appropriate Federal banking agency shall give notice to the Securities and Exchange Commission of the proposed action.

"(8) IMMEDIATE ACTION ALLOWED BEFORE NOTICE.—The notice required under paragraph (6) or (7) may be provided promptly after action by the Securities and Exchange Commission or the appropriate Federal banking agency, if—

"(A) the Commission determines that the protection of investors requires immediate action by the Commission and prior notice under paragraph (6) is not practical under the circumstances; or

"(B) the appropriate Federal banking agency determines that concerns for the safety and soundness of a depository institution or its affiliate require immediate action by the agency and prior notice under paragraph (7) is not practical under the circumstances.

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

"(10) INVESTMENT COMPANIES NOT AFFILIATED WITH A DEPOSITORY INSTITUTION.—The appropriate Federal banking agency shall not have authority under this Act or any other provision of law to inspect or examine any investment company registered under the Federal securities laws that is not—

"(A) affiliated with a depository institution; or

"(B) advised by an investment adviser affiliated with a depository institution or by a separately identifiable department or division of a depository institution that is a registered investment adviser.

"(11) DEFINITION.—For purposes of this subsection, the term 'Federal securities laws' means the provisions of Federal law governing securities activities that are within the jurisdiction of the Securities and Exchange Commission under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and the Trust Indenture Act of 1939.

"(n) FOREIGN BANK FIREWALLS.—

"(1) IN GENERAL.—A foreign bank that operates a branch, agency, or commercial lending company in the United States and accepts no deposits in the United States, either directly or through an affiliate, that are insured under the Federal Deposit Insurance Act, and any affiliate of such foreign bank, shall not be

subject to the restrictions of any subsection of this section, other than subsections (l) and (m), if the conditions described in paragraph (2) are met.

"(2) CONDITIONS FOR APPLICABILITY OF EXCEPTION.—The conditions of this paragraph have been met with respect to any foreign bank referred to in paragraph (1) if—

"(A) transactions between a securities affiliate of such foreign bank and any branch, agency or commercial lending company operated in the United States by such foreign bank comply with the provisions of sections 23A and 23B of the Federal Reserve Act as if the foreign bank were a member bank; and

"(B) such foreign bank has received a determination from the Board that the bank meets capital standards comparable to those established by the Board for well capitalized financial services holding companies, giving due regard to the principle of national treatment and equality of competitive opportunity, subject to any changes the Board may adopt with respect to such standards.

"(3) APPLICABILITY OF SUBSECTION (l) TO FOREIGN BANKS.—Any limitation, restriction, condition, or modification adopted by the Board under subsection (l) may be applied by the Board to—

"(A) a foreign bank described in paragraph (1) (and any company that owns or controls such foreign bank);

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

"(C) any other affiliate of such foreign bank in the United States,

if such limitation, restriction, condition, or modification is applied by regulation or order of general applicability under section 12(a)(2)(B)(ii) to wholesale financial institutions and securities affiliates controlled by investment bank holding companies, subject to such modifications, conditions, or exemptions as the Board deems appropriate, giving due regard to the principle of national treatment and equality of competitive opportunity.".

(b) AMENDMENT TO THE FEDERAL RESERVE ACT.—Section 23B(b)(1)(B) of the Federal Reserve Act (12 U.S.C. 371c–l(b)(1)(B)) is amended by inserting "and for 30 days thereafter" after "during the existence of any underwriting or selling syndicate".

(c) EXEMPTION FROM SECTION 305(b) OF THE FEDERAL POWER ACT.—Section 305(b) of the Federal Power Act shall not apply to any person now holding, or proposing to hold, at the same time the position of officer or director of a public utility and the position of officer or director of a bank, trust company, banking association, or firm permitted by section 10 of the Financial Services Holding Company Act of 1995 (as amended by section 103(a) of this Act) to underwrite or participate in the marketing of securities (including commercial paper) of a public utility, if that bank, trust company, banking association, or firm does not underwrite or participate in the marketing of securities of the public utility for which the person serves, or proposes to serve, as an officer or director.

(d) AMENDMENT TO THE RIGHT TO FINANCIAL PRIVACY ACT.—Section 1112(e) of the Right to Financial Privacy Act (12 U.S.C. 3412(e)) is amended as follows—

(1) by striking "this title" and inserting "law"; and

(2) by inserting ", examination reports," after "financial records".

(e) REGULATIONS TO PRESERVE SEPARATION OF BANKING AND COMMERCE.—Section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(b)) is amended by inserting ", including the protection of depository institutions and the separation of banking and commerce," after "purposes of this Act".

SEC. 105. OWNERSHIP OF SHARES OF CERTAIN COMPANIES BY FINANCIAL SERVICES HOLDING COMPANIES.

Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended by adding at the end the following new subsection:

"(k) OWNERSHIP OF SHARES OF CERTAIN COMPANIES BY FINANCIAL SERVICES HOLDING COMPANIES.—

"(1) NONCONFORMING FINANCIAL COMPANIES.—Notwithstanding section 4(a), a financial services holding company may retain direct or indirect ownership or control of voting shares of any company that—

"(A) engages solely in activities that the Board finds to be financial but which the Board has not authorized under section 4(c)(8) (and such other financial activities that the Board has authorized) if—

"(i) the financial services holding company acquired the shares of a company engaged in such activities or of each company to which the company engaged in such activities is a successor more than 2 years

before the date that such financial services holding company becomes a financial services holding company;

"(ii) the aggregate investment by the financial services holding company in shares of all such companies does not exceed 10 percent of the total consolidated capital and surplus of the financial services holding company as of the date that the holding company becomes a financial services holding company or as of the date of any additional investment by the financial services holding company in such shares;

"(iii) more than 50 percent of the aggregate gross revenues of the financial services holding company and the subsidiaries of such holding company for each of the 2 calendar years before the date the holding company becomes a financial services holding company were attributable to securities activities described in subparagraphs (A) and (B) of section 10(a)(1), as determined without taking into account any activities (other than securities activities) in which financial services holding companies were permitted to engage before the date of the enactment of the Financial Services Competitiveness Act of 1995; and

"(iv) the company engaged in such activities continues to engage only in activities that such company conducted as of the date that such financial services holding company becomes a financial services holding company (or other activities permitted under section 4(c)(8) or section 10); or

"(B) engages in activities not authorized under section 4 if—

"(i) the financial services holding company held the shares of any company engaged in such activities as of the date of the enactment of the Financial Services Competitiveness Act of 1995 and the financial services holding company was then exempt from the provisions of section 4 pursuant to section 4(d) as of such date;

"(ii) the company engaged in such activities continues to engage only in the same general lines of business and related activities that such company conducted as of the date of the enactment of the Financial Services Competitiveness Act of 1995 (or other activities permitted under section 4(c) or section 10); and

"(iii) 80 percent of the aggregate gross revenues of the financial services holding company and the subsidiaries of such holding company as of the date of the enactment of the Financial Services Competitiveness Act of 1995 was attributable to—

"(I) ownership and operation of depository institutions;

"(II) activities that are financial in nature as determined by the Board pursuant to section 4(c)(8);

"(III) activities permissible under section 10; and

"(IV) such other activities that would be permissible generally for the holding company as a financial services holding company (other than as an investment bank holding company).

"(2) NONFINANCIAL COMPANIES.—

"(A) IN GENERAL.—Notwithstanding section 4(a), a financial services holding company described in paragraph (1)(A)(iii) may, during the 5-year period beginning on the date that the company becomes a financial services holding company, retain direct or indirect ownership or control of voting shares of any company that the financial services holding company owns or controls on the date such holding company becomes a financial services holding company.

"(B) EXTENSION OF DIVESTITURE PERIOD.—The Board may extend the period described in subparagraph (A) for an additional period not to exceed 5 years if the Board—

"(i) determines that such extension is necessary to avert substantial loss to the financial services holding company; and

"(ii) finds that the financial services holding company has made good faith efforts to divest such shares.

"(C) NO EXPANSION OF NONFINANCIAL COMPANIES PRIOR TO DIVESTITURE.—Unless an acquisition or activity is permitted in accordance with section 3 or 4(c)—

"(i) no financial services holding company, and no company whose shares are owned or controlled by a financial services holding company in accordance with this paragraph, may acquire any interest in or assets of any other company, and

"(ii) no company whose shares are owned or controlled by a financial services holding company pursuant to this paragraph may engage di-

rectly or indirectly in any activity that the company did not conduct on the day before the financial services holding company registered as a financial services holding company.

"(3) RESTRICTIONS ON JOINT MARKETING.—No depository institution (and no subsidiary of such institution) shall—

"(A) offer or market, directly or indirectly through any arrangement, any product or service of any affiliate whose shares are owned or controlled by the financial services holding company pursuant to this subsection or section 10(j); or

"(B) permit any of such depository institution's or subsidiary's products or services to be offered or marketed, directly or indirectly through any arrangement, by or through any affiliate whose shares are owned or controlled by the financial services holding company pursuant to this subsection or section 10(j),

unless, in a case involving an affiliate held under this subsection, the product or service is permissible for financial services holding companies to provide under section 4(c)(8) or 10.

"(4) DEPOSITORY INSTITUTION DEFINED.—For purposes of paragraph (3), the term 'depository institution' includes a foreign bank.".

SEC. 106. PROVISIONS APPLICABLE TO LIMITED PURPOSE BANKS.

(a) EXCEPTION TO RESTRICTION ON ASSET GROWTH OF NONBANK BANKS.—

(1) IN GENERAL.—Section 4(f)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)(3)) is amended by adding at the end the following new subparagraph:

"(D) EXCEPTION TO RESTRICTION ON ASSET GROWTH, ACTIVITIES, AND CERTAIN CROSS-MARKETING RESTRICTIONS.—

"(i) QUALIFICATION FOR EXCEPTION FROM GROWTH RESTRICTION.—A bank controlled by a company described in paragraph (1) shall not be subject to the limitation contained in subparagraph (B)(iv) if the company meets the requirements of this subparagraph and the requirements of paragraph (14).

"(ii) QUALIFICATION FOR EXCEPTION FROM ACTIVITIES RESTRICTION.—Notwithstanding subparagraph (B)(i), a bank controlled by a company described in paragraph (1) that meets the requirements of clause (i) may engage in an activity authorized under applicable law (other than an activity that would have resulted in the institution being a bank for purposes of this Act, as in effect on the day before the date of the enactment of the Competitive Equality Banking Act of 1987, based on the activities each bank conducted on March 5, 1987, as reported to the Board) if such bank, at least 60 days before commencing such activity, has notified the Board of the bank's intention to commence such activity and either—

"(I) the Board has notified such bank that the Board will not disapprove the proposed activity as unsafe or unsound; or

"(II) the Board has not, within 60 days after receiving such notice, disapproved the proposal on the basis of such criteria.

"(iii) QUALIFICATION FOR EXCEPTION FROM CROSS-MARKETING RESTRICTION.—Notwithstanding subparagraph (B)(ii), a bank controlled by a company described in paragraph (1) that meets the requirements of clause (i) may offer or market products or services of an affiliate or permit the bank's products or services to be offered or marketed in connection with products or services of an affiliate if such products or services are offered or marketed only to the extent permissible for banks or financial services holding companies to provide by law, regulation, or order under paragraph (8) or (15) of subsection (c).

"(iv) EXCEPTION FROM DIVESTITURE REQUIREMENT FOR BANKS RESTORED TO WELL CAPITALIZED LEVEL.—If any bank controlled by a company that meets the requirements of clause (i) ceases to be well capitalized, the company shall divest control of such bank in accordance with paragraph (4) unless—

"(I) within 12 months after the date the bank ceases to be well capitalized, the capital of the bank is restored to the well capitalized level; and

"(II) after the end of such 12-month period, the bank remains well capitalized, subject to the capital restoration requirements in subclause (I).

"(v) ACTION REQUIRED IF BANK CEASES TO BE ADEQUATELY CAPITALIZED.—If any bank controlled by a company that meets the requirements of clause (i) ceases to be adequately capitalized, the company shall, within 30 days after the date as of which the bank ceases to be adequately capitalized—

"(I) execute an agreement with the Board to divest control of such bank in accordance with paragraph (4); or

"(II) restore the capital of the bank to at least the adequately capitalized level.".

(2) QUALIFICATIONS FOR COMPANIES UNDER PARAGRAPH (3)(D).—Section 4(f) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)) is amended by adding at the end the following new paragraph:

"(14) QUALIFICATIONS FOR COMPANIES UNDER PARAGRAPH (3)(D).—A company meets the requirements of paragraph (3)(D)(i) if—

"(A) the company (based on consolidated revenues) engages in activities that are financial (including activities not authorized under subsection (c)(8)) and predominantly in—

"(i) banking;

"(ii) activities that the Board has determined under subsection (c)(8) to be financial in nature or incidental to such financial activities;

"(iii) activities permitted under subparagraph (A) or (B) of section 10(a)(1); and

"(iv) other activities that would be permissible for such company as a financial services holding company (other than as an investment bank holding company);

"(B) all insured depository institutions controlled by such company are well capitalized and well managed;

"(C) the bank and any affiliate of the bank that is engaged in securities activities described in section 10(a) comply with the safeguards contained in section 11 as if that affiliate were a securities affiliate; and

"(D) the company has provided at least 60 days prior written notice to the Board and, during that period, the Board has not disapproved the proposal.".

(b) AMENDED DIVESTITURE PROCEDURE FOR CERTAIN COMPANIES.—Section 4(f)(4) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)(4)) is amended by adding at the end the following: "If any company described in paragraph (1) which meets the requirements of paragraph (3)(D)(i) fails to qualify for the exemption provided under paragraph (2), such company shall divest, in accordance with this paragraph, control of each bank the company controls unless, within 12 months after the date that the company fails to comply with the provisions of paragraph (2), the company has corrected the condition or ceased the activity that led to the failure to comply.".

(c) CONVERSION OF CERTAIN NONBANK HOLDING COMPANIES TO FINANCIAL SERVICES HOLDING COMPANIES.—Section 4(f) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)) is amended by inserting after paragraph (14) (as added by subsection (a)(2)) the following new paragraph:

"(15) CONVERSION OF CERTAIN COMPANIES TO FINANCIAL SERVICES HOLDING COMPANIES.—

"(A) IN GENERAL.—During the 18-month period beginning on the date of the enactment of the Financial Services Competitiveness Act of 1995, any company described in paragraph (1) may become a financial services holding company if—

"(i) the company (on a consolidated basis) engages in activities that are financial (including activities not authorized under subsection (c)(8)) and predominantly in—

"(I) banking;

"(II) activities that the Board has determined under subsection (c)(8) to be financial in nature or incidental to such financial activities;

"(III) activities permitted under subparagraph (A) or (B) of section 10(a)(1); and

"(IV) other activities that would be permissible for such company as a financial services holding company (other than an investment bank holding company);

"(ii) all insured depository institutions controlled by such company are well capitalized and well managed;

"(iii) the company provides written notice to the Board under sections 4 and 10 at least 60 days before the company becomes a financial services holding company; and

"(iv) the Board does not object to such transaction before the end of such 60-day period.

"(B) RETENTION OF FINANCIAL COMPANIES.—

"(i) IN GENERAL.—Notwithstanding subsection (a), a company that becomes a financial services holding company pursuant to subparagraph (A) may retain direct or indirect ownership or control of voting shares of any company that engages solely in activities that the Board finds to be financial but which the Board has not authorized under subsection (c)(8) (and such other financial activities that the Board has authorized) if the financial services holding company acquired the shares of such company, or of each company to which such company is a successor, before January 1, 1995.

"(ii) LIMITS ON EXPANSION FOLLOWING REGISTRATION.—A company that becomes a financial services holding company pursuant to this paragraph, and any company whose shares are owned or controlled by a financial services holding company pursuant to this paragraph, shall be subject to the limitations contained in paragraphs (2)(C) and (3) of section 4(k) as if the activities or shares of such company were conducted or held pursuant to section 4(k)(2).

"(iii) PERIOD TO CONFORM OTHER ACTIVITIES.—Notwithstanding subsection (a), a company that becomes a financial services holding company pursuant to subparagraph (A) may retain direct or indirect ownership or control of voting shares of any company not otherwise permitted under this section for the period provided in, and subject to the conditions contained in, paragraphs (2) and (3) of section 4(k).

"(C) ELECTION FOR REDUCED SUPERVISION.—Any company that becomes a financial services holding company pursuant to subparagraph (A) may elect to be governed by the provisions of paragraphs (3), (4), (5), and (6) of section 5(g), subject to the requirements of such section, if—

"(i) the company, and any insured depository institution controlled by such company, meet the requirements of section 5(g) (other than the requirements of paragraph (2)(A) of such section);

"(ii) the company does not acquire more than 5 percent of the shares of any additional depository institution after the date that such company becomes a financial services holding company; and

"(iii) no depository institution controlled by such company acquires, establishes, or operates an additional branch office after the date that the company becomes a financial services holding company.".

SEC. 107. SECURITIES COMPANY AFFILIATIONS OF FDIC–INSURED BANKS.

(a) IN GENERAL.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsections:

"(s) SECURITIES AFFILIATIONS OF BANKS.—

"(1) IN GENERAL.—A bank shall not be an affiliate of any company that, directly or indirectly, acts as an underwriter or dealer of any security, other than—

"(A) a securities affiliate in accordance with section 10 of the Financial Services Holding Company Act of 1995; or

"(B) a company that underwrites or deals only in securities described in section 10(g) of the Financial Services Holding Company Act of 1995.

"(2) EXCEPTIONS.—

"(A) CERTAIN BANKS NOT INCLUDED.—For purposes of this subsection, the term 'bank' does not include—

"(i) an insured bank described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Financial Services Holding Company Act of 1995; and

"(ii) a Federal branch or an insured branch (as defined in section 3 of the Federal Deposit Insurance Act).

"(B) AFFILIATIONS WITH EDGE ACT AND AGREEMENT CORPORATIONS.—Paragraph (1) shall not apply with respect to the affiliation of a bank with a company held pursuant to section 25 or 25A of the Federal Reserve Act or section 4(c)(13) of the Financial Services Holding Company Act of 1995.

"(3) GRANDFATHER PROVISION.—This subsection shall not apply with respect to—

"(A) an affiliation that existed on January 1, 1995; or

"(B) any new affiliation by an insured bank that has an affiliation that would be prohibited if the affiliation were not covered by subparagraph (A).

"(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

"(A) BROKER.—The term 'broker' has the meaning given to such term in section 3(a)(4) of the Securities Exchange Act of 1934.

"(B) DEALER.—The term 'dealer' has the meaning given to such term in section 3(a)(5) of the Securities Exchange Act of 1934.

"(C) SECURITY.—The term 'security' has the meaning given to such term in section 10(k) of the Financial Services Holding Company Act of 1995.

"(D) UNDERWRITER.—The term 'underwriter' has the meaning given to such term in section 2(11) of the Securities Act of 1933.

"(5) AFFILIATE.—For purposes of this subsection, a separately identifiable department or division (as defined in section 3(a) of the Securities Exchange Act of 1934) of a bank shall be deemed to be a company which is an affiliate of the bank.

"(t) BROKER-DEALER REGISTRATION.—An insured bank may not use the United States mails or any means or instrumentality of interstate commerce to act as a broker or dealer without registration under the Securities Exchange Act of 1934—

"(1) except to the extent permitted under the circumstances described in paragraph (4) or (5) of section 3(a) of such Act; or

"(2) unless otherwise exempt from registrations as a broker or dealer pursuant to regulations prescribed by the Securities and Commission.

"(u) EXAMINATION REPORTS.—The Federal banking agencies shall, to the maximum extent practicable, use the reports of examination of any broker, dealer, investment adviser, or investment company made by or on behalf of the Securities and Exchange Commission and reports made by or on behalf of a registered securities association or national securities exchange and shall defer to such examination for compliance with Federal securities laws.".

(b) STUDY OF RISKS TO DEPOSIT INSURANCE SYSTEM.—

(1) STUDY REQUIRED.—During the 6-month period beginning 18 months after the date of the enactment of the Financial Services Competitiveness Act of 1995, the Federal Deposit Insurance Corporation shall conduct a study of the risks posed to the deposit insurance funds by—

(A) the affiliation of insured depository institutions with securities affiliates and other institutions described in subsection (s)(1) of section 18 of the Federal Deposit Insurance Act (as added by subsection (a) of this section); or

(B) any activity described in section 10(a) (as added by section 103(a) of this Act) of the Financial Services Holding Company Act of 1995 (as so redesignated by section 128(a) of this Act) in which insured depository institutions may engage in accordance with any provision of Federal or State law.

(2) REPORT TO CONGRESS AND GAO.—

(A) IN GENERAL.—Before the end of the 6-month period described in paragraph (1), the Federal Deposit Insurance Corporation shall submit a report to the Congress on the findings and conclusions of the Corporation with respect to the study conducted under such paragraph, together with such conclusions for administrative or legislative action as the Corporation may determine to be appropriate.

(B) DETAILS OF SPECIFIC RISKS.—If the Federal Deposit Insurance Corporation concludes that certain kinds of activities not specifically authorized by statute for insured depository institutions before the date of the enactment of this Act, or the affiliation of insured depository institutions with securities affiliates engaged in certain kinds of securities activities, pose a greater risk to the deposit insurance funds than activities specifically authorized by statute for national banks before January 1, 1995, the report submitted under subparagraph (A) shall contain a detailed explanation of the basis for such conclusion.

(C) TRANSMITTAL TO GAO.—The Federal Deposit Insurance Corporation shall transmit a copy of the report referred to in paragraph (1) to the Comptroller General.

(3) ACTION BY FDIC.—If the Federal Deposit Insurance Corporation concludes that any activity or affiliation with respect to insured depository institutions poses a greater risk to any deposit insurance fund than the risk posed by activities specifically authorized by statute for national banks before January 1, 1995, the Federal Deposit Insurance Corporation shall treat such conclusion as a fac-

tor to be considered in setting semiannual assessments under section 7(b)(2)(A) of the Federal Deposit Insurance Act.

(4) EVALUATION OF REPORT BY GAO.—The Comptroller General shall—

(A) evaluate the report transmitted by the Federal Deposit Insurance Corporation to the Comptroller General under paragraph (2); and

(B) submit a report to the Congress on such evaluation, including a discussion on the methodology used by the Corporation to assess risks posed by nonbanking activities to the deposit insurance funds.

SEC. 108. AUTHORITY TO TERMINATE GRANDFATHER RIGHTS UNDER THE INTERNATIONAL BANKING ACT OF 1978.

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

"(3) PARITY IN CONDUCT OF AUTHORIZED SECURITIES ACTIVITIES.—

"(A) IN GENERAL.—Notwithstanding the provisions of paragraph (1) or any other provision of law, any authority conferred under this subsection on any foreign bank or company with respect to securities activities authorized for financial services holding companies in the United States shall terminate 30 days following approval by the Board of an application by such foreign bank or company under section 10 of the Financial Services Holding Company Act of 1995.

"(B) AUTHORITY TO IMPOSE CONDITIONS.—If a foreign bank or company that engages directly or through an affiliate in any securities activity pursuant to paragraph (1) has not received approval by the Board under section 10 of the Financial Services Holding Company Act of 1995 to control a securities affiliate by the end of the 3-year period beginning on the effective date of such Act, the Board may impose such limitations and restrictions, including the termination of any activities conducted under paragraph (1) or a requirement that such activities be conducted in compliance with the safeguards of section 11 of such Act, as the Board considers appropriate consistent with the purposes of this Act and the Financial Services Holding Company Act of 1995.".

SEC. 109. EFFECT ON STATE LAWS PROHIBITING THE AFFILIATION OF BANKS AND SECURITIES COMPANIES.

(a) IN GENERAL.—Section 7 of the Bank Holding Company Act of 1956 (12 U.S.C. 1846) is amended by adding at the end the following new subsection:

"(c) AFFILIATIONS AND ACTIVITIES.—No State may prohibit or limit—

"(1) the affiliation of a bank or financial services holding company with a securities affiliate solely because the securities affiliate is engaged in activities described in subparagraph (A) or (B) of section 10(a)(1); or

"(2) the insurance or other activities of a subsidiary of a financial services holding company solely because the financial services holding company is no longer exempt under this Act pursuant to section 4(d).".

(b) BANK ACTIVITIES.—No provision of this Act, and no amendment made by this Act to any other provision of law (other than section 10 or 11 of the Financial Services Holding Company Act of 1995 (as added by sections 103 and 104 of this Act), section 18(s) of the Federal Deposit Insurance Act (as added by section 107 of this Act), or any amendments made by title II of this Act), may be construed as affecting the authority of any bank to engage in any activity authorized for such bank under the law of such bank's home State (as defined in section 2(o)(4) of the Financial Services Holding Company Act of 1995).

SEC. 110. MUNICIPAL SECURITIES.

The paragraph designated the "Seventh" of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) is amended by adding at the end the following new sentences: "Notwithstanding any limitation and restriction contained in this paragraph relating to dealing, underwriting, and purchasing securities and in addition to any authorization in this paragraph to deal in, underwrite or purchase securities, a national bank may deal in, underwrite, and purchase for such association's own account any obligation (including general and limited obligation bonds, revenue bonds and obligations that satisfy the requirements of section 142(b)(1) of the Internal Revenue Code of 1986) issued by or on behalf of any State or political subdivision of a State, including any municipal corporate instrumentalities of 1 or more States, or any public agency or authority of any State or political subdivision of a State, if the national bank—

"(1) is well capitalized (as defined in section 38(b) of the Federal Deposit Insurance Act); and

"(2) engages in the business of banking.".

SEC. 111. INTERAGENCY AGREEMENT RELATING TO RETAIL SALES OF CERTAIN NONDEPOSIT INVESTMENT PRODUCTS.

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by inserting after subsection (u) (as added by section 107 of this Act) the following new subsection:

"(v) JOINT STANDARDS RELATING TO RETAIL SALES OF CERTAIN NONDEPOSIT INVESTMENT PRODUCTS.—

"(1) IN GENERAL.—The appropriate Federal banking agencies shall jointly prescribe, after consulting with and considering the views of the Securities and Exchange Commission, standards applicable to any insured depository institution which—

"(A) is not registered as a broker under the Securities Exchange Act of 1934; and

"(B) effects transactions in securities issued by an investment company or annuities.

"(2) SCOPE OF STANDARDS.—The standards required under paragraph (1) with respect to securities and annuities referred to in such paragraph shall, at a minimum, establish requirements with respect to—

"(A) sales practices;

"(B) disclosures and advertising in connection with transactions in such securities and annuities, including—

"(i) the content, form, and timing of any such disclosure; and

"(ii) disclaimers concerning the noninsured status of the security or annuity;

"(C) the compensation of sales personnel with respect to referrals or transactions;

"(D) the training of and qualifications for personnel involved in such transactions, including training in making an accurate judgment about the suitability of a particular investment product for a prospective customer; and

"(E) the setting in which and the circumstances under which transactions may be effected, and referrals made, by sales personnel with respect to such securities and annuities.".

SEC. 112. EFFECTIVE DATE.

The amendments made by this subtitle shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act.

Subtitle B—Investment Bank Holding Companies

SEC. 116. INVESTMENT BANK HOLDING COMPANIES.

(a) DEFINITIONS.—

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

"(s) WHOLESALE FINANCIAL INSTITUTION.—The term 'wholesale financial institution' means any institution that is an uninsured State member bank authorized pursuant to section 9B of the Federal Reserve Act.

"(t) INVESTMENT BANK HOLDING COMPANY.—The term 'investment bank holding company' means any financial services holding company that—

"(1) controls a company engaged in underwriting corporate equity securities pursuant to section 10;

"(2) controls a wholesale financial institution; and

"(3) if the company is a foreign bank that operates a branch, agency or commercial lending company in the United States, or is a company that controls such foreign bank, is treated as an investment bank holding company because such bank or company meets the criteria in section 12(b) and has received the determination required by such section.".

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

"(C) A wholesale financial institution.".

(b) INVESTMENT BANK HOLDING COMPANIES.—The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by inserting after section 11 (as added by section 104 of this Act) the following new section:

"SEC. 12. INVESTMENT BANK HOLDING COMPANIES.

"(a) PERMISSIBLE AFFILIATIONS FOR INVESTMENT BANK HOLDING COMPANIES.—

"(1) FINANCIAL ACTIVITIES.—

"(A) ACTIVITIES AUTHORIZED.—An investment bank holding company may directly or indirectly own or control shares of any company engaged in any activity the Board has determined to be financial in nature or incidental to a financial activity (other than activities expressly limited under subsection (c)(8)), or any activity in compliance with subparagraph (B) or (C).

"(B) INCIDENTAL ACTIVITIES.—

"(i) IN GENERAL.—Notwithstanding subparagraph (A), the aggregate investment by an investment bank holding company in shares of companies that engage in nonfinancial activities and financial activities (other than those otherwise permitted under this section) shall not at any time exceed 7.5 percent (or such greater percentage as the Board may determine to be appropriate) of the consolidated total risk-weighted assets of the investment bank holding company (excluding assets of companies held pursuant to this subparagraph), except that the amount invested by the investment bank holding company in any 1 company (including all affiliates of such company other than preexisting affiliates of such investment bank holding company) may not exceed the amount which is equal to 25 percent of the total capital and surplus of such investment bank holding company.

"(ii) APPLICABILITY TO SUCCESSOR IN INTEREST.—Any successor to any investment bank holding company referred to in clause (i) may retain any investments made pursuant to this subparagraph—

"(I) during the 5-year period beginning on the date the succession is consummated; and

"(II) with the consent of the Board, for an additional period not to exceed 5 years after the 5-year period referred to in subclause (I),

unless the Board determines that the retention of such investment would jeopardize the safety and soundness of any insured depository institution affiliate of such successor.

"(iii) CROSS MARKETING RESTRICTIONS.—A wholesale financial institution shall not—

"(I) offer or market, directly or through any arrangement, any product or service of an affiliate whose shares are owned or controlled by the investment bank holding company pursuant to this subparagraph or subparagraph (C); or

"(II) permit any of such wholesale financial institution's or subsidiary's products or services to be offered or marketed, directly or through any arrangement, by or through any such affiliate.

"(iv) USE OF COMMON NAME.—An investment bank holding company shall not permit a wholesale financial institution to adopt a name which is the same as or similar to, or a variation of, the name or title of an affiliate engaged in activities pursuant to subparagraph (B).

"(C) COMMODITIES.—

"(i) IN GENERAL.—An investment bank holding company predominantly engaged as of January 1, 1995, in securities activities in the United States (or any successor to any such company) may engage in, or directly or indirectly own or control shares of a company engaged in, activities related to the trading, sale, or investment in commodities and underlying physical properties that were not permissible for bank holding companies to conduct in the United States as of January 1, 1995, provided such investment bank holding company, or any subsidiary of such holding company, was engaged directly, indirectly, or through any such company in any of such activities as of January 1, 1995, in the United States.

"(ii) LIMITATION.—Notwithstanding subparagraphs (A) and (B), the aggregate investment by an investment bank holding company in activities under this subparagraph (other than those otherwise permitted under this section) shall not at any time exceed 5 percent of the total consolidated assets of the investment bank holding company.

"(iii) SUCCESSOR DEFINED.—For purposes of this subparagraph and subparagraph (B), the term 'successor' means, with respect to any investment bank holding company described in clause (i), any company that merges with, or acquires control of, such investment bank holding company.

"(D) QUALIFIED INVESTOR IN AN INVESTMENT BANK HOLDING COMPANY.—

"(i) IN GENERAL.—Notwithstanding any other provision of Federal or State law, a qualified investor—

"(I) shall not be, or be deemed to be, an investment bank holding company, a financial services holding company, a bank holding company, or any similar organization; and

"(II) shall not be deemed to control any such company or organization or any subsidiary of any such company or organization (other than for purposes of section 23A and 23B of the Federal Reserve Act),

by virtue of the investor's ownership or control of shares of an investment bank holding company.

"(ii) QUALIFIED INVESTOR DEFINED.—For purposes of this subparagraph, the term 'qualified investor' means any United States company (including a parent company and all subsidiaries of which the parent company holds at least 80 percent of the total voting equity securities) which since February 27, 1995, has directly or indirectly owned or controlled shares of capital stock representing at least 10 percent, and not more than 45 percent, of the outstanding voting shares or voting power of a company that—

"(I) becomes an investment bank holding company or a subsidiary of an investment bank holding company; and

"(II) before such company became an investment bank holding company or a subsidiary of an investment bank holding company, had more than 50 percent of the company's assets employed directly or indirectly in securities activities.

"(iii) CROSS-MARKETING AND COMMON NAME.—A wholesale financial institution shall not—

"(I) offer or market products or services of a qualified investor in the investment bank holding company of which the wholesale financial institution is an affiliate;

"(II) permit the institution's products or services to be offered or marketed in connection with products or services of such qualified investor; or

"(III) adopt a name which is the same as or similar to, or a variation of, the name or title of such qualified investor.

"(iv) EXAMINATION AND REPORTING.—Notwithstanding any other provision of law, the Board may conduct examinations of, or require reports from, a qualified investor only to the extent that the Board reasonably determines that such examinations or reports are necessary—

"(I) to ensure compliance with this subparagraph; or

"(II) to the extent that the qualified investor is an affiliate of a wholesale financial institution for purposes of section 23A of the Federal Reserve Act, to ensure compliance with restrictions imposed by law or regulation on transactions between the qualified investor and such wholesale financial institution.

"(E) SPECIAL RULE.—An investment bank holding company that owns and controls shares of a company pursuant to subparagraph (B) or (C) may not own or control shares of a company pursuant to section 4(k).

"(F) CONSOLIDATED TOTAL RISK-WEIGHTED ASSETS.—For purposes of this paragraph, the following definitions shall apply:

"(i) IN GENERAL.—The term 'consolidated total risk-weighted assets' shall have the meaning given to such term in regulations prescribed by the Board as in effect on the date of the enactment of the Financial Services Competitiveness Act of 1995.

"(ii) APPLICATION TO FOREIGN BANKS.—In the case of a foreign bank or a company that owns or controls a foreign bank, the term 'consolidated total risk-weighted assets' means total risk-weighted assets held by the foreign bank or company in the United States in any United States branch, agency, or commercial lending company subsidiary, any depository institution controlled by the foreign bank or company, any subsidiary held under the authority of this section, section 3, 4, or 10 (other than paragraph (9) or (13) of section 4(c)), or section 25 or 25A of the Federal Reserve Act.

"(2) SECURITIES ACTIVITIES.—

"(A) INSTITUTIONS MUST BE WELL CAPITALIZED.—The Board shall disapprove a notice under section 10 by an investment bank holding company (or a company seeking to become an investment bank holding company) to acquire a securities affiliate if any wholesale financial institution controlled

by the investment bank holding company is not well capitalized or would not be well capitalized following the transaction.

"(B) TRANSACTIONS WITH AFFILIATES.—

"(i) IN GENERAL.—A wholesale financial institution controlled by an investment bank holding company shall be treated as a bank for purposes of the provisions of sections 23A and 23B of the Federal Reserve Act.

"(ii) OTHER RESTRICTIONS REGARDING SECURITIES AFFILIATES DETERMINED BY THE BOARD.—A securities affiliate of an investment bank holding company, and a wholesale financial institution controlled by an investment bank holding company, shall not be subject to the provisions of section 11, except that the securities affiliate and wholesale financial institution shall be subject to subsections (l) and (m) of such section in the same manner and to the same extent such paragraphs would apply if the wholesale financial institution were an insured depository institution.

"(3) LIMITATION ON AFFILIATION WITH INSURED DEPOSITORY INSTITUTIONS.—An investment bank holding company may not, directly or indirectly, own or control—

"(A) any bank, other than a wholesale financial institution;

"(B) any savings association;

"(C) any institution described in section 2(c)(2) (other than subparagraphs (C) and (G) of such section); or

"(D) any institution that accepts—

"(i) initial deposits of $100,000 or less, other than on an incidental or occasional basis, or

"(ii) deposits that are insured under the Federal Deposit Insurance Act.

"(4) NO DEPOSIT INSURANCE FUND LIABILITY.—No Federal deposit insurance funds may be used in connection with the failure of, or any proposed assistance to, a wholesale financial institution or an investment bank holding company.

"(5) CAPITAL OF IBHC.—

"(A) IN GENERAL.—The Board shall not impose any capital requirement on investment bank holding companies or subsidiaries of such companies (other than depository institutions) unless any such requirement is based upon appropriate risk-weighing considerations.

"(B) APPLICABLE ACCOUNTING PRINCIPLES.—In applying any capital standard to investment bank holding companies, or subsidiaries of such companies, the Board shall utilize uniform accounting principles consistent with generally accepted accounting principles in accordance with section 37(a)(2) of the Federal Deposit Insurance Act.

"(b) QUALIFICATION OF FOREIGN BANK AS INVESTMENT BANK HOLDING COMPANY.—

"(1) IN GENERAL.—Any foreign bank that—

"(A) operates a branch, agency or commercial lending company in the United States (and any company that owns or controls such foreign bank), including a foreign bank that does not own or control a wholesale financial institution; and

"(B) controls a security affiliate that engages in underwriting corporate equity securities,

may request a determination from the Board that such bank or company be treated as an investment bank holding company.

"(2) CONDITIONS FOR TREATMENT AS AN INVESTMENT BANK HOLDING COMPANY.—A foreign bank and a company that owns or controls a foreign bank may not be treated as an investment bank holding company unless the bank and company meet and continue to meet the following criteria:

"(A) NO INSURED DEPOSITS.—No deposits held directly by a foreign bank or through an affiliate are insured under the Federal Deposit Insurance Act.

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

"(C) TRANSACTIONS WITH AFFILIATES.—Transactions between a branch, agency, or commercial lending company subsidiary of the foreign bank in the United States, and any securities affiliate or company in which the foreign bank (or any company that owns or controls such foreign bank) has invested pursuant to subsection (a)(1)(B), comply with the provisions of sections 23A and 23B of the Federal Reserve Act in the same manner and to

the same extent as such transactions would be required to comply with such sections if the bank were a member bank.

"(3) TREATMENT AS A WHOLESALE FINANCIAL INSTITUTION.—Any foreign bank which is, or is affiliated with a company which is, treated as an investment bank holding company under this subsection shall be treated as a wholesale financial institution for purposes of clauses (iii) and (iv) of subsection (a)(1)(B), subsection (a)(2)(B)(ii), and section 5(g), except that the Board may adopt such modifications, conditions, or exemptions as the Board deems appropriate, giving due regard to the principle of national treatment and equality of competitive opportunity.

"(4) NONAPPLICABILITY OF OTHER EXEMPTION.—Any foreign bank or company which is treated as an investment bank holding company under this subsection shall not be eligible for any exemption described in section 2(h).

"(c) ELIGIBILITY OF FOREIGN BANKS FOR CERTAIN TREATMENT.—

"(1) RECIPROCAL NATIONAL TREATMENT.—

"(A) IN GENERAL.—A foreign bank that operates a branch, agency or commercial lending company in the United States, and any company that owns or controls such a foreign bank, shall be eligible for the treatment afforded under subsection (b) or section 11(n) only if the home country of such foreign bank or company accords to United States banks the same competitive opportunities in banking as such country accords to domestic banks of such country.

"(B) COORDINATION WITH NAFTA.—Subparagraph (A) shall not apply in derogation of any obligation under the North American Free Trade Agreement.

"(C) HOME COUNTRY DEFINED.—For purposes of subparagraph (A), the term 'home country' means, with respect to any foreign bank or company referred to in subparagraph (A), the country under the laws of which the foreign bank or company is organized.

"(2) PREVENTION OF EVASION.—No foreign bank or bank owned by a former United States national may operate a branch or agency in the United State if the predominance of the assets of such bank were acquired in connection with a merger with, or purchase or assumption of all or substantially all the assets of, a wholesale financial institution.

"(d) RULE FOR FINANCIAL SERVICES HOLDING COMPANIES.—For purposes of section 5(g)(2)(A)(ii), any foreign bank (as defined in section 1(b) of the International Banking Act of 1978) which is directly or indirectly owned, controlled, or operated by a company that—

"(1) as of January 1, 1995, was registered as a bank holding company; or

"(2) is a successor to any such bank holding company,

shall be treated as a wholesale financial institution.".

(c) CONFORMING AMENDMENTS.—

(1) EXCEPTION TO DEPOSIT INSURANCE REQUIREMENT.—Section 3(e) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(e)) is amended by adding at the end the following: "This subsection shall not apply to a wholesale financial institution that is controlled by an investment bank holding company that controls no banks other than wholesale financial institutions.".

(2) APPROPRIATE FEDERAL BANKING AGENCY.—Section 3(q)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)(2)(A)) is amended to read as follows:

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

SEC. 117. WHOLESALE FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended by inserting after section 9A the following new section:

"SEC. 9B. WHOLESALE FINANCIAL INSTITUTIONS.

"(a) APPLICATION FOR MEMBERSHIP AS WHOLESALE FINANCIAL INSTITUTION.—

"(1) APPLICATION REQUIRED.—

"(A) IN GENERAL.—Any bank incorporated by special law of any State, or organized under the general laws of any State, may apply to the Board of Governors of the Federal Reserve System to become a wholesale financial institution and to subscribe to the stock of the Federal reserve bank organized within the district where the applying bank is located.

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

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

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

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

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

"(A) the relevant capital levels and capital measures for each capital category shall be the levels specified by the Board for wholesale financial institutions in accordance with subsection (c);

"(B) the provisions applicable to well capitalized insured depository institutions shall be inapplicable to wholesale financial institutions;

"(C) the provisions authorizing or requiring an institution to be placed into receivership shall not apply to a wholesale financial institution, and, instead, the Board is authorized or required, as the case may be, to terminate the wholesale financial institution's membership in the Federal Reserve System or place the bank into conservatorship; and

"(D) for purposes of applying the provisions of section 38 of the Federal Deposit Insurance Act to wholesale financial institutions, all references to the appropriate Federal banking agency or to the Corporation in that section shall be deemed to be references to the Board.

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

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

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

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

"(1) LIMITATIONS ON DEPOSITS.—

"(A) MINIMUM AMOUNT.—

"(i) IN GENERAL.—Pursuant to such regulations as the Board may prescribe, no wholesale financial institution may receive initial deposits of $100,000 or less, other than on an incidental and occasional basis.

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

"(B) NO DEPOSIT INSURANCE.—No deposits held by a wholesale financial institution shall be insured deposits under the Federal Deposit Insurance Act.

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

"(2) SPECIAL CAPITAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—

"(A) MINIMUM CAPITAL LEVELS.—

"(i) IN GENERAL.—The Board shall, by regulation, adopt capital requirements for wholesale financial institutions—

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

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

"(ii) MINIMUM LEVERAGE RATIO.—The minimum leverage ratio of tier one capital to total assets of wholesale financial institutions shall be not less than the level required for a State member insured bank to be well capitalized unless the Board determines otherwise, consistent with safety and soundness.

"(B) CAPITAL CATEGORIES FOR PROMPT CORRECTIVE ACTION.—For purposes of applying section 38 of the Federal Deposit Insurance Act with respect to any wholesale financial institution, the Board shall, by regulation, establish, for each relevant capital measure specified by the Board under subparagraph (A), the levels at which a wholesale financial institution is well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized.

"(3) ADDITIONAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—In addition to any requirement otherwise applicable to State member banks or applicable, under this section, to wholesale financial institutions, the Board may prescribe, by regulation or order, for wholesale financial institutions—

"(A) limitations on transactions with affiliates to prevent an affiliate from gaining access to, or the benefits of, credit from a Federal reserve bank, including overdrafts at a Federal reserve bank;

"(B) special clearing balance requirements; and

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

"(i) promote the safety and soundness of the wholesale financial institution, or

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

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

"(A) the promotion of the safety and soundness of the wholesale financial institution; and

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

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

"(d) CONSERVATORSHIP AUTHORITY.—

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

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

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

"(1) WHOLESALE FINANCIAL INSTITUTION.—The term 'wholesale financial institution' means a bank whose application to become a wholesale financial institu-

tion and a State member bank has been approved by the Board under this section.

"(2) DEPOSIT.—The term 'deposit' has the meaning given to such term by the Board under this Act.

"(3) STATE MEMBER INSURED BANK.—The term 'State member insured bank' means a State member bank which is an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act).

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

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

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

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (9) as paragraphs (1) through (8), respectively.

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

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

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

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

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

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

"(2) either—

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

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

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

"(1) an insured savings association;

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

"(3) any institution described in section 2(c)(2) of the Bank Holding Company Act of 1956.

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

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

"(e) EXIT FEES.—

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

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

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

"(1) TRANSITION PERIOD.—The insured deposits of each depositor in a State bank or a national bank on the effective date of the voluntary termination of the bank's insured status, less all subsequent withdrawals from any deposits of

such depositor, shall continue to be insured for a period of not less than 6 months and not more than 2 years, as determined by the Corporation. During such period, no additions to any such deposits, and no new deposits in the depository institution made after the effective date of such termination shall be insured by the Corporation.

"(2) TEMPORARY ASSESSMENTS; OBLIGATIONS AND DUTIES.—During the period specified in paragraph (1) with respect to any bank, the bank shall continue to pay assessments under section 7 as if the bank were an insured depository institution. The bank shall, in all other respects, be subject to the authority of the Corporation and the duties and obligations of an insured depository institution under this Act during such period, and in the event that the bank is closed due to an inability to meet the demands of the bank's depositors during such period, the Corporation shall have the same powers and rights with respect to such bank as in the case of an insured depository institution.

"(g) ADVERTISEMENTS.—

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

"(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS, AND SECURITIES.—Any certificate of deposit or other obligation or security issued by a State bank or a national bank after the effective date of the voluntary termination of the bank's insured status under this section shall be accompanied by a conspicuous, prominently displayed notice that such certificate of deposit or other obligation or security is not insured under this Act.

"(h) NOTICE REQUIREMENTS.—

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

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

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

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

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

(c) REPORTS ON DISCOUNTS AND ADVANCES TO WHOLESALE FINANCIAL INSTITUTIONS.—Section 10B of the Federal Reserve Act (12 U.S.C. 347(b)) is amended by adding at the end the following new subsection:

"(c) REPORTS ON DISCOUNTS AND ADVANCES TO WHOLESALE FINANCIAL INSTITUTIONS.—

"(1) IN GENERAL.—The Board shall submit a report to the Congress at the end of any year in which any wholesale financial institution has obtained a discount, advance, or other extension of credit from a Federal reserve bank.

"(2) CONTENTS.—Any report submitted under paragraph (1) shall explain the circumstances and need for any discount, advance, or other extension of credit to a wholesale financial institution during the period covered by the report, including the type and amount of credit extended and the amount of credit remaining outstanding as of the date of the report.".

Subtitle C—Financial Activities

SEC. 121. FINANCIAL ACTIVITIES.

Section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)) is amended—

(1) by striking "shares of any company" and all that follows through "for a bank holding company to provide" and inserting "shares of any company the activities of which the Board after due notice has determined (by order, regulation, or advisory opinion) to be financial in nature or incidental to such financial activities. In determining whether an activity is financial in nature or incidental to financial activities, the Board shall take into account changes or reasonably expected changes in the marketplace in which financial services holding companies compete as well as changes or reasonably expected changes in the technology by which these services are delivered. In addition, the Board shall take

into account activities considered financial activities or banking or financial operations for purposes of the regulation of the Board designated as 'Regulation K' (12 C.F.R. 211.23 (f)(5)(iii)(B)) as in effect on the date of the enactment of the Financial Services Competitiveness Act of 1995. Any activity that the Board has determined, by order or regulation that is in effect on such date to be so closely related to banking or managing or controlling banks as to be a proper incident thereto shall be deemed to be of a financial nature for purposes of this paragraph without further action by the Board (subject to the same terms and conditions contained in such order or regulation, unless modified by the Board), but for purposes of this subsection it shall not be closely related to banking or managing or controlling banks or financial in nature or incidental to a financial activity for a financial services holding company to provide";

(2) in the 3d sentence, by inserting "and between activities commenced by affiliates of different classes of banks" before the period at the end; and

(3) by striking the 2d sentence.

SEC. 122. NO PRIOR APPROVAL REQUIRED FOR WELL CAPITALIZED AND WELL MANAGED FINANCIAL SERVICES HOLDING COMPANIES.

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

(1) in paragraph (1), by striking "No" and inserting "Except as provided in paragraph (3) or section 10(b)(3), no"; and

(2) by adding at the end the following new paragraphs:

"(3) NO NOTICE REQUIRED FOR CERTAIN TRANSACTIONS.—Notwithstanding paragraph (1), no notice under subsection (c)(8) or (a)(2)(B) is required for a proposal by a financial services holding company to engage in any activity (other than an activity described in subparagraph (A) or (B) of section 10(a)(1)) or acquire or retain the shares or assets of any company (other than a securities affiliate) if the proposal qualifies under paragraph (4).

"(4) CRITERIA FOR STATUTORY APPROVAL.—A proposal qualifies under this paragraph if all of the following criteria are met:

"(A) FINANCIAL CRITERIA.—Both before and immediately after the proposed transaction—

"(i) the acquiring financial services holding company is well capitalized;

"(ii) the lead depository institution of such holding company is well capitalized;

"(iii) well capitalized depository institutions control at least 80 percent of the aggregate total risk-weighted assets of depository institutions controlled by such holding company; and

"(iv) no depository institution controlled by such holding company is undercapitalized.

"(B) MANAGERIAL CRITERIA.—

"(i) WELL MANAGED.—At the time of the transaction, the acquiring financial services holding company, the lead depository institution of such holding company, and depository institutions that control at least 80 percent of the aggregate total risk-weighted assets of depository institutions controlled by such holding company are well managed.

"(ii) LIMITATION ON POORLY MANAGED INSTITUTIONS.—No depository institution which is controlled by the acquiring financial services holding company has received any of the lowest 2 composite ratings at the later of the institution's most recent examination or subsequent review.

"(iii) RECENTLY ACQUIRED INSTITUTIONS.—Depository institutions acquired by the financial services holding company during the 12-month period ending on the date of the proposed transaction may be excluded for purposes of clause (ii) if—

"(I) the financial services holding company has developed a plan acceptable to the appropriate Federal banking agency for the institution to restore the capital and management of the institution; and

"(II) all such depository institutions represent, in the aggregate, less than 25 percent of the total risk-weighted assets of all depository institutions controlled by the financial services holding company.

"(C) ACTIVITIES PERMISSIBLE.—Following consummation of the proposed transaction, the financial services holding company engages directly or through a subsidiary solely in—

"(i) activities that are permissible under subsection (c)(8), as determined by the Board by any regulation, order, or advisory opinion under such subsection that is in effect at the time of the proposed transaction, subject to all of the restrictions, terms, and conditions of such subsection and such regulation, order, or advisory opinion; and

"(ii) such other activities as are otherwise permissible under this Act, subject to the restrictions, terms and conditions, including any prior notice or approval requirements, provided in this Act.

"(D) SIZE OF ACQUISITION.—

"(i) ASSET SIZE.—The book value of the total risk-weighted assets acquired does not exceed 10 percent of the consolidated total risk-weighted assets of the acquiring financial services holding company.

"(ii) CONSIDERATION.—The gross consideration to be paid for the securities or assets does not exceed 15 percent of the consolidated tier 1 capital of the acquiring financial services holding company.

"(E) NOTICE NOT OTHERWISE WARRANTED.—For proposals described in paragraph (5)(B), the Board has not, before the conclusion of the period described in such paragraph, advised the financial services holding company that a notice under paragraph (1) is required.

"(5) NOTIFICATION.—

"(A) COMMENCEMENT OF ACTIVITIES APPROVED BY RULE.—A financial services holding company that qualifies under paragraph (4) and proposes to engage de novo, directly or through a subsidiary, in any activity that is permissible under subsection (c)(8), as determined by the Board by regulation, may commence that activity without prior notice to the Board.

"(B) SUBSEQUENT NOTICE.—A financial services holding company that commences an activity under subsection (c)(8) without prior notice to the Board shall provide written notice to the Board no later than 10 business days after commencing the activity.

"(C) ACTIVITIES PERMITTED BY ORDER AND ACQUISITIONS.—

"(i) IN GENERAL.—At least 12 business days prior to commencing any activity (other than an activity described in subparagraph (A)) or acquiring shares or assets of any company in a proposal that qualifies under paragraph (4), the financial services holding company shall provide written notice to the Board of the proposal, unless the Board determines that no notice or a shorter notice period is appropriate.

"(ii) DESCRIPTION OF PROPOSED ACTIVITIES.—A notice under clause (i) shall include a description of the proposed activities and the terms of any proposed acquisition.

"(6) ADJUSTMENT OF AMOUNTS.—The Board may, by regulation, adjust the amounts and the manner in which the percentage of depository institutions is calculated under subparagraph (B)(i), (B)(iii)(II), or (D) of paragraph (4) if the Board determines that any such adjustment is consistent with safety and soundness and the purposes of this Act.

"(7) EXPEDITED PROCEDURE FOR NEW ACTIVITIES.—

"(A) EXPEDITED PREACQUISITION REVIEW.—After the end of the 12-day period referred to in paragraph (5)(C) and subject to any final ruling under subparagraph (B), a financial services holding company may acquire a company engaged in activities that the company believes are financial in nature for purposes of subsection (c)(8) and that the Board has not previously reviewed under such subsection if—

"(i) the proposal qualifies under all of the criteria in paragraph (4) other than paragraph (4)(C);

"(ii) the financial services holding company provides the notice required under paragraph (5)(C), and includes with such notice an explanation of the facts and circumstances that provide a reasonable basis for concluding that the proposed activities are financial in nature or incidental to such financial activities; and

"(iii) before the end of such 12-day period, the Board has not—

"(I) required a notice under paragraph (1) with respect to the proposed transaction; or

"(II) advised the financial services holding company that the company has failed to provide a reasonable basis for concluding that the proposed activities are financial in nature or incidental to such financial activities.

"(B) POSTACQUISITION REVIEW.—

"(i) NOTICE PROCEDURE.—A financial services holding company which is permitted to make an acquisition under this paragraph shall file a

notice with the Board in accordance with paragraph (1) before the end of the 30-day period beginning on the date of the consummation of the acquisition.

"(ii) LIMITED REVIEW.—The Board's review of a postconsummation notice required under this subparagraph shall be limited to determining whether the proposed activities are permissible under subsection (c)(8), including whether the proposal meets the criteria in paragraph (2)(A).

"(iii) CONDITIONAL ACTION.—No provision of this paragraph shall be construed as limiting in any way the authority of the Board under this section to impose conditions on the conduct of any activity or the ownership of any company.

"(iv) DIVESTITURE OF IMPERMISSIBLE ACTIVITIES.—If the Board determines that any proposed activity is not permissible under subsection (c)(8), the financial services holding company shall terminate the activity or divest the company acquired in reliance on this paragraph before the end of the 2-year period beginning on the date of such determination.

"(C) INITIAL DECISION NOT PREJUDICIAL TO SUBSEQUENT DETERMINATION.—A decision by the Board under subparagraph (A) not to require a notice under paragraph (1) during the 12-day period referred to in such subparagraph shall not prejudice the Board's decision under subparagraph (B).".

SEC. 123. STREAMLINED EXAMINATION AND REPORTING REQUIREMENTS FOR ALL FINANCIAL SERVICES HOLDING COMPANIES.

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

"(c) REPORTS AND EXAMINATIONS.—

"(1) PURPOSES.—

"(A) IN GENERAL.—The purpose of this subsection is to authorize the Board, through reports and examinations, to gather information from a financial services holding company and the subsidiaries of any such holding company regarding the structure, activities, and financial condition of the financial services holding company and such subsidiaries so that the Board can monitor risks within the holding company system that could adversely affect any depository institution subsidiary of the holding company and may monitor and enforce compliance with this Act.

"(B) PURPOSE NOT TO IMPOSE ADDITIONAL BURDENS ON HOLDING COMPANIES.—It is the intended purpose of this subsection that the Board shall—

"(i) exercise the Board's authority to collect information under this section in a manner that is the least burdensome to financial services holding companies and the subsidiaries of such companies; and

"(ii) rely, to the fullest extent possible, on reports prepared for and examinations conducted by or for other Federal and State supervisors.

"(C) PURPOSE TO REQUIRE CAREFULLY TAILORED EXAMINATIONS.—It is the intended purpose of this subsection that the Board shall tailor the focus and scope of any examination under this section to a financial services holding company or to any subsidiary of such company which, because of financial conditions, activities, operations of such subsidiary, the transactions between such subsidiary and other affiliates, or the size of any such subsidiary poses a potential material risk to a depository institution subsidiary of such holding company.

"(2) REPORTS.—

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

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

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

"(B) USE OF EXISTING REPORTS.—

"(i) IN GENERAL.—The Board shall, to the fullest extent possible, accept reports in fulfillment of the Board's reporting requirements under this paragraph that a financial services holding company or any sub-

sidiary of such company has been required to provide to other Federal and State supervisors or to appropriate self-regulatory organizations.

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

"(3) EXAMINATIONS.—

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

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

"(ii) inform the Board of the—

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

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

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

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

"(i) the holding company; and

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

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

"(D) DEFERENCE TO OTHER EXAMINATIONS.—The Board shall, to the fullest extent possible, use the reports of examination made of—

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

"(ii) any other subsidiary that the Board finds to be comprehensively supervised under relevant Federal or State law by a Federal or state agency or authority.

"(E) CONFIDENTIALITY OF REPORTED INFORMATION.—

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

"(ii) COMPLIANCE WITH REQUESTS FOR INFORMATION.—No provision of this subparagraph shall be construed as authorizing the Board to withhold information from Congress, or preventing the Board from complying with a request for information from any other Federal department or agency for purposes within the scope of such department's or agency's jurisdiction, or from complying with an order of a court of competent jurisdiction in an action brought by the United States or the Board.

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

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

"(F) COSTS.—The cost of any examination conducted by the Board under this section may be assessed against, and made payable by, such holding company.".

SEC. 124. HOLDING COMPANY SUPERVISION FOR FINANCIAL SERVICES HOLDING COMPANIES ENGAGED PRIMARILY IN NONBANKING ACTIVITIES.

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

"(g) REDUCED SUPERVISION OF COMPANIES CONTROLLING PRINCIPALLY NONDEPOSITORY INSTITUTIONS.—

"(1) ELECTION.—

"(A) IN GENERAL.—Any financial services holding company that qualifies under paragraph (2) may make an election to be governed by the approval, capital, reporting and examination requirements of paragraphs (3), (4), (5) and (6) by—

"(i) filing a written notice of such election with the Board; and

"(ii) if applicable, providing a written guarantee to the Federal Deposit Insurance Corporation pursuant to paragraph (2).

"(B) EFFECTIVE PERIOD OF ELECTION.—An election under subparagraph (A) shall remain in effect—

"(i) so long as the financial services holding company continues to qualify under paragraph (2); or

"(ii) until the financial services holding company revokes the election.

"(2) CRITERIA FOR ELECTION.—A financial services holding company may make an election under paragraph (1) if the company meets all of the following criteria:

"(A) COMPANY PRINCIPALLY CONTROLS NONDEPOSITORY COMPANIES.—

"(i) FINANCIAL SERVICES HOLDING COMPANIES WITH DEPOSITORY INSTITUTIONS.—In the case of a financial services holding company (other than an investment bank holding company), the consolidated total risk-weighted assets of all depository institutions and foreign banks (as defined in section 1(b)(7) of the International Banking Act of 1978) controlled by the financial services holding company—

"(I) constitute less than 10 percent of the consolidated total risk-weighted assets of such company; and

"(II) are less than $5,000,000,000.

"(ii) INVESTMENT BANK HOLDING COMPANIES.—In the case of an investment bank holding company, the consolidated total risk-weighted assets of all wholesale financial institutions controlled by the investment bank holding company—

"(I) constitute less than 25 percent of the consolidated total risk-weighted assets of such company; and

"(II) are less than $15,000,000,000.

"(iii) INFLATION ADJUSTMENT.—The dollar limitation contained in clauses (i)(II) and (ii)(II) shall be adjusted annually after December 31, 1995, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

"(iv) AUTHORITY TO INCREASE LIMITS.—The Board may increase any of the percentages referred to in clauses (i)(I) and (ii)(I) and the dollar amounts described in clauses (i)(II) and (ii)(II) as the Board may determine to be appropriate.

"(B) WELL CAPITALIZED INSTITUTIONS.—Each depository institution controlled by the financial services holding company is well capitalized.

"(C) WELL MANAGED INSTITUTIONS.—

"(i) IN GENERAL.—Each depository institution controlled by the financial services holding company received a CAMEL composite rating of 1 or 2 (or an equivalent rating under an equivalent rating system) in the most recent examination of such institution.

"(ii) EXCLUSION FOR NEWLY ACQUIRED INSTITUTIONS.—A depository institution acquired by a financial services holding company during the 12-month period ending on the date of the election by such company under paragraph (1) may be excluded for purposes of clause (i) if the financial services holding company has developed a plan acceptable to the appropriate Federal banking agency (for such institution) to restore the capital and management of the institution.

"(D) HOLDING COMPANY GUARANTEE.—

"(i) IN GENERAL.—The financial services holding company provides a written guarantee acceptable to the Federal Deposit Insurance Corporation to maintain the capital levels of each insured depository institution controlled by the financial services holding company at not less than the levels required for such institution to remain well capitalized.

"(ii) LIMITATION ON LIABILITY.—The liability of a financial services holding company under a guarantee provided under this subparagraph shall not exceed an amount equal to 10 percent of the total risk-weighted assets of the insured depository institution, measured as of the date that the institution becomes undercapitalized.

"(iii) DURATION OF GUARANTEE.—Notwithstanding paragraph (1), a financial services holding company that has elected treatment under this subsection shall continue to be bound by the guarantee made under this subsection until released in accordance with this subparagraph.

"(iv) RELEASE FROM LIABILITY.—The Board shall release a financial services holding company from the guarantee applicable with respect to any depository institution subsidiary of such company—

"(I) upon the written request of the financial services holding company to revoke the company's election under paragraph (1) if the Board determines that each depository institution controlled by the financial services holding company is well capitalized and well managed at the time of such revocation;

"(II) in the case of a financial services holding company which no longer meets the requirements of subparagraph (A), upon a determination by the Board that each depository institution controlled by the financial services holding company is well capitalized and well managed;

"(III) upon the written request of the financial services holding company following the divestiture of control of the depository institution in a transaction that does not require Federal assistance if the Board determines that, immediately following the divestiture, the depository institution is or will be well capitalized; or

"(IV) upon a determination by the Board, after consultation with the Federal Deposit Insurance Corporation, that, subject to the limit on liability provided in clause (ii), the financial services holding company has fully performed under the guarantee.

"(E) RESPONSIVENESS TO COMMUNITY NEEDS.—The lead insured depository institution subsidiary of the financial services holding company and insured depository institutions controlling at least 80 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by the financial services holding company have achieved a 'satisfactory record of meeting community credit needs', or better, during the most recent examination of such insured depository institutions.

"(3) NO NOTICE OR APPROVAL REQUIRED FOR CERTAIN PURPOSES UNDER PARAGRAPHS (8), (13), OR (15) OF SECTION 4(C).—

"(A) IN GENERAL.—Notwithstanding paragraphs (8), (13), and, in the case of an investment bank holding company, (15) of section 4(c), a financial services holding company that has in effect an election under paragraph (1), and any subsidiary of such holding company, may, without prior notice to, or the approval of, the Board under paragraph (8), (13), or, in the case of an investment bank holding company, (15) of section 4(c), engage de novo in any activity, or acquire shares of any company engaged in any activity, if—

"(i) the Board has determined, by order or regulation in effect at the time the company or subsidiary commences to engage in such activity or acquire such shares, that the activity is permissible for a financial services holding company or a subsidiary of such company to engage in under paragraph (8) or (13) of section 4(c) (and regulations prescribed under such paragraphs); and

"(ii) the activity is conducted in compliance with all conditions and limitations applicable to such activity under any regulation, order, or advisory opinion prescribed or issued by the Board.

"(B) SUBSEQUENT NOTICE.—A financial services holding company that commences to engage in an activity, or makes an acquisition, in accordance with subparagraph (A) shall inform the Board of such fact, in writing, not later than 10 days after commencing the activity or consummating the acquisition.

"(4) CAPITAL.—

"(A) IN GENERAL.—The Board shall not (by regulation or order), directly or indirectly, establish or apply minimum capital requirements to a financial services holding company which has in effect an election under paragraph (1) unless the Board concludes, on the basis of all information available to the Board, that the financial services holding company is not maintaining sufficient financial resources to meet fully any guarantee required under paragraph (2).

"(B) CRITERIA FOR CONSIDERATION.—For purposes of making a determination under subparagraph (A), the Board shall consider, in addition to any other relevant considerations, the financial condition and the adequacy of the capital of each of the depository institutions controlled by the financial services holding company.

"(5) REPORTS.—

"(A) IN GENERAL.—The reporting requirements contained in subsection (c)(2) shall apply to a financial services holding company which qualifies under this subsection, to the extent provided by the Board.

"(B) EXEMPTIONS FROM REPORTING REQUIREMENTS.—

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

"(ii) CRITERIA FOR CONSIDERATION.—In granting any exemption under clause (i), the Board shall consider, among other factors—

"(I) whether information of the type required under this paragraph is available from a supervisory agency (as defined in section 1101(7) of the Right to Financial Privacy Act of 1978), the Commodity Futures Trading Commission, or a foreign regulatory body of a similar type;

"(II) the primary business of the company; and

"(III) the nature and extent of domestic or foreign regulations of the company's activities.

"(6) EXAMINATIONS.—

"(A) LIMITED USE OF EXAMINATION AUTHORITY FOR FINANCIAL SERVICES HOLDING COMPANIES.—The Board shall not examine, under this section, any financial services holding company described in paragraph (2)(A)(i) for which an election is in effect under paragraph (1) or any subsidiary (other than a depository institution) of such holding company unless—

"(i) the Board determines, on the basis of all information available to the Board, that—

"(I) the operations or activities of the financial services holding company or any subsidiary of such company, or any transaction involving such company or subsidiary and an affiliated depository institution, may pose a material risk to the safety and soundness of any depository institution owned by such holding company; or

"(II) the financial services holding company does not appear to have sufficient resources to meet the guarantee required under paragraph (2); or

"(ii) the Board is unable to accomplish the purposes described in subsection (c)(3)(A) without such examinations.

"(B) LIMITED USE OF EXAMINATION AUTHORITY FOR INVESTMENT BANK HOLDING COMPANIES.—The Board shall not examine, under this section, any investment bank holding company described in paragraph (2)(A)(ii) which has an election in effect under paragraph (1) or any subsidiary (other than a depository institution) of such holding company unless—

"(i) the Board determines that the operations or activities of the investment bank holding company or any subsidiary of such company, or any transaction involving such company or subsidiary and an affiliated depository institution, may pose a material risk to the safety and soundness of any depository institution owned by such holding company; or

"(ii) the Board is unable to determine from reports the nature of the operations, financial condition, activities, or effectiveness of the risk management systems of the investment bank holding company or any subsidiary of such company, or to assess compliance with the provisions of this Act and those governing transactions and relationships between any depository institution controlled by the investment bank holding

company and the investment bank holding company or any of such subsidiaries.

"(C) RESTRICTED FOCUS AND DEFERENCE IN EXAMINATIONS.—The Board shall limit the focus and scope of any examination, under this section, of a financial services holding company or investment bank holding company for which an election is in effect under paragraph (1) or of any subsidiary (other than a depository institution) of such holding company and shall defer to examinations conducted by the Securities Exchange Commission or other supervisors in accordance with subparagraphs (B), (C), and (D) of subsection (c)(3).".

SEC. 125. CONVERSION OF UNITARY SAVINGS AND LOAN HOLDING COMPANIES TO FINANCIAL SERVICES HOLDING COMPANIES.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by inserting after section 5 the following new section:

"SEC. 6. CONVERSION OF UNITARY SAVINGS AND LOAN HOLDING COMPANIES TO FINANCIAL SERVICES HOLDING COMPANIES.

"(a) STREAMLINED PROCEDURE FOR CONVERSION.—

"(1) IN GENERAL.—During the 18-month period beginning on the date of the enactment of the Financial Services Competitiveness Act of 1995, no approval shall be required under section 3(a) or paragraph (8) or (13) of section 4(c) for any qualified savings and loan holding company to become a financial services holding company for any company that, both prior to January 1, 1995, and on the date of enactment of the Financial Services Competitiveness Act of 1995, is a savings and loan holding company if the requirements of paragraph (2) are met.

"(2) ELIGIBILITY REQUIREMENTS.—A qualified savings and loan holding company shall be eligible to become a financial services holding company pursuant to paragraph (1) if—

"(A) the company becomes a financial services holding company as the result of the conversion of a savings association controlled by such company as of the date of enactment of the Financial Services Competitiveness Act of 1995 into a bank;

"(B) the company is adequately capitalized before and immediately after the conversion referred to in subparagraph (A);

"(C) all depository institutions controlled by such company are well capitalized before and immediately after such conversion;

"(D) all depository institutions controlled by such company are well managed before the conversion;

"(E) the Board would not be prohibited under any provision of section 3(d) from approving the transaction;

"(F) the activities of the company and of each subsidiary of the company comply with this Act (and regulations prescribed under this Act); and

"(G) the company provides the Board with at least 30 days written notice of the proposed conversion, and, before the expiration of such 30-day period, the Board has not objected to the company becoming a financial services holding company based on the criteria contained in this subsection.

"(3) QUALIFIED SAVINGS AND LOAN HOLDING COMPANY DEFINED.—For purposes of this subsection, the term 'qualified savings and loan holding company' means any company which became a savings and loan holding company before January 1, 1995, and is a savings and loan holding company as of the date of the enactment of the Financial Services Competitiveness Act of 1995.

"(b) LIMITED RETENTION OF EXISTING INVESTMENTS.—Any holding company which converts to a financial services holding company in accordance with subsection (a) may retain direct or indirect ownership or control of voting shares of any company as provided in, and subject to, section 4(k) if—

"(1) the holding company controlled 1 or more savings associations in accordance with section 10(c)(3) of the Home Owners Loan Act before January 1, 1995, and as of the date of the enactment of the Financial Services Competitiveness Act of 1995;

"(2) the investment in voting shares and the financial services holding company meet the requirements of section 4(k) (other than paragraph (1)(A)(iii) of such section); and

"(3) more than 75 percent of the revenues of the financial services holding company for each of the 2 calendar years before the date such company became a financial services holding company involved securities activities described in subparagraphs (A) and (B) of section 10(a)(1) and activities that the Board has determined to be permissible under section 4(c)(8).".

SEC. 126. FINANCIAL SERVICES ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—There is hereby established the Financial Services Advisory Committee (hereinafter in this section referred to as the "Committee").

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Committee shall consist of 9 members, appointed as follows from among individuals who are not officers or employees of the Federal Government and who are especially qualified to serve on such committee by virtue of their education, training, or experience:

(A) 1 member appointed by the Secretary of the Treasury.

(B) 2 members appointed by the Comptroller of the Currency.

(C) 2 members appointed by the Director of the Office of Thrift Supervision.

(D) 2 members appointed by the Board of Governors of the Federal Reserve System.

(E) 2 members appointed by the Board of Directors of the Federal Deposit Insurance Corporation.

(2) REPRESENTATION OF SMALL AND INDEPENDENT DEPOSITORY INSTITUTIONS.—Of the members appointed under subparagraphs (B), (C), (D), and (E) of paragraph (1), 1 of the 2 members appointed under each such paragraph shall be appointed from among individuals who are especially qualified to represent the interests of depository institutions which—

(A) have total assets of less than $500,000,000; or

(B) are not controlled by any depository institution holding company.

(c) VACANCIES.—Any vacancy on the Committee shall be filled in the same manner in which the original appointment was made.

(d) PAY AND EXPENSES.—Members of the Committee shall serve without pay, but each member shall be reimbursed for expenses incurred in connection with attendance of such members at meetings of the Committee by the agency which appointed such member to the Committee.

(e) TERMS.—Members shall be appointed for terms of 1 year.

(f) AUTHORITY OF THE COMMITTEE.—The Committee may select a chairperson, vice chairperson, and secretary, and adopt methods of procedure, and shall have power—

(1) to confer with each Federal banking agency on general and special business conditions and regulatory and other matters relating to the financial services industry in the United States and the impact of this Act, and the amendments made by this Act, on the financial service industry, especially with regard to depository institutions described in subsection (b)(2); and

(2) to request information from, and to make recommendations to, each of the Federal banking agencies with respect to matters within the jurisdiction of such agency.

(g) MEETINGS.—The Committee shall meet at least 2 times each year at the call of the chairperson or a majority of the members.

(h) REPORTS.—The Committee shall submit a semiannual written report to the Committee on Banking and Financial Services of the House and to the Committee on Banking, Housing, and Urban Affairs of the Senate. Such report shall describe the activities of the Committee for such semiannual period and contain such recommendations as the Committee considers appropriate.

(i) PROVISION OF STAFF AND OTHER RESOURCES.—Each of the Federal banking agencies shall provide the Committee with the use of such resources, including staff, as the Committee reasonably shall require to carry out its duties, including the preparation and submission of reports to Congress, under this section.

(j) DEFINITIONS.—The terms "insured depository institution" and "Federal banking agencies" have the meaning given to such terms in section 3 of the Federal Deposit Insurance Act.

(k) FEDERAL ADVISORY COMMITTEE ACT DOES NOT APPLY.—The Federal Advisory Committee Act shall not apply to the Committee.

(l) SUNSET.—The Committee shall cease to exist 10 years after the enactment of this section.

SEC. 127. COORDINATION WITH STATE LAW.

Except as specifically provided in section 109, no provision of this Act, and no amendment made by this Act to any other provision of law, may be construed as superseding any provision of the law of any State which imposes additional requirements or establishes higher standards for the safe and sound operation and condition of depository institutions (as defined in section 3 of the Federal Deposit Insurance Act) and the protection of consumers than the requirements imposed or the standards established under this Act and the amendments made by this Act to other

provisions of law (including capital standards and other safeguards placed on affiliates).

SEC. 128. CONFORMING AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.

(a) SHORT TITLE; TABLE OF CONTENTS.—The first section of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 nt.) is amended to read as follows:

"SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

"(a) SHORT TITLE.—This Act may be cited as the 'Financial Services Holding Company Act of 1995'.

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

"Sec. 1. Short title; table of contents.
"Sec. 2. Definitions.
"Sec. 3. Acquisition of bank shares or assets.
"Sec. 4. Interests in nonbanking organizations.
"Sec. 5. Administration.
"Sec. 6. Conversion of unitary savings and loan holding companies to financial services holding companies.
"Sec. 7. Reservation of rights to States.
"Sec. 8. Penalties.
"Sec. 9. Judicial review.
"Sec. 10. Securities activities.
"Sec. 11. Safeguards relating to securities activities.
"Sec. 12. Investment bank holding companies and other financial activities.
"Sec. 13. Saving provision.
"Sec. 14. Separability of provisions.

"(c) REFERENCES IN OTHER LAWS.—Any reference in any Federal or State law to a provision of the Bank Holding Company Act of 1956 shall be deemed to be a reference to the corresponding provision of this Act.".

(b) DEFINITIONS.—

(1) Subsection (n) of section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(n)) is amended by inserting "'depository institution'," before "'insured depository institution'".

(2) Subsection (o) of section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(o)) is amended—

(A) by striking paragraph (1) and inserting the following new paragraph:

"(1) LEAD DEPOSITORY INSTITUTION.—The term 'lead depository institution' means the largest depository institution controlled by the financial services holding company, based on a comparison of the average total assets controlled by each depository institution during the previous 12-month period."; and

(B) by adding at the end the following new paragraphs:

"(8) INSURED DEPOSITORY INSTITUTION FOR CERTAIN SECTIONS.—Notwithstanding subsection (n), the terms 'depository institution' and 'insured depository institution' include, for purposes of paragraph (1) and sections 4(k), 10, and 11, any branch, agency, or commercial lending company operated in the United States by a foreign bank.

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

"(A) in the case of any company or depository institution which receives examinations, the achievement of—

"(i) a CAMEL composite rating of 1 or 2 (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of such company or institution; and

"(ii) at least a satisfactory rating for management, if such rating is given; or

"(B) in the case of a company or depository institution that has not received an examination rating, the existence and use of managerial resources which the Board determines are satisfactory.".

(3) Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) (as amended by section 116(a)(1) of this Act) is amended by inserting after subsection (o) the following new subsections:

"(p) SECURITIES AFFILIATE.—The term 'securities affiliate' means any company—

"(1) that is (or is required to be) registered under the Securities Exchange Act of 1934 as a broker or dealer; and

"(2) the acquisition or retention of the shares or assets of which the Board has approved under section 10.

"(q) CAPITAL TERMS.—

"(1) DEPOSITORY INSTITUTIONS.—With respect to depository institutions, the terms 'well capitalized,' 'adequately capitalized' and 'undercapitalized' have the meanings given to such terms in accordance with section 38(b) of the Federal Deposit Insurance Act.

"(2) FINANCIAL SERVICES HOLDING COMPANY.—The following definitions shall apply with respect to financial services holding companies:

"(A) ADEQUATELY CAPITALIZED.—The term 'adequately capitalized' means a level of capitalization which meets or exceeds the required minimum level established by the Board for each relevant capital measure for financial services holding companies.

"(B) WELL CAPITALIZED.—The term 'well capitalized' means a level of capitalization which meets or exceeds the required capital levels established by the Board for well capitalized financial services holding companies.

"(3) OTHER CAPITAL TERMS.—The terms 'tier 1' and 'risk-weighted assets' have the meaning given those terms in the capital guidelines or regulations established by the Board for financial services holding companies.

"(r) FOREIGN BANK TERMS.—For purposes of subsections (s) and (u), sections 4(k), 10, and 11, and subsections (b) and (c) of section 12—

"(1) the terms 'agency', 'branch', and 'commercial lending company' have the same meaning as in section 1(b) of the International Banking Act of 1978.

"(2) the term 'foreign bank' means a foreign bank (as defined in section 1(b) of the International Banking Act of 1978) which operates a branch, agency or commercial lending company, or owns or controls a bank, in the United States.".

(c) AMENDMENT REGARDING CONDITIONAL APPROVAL OF NOTICES.—Section 4(a)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(a)(2)) is amended by striking "paragraph (8)" and all that follows through "issued by the Board under such paragraph" and inserting "subsection (c)(8) or section 4(k), 10, or 11, subject to all the conditions specified in those provisions or in any order or regulation issued by the Board under those provisions".

(d) AMENDMENT TO NOTICE PROCEDURES.—Section 4(j) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)) is amended—

(1) in paragraph (1)(A), by striking "subsection (c)(8) or (a)(2)" and inserting "subsection (a)(2), (c)(8), (c)(15), or (k)";

(2) in paragraph (1)(E)—

(A) by striking "subsection (c)(8) or (a)(2)" and inserting "subsection (a)(2), (c)(8), (c)(15), or (k)"; and

(B) by striking the last sentence and inserting the following: "In no event may the Board, without the agreement of the financial services holding company submitting the notice, extend the notice period under this subparagraph beyond the period that ends 180 days after the date that a notice is filed with the Board or the relevant Federal reserve bank in accordance with the regulations of the Board."; and

(3) in paragraph (2), by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively, and inserting after subparagraph (A) the following new subparagraph:

"(B) CRITERIA FOR NOTICES INVOLVING SECURITIES AFFILIATES.—In considering any notice that involves the acquisition of shares of a securities affiliate pursuant to section 4(c)(15), the Board shall apply the criteria and safeguards contained in this paragraph and in sections 10 and 11.".

(e) ELIMINATION OF OBSOLETE PROVISIONS.—The Bank Holding Company Act of 1956 (12 U.S.C. 1841 through 1849) is amended—

(1) in section 4(a)(2)—

(A) by striking "or in the case of a company" and ending "after December 31, 1980,"; and

(B) by striking the sentence beginning "Notwithstanding any other provision of this paragraph";

(2) in section 4(b), by striking "After two years from the date of enactment of this Act, no" and inserting "No"; and

(3) in section 5(a)—

(A) by striking "Within one hundred and eighty days after the date of enactment of this Act, or within" and inserting "Within"; and

(B) by striking "whichever is later,".

(f) CONFORMING AMENDMENTS.—The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended as follows:

(1) In section 3(c)(4), by striking "one-bank holding company" each place such term appears and inserting "1-bank financial services holding company".

(2) In section 3(f)(5), by striking "bank holding company" the first and second time such term appears and inserting "financial services holding company".

(3) In section 4(i)(3)(A), by striking "is acquired" and inserting "was acquired".

(4) By striking "bank holding companies" each place such appears in the following sections and inserting "financial services holding companies":

(A) Section 3(d).

(B) Section 4(f).

(C) Section 7(a).

(5) By striking "bank holding company's" each place such term appears in section 4(c)(14) and inserting "financial services holding company's".

(6) By striking "bank holding company" each place such term appears in the following sections and inserting "financial services holding company":

(A) Subsections (a), (d), (e), (g), (h), and (o) of section 2.

(B) Subsections (a), (b), (d), (f)(1), (f)(2), and (f)(3) of section 3.

(C) Subsections (a), (d), (e), (g), (h), and (j) of section 4.

(D) Clause (ii) in the portion of section 4(c) which precedes paragraph (1) of such section.

(E) Paragraphs (2), (3), (7), (8), (10), (11), (12)(A), and (14) of section 4(c).

(F) Paragraphs (4), (5), and (9) of section 4(f).

(G) Paragraphs (1) and (2) of section 4(i).

(H) Sections 5, 7(b), 8, and 11.

(7) In section 4(f)(1), by striking "bank holding company" the 2d place such term appears and inserting "financial services holding company".

(8) In the headings for section 3(f) and 4(f), by striking "BANK HOLDING" and inserting "FINANCIAL SERVICES HOLDING".

(9) In the heading for section 2(o)(7), by striking "BANK" and inserting "FINANCIAL SERVICES".

(g) TREATMENT OF EXISTING BANK HOLDING COMPANIES.—Section 2(a)(6) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(6)) is amended by inserting at the end the following: "Any company that was a bank holding company on the day before the date of enactment of the Financial Services Competitiveness Act of 1995 shall, for purposes of this chapter, be deemed to have been a financial services holding company as of the date on which the company became a bank holding company.".

(h) OTHER REFERENCES.—Any reference in any Federal law to "bank holding company" or "bank holding companies" as those terms were defined under the Bank Holding Company Act of 1956 before the enactment of this Act shall be deemed to include a reference to "financial services holding company" and "financial services holding companies", respectively, as such terms are defined under the Financial Services Holding Company Act of 1995.

SEC. 129. CONFORMING AMENDMENTS TO THE BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.

Section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971 through 1978) is amended by striking "bank holding company" each place such term appears and inserting "financial services holding company".

SEC. 130. CREDIT CARDS FOR BUSINESS PURPOSES.

Section 2(c)(2)(F) of the Bank Holding Company Act of 1956 (relating to the definition of credit card banks) is amended—

(1) in clause (i), by inserting "including the provision of credit card accounts for business purposes" before the semicolon; and

(2) in clause (v), by inserting "(other than the provision of credit card accounts for business purposes in connection with the credit card operations referred to in clause (i))" before the period.

Subtitle D—Interagency Banking and Financial Services Advisory Committee

SEC. 141. INTERAGENCY BANKING AND FINANCIAL SERVICES ADVISORY COMMITTEE.

(a) ESTABLISHMENT; COMPOSITION.—There is established the Banking and Financial Services Advisory Committee which shall consist of 6 members as follows:

(1) The Secretary of the Treasury.

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

(3) The Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation.

(4) The Chairman of the Securities and Exchange Commission.

(5) The Chairperson of the Commodities Futures Trading Commission.

(6) The Comptroller of the Currency.

(b) CHAIRPERSON.—The chairperson of the Committee shall be the Secretary of the Treasury.

(c) DESIGNATION OF OFFICERS AND EMPLOYEES.—The members of the Committee may, from time to time, designate other officers or employees of their respective agencies to carry out their duties on the Committee.

(d) COMPENSATION AND EXPENSES.—Each member of the Committee shall serve without additional compensation but shall be entitled to reasonable expenses incurred in carrying out official duties as a member.

(e) FUNCTION OF THE COMMITTEE.—

(1) IN GENERAL.—The Committee shall meet as appropriate to consider matters of mutual interest to the members and to consider making recommendations to the Board of Governors of the Federal Reserve System regarding the types of activities that may be financial in nature for purposes of the Financial Services Holding Company Act and to the Comptroller of the Currency regarding the types of activities that may be incidental to banking for purposes of section 5136 of the Revised Statutes of the United States.

(2) CONSIDERATION OF RECOMMENDATIONS.—The Board of Governors of the Federal Reserve System and the Comptroller of the Currency, as appropriate, shall take into account any recommendation made to the respective agency by the Committee and, if the agency does not adopt the recommendation, shall provide a written explanation to the Committee.

(f) IMPROVING THE SUPERVISION, EFFICIENCY, AND COMPETITIVENESS OF THE FINANCIAL SERVICES INDUSTRY.—

(1) IN GENERAL.—The Committee shall seek to improve the supervision, efficiency, and competitiveness of the financial services industry by making recommendations for such legislative or administrative action as the Committee determines to be appropriate to the Congress, each agency or office represented by a member on the Committee, and other agencies or departments of the United States, including recommendations for changes in law and in the regulations, policies, and procedures of any department or agency.

(2) PRINTING IN FEDERAL REGISTER.—Recommendations from paragraph (1) shall be printed in the Federal Register and submitted to the Committee on Banking and Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

TITLE II—FUNCTIONAL REGULATION

Subtitle A—Brokers and Dealers

SEC. 201. DEFINITION OF BROKER.

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

"(4) BROKER.—

"(A) IN GENERAL.—The term 'broker' means any person engaged in the business of effecting transactions in securities for the account of others.

"(B) EXCLUSION OF BANKS.—The term 'broker' does not include a bank unless such bank—

"(i) publicly solicits the business of effecting securities transactions for the account of others;

"(ii) is compensated for such business by the payment of commissions or similar remuneration based on effecting transactions in securities (other than fees calculated as a percentage of assets under management) in excess of the bank's incremental costs directly attributable to effecting such transactions (hereafter referred to as 'incentive compensation'); or

"(iii) is a separately identifiable department or division of the bank.

"(C) EXEMPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be deemed to be a broker because it engages in any of the following activities under the conditions described:

"(i) THIRD PARTY BROKERAGE ARRANGEMENTS.—The bank enters into a contractual or other arrangement with a broker or dealer registered under this title under which the broker or dealer offers brokerage services on or off the premises of the bank if—

"(I) such broker or dealer is clearly identified as the person performing the brokerage services;

"(II) the broker or dealer performs brokerage services in an area that is clearly marked and, unless made impossible by space or personnel considerations, physically separate from the routine deposit-taking activities of the bank;

"(III) any materials used by the bank to advertise or promote generally the availability of brokerage services under the contrac-

tual or other arrangement clearly indicate that the brokerage service are being provided by the broker or dealer and not by the bank;

"(IV) any materials used by the bank to advertise or promote generally the availability of brokerage services under the contractual or other arrangement are in compliance with the Federal securities laws before distribution;

"(V) bank employees perform only clerical or ministerial functions in connection with brokerage transactions, including scheduling appointments with the associated persons of a broker or dealer and, on behalf of a broker or dealer, transmitting orders or handling customers funds or securities, except that bank employees who are not so qualified may describe in general terms investment vehicles under the contractual or other arrangement and accept customer orders on behalf of the broker or dealer if such employees have received training that is substantially equivalent to the training required for personnel qualified to sell securities pursuant to the requirements of a self-regulatory organization (as defined in section 3(a) of the Securities Exchange Act of 1934);

"(VI) bank employees do not directly receive incentive compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the requirements of a self-regulatory organization (as so defined) except that the bank employees may receive nominal cash and noncash compensation for customer referrals if the cash compensation is a 1-time fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction;

"(VII) such services are provided by the broker or dealer on a basis in which all customers which receive any services are fully disclosed to the broker or dealer; and

"(VIII) the broker or dealer informs each customer that the brokerage services are provided by the broker or dealer and not by the bank and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not insured by the Federal Deposit Insurance Corporation.

"(ii) TRUST ACTIVITIES.—The bank engages in trust activities (including effecting transactions in the course of such trust activities) permissible for national banks under the first section of the Act of September 28, 1962, or for State banks under relevant State trust statutes or law (including securities safekeeping, self-directed individual retirement accounts, or managed agency accounts or other functionally equivalent accounts of a bank) unless the bank—

"(I) publicly solicits brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities; or

"(II) receives incentive compensation for such brokerage activities.

"(iii) PERMISSIBLE SECURITIES TRANSACTIONS.— The bank effects transactions in exempted securities, other than municipal securities, or in commercial paper, bankers acceptances, commercial bills, qualified Canadian Government obligations as defined in section 5136 of the Revised Statues, obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969, obligations of the North American Development Bank, and obligations of any local public agency (as defined in section 110(h) of the Housing Act of 1949) or any public housing agency (as defined in the United States Housing Act of 1937) that are expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in.

"(iv) MUNICIPAL SECURITIES.—The bank effects transactions in municipal securities.

"(v) EMPLOYEE AND SHAREHOLDER BENEFIT PLANS.—The bank effects transactions as part of any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment, or similar plan for employees or shareholders of an issuer or its subsidiaries.

"(vi) SWEEP ACCOUNTS.—The bank effects transactions as part of a program for the investment or reinvestment of bank deposit funds into any no-load, open-end management investment company registered under the Investment Company Act of 1940 that holds itself out as a money market fund.

"(vii) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate of the bank, as defined in section 2 of the Financial Services Holding Company Act of 1995.

"(viii) PRIVATE SECURITIES OFFERINGS.—The bank—

"(I) effects sales as part of a primary offering of securities by an issuer, not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations issued thereunder;

"(II) effects such sales exclusively to an accredited investor, as defined in section 3 of the Securities Act of 1933; and

"(III) if affiliated with a securities affiliate, as provided under section 10 of the Financial Services Holding Company Act of 1995—

"(aa) has not been so affiliated for more than 1 year; or

"(bb) effects such sales through a separately identifiable department or division that itself shall be deemed to be a broker.

"(ix) DE MINIMIS EXEMPTION.—If the bank does not have a subsidiary or affiliate registered as a broker or dealer under section 15, the bank effects, other than in transactions referenced in clauses (i) through (viii), not more than—

"(I) 800 transactions in any calendar year in securities for which a ready market exists, and

"(II) 200 other transactions in securities in any calendar year.

"(x) SAFEKEEPING AND CUSTODY SERVICES.—The bank, as part of customary banking activities—

"(I) provides safekeeping or custody services with respect to securities, including the exercise of warrants or other rights on behalf of customers;

"(II) clears or settles transactions in securities;

"(III) effects securities lending or borrowing transactions with or on behalf of customers as part of services provided to customers pursuant to subclauses (I) and (II) or invests cash collateral pledged in connection with such transactions; or

"(IV) holds securities pledged by 1 customer to another customer or securities subject to resale agreements between customers or facilitates the pledging or transfer of such securities by book entry.

"(xi) BANKING PRODUCTS.—The bank effects transactions that have been determined pursuant to section 10(k)(3)(C) to be more appropriately treated as banking products, if the bank effects such transactions through a separately identifiable department or division that itself shall be deemed to be a broker.

"(D) EXEMPTION FOR ENTITIES SUBJECT TO SECTION 15(e).—The term 'broker' does not include a bank that—

"(i) was, immediately prior to the enactment of the Financial Services Competitiveness Act of 1995, subject to section 15(e); and

"(ii) is subject to such restrictions and requirements as the Commission deems appropriate.".

(b) SEPARATELY IDENTIFIABLE DEPARTMENT OR DIVISION DEFINED.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following new paragraph:

"(54) For purposes of paragraphs (4) and (5), the term 'separately identifiable department or division' of a bank means a unit—

"(A) that is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's activities, including the supervision of all bank employees engaged in the performance of such activities; and

"(B) for which all of the records relating to its activities described in paragraphs (4) and (5) are separately maintained in or extractable from such unit's own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement of this Act and rules and regulations promulgated under this Act.".

(c) REGULATION.—Section 15(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)) is amended by adding at the end the following new paragraph:

"(8)(A) The Commission may prescribe rules, after consultation with and considering the views of the appropriate Federal banking agencies, with respect to a broker or dealer that is a separately identifiable department or division of a bank as the Commission finds necessary in the public interest or for the protection of investors to take into account the characteristics of a separately identifiable department or division of a bank.

"(B) If a bank of which a separately identifiable department or division is a part is adequately capitalized (as defined by the bank's appropriate Federal banking agency), the separately identifiable department or division that is a broker or dealer shall be deemed to be in compliance with the net capital rules adopted pursuant to paragraph (3).".

SEC. 202. DEFINITION OF DEALER.

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

"(5) DEALER.—

"(A) IN GENERAL.—The term 'dealer' means any person engaged in the business of buying and selling securities for his own account through a broker or otherwise.

"(B) EXCEPTIONS.—Such term does not include—

"(i) a person that buys or sells securities for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business; or

"(ii) a bank, to the extent that the bank—

"(I) buys and sells commercial paper, bankers acceptances, exempted securities (other than municipal securities), qualified Canadian Government obligations as defined in section 5136 of the Revised Statues, obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969, obligations of the North American Development Bank, and obligations of any local public agency (as defined in section 110(h) of the Housing Act of 1949) or any public housing agency (as defined in the United States Housing Act of 1937) that are expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in;

"(II) buys and sells municipal securities;

"(III) buys and sells securities for investment purposes for the bank or for accounts for which the bank acts as a trustee or fiduciary;

"(IV) engages in the issuance or sale of designated asset-back securities through a grantor trust or otherwise and—

"(aa) has not been affiliated with a securities affiliate under section 10 of the Financial Services Holding Company Act of 1995 for more than 1 year; or

"(bb) effects such transactions through a separately identifiable department or division that itself shall be deemed to be a dealer; or

"(V) buys and sells securities that have been determined pursuant to section 10(k)(3)(C) to be more appropriately treated as banking products, if a separately identifiable department or division that itself is deemed to be a broker or dealer for purposes of this Act engages in such purchases and sales.

"(C) DESIGNATED ASSET-BACKED SECURITIES DEFINED.—For purposes of subparagraph (B)(ii)(IV), the term 'designated asset-backed securities' means—

"(i) securities backed by or representing an interest in 1-4 family residential mortgages originated or purchased by the bank, its affiliates, or its subsidiaries; and

"(ii) securities backed by or representing an interest in consumer receivables or consumer leases originated or purchased by the bank, its affiliates, or its subsidiaries.".

SEC. 203. POWER TO EXEMPT FROM THE DEFINITIONS OF BROKER AND DEALER.

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

"(e) EXEMPTION FROM DEFINITION OF BROKER OR DEALER.—The Commission, by regulation or order, upon its own motion or upon application, may conditionally or unconditionally exclude any person or class of persons from the definitions of 'broker' or 'dealer', if the Commission finds that such exclusion is consistent with the public interest, the protection of investors, and the purposes of this title.".

SEC. 204. MARGIN REQUIREMENTS.

(a) Section 7(d) of the Securities Exchange Act of 1934 (15 U.S.C. 15g(d)) is amended by striking "or (E)" and inserting "(E) to a loan to a broker or dealer by a member bank or any other person that has entered into an agreement pursuant to section 8(a) if the proceeds of the loan are to be used in the ordinary course of the broker's or dealer's business other than for the purpose of funding the purchase of securities for the account of such broker or dealer, or (F)".

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

(1) by striking "nonmember bank" and inserting "person other than a member bank"; and

(2) by striking "such bank" in the second sentence and inserting "such person".

SEC. 205. EFFECTIVE DATE.

This subtitle shall become effective 270 days after the date of enactment of this Act.

Subtitle B—Bank Investment Company Activities

SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY AFFILIATED BANK.

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

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

(2) by striking "(f) Every registered" and inserting "(f) CUSTODY OF SECURITIES.—

"(1) Every registered";

(3) by designating the 2d, 3d, 4th, and 5th sentences of such subsection as paragraphs (2) through (5), respectively, and indenting the left margin of such paragraphs appropriately; and

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

"(6) Notwithstanding any provision of this subsection, if a bank described in paragraph (1) or an affiliated person of such bank is an affiliated person, promoter, organizer, or sponsor of, or principal underwriter for the registered company, such bank may serve as custodian under this subsection in accordance with such rules, regulations, or orders as the Commission may prescribe, consistent with the protection of investors, after consulting in writing with the appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act.".

(b) UNIT INVESTMENT TRUSTS.—Section 26(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–26(a)(1)) is amended by inserting before the semicolon at the end the following: ", except that, if the trustee or custodian described in this subsection is an affiliated person of such underwriter or depositor, the Commission may adopt rules and regulations or issue orders, consistent with the protection of investors, prescribing the conditions under which such trustee or custodian may serve, after consulting in writing with the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act)".

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

(1) in paragraph (1), by striking "or" at the end;

(2) in paragraph (2), by striking the period at the end and inserting "; or" ; and

(3) by inserting after paragraph (2) the following:

"(3) as custodian.".

SEC. 212. INDEBTEDNESS TO AFFILIATED PERSON.

Section 10(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(f)) is amended—

(1) in the 1st sentence, by striking "issuer) a principal underwriter" and inserting "issuer)—

"(1) a principal underwriter"; and

(2) by striking "for the issuer. The Commission" and inserting "for the issuer; or

"(2) the issuer of which has a material lending relationship with the adviser of such registered investment company or any person controlling, controlled by, or under common control with the adviser in contravention of such rules, regulations, or orders as the Commission may prescribe in the public interest and consistent with the protection of investors.

The Commission".

SEC. 213. LENDING TO AN AFFILIATED INVESTMENT COMPANY.

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

"(l) Notwithstanding any provision of this section, it shall be unlawful for any affiliated person of a registered investment company or any affiliated person of such a person to loan money to such investment company in contravention of such rules, regulations, or orders as the Commission may prescribe in the public interest and consistent with the protection of investors.".

SEC. 214. INDEPENDENT DIRECTORS.

(a) IN GENERAL.—Section 2(a)(19)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(A)) is amended—

(1) by striking clause (v) and inserting the following new clause:

"(v) any person (other than a registered investment company) that, at any time during the preceding 6 months, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

"(I) the investment company,

"(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services, or

"(III) any account over which the investment company's investment adviser has brokerage placement discretion,

or any affiliated person of such a person,";

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

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

"(vi) any person (other than a registered investment company) that, at any time during the preceding 6 months, has loaned money to—

"(I) the investment company,

"(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services, or

"(III) any account for which the investment company's investment adviser has borrowing authority,

or any affiliated person of such a person, or".

(b) AFFILIATION OF DIRECTORS.—Section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(c)) is amended by striking "bank, except" and inserting "bank (and its subsidiaries) or any single financial services holding company (and its affiliates and subsidiaries), as those terms are defined in the Financial Services Holding Company Act of 1995, except".

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

SEC. 215. ADDITIONAL SEC DISCLOSURE AUTHORITY.

(a) MISREPRESENTATION.—Section 35(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–34(a)) is amended to read as follows:

"(a) MISREPRESENTATION OF GUARANTEES.—

"(1) IN GENERAL.—It shall be unlawful for any person, issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company—

"(A) has been guaranteed, sponsored, recommended, or approved by the United States, or any agency, instrumentality or officer of the United States;

"(B) has been insured by the Federal Deposit Insurance Corporation; or

"(C) is guaranteed by or is otherwise an obligation of any bank or insured depository institution.

"(2) DISCLOSURES.—Any person issuing or selling the securities of a registered investment company shall prominently disclose that the investment company or any security issued by the investment company—

"(A) is not insured by the Federal Deposit Insurance Corporation;

"(B) is not guaranteed by an affiliated insured depository institution; and

"(C) is not otherwise an obligation of any bank or insured depository institution,

in accordance with such rules, regulations, or orders as the Commission may prescribe as reasonably necessary or appropriate in the public interest for the protection of investors, after consulting in writing with the appropriate Federal banking agencies.

"(3) DEFINITIONS.—The terms 'insured depository institution' and 'appropriate Federal banking agency' have the meanings given to such terms in section 3 of the Federal Deposit Insurance Act.".

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

"(d)(1) It shall be unlawful for any registered investment company to adopt as part of the name or title of such company, or of any securities of which it is the issuer, any word or words that the Commission finds are materially deceptive or misleading. The Commission may adopt such rules or regulations or issue such orders as are necessary or appropriate to prevent the use of deceptive or misleading names or titles by investment companies.

"(2) It shall be deceptive and misleading for any registered investment company (A) that is an affiliated person of a bank or an affiliated person of such a person, or (B) for which a bank or an affiliated person of a bank acts as investment adviser, sponsor, promoter, or principal underwriter, to adopt, as part of the name or title of such company, or of any security of which it is an issuer, any word that is the same or similar to, or a variation of, the name or title of such bank or affiliated person thereof, in contravention of such rules, regulations, or orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.".

SEC. 216. DEFINITION OF BROKER UNDER THE INVESTMENT COMPANY ACT OF 1940.

Section 2(a)(6) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(6)) is amended to read as follows:

"(6) 'Broker' has the same meaning as in the Securities Exchange Act of 1934, except that it does not include any person solely by reason of the fact that such person is an underwriter for 1 or more investment companies.".

SEC. 217. DEFINITION OF DEALER UNDER THE INVESTMENT COMPANY ACT OF 1940.

Section 2(a)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(11)) is amended to read as follows:

"(11) The term 'dealer' has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.".

SEC. 218. REMOVAL OF THE EXCLUSION FROM THE DEFINITION OF INVESTMENT ADVISER FOR BANKS THAT ADVISE INVESTMENT COMPANIES.

(a) INVESTMENT ADVISER.—Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is amended in subparagraph (A), by striking "investment company" and inserting "investment company, except that the term 'investment adviser' includes any bank or financial services holding company to the extent that such bank or financial services holding company acts as an investment adviser to a registered investment company, or if, in the case of a bank, such services are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser".

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

"(25) The term 'separately identifiable department or division' of a bank means a unit—

"(A) that is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's investment adviser activities for 1 or more investment companies, including the supervision of all bank employees engaged in the performance of such activities; and

"(B) for which all of the records relating to its investment adviser activities are separately maintained in or extractable from such unit's own facilities or the facilities of the bank, and such records are so maintained or oth-

erwise accessible as to permit independent examination and enforcement of this Act or the Investment Company Act of 1940 and rules and regulations promulgated under this Act or the Investment Company Act of 1940.".

SEC. 219. DEFINITION OF BROKER UNDER THE INVESTMENT ADVISERS ACT OF 1940.

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

"(3) The term 'broker' has the same meaning as in the Securities Exchange Act of 1934.".

SEC. 220. DEFINITION OF DEALER UNDER THE INVESTMENT ADVISERS ACT OF 1940.

Section 202(a)(7) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(7)) is amended to read as follows:

"(7) The term 'dealer' has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.".

SEC. 221. INTERAGENCY CONSULTATION.

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

"SEC. 210A. CONSULTATION.

"(a) EXAMINATION RESULTS AND OTHER INFORMATION.—

"(1) The appropriate Federal banking agency shall provide the Commission upon request the results of any examination, reports, records, or other information as each may have access to with respect to the investment advisory activities of any financial services holding company, bank, or separately identifiable department or division of a bank, that is registered under section 203 of this title, or, in the case of a financial services holding company or bank, that has a subsidiary or a separately identifiable department or division registered under that section, to the extent necessary for the Commission to carry out its statutory responsibilities.

"(2) The Commission shall provide to the appropriate Federal banking agency upon request the results of any examination, reports, records, or other information with respect to the investment advisory activities of any financial services holding company, bank, or separately identifiable department or division of a bank, any of which is registered under section 203 of this title, to the extent necessary for the agency to carry out its statutory responsibilities.

"(b) EFFECT ON OTHER AUTHORITY.—Nothing herein shall limit in any respect the authority of the appropriate Federal banking agency with respect to such financial services holding company, bank, or department or division under any provision of law.

"(c) DEFINITION.—For purposes of this section, the term 'appropriate Federal banking agency' shall have the same meaning as in section 3 of the Federal Deposit Insurance Act.".

SEC. 222. TREATMENT OF BANK COMMON TRUST FUNDS.

(a) SECURITIES ACT OF 1933.—Section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended by striking "or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian" and inserting "or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940".

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a)(l2)(A)(iii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(l2)(A)(iii)) is amended to read as follows:

"(iii) any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940;".

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

"(A) such fund is employed by the bank solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose;

"(B) except in connection with the ordinary advertising of the bank's fiduciary services, interests in such fund are not—

"(i) advertised; or

"(ii) offered for sale to the general public; and

"(C) fees and expenses charged by such fund are not in contravention of fiduciary principles established under applicable Federal or State law".

(d) TAX EFFECT.—It is the sense of the Congress that the public interest would be furthered by enacting legislation to amend section 584 of the Internal Revenue Code of 1986 by inserting after subsection (h) the following new subsection:

"(i) CONVERSION, MERGERS, OR REORGANIZATION OF COMMON TRUST FUNDS.—Notwithstanding any other provision of the Internal Revenue Code, any transfer of all or substantially all of the assets of a common trust fund taxable under this section to a registered investment company taxable under subchapter M shall not result in a gain or loss to the participants in such common trust fund where the transfer is a result of a merger, conversion, reorganization, transfer, or other similar transaction or series of transactions.".

SEC. 223. INVESTMENT ADVISERS PROHIBITED FROM HAVING CONTROLLING INTEREST IN REGISTERED INVESTMENT COMPANY.

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

"(g) CONTROLLING INTEREST IN INVESTMENT COMPANY PROHIBITED.—

"(1) IN GENERAL.—If any investment adviser to a registered investment company, or an affiliated person of that investment adviser, holds a controlling interest in that registered investment company in a trustee or fiduciary capacity, such person shall—

"(A) if it holds the shares in a trustee or fiduciary capacity with respect to any employee benefit plan subject to the Employee Retirement Income Security Act of 1974, transfer the power to vote the shares of the investment company through to another person acting in a fiduciary capacity with respect to the plan who is not an affiliated person of that investment adviser or any affiliated person thereof; or

"(B) if it holds the shares in a trustee or fiduciary capacity with respect to any other person or entity other than an employee benefit plan subject to the Employee Retirement Income Security Act of 1974—

"(i) transfer the power to vote the shares of the investment company through to—

"(I) the beneficial owners of the shares;

"(II) another person acting in a fiduciary capacity who is not an affiliated person of that investment adviser or any affiliated person thereof; or

"(III) any person authorized to receive statements and information with respect to the trust who is not an affiliated person of that investment adviser or any affiliated person thereof;

"(ii) vote the shares of the investment company held by it in the same proportion as shares held by all other shareholders of the investment company; or

"(iii) vote the shares of the investment company as otherwise permitted under such rules, regulations, or orders as the Commission may prescribe for the protection of investors.

"(2) EXEMPTION.—Paragraph (1) shall not apply to any investment adviser to a registered investment company, or an affiliated person of that investment adviser, holding shares of the investment company in a trustee or fiduciary capacity if that registered investment company consists solely of assets of held in such capacities.

"(3) SAFE HARBOR.—No investment adviser to a registered investment company or any affiliated person of such investment adviser shall be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law solely by reason of acting in accordance with clause (i), (ii), or (iii) of paragraph (1)(B).

"(4) CHURCH PLAN EXEMPTION.—Paragraph (1) shall not apply to any investment adviser to a registered investment company, or an affiliated person of that investment adviser, holding shares in such a capacity, if such investment adviser or such affiliated person is an organization described in section 414(e)(3)(A) of the Internal Revenue Code of 1986.".

SEC. 224. CONFORMING CHANGE IN DEFINITION.

Section 2(a)(5) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(5)) is amended by striking "(A) a banking institution organized under the laws of the United States" and inserting "(A) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or a branch or agency of a foreign bank (as such terms are defined in section 101(b) of the International Banking Act of 1978)".

SEC. 225. EFFECTIVE DATE.

This subtitle shall take effect 270 days after the date of the enactment of this Act.

PURPOSE AND SUMMARY

In general, H.R. 1062, the Financial Services Competitiveness Act of 1995 ("FSCA"), is intended to permit affiliations between full-service depository institutions and full-service securities companies.

First, it would permit a firm to conduct both banking and full service securities activities under the legal framework of the Bank Holding Company Act ("BHCA"), renamed the Financial Services Holding Company Act ("FSHCA"). Second, it generally would require that banking and securities activities be conducted in separate subsidiaries of the bank holding company or in separately identifiable divisions or departments of banks subject to "functional regulation" by the appropriate bank regulator and the Securities and Exchange Commission ("SEC"), respectively. Third, it would impose statutory "firewalls" and other restrictions in an effort to insulate the insured depository from risk associated with the securities affiliate and to prevent unfair competition. Finally, it would impose separate firewalls and functional regulation with respect to mutual fund or investment company activities.

The FSCA would remove the restrictions contained in certain sections of the Banking Act of 1933, commonly referred to as the Glass-Steagall Act. (Sections 16, 20, 21, and 32 of the Banking Act of 1933 are referred to as the "Glass-Steagall Act.") Holding companies would be permitted both to control a bank and to control a securities affiliate that may engage in underwriting and dealing in any security, as well as sponsoring investment companies and distributing shares of those companies. These securities affiliates would be required to comply with all applicable Federal securities laws, including the registration and other requirements applicable to brokers-dealers.

Since investment banking firms may currently engage in activities not permitted for bank holding companies, the framework permits investment banking firms to continue to conduct such activities under certain conditions only if the Federal Reserve Board ("Federal Reserve" or "Board") determines that such activities are financial in nature. Investment banking firms that acquire a bank may continue to engage in nonfinancial activities for 5 years after acquiring a bank, subject to certain limitations.

The FSCA would create a new category of bank holding companies, known as investment bank holding companies ("IBHCs"). IBHCs would be permitted to engage in a wider range of financial activities than is authorized for bank holding companies, provided that such companies control only wholesale financial institutions that do not accept insured deposits or deposits under $100,000.

As noted above, affiliations between insured depository institutions and securities firms would take place subject to the BHCA, renamed as the FSHCA. In the view of some, the bank holding company framework permits financial organizations to engage in broader financial activities while at the same time maximizing the corporate insulation of insured depository institutions from the potential risks of these activities. Since 1987, the Federal Reserve has

allowed affiliations between banks and securities firms that engage in limited underwriting activities pursuant to section 20 of the Glass-Steagall Act. In approving these affiliations, the Board has adopted limitations on inter-affiliate relationships and transactions known as "firewalls." Firewalls such as those adopted by the Board have helped to assure that insured depository institutions that are affiliated with so-called section 20 affiliates have not suffered financial loss as a result of the activities of the securities affiliate.

One of the most important methods of maintaining the financial strength of, and public confidence in, insured depository institutions that affiliate with a securities firm is to require that the insured depository institution be strongly capitalized. Accordingly, the FSCA would provide that affiliations between securities firms and bank holding companies may only take place if the lead insured depository institution in the organization is well capitalized and if well capitalized insured depository institutions control at least 80 percent of the risk-weighted assets of insured depository institution subsidiaries of the bank holding company. In addition, all depository institutions in the bank holding company would be required to be well managed and at least adequately capitalized, and the bank holding company itself must be well managed and at least adequately capitalized. The FSCA also contains other limitations on interaffiliate transactions that are similar to the "firewalls" adopted by the Board.

Any securities firm that is affiliated with an insured depository institution would be, as is currently required, subject to registration and regulation by the SEC under the Federal securities laws. In addition, the FSCA amends the Securities Exchange Act of 1934 ("Exchange Act") to remove the exemption from the definition of the terms "broker" and "dealer" currently provided for banks, except in certain defined circumstances that primarily involve traditional banking activities. As a result, banks that engage in brokerage or dealing activities would be required, with several exceptions primarily for traditional banking activities, to register with the SEC. It is expected that most banks would conduct these activities through a subsidiary or an affiliate that is registered with the SEC or through an arrangement with an unaffiliated broker-dealer. The FSCA also amends the Investment Advisers Act of 1940 to remove the exemption from registration and regulation as an investment adviser for banks and bank holding companies and the Investment Company Act of 1940 to add limitations on the relationships and transactions between banks and affiliated investment companies.

BACKGROUND AND NEED FOR THE LEGISLATION

The Glass-Steagall Act separates commercial banking, the taking of deposits and the making of commercial loans, from investment banking, the raising of capital for companies through the public offering of securities. The Act contains additional regulation of the activities of Federal Reserve member banks, including provisions covering corporate affiliation and interlocking directorates. Even at the time of its enactment, the Act contained exceptions that allowed banks to underwrite and deal in obligations of the United States and many of its instrumentalities, along with obligations of States and their subdivisions. These were principally the securities

of cities, counties, and school districts supported by the full faith and credit of the issuer. Banks were also permitted to provide securities brokerage services at the request of customers by amendments to the Act made in 1935 to allow stock purchases and sales in an "agency" capacity.

Today, Sections 5(c) and 16 of the Glass-Steagall Act limit a national bank and a State-chartered Federal Reserve member bank to "purchasing and selling such securities and stock without recourse, solely upon the order and for the account of customers, and in no case for its own account" except for dealing in an underwriting U.S. Treasury and State and municipal general obligation securities. Section 20 of the Act forbids affiliation of any Federal Reserve member bank (through a holding company or otherwise) with any business entity "principally engaged" in investment banking activities. For over fifty years after the enactment of the Glass-Steagall Act, bank holding companies could not underwrite securities.

In recent years, however, the Glass-Steagall wall separating commercial from investment banking has largely eroded. Banks now engage in a wide range of brokerage and other securities activities that are comparable to, and competitive with, services offered by registered broker-dealers. Banking organizations currently are advisers to and sell mutual funds, offer full-service brokerage, and (through so-called "section 20 affiliates") underwrite corporate debt and equity securities. Over the same period, too, securities firms have entered into certain aspects of the banking business.

This expansion, notably, has been made possible by administrative rather than Congressional action. The Comptroller of the Currency ("OCC") has broadly interpreted the Glass-Steagall Act to permit national banks and their operating subsidiaries (among other things) to provide discount and full-service brokerage, to originate and sell asset-backed securities, and to deal in options on a wide range of instruments. The Federal Reserve, for its part, has allowed bank holding companies' affiliates to underwrite commercial paper, municipal revenue bonds, and securities backed by mortgages or consumer credit. Originally, this activity was limited to 5 percent of an individual affiliate's gross revenues. The five percent limitation was an attempt to comply with the language of section 20 of the Glass-Steagall Act prohibiting commercial bankers from being "engaged principally" in investment banking functions.

In 1989, the Federal Reserve allowed specific bank holding companies, through subsidiaries, to underwrite and deal in corporate debt securities. The Board has since doubled its percentage limits on the four groups of affected private and municipal securities to 10 percent of revenues of the bank holding company "Section 20" affiliates authorized to underwrite them. And, just as national banks may package their own loans into securities and underwrite them, so can bank holding company affiliates package bank loans into self-underwritten securities. The latter must be given a quality rating by a national rating agency comparable to the ratings of corporate bonds.

The Federal Reserve also approved equity (stock) underwriting by one bank holding company in 1990—and has allowed this activity for others since. About the same time, the OCC approved fur-

ther securities powers for national banks. These institutions may sell mortgage-backed securities they originate, and offer investments in pools of futures commodities (speculative "commodity funds").

Finally, in 1992, the Federal Reserve issued an amendment to its "Regulation Y" allowing bank holding companies to offer investment advisory and securities brokerage services to large (institutional) customers on a combined basis. The Board also relaxed restrictions on key personnel overlaps between banks and affiliated securities firms.

Banking institutions have also blended the commercial and investment banking businesses abroad. In most of the world, there is little or no separation of banking and commerce. The international operations of many large U.S. banking organizations include the underwriting, distribution, and brokerage of securities in many other countries whose internal financial markets are more deregulated than the United States.

Technological developments, such as the rapid growth of computers, CD–ROM and telecommunications, also have had an impact on the delivery of financial services. Technology is lowering the cost and broadening the scope of financial services. New product development has changed the institutional and market boundaries. In turn, technological innovation has added to financial globalization by expanding cross-border asset holdings, trading, and credit flows. In response, both securities firms and U.S. and foreign banks have increased their cross-border presence. These firms, in a response to competitive pressures of the local markets in which they operate, have been permitted to engage in activities not permitted to them at home.

The supporters of Glass-Steagall reform argue that the U.S. financial services regulatory structure has not kept pace with these technological and market developments. This line of argument holds that the Glass-Steagall Act, enacted over 60 years ago, has prevented corporations, State and local government enterprises, and other borrowers from realizing the cost, efficiency, and other benefits that would result from greater competition among providers of financial services. In addition, from the international perspective, U.S. companies (lenders as well as borrowers) may have been constrained by Glass-Steagall, to the benefit of their foreign counterparts.

In response to these concerns, H.R. 1062 attempts to design a financial framework that allows banks and banking organizations to offer a broader array of products and services.

Based on the series of hearings before the Committee and the Committee on Banking and Financial Services this Congress, there is a general agreement on the forces shaping our evolving financial system—forces that require modernization of our statutory framework for financial institutions and the markets. The anomalies among banks and between banks, securities firms, and other providers of financial services need to be corrected in the interest of efficiency and fair competition.

During the course of hearings before this Committee, however, a number of serious issues were raised with respect to the route that H.R. 1062 takes toward financial services reform. The hearings

highlighted, in particular, concerns about (1) the bill's provisions allowing banks to engage directly, through "separately identifiable departments or divisions" ("SIDs") of the bank, in a wide range of securities activities; (2) the bill's "two-way street" provisions, which will bring securities firms affiliated with banks within a banking-oriented regulatory framework; and (3) the bill's failure to resolve long-standing controversies with respect to bank insurance powers and affiliations.

SIDS

H.R. 1062 would allow a bank that establishes a SIDD to engage in significant securities activities directly rather than in a separately incorporated broker-dealer. The Committee heard testimony that, because SIDs would not be subject to the SEC's net capital requirements, bank SIDs would operate under a different standard than applies to their broker-dealer competitors. This differential could skew competition and create an incentive for financial services firms to move securities activities out of broker-dealers and into affiliated banks. The bank SID concept also means that the capital of the bank as a whole (and ultimately the Federal Deposit Insurance Fund) would be exposed to losses that occur in the SIDD as a result of its securities business. Finally, use of bank SIDs could also present significant practical problems relating to securities examination and enforcement efforts.

TWO-WAY STREET

Testimony before the Committee noted that H.R. 1062—following the model of the BHCA—would essentially impose an overlay of bank-type "safety and soundness" regulation on bank securities affiliates. For example, H.R. 1062 would require the Federal Reserve to impose restrictions on a securities firm on the basis of capital or management problems in an affiliated bank. The Committee fears that imposing bank-oriented safety and soundness regulation on securities affiliates could constrain their ability to respond quickly to market movements; this in turn could change the character of the securities business and affect the capital formation process.

INSURANCE ISSUES

Controversy has long surrounded the questions of bank insurance powers and bank affiliations with insurance firms.

Over the past several years, the OCC—by administrative interpretation, and without Congressional instruction—has moved to expand the insurance powers of national banks. For example, the OCC interpreted the National Bank Act to authorize a national bank or its branches located in a place of 5,000 or under population, to sell insurance to existing and potential customers located anywhere. The OCC also concluded that Federal law preempts State statutes that require licensing of individuals engaged in the sale of insurance, with respect to national bank employees engaged in insurance activities allowed by 12 U.S.C. § 24(Seventh). Most recently, the Supreme Court upheld the OCC's determination that

national banks may sell annuities (*NationsBank of North Carolina, N.A. v. Variable Annuity Life Insurance Co.*, 115 S. Ct. 810 (1995)).

H.R. 1062 does not address the issue of national bank insurance powers—or the OCC's ability to continue expanding those powers through administrative rulings. Nor does the bill address the equally thorny question of whether banks should be permitted to affiliate with insurance companies.

Under existing State and Federal law, banks and bank holding companies are subject to strict restrictions on their ability to affiliate with insurance companies. These limitations, among other things, create an obstacle to a true "two-way street" between banks and securities firms, since many of the latter are affiliated with insurance companies.

The Commerce Committee did not amend H.R. 1062 to address the issue of bank SIDs, the "two-way street", or bank insurance powers and affiliations—but this should not be taken to mean that the issues are unimportant, or that they have been resolved to the Committee's satisfaction. Rather, this Committee determined that an attempt to improve the bill before it reached the House Floor would only jeopardize the prospect of enacting historic legislation modernizing our financial services industries.

Accordingly, this Committee has chosen to report H.R. 1062, without recommendation, in the form approved by the Banking Committee. This will permit the bill and the important issues it raises to move forward to the Floor of the House and to ultimate resolution by the Members. This Committee has also obtained the consent of the Chairman of the Rules Committee to allow amendments on the Floor which will address some of these issues.

HEARINGS

H.R. 1062, the Financial Services Competitiveness Act of 1995, 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. On May 18, 1995, the Committee on Banking and Financial Services reported the bill to the House.

The Subcommittee on Telecommunications and Finance and the Subcommittee on Commerce, Trade and Hazardous Materials held two days of joint hearings on the bill.

Testifying before the Subcommittees on June 6, 1995 were: Arthur Levitt, Chairman, Securities and Exchange Commission; Alan Greenspan, Chairman, Federal Reserve Board; Julie Williams, Chief Counsel, Office of the Comptroller of the Currency; Ricki Helfer, Chairman, Federal Deposit Insurance Corporation; Gary Hughes, Vice President, American Council of Life Insurers; Joseph Bracewell, Chairman, Century National Bank; Elizabeth Randall, Commissioner of Banking, State of New Jersey; and Philip Feagin, President, North American Securities Administrators Association.

On June 8, 1995, the Subcommittees received testimony from: Peter Browne, Chairman of the National Association of Life Underwriters Committee on Federal Law and Legislation; Andrew Cassidy, Chairman, Task Force on Financial Services, The Council of Insurance Agents & Brokers; Michael Grace, Wright and Percy Insurance; James Klagholz, Chairman, Government Affairs Com-

mittee, Independent Insurance Agents of America; Matthew Fink, President, Investment Company Institute; Mark Lackritz, President, Securities Industry Association; Samuel Baptista, President, Financial Service Council; R. Scott Jones, Director, American Bankers Association; Jeffrey Tassey, Senior Vice President, American Financial Services Association; Craig Zimpher, Vice President, Nationwide Insurance Enterprise; and Drew Pfirrman, Senior Vice President, Fleet Financial Group.

COMMITTEE CONSIDERATION

The Subcommittee on the Telecommunications and Finance met on June 13, 1995, and marked up a Committee Print of H.R. 1062 containing the text of the bill as reported to the House by the Committee on Banking and Financial Services. The Subcommittee approved the Committee Print for Full Committee, without recommendation, by a voice vote.

The Subcommittee on Commerce, Trade, and Hazardous Materials met on June 14, 1995, and marked up a Committee Print of H.R. 1062 containing the text of the bill as reported to the House by the Committee on Banking and Financial Services. The Subcommittee approved the Committee Print for Full Committee, without recommendation, by a voice vote.

The Full Committee met on June 16, 1995, and ordered H.R. 1062 reported to the House, as amended, without recommendation, by a voice vote, a quorum being present.

ROLL CALL VOTES

Pursuant to clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, there were no recorded votes on the motion to report H.R. 1062 or on amendments offered to the measure. The voice votes taken on this measure are listed below.

COMMITTEE ON COMMERCE—104TH CONGRESS VOICE VOTES

Bill: H.R. 1062, Financial Services Competitiveness Act of 1995.

Amendment: An amendment by Mr. Markey re: securities affiliate investments.

Disposition: Withdrawn, by unanimous consent.

Amendment: An en bloc amendment by Mr. Dingell re: functional regulation/securities activities.

Disposition: Withdrawn, by unanimous consent.

Amendment: An amendment by Mr. Dingell re: adding a new title III to the bill, Insurance Competition.

Disposition: Withdrawn, by unanimous consent.

Motion: Motion by Mr. Fields to report H.R. 1062 to the House, as amended, without recommendation.

Disposition: Agreed to, by a voice vote, a quorum being present June 16, 1995.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Subcommittee on Telecommunications and Power and the Subcommittee on Commerce, Trade, and Hazardous

Materials held oversight and legislative hearings and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House rule XI of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, following is the cost estimate provided by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 19, 1995.

Hon. THOMAS J. BLILEY, Jr.,
Chairman, Committee on Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1062, the Financial Services Competitiveness Act of 1995, as ordered reported by the House Committee on Commerce on June 16, 1995. H.R. 1062 would repeal provisions of the Glass-Steagall Act that restrict the authority of commercial banks to underwrite and sell securities. While these changes could affect the government's spending for deposit insurance, CBO has no basis for predicting whether long-run deposit insurance costs would be higher or lower than under current law. Implementing this bill is not expected to affect significantly the administrative costs of the financial regulatory agencies other than the Securities and Exchange Commission (SEC), which would spend an additional $750,000 to $1 million annually, assuming appropriation of the necessary amounts.

Because the bill could affect direct spending and receipts, pay-as-you-go procedures would apply. CBO estimates that the net effect of H.R. 1062 on both direct spending and receipts would not be significant. We expect that this bill would not result in any significant costs to state and local governments. This cost estimate is identical to the one prepared on May 23, 1995, for H.R. 1062, as reported

by the House Committee on Banking and Financial Services on May 18, 1995.

BILL PURPOSE

H.R. 1062 would amend a number of banking laws, including the repeal of certain restrictions of the Glass-Steagall Act, to allow banks and securities firms to affiliate through financial services holding companies and to offer a full range of retail and wholesale banking services, as well as underwriting and selling securities.

H.R. 1062 would require financial institutions to conduct banking and securities activities in separate subsidiaries, and would impose strict capital standards on bank holding companies that seek to acquire or retain a securities affiliate. In an effort to maintain the safety and soundness of the insured depository institutions, the bill would create "firewalls" to protect federally insured banks from losses by a security affiliate, and would prevent banks from using insured deposits to subsidize non-bank related activities. A number of safeguards, including restrictions on access to credit and other information, limits on underwriting purchases, and required disclosures of certain information, would help to limit the direct risk to banks and the federal government's deposit insurance funds, primarily the Bank Insurance Fund.

The Board of Governors of the Federal Reserve, the SEC, and state and federal banking regulators—the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS)—would have responsibility for monitoring and enforcing compliance with the statute. The bill would create an interagency advisory committee to recommend types of financial activities permissible for financial services holding companies and would allow the various regulatory agencies to coordinate examinations and enforcement procedures.

H.R. 1062 also includes a number of provisions affecting financial institutions' transactions and products. In addition, banks selling nondeposit investment products would be required to obtain a signed acknowledgement from the customer that the products are not deposits and are not federally insured.

IMPACT ON THE BUDGET

Deposit Insurance Funds.—Enactment of H.R. 1062 could affect the federal budget by causing changes in the government's spending for deposit insurance, but there is no clear basis for predicting the direction or the amount of such changes.

On the one hand, the bill could reduce potential risk to the insurance funds by allowing banks to diversify their sources of income and by helping banks to be more competitive in the world's financial markets. Diversification of income sources could result in lower overall risks for banks, assuming that the expansion of their activities is accompanied by adequate safeguards. H.R. 1062 would create a holding company framework to limit the direct risk of securities activities to banks and the deposit insurance fund. Other firewalls and rules would prohibit or limit certain bank and affiliate transactions.

In addition, repeal of the restrictions of the Glass-Steagall Act would accelerate changes already occurring in the marketplace. For

example, some banks now sell mutual funds to their customers and, under limited circumstances, underwrite securities. At the same time, some securities firms offer checking-like accounts linked to mutual funds and extend credit directly to businesses. Expanding permissible activities would allow banking organizations to compete more effectively and efficiently with other financial businesses.

On the other hand, while the bill contains safeguards and other provisions to protect the banks, the benefits do not come without risks. In certain circumstances, a holding company may have an incentive to transfer or divert value away from the insured bank, leaving greater losses for the FDIC if the bank ultimately fails. Ultimately, strong supervision and monitoring by the regulators, which history has demonstrated is critical in limiting the exposure of the taxpayer during times of severe financial stress, will be essential to avoid additional losses to the deposit insurance funds.

If losses to the deposit insurance funds were to increase as a result of enactment of this measure, the FDIC would increase premiums that banks pay for deposit insurance. Similarly, if losses were to decrease, banks might pay smaller premiums. As a result, the net budgetary impact is likely to be negligible over time in either case.

Regulatory Costs.—The Federal Reserve would be the primary regulator of the new banking organizations. Because the Federal Reserve System remits its budget surplus to the Treasury, with the payment classified as a miscellaneous receipt (or revenue), additional operating costs can potentially reduce government receipts. Based on information provided by staff members of the Board of Governors of the Federal Reserve System, we estimate that H.R. 1062 would cause no overall change in Federal Reserve costs. CBO estimates that H.R. 1062 would change the Federal Reserve's costs of processing applications in two offsetting ways. By allowing bank holding companies to own securities firms, subject to the approval of the Federal Reserve, the bill would increase the Federal Reserve's costs for processing the required applications. But that effect would be offset by other cost reductions because the bill also would streamline the processing of certain other applications.

Based on information from the SEC, we expect that additional rulemaking and inspections would cost $750,000 to $1 million annually. The other financial regulatory agencies—OCC, FDIC, and OTS—do not expect any significant change in their workload as a result of enactment of the legislation.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mary Maginniss, who can be reached at 226–2860, and Mark Booth, who can be reached at 226–2685.

Sincerely,

JUNE E. O'NEILL, *Director.*

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONGRESSIONAL ACCOUNTABILITY ACT

The reporting requirement under section 102(b)(3) of the Congressional Accountability Act (P.L. 104–1) is inapplicable because this legislation does not relate to terms and conditions of employment or access to public services or accommodations.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the bill would have no inflationary impact.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

Section 1 designates the bill as the "Financial Services Competitiveness Act of 1995."

TITLE I—BANK SECURITIES ACTIVITIES AND AFFILIATIONS WITH SECURITIES FIRMS AND OTHER FINANCIAL COMPANIES

Subtitle A—Securities Activities

Section 101. Anti-affiliation provisions of Glass-Steagall Act repealed

Section 101 repeals section 20 and amends section 32 of the Banking Act of 1933. (Sections 16, 20, 21, and 32 of the Banking Act of 1933 are known as the "Glass-Steagall Act.")

Section 20 currently prohibits any bank that is a member of the Federal Reserve System from affiliating with any company that is "engaged principally in the issue, floation, underwriting, public sale or distribution" of securities. 12 U.S.C. § 377. The effect of repealing Section 20 is to permit affiliations between banks and securities firms regardless of the type or volume of securities activities conducted by the firm. As explained below, section 103 contemplates that the affiliation of an insured depository institution and a securities firm will occur through a holding company structure. Section 107 amends the Federal Deposit Insurance Act ("FDIA") to provide that banks may not be affiliated with securities firms engaged in underwriting or dealing in securities (other than certain bank-eligible securities) except pursuant to new section 10 of the BHCA.

Section 32 prohibits any officer, director, or employee of a company "primarily engaged in the issue, floation, underwriting, public sale, or distribution" of securities from serving simultaneously as an officer, director, or employee of any member bank, except as allowed by the Board. 12 U.S.C. § 78. Section 101 adds an exception to section 32 that allows an officer, director, or employee of a "securities affiliate" or of an investment company or investment adviser to serve simultaneously as an officer, director, or employee of a member bank as permitted under section 10 of the BHCA.

Section 102. Financial services holding companies authorized to have securities affiliates

Section 4 of the BHCA permits a bank holding company to own or control voting shares of a company that is engaged in banking or nonbanking activities permitted by that Act or determined by the Board to be closely related to banking. 12 U.S.C. § 1843. Section 102 adds a new section 4(c)(15) to the BHCA that permits a bank holding company to own or control shares of a securities affiliate in accordance with section 10 of the BHCA.

Section 103. Establishment and operations of securities affiliates

Sectin 103 adds a new section 10 to the BHCA to establish a new framework for affiliations between banks and securities firms. This section provides the authority for banks to affiliate with securities firms and establishes the prudential limitations that govern that affiliation.

A. Activities permissible for securities affiliates

1. Securities activities

Subsection (a)(1)(A) permits a securities affiliate to underwrite, deal in, broker, place, or distribute any type of securities, provide investment advice regarding securities, and engage in other securities activities permitted by the Board. A securities affiliate also is permitted under subparagraph (B) to sponsor, organize, control, manage, and act as an investment adviser to an investment company, including a mutual fund.

2. Other activities.

In addition, subparagraph (C) permits a securities affiliate to engage in, or acquire the shares of a company engaged in, any other activity permissible under section 4(c) of the BHCA. In order to do so, the activity or shares must satisfy a two-part test. First, a provision of section 4(c) must permit bank holding companies generally to engage in that activity or acquire those shares, Second, the bank holding company must obtain Board approval under the BHCA to conduct the activity or acquire the shares if such approval is otherwise required by section 4(c).

3. Permissible securities activities.

In determining the type of securities activities that would be permissible for financial services holding companies ("FSHC"), the Board is directed to take into account the need for securities firms to be innovative and competitive.

U.S. securities firms have historically been extremely innovative, introducing a number of new products—such as commercial paper, money market funds and asset backed securities—that have been extremely valuable to the economy. The Committee believes that it is important for the economy that U.S. securities firms continue to be innovative and competitive. Therefore, it is the Committee's intention that securities affiliates of banks be permitted to engage in the full range of investment banking, securities and financial activities engaged in by domestic and foreign securities firms whether or not they are affiliated with U.S. banks. Furthermore, the Com-

mittee believes that such firms need the flexibility to introduce quickly new financial products and services.

B. Acquiring interest in securities affiliate

Subsection (b) establishes the standards and procedures applicable to a bank holding company that seeks to acquire shares, or all, or substantially all, of the assets of a securities affiliate.

1. Notice required

Paragraph (1) of subsection (b) provides that a bank holding company cannot directly or indirectly acquire or retain more than 5 percent of the voting shares of a securities affiliate, or all or substantially all of the assets of a securities affiliate, without complying with the notice procedures contained in section 4(j) of the BHCA and receiving approval from the Board pursuant to these procedures. Section 4(j) establishes a 60-day prior notice procedure for Board review of nonbanking proposals.

2. Criteria for approval

Under paragraph (2), the Board must disapprove a notice filed by a bank holding company to acquire or retain shares (or all or substantially all of the assets) of a securities affiliate unless the Board determines that the proposed transaction satisfies criteria relating to capital, managerial resources, internal controls, effect on affiliates, concentration of resources, and responsiveness to community credit needs as set forth in subparagraphs (A) through (G).

Subparagraph (A) sets out capital standards that bank holding companies must meet in order to acquire or retain a securities affiliate. Requiring the maintenance of high capital is fundamental to assuring that the new securities activities permitted by section 10 do not jeopardize the safety and soundness of affiliated depository institutions. To achieve this goal, subparagraph (A) requires that a bank holding company seeking to acquire a securities affiliate meet the following capital standards: (1) the bank holding company's lead subsidiary insured depository institution must be well capitalized; (2) at least 80 percent of the aggregate total risk-weighted assets of depository institution assets controlled by the bank holding company must be in depository institutions that are well capitalized; (3) all subsidiary depository institutions controlled by the bank holding company must be well capitalized or adequately capitalized; and (4) the bank holding company itself must be adequately capitalized and must continue to be so immediately after the acquisition.

In determining whether well capitalized depository institutions control 80 percent of the total risk-weighted depository institution assets, recently acquired depository institutions may be excluded from the test, if a capital restoration plan has been submitted to and accepted by the institution's appropriate federal banking agency and all institutions that are excluded represent in aggregate less than 25 percent of the aggregate total risk-weighted assets of all depository institutions controlled by the FSHC. In addition, under subparagraph (B), a FSHC and its depository institution subsidiaries are deemed to have met the legislation's capital requirements if the depository institutions are at least adequately capitalized

and the holding company is well capitalized after the acquisition. Any FSHC that makes this election will be held liable for any FDIC losses, including any reasonably anticipated losses, associated with any of its depository institutions.

The Board is required to establish and apply comparable capital standards for the ownership or control of a securities affiliate in the United States by a foreign bank, giving due regard to the principle of national treatment and equality of competitive opportunity in the United States.

In this regard, the legislation requires that the Board evaluate the capital of both the bank and the bank holding company in determining whether a U.S. bank holding company may acquire and retain a securities affiliate. Foreign banks, however, operate in the United States as both banks and bank holding companies. Moreover, branches and agencies of foreign banks do not have separate capital requirements and operate based on the consolidated capital of the foreign bank itself. In light of these differences, the FSCA, without mandating a holding company structure, gives the Board the authority to apply capital standards to the foreign bank that assure a level playing field and prevent a foreign bank operating at lower capital levels than apply to U.S. banking organizations from acquiring or retaining control of a securities affiliate.

Subparagraph (C) requires that the bank holding company must have the managerial resources to conduct the proposed securities activities safely and soundly. In addition, the bank holding company and each of its subsidiary insured depository institutions must be well managed, and have been well managed for at least 12 months (excluding institutions acquired during that period).

Subparagraph (D) requires the FSHC to have established adequate internal controls.

Subparagraph (E) provides that the acquisition of a securities affiliate must not adversely affect the safety and soundness of the bank holding company or any of its subsidiary insured depository institutions.

Subparagraph (F) provides that the acquisition may not be approved if it would result in an undue concentration of resources in the financial services business.

Subparagraph (G) provides that the acquisition may not be approved unless the lead insured depository institution and insured depository institutions that control at least 80 percent of the aggregate total risk-weighted insured depository institution assets controlled by the holding company have achieved at least a "satisfactory" rating under the Community Reinvestment Act. This requirement would not apply to IBHCs as such companies are not subject to the Community Reinvestment Act.

3. Limited notice procedure for acquisition of additional securities affiliates

Paragraph (3) establishes a limited notice procedure for the acquisition of additional securities affiliates by a FSHC.

C. Additional investment in securities affiliate

1. Prior notice

Section 10(c)(1) requires a bank holding company to provide 30 days prior notice to the Board before making additional investments in a securities affiliate held under section 10(b)(1), if the investment would be considered capital for purposes of any capital requirement imposed under the Exchange Act. The holding company may not make the investment if the Board disapproves the notice within the 30-day period. Currently, this includes an investment in the form of preferred stock, nonvoting common stock, convertible debt, or subordinated debt considered capital for purposes of such a capital requirement. The notice requirement does not apply to additional extensions of credit under a revolving credit agreement approved by the Board.

2. No prior notice required for certain bank holding companies

Paragraph (2) permits a bank holding company that meets certain capital and managerial requirements to make additional investments in a securities affiliate without providing prior notice to the Board. This paragraph applies if each of the bank holding company's subsidiary insured depository institutions are well capitalized, the bank holding company is adequately capitalized, and the holding company and each of its subsidiary depository institutions are well managed (except for institutions acquired during the previous 12-month period). The bank holding company must provide subsequent notice to the Board regarding such additional investment.

3. Criteria for disapproving notice

Paragraph (3) permits the Board to disapprove a notice of additional investment filed under paragraph (1), if any insured depository institution affiliate of the securities affiliate is undercapitalized, or if the Board determines that the bank holding company would be undercapitalized after making the investment or that the investment would be otherwise unsafe or unsound.

4. Emergency approval

Paragraph (4) permits the Board to approve any additional investment in a securities affiliate on an emergency basis to address situations such as adverse market conditions or concerns regarding the financial or operation condition of a securities affiliate, if such additional investment does not adversely affect the safety and soundness of any insured depository institutions affiliated with the securities affiliate and does not diminish the ability of the financial services holding company to maintain an appropriate amount of capital in all such insured depository institutions

D. Provision applicable if affiliated insured depository institution ceases to be well capitalized

Subsection (d) requires that a bank holding company that owns a securities affiliate maintain high levels of capital in its depository institution. Under this section, if the holding company's lead depository institution is not well capitalized, or if well capitalized deposi-

tory institutions do not control at least 80 percent of the total risk-weighted depository institution assets of the company, the holding company must execute a capital maintenance agreement with the Board to meet the capital requirements in a reasonable time or to divest control of the depository institution. If the holding company doe not comply with this agreement then the holding company's securities affiliate must discontinue its securities underwriting and dealing activities beginning 180 days after the insured depository institutions first fail these capital tests. In these circumstances, subsection (d) permits an affiliated securities affiliate to underwrite and deal in only: (1) securities that section 5136 of the Revised Statutes expressly authorized as permissible for a national bank to underwrite or deal in (hereinafter "bank eligible securities"); (2) securities backed by or representing interests in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations; or (3) securities issued by an open-end investment company registered under the Investment Company Act of 1940.

The Board may permit a securities affiliate to underwrite other securities for up to one year after its insured depository institutions fail these capital tests, if the bank holding company submits a capital restoration plan to the Board and the Board approves the plan. Such a plan must specify the steps the holding company will take to meet the capital requirements necessary to retain a securities affiliate and contain such other information as the Board may require. The Board may grant up to two additional one year extensions for a bank holding company that has submitted an acceptable capital plan.

Paragraph (2) requires a bank holding company to divest its securities affiliate if any of the bank holding company's subsidiary insured depository institutions has been undercapitalized for more than 6 months. The Board may extend the deadline for divestiture for up to an additional 18 months if: (1) the appropriate federal banking agency has approved the undercapitalized institution's capital restoration plan and (2) the Board determines that the securities affiliate poses no significant risk to any affiliated depository institution.

E. Securities affiliate excluded in determining whether bank holding company is adequately capitalized

Paragraph (1) of subsection (e) requires that a securities affiliate be separately capitalized, i.e., that the bank holding company's investment in the securities affiliate be deducted from the bank holding company's capital in calculating compliance with bank holding company capital standards. The separate capitalization requirement promotes the safety and soundness of the bank holding company and its subsidiary insured depository institutions. It also promotes the financial stability of the securities affiliate by providing capital to the affiliate that is not committed to other purposes.

Specifically, paragraph (1) provides that in determining whether a bank holding company is adequately capitalized, the bank holding company's capital and total assets must each be reduced by the amount of (1) the bank holding company's equity investment in any securities affiliate, and (2) any extensions of credit by the bank holding company to any securities affiliate that are considered cap-

ital for purposes of any capital requirement imposed on the securities affiliate under the Exchange Act. The securities affiliate's assets and liabilities also must not be consolidated with those of the bank holding company.

Paragraph (2) provides that the rules of paragraph (1) do not apply to the extent that the Board determines by order that the securities affiliate is engaged in nonsecurities activities or that another method of adjusting capital is more appropriate to ensure safety and soundness of depository institutions. It is the intent of the Committee that the Board consult with, and consider the views of, the SEC in making any such determination.

The Board may not require a securities affiliate to hold more capital than is required for unaffiliated broker-dealers. Such a practice would undermine the notion of functional regulation and put securities affiliates at a clear competitive disadvantage with securities firms not affiliated with banks. In addition, this provision generally requires a FSHC to deduct from its regulatory capital the amount of its equity investment in a securities affiliate, any requirement for excess capital in the securities affiliate effectively doubles the competitive disadvantage for banking organizations.

F. Safeguards

Subsection (f) requires that each holding company and each subsidiary comply with the safeguards in new section 11 of the FSHCA. New section 11 imposes a series of prudential restrictions and requirements on relationships and transactions among securities affiliates, their parent holding companies, and affiliated depository institutions and subsidiaries.

G. Activities not permissible for depository institutions or securities affiliates

Section 103 of the FSCA enacts a new section 10(g) of the BHCA that governs the securities activities of banks that are affiliated with a securities affiliate and subsidiaries of such banks. Effective one year after a bank holding company acquires a securities affiliate, its depository institutions and their subsidiaries are prohibited from making an equity investment in any securities affiliate, and must cease engaging in the United States in (1) underwriting securities backed by or representing obligations, or pools of any obligations, originated or purchased by the depository institution or its affiliates (other than certain consumer obligations described below), or (2) underwriting or dealing in any other securities, except securities expressly authorized by section 5136 of the Revised Statutes. Thus, this provision does not disturb any securities underwriting or dealing activity specifically authorized for a national bank by statute. For example, a bank affiliated with a securities affiliate may continue to engage in underwriting and dealing in the securities specifically referenced in section 5136 of the Revised Statutes as permissible for a national bank to underwrite and deal in, such as obligations of the United States, general obligations of any State or of any political subdivision of any State, and securities sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation

Act. The provision also specifically permits banks to continue to securitize 1–4 family residential mortgage assets and consumer receivables that are originated or purchased by the bank.

It is recognized that a national bank is "expressly authorized" to underwrite and deal in obligations described in 12 C.F.R. Part 1 as of January 1, 1995, subject to the limitations described therein. These would include, for example, certain indirect general obligation bonds involving lease/rental agreement, tax anticipation notes, obligations secured by so-called "Type I" obligations, and several other types of obligations.

It is also recognized that a national bank is "expressly authorized" to underwrite and deal in the preferred stock of the Federal Home Loan Mortgage Corporation; options on U.S. government securities or other "bank eligible" securities; and bonds collateralized by U.S. government obligations. All of these obligations were clearly "bank eligible" as of January 1, 1995.

In addition, a bank may engage within the bank, subject to the requirements of section 15B of the Exchange Act, in the new municipal securities underwriting activities authorized under section 110 of the FSCA. These permissible activities also include investment securities underwriting activities that are described in the regulations of the OCC that are currently in effect. Private placement activities, which have not been deemed to be underwriting or dealing activities by the federal banking regulators, are also left unaffected by this provision, unless a bank affiliates with a broker-dealer.

This reference to permissible underwriting or dealing activities under section 5136 of the Revised Statutes is also referred to in other new provisions of the FSHCA.

The limitations on the underwriting and dealing activities contained in this subsection do not apply to so-called Edge Act companies, Agreement companies, or companies held under section 4(c)(13) of the BHCA. All of these companies are engaged primarily in business outside the United States.

H. Approval of securities activities under section 4(c)(8) restricted

Subsection (h) requires the Board to deny any application by a bank holding company under section 4(c)(8) to engage in, or acquire the shares of a company engaged in, underwriting or dealing in securities other than bank-eligible securities. Thus, a bank holding company may only acquire a securities affiliate pursuant to new section 10. This subsection does not disturb the Board's authority under section 4(c)(13) to permit a bank holding company to control shares of a company that does no business in the United States except as an incident to its international or foreign business.

I. Bankers' bank

Subsection (i) applies a special rule to a shareholder of or participant in a bankers' bank holding company, if the shareholder or participant and its affiliates, in the aggregate, control more than 5 percent of any class of bankers' bank holding company's voting shares. Subsection (i) treats each such shareholder or participant, and each subsidiary of such a shareholder or participant, as if it

were a subsidiary of the bankers' bank holding company. Thus, the bankers' bank and each shareholder, participant, or affiliate of the bankers' bank will be treated for purposes of section 16, as an affiliate of any securities affiliate owned by the bankers' bank holding company or affiliated with any 10 percent shareholder of the bankers' bank holding company. For example, a depository institution controlling 10 percent of the voting shares of a bankers' bank holding company may extend credit to any securities affiliate of the bankers' bank holding company only to the extent permitted under section 10(f)(1).

J. Shares acquired in connection with underwriting and investment banking activities

Section 10(j) is designed to recognize the essential role that investment banking, also known as merchant banking, plays in modern finance and permits a FSHC that has a securities affiliate to engage in such activities without the Board's prior approval so long as these investments do not result in breaching the barrier between banking and commerce. Under this provision, the FSHC may directly or indirectly acquire or control any kind of ownership interest (including debt or equity securities, partnership interests, trust certificates, or other instruments representing ownership) in an entity engaged in any kind of trade or business whatsoever. (Such entities are customarily referred to as portfolio companies). The FSHC may make such an acquisition whether acting as principal, on behalf of one or more entities (e.g., as adviser to a fund, regardless of whether the FSHC is also an investor in the fund), including entities that the FSHC controls (other than a depository institution or a subsidiary thereof), or otherwise.

The Committee recognizes that the investment may result in the FSHC or an affiliate acquiring control of a portfolio company or employees of the FSHC or an affiliate constituting a majority of the board of directors of a portfolio company. However, section 10(j) imposes on all investments three conditions designed to maintain the separation between banking and commerce. First, the ownership interests in question may not be acquired or held by a depository institution or subsidiary thereof. Only a securities affiliate or another nonbanking affiliate of the holding company may make such investments. In this regard, section 4(k)(3) restricts any joint marketing activities between depository institutions and portfolio companies. Second, the ownership interests must be acquired or held by the FSHC for the purpose of appreciation and ultimate resale or other disposition and for such a period of time as will permit the sale or disposition of the investment on a reasonable basis consistent with the nature of the investment activity. The Committee recognizes this broad language contemplates a variety of factors which may affect the decision to sell or dispose of the investment, including but not limited to overall conditions in the financial or other markets, the nature of the portfolio company's business, the financial condition and results of operation of the portfolio company, opportunities for selling or disposing of all or part of the investment or portfolio company in a manner which will maximize investment return, and any fiduciary, contractual, or other duties to co-investors and advisory clients. In this regard, the Committee recognizes

that the nature of certain investment is such that they must often be held for a considerable period of time in order to realize their potential value. Third, during the period such ownership interests are held, the FSHC may not actively manage or operate the portfolio company except insofar as necessary to achieve the investment objectives. The Committee anticipates that employees of the FSHC may have certain dealings with the management of a portfolio company. The Committee also recognizes that there may be special circumstances when active, day-to-day management or operation may become necessary to achieve the objectives of the investment.

The Committee believes that compliance with these requirements of section 10(j) can be ascertained either by periodic reports from or by examination of the FSHC or affiliate making the investment and that no reporting by or examination of the portfolio company itself is necessary or appropriate other than in the unusual case in which reports or examinations are necessary to assure compliance with the BHCA restrictions governing transactions involving depository institutions and portfolio companies.

Furthermore, the Committee intends section 10(j) to permit investment banking firms to continue to conduct their principal investing in substantially the same manner as at present and recognizes that any rules or regulations creating undue, artificial, or rigid restrictions or requirements would destroy the two-way street concept and frustrate the efforts of FSHCs to be competitive for investment banking services. Thus, on the one hand, if investment banking firms that wish to become FSHCs found their principal investing activities would be significantly restricted—such as by any rules or regulations limiting the amount of shares or other ownership interests that could be acquired or unduly limiting the period of time during which they could be held or restricting the ability of representatives of the FSHC or its affiliates to work with a portfolio company to the extent necessary to achieve the objectives of the investment—they might be constrained to forgo establishing or acquiring a depository institution. On the other hand, if commercial banking organizations found that, because of any such restrictions, they could not compete on an equal basis for principal investments with firms unaffiliated with any depository institution, then the effectiveness of such organizations in their investment banking activities would be compromised. For these reasons, the Committee intends that the Board not require, even informally, any preclearance of principal investments and not impose any unduly restrictive limitations on the holding period for such investments. The Committee intends that the Board may adopt appropriate rules governing activities under section 10(j) to assure that the purposes of the BHCA are carried out including the separation of banking and commerce and the protection of affiliated depository institutions.

K. Definitions

Subsection (*k*) defines various terms used in sections 10, 11 and 12.

Paragraph (1) of subsection (k) gives "capital stock and surplus" the same meaning as in section 23A of the Federal Reserve Act.

Paragraph (2) generally incorporates the definition of "covered transaction" in section 23A of the Federal Reserve Act.

Subparagraph (A) of paragraph (3) incorporates the definition of "security" in section 3(a)(10) of the Exchange Act.

Subparagraph (B) provides that, for certain purposes, "security" does not include any of the following: (1) a contract of insurance, other than a variable annuity; (2) a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a depository institution; (3) a share account issued by a savings association if the account is insured by the FDIC; (4) a banker's acceptance; (5) a letter of credit issued by a depository institution; (6) a debit account at a depository institution arising from a credit card or similar arrangement; or (7) a loan or loan participation (as determined by the Board).

Under subparagraph (C), the Board may, by regulation or order, after consultation with and consideration of the views of the SEC, exempt a banking product from the definition of "security," if the Board determines that the product is a traditional banking product and thus is more appropriately regulated as a banking product, and the exemption is consistent with the purposes of section 10.

Subparagraph (D) provides that the exclusion of a particular instrument from the definition of security under subparagraphs (B) and (C) should not be construed as a finding, or as implying any finding, as to whether that instrument is or is not a security for purposes of section 3(a)(10) of the Exchange Act.

Questions have been raised in the past about whether certain over-the-counter derivatives should be deemed "securities" for purposes of the securities laws. At present, banks engage in certain underwriting, dealing in, and brokering of over-the-counter derivatives. To the extent that a determination is made in the future with respect to any derivative instrument, the FSCA provides that brokerage or dealing activities involving such derivatives, even if engaged in by a bank, would have to be conducted by a registered broker-dealer subject to SEC regulation. Depending on the circumstances, however, a bank may be permitted to engage in such activities (1) directly through a SID of the bank that itself registers as a broker-dealer; (2) in a subsidiary of the bank that registers as a broker-dealer (and is not subject to the FSCA's firewalls); or (3) in the new securities affiliate, which by definition is a registered broker-dealer and subject to the FSCA's firewalls.

In general, a bank could take advantage of the first two options if the Board exempted the derivative instrument from the definition of "security" for purposes of the banking laws pursuant to a determination that the instrument would be more appropriately regulated as a banking product. If no such determination were made, dealing activities involving the instrument would have to be conducted through the new securities affiliate.

TRANSITION RULE FOR SECURITIES AFFILIATES APPROVED UNDER SECTION 4(C)(8)

Pursuant to section 4(c)(8), the Board has authorized bank holding companies to engage through nonbank subsidiaries in underwriting and dealing activities not permissible for banks. Section 103(b) requires a bank holding company to obtain approval to re-

tain such a subsidiary as a securities affiliate under section 10 unless the subsidiary underwrites and deals in only securities expressly specified by section 5136 of the Revised Statutes as permissible for a national bank to underwrite or deal in. The bank holding company must obtain the Board's approval within 18 months of the date of enactment of the FSCA. The Board may, for good cause shown, extend the deadline for up to 18 additional months. If a bank holding company files a notice under section 10 within 180 days after the FSCA becomes law, the initial 18-month period does not begin to elapse until 180 days after the Board acts on the notice. Section 103(b)(3) also relieves holding companies previously authorized to conduct corporate debt and equity securities underwriting activities after filing a limited notice from revenue limitations and other restrictions imposed in the order that allowed the holding company to engage in these activities.

Finally, a FSHC can continue to control an existing company which is engaged in securities activities (other than underwriting and dealing in corporate debt or equity securities) subject to the limitations in the original orders, following enactment of the FSCA. In that regard, FSHCs with existing section 20 subsidiaries authorized to conduct limited underwriting powers pursuant to an order of the Board are authorized to continue to conduct such activities, subject to the limitations in the original orders, following enactment of the FSCA. In order to own or retain an affiliate engaging in the full range of underwriting activities under new section 10, such FSHCs must file a notice and obtain the Board's approval. The Board has had an opportunity to review and examine the limited underwriting activities and other operations of such companies. The Committee, therefore, anticipates that the Board will be able to process notices by FSHCs that control affiliates with existing limited underwriting powers within the 60-day period specified for such notices in section 4(j)(1) of the FSHCA. Such time period is particularly appropriate in the case where the securities affiliate has demonstrated adequate financial and managerial resources as demonstrated by receiving one of the two highest overall ratings on its most recent examination by the Board.

Section 104. Safeguards relating to securities affiliates

Section 104 imposes a series of prudential restrictions and requirements (commonly known as "firewalls") on relationships and transactions among securities affiliates, their parent bank holding companies, and affiliated insured depository institutions and their subsidiaries. These firewalls are also made applicable to subsidiaries of securities affiliates and to subsidiaries of insured depository institutions. Section 104 places these safeguards in section 11 of the BHCA and redesignates current section 11 and section 12 as sections 13 and 14, respectively.

1. Extensions of credit and assets purchases restricted

Section 11(a)(1) prohibits a depository institution affiliated with a securities affiliate from, directly or indirectly, (1) extending credit in any manner to a securities affiliate; (2) issuing a guarantee, acceptance, or letter of credit, for the benefit of a securities affiliate; or (3) purchasing for its own account, or for the account of any sub-

sidiary of such institution, financial assets of the securities affiliate. The restrictions contained in paragraph (1) are in addition to any other applicable restrictions, such as sections 23A and 23B of the Federal Reserve Act.

A. EXCEPTION FOR CLEARING SECURITIES

Paragraph (2) permits a depository institution to extend credit to a securities affiliate that is incidental to clearing securities for the securities affiliate if four conditions are satisfied. First, the depository institution must be well capitalized. Second, the extension of credit must be fully secured as to both principal and interest by those securities. Third, the securities must either be bank-eligible securities or other securities as the Board may permit. Except in the case of bank-eligible securities, the Board may require whatever additional security or other assurance of performance as may be necessary to prevent the transaction from posing any appreciable risk to the institution.

Fourth, the extension of credit must be for repayment before the close of business on the same day. If the securities cannot, in the ordinary course of business, be cleared on the same business day on which the extension of credit was made, the extension of credit must be repaid on the next business day and, when aggregated with all other covered transactions between the institution and all affiliated securities affiliates, must not exceed 10 percent of the institution's capital stock and surplus.

In general, this exception is intended to apply to intraday extensions of credit by a bank to any securities affiliate in connection with clearing and settling transactions in securities by the securities affiliate, provided that the extensions of credit are fully secured by readily marketable securities or collateral approved by the Board. The exception is intended to apply to extensions of credit that would be intraday if all the parties were located in the same time zone, but where the extension of credit arises on one calendar day in one time zone and is repaid on another calendar day in another time zone. More and more banks and securities affiliates operate across several time zones, and the financial payments systems are on global systems spanning many time zones. The exception would apply to extensions of credit made by any office of a bank after the close of business established by such office on one business day and repaid before the close of business established by such office on the next succeeding business day.

b. Exception for purchasing certain financial assets

Paragraph (3) grants an exception to permit the purchase of financial assets of the securities affiliate, if the assets are purchased at current market value and the assets consist of either bank-eligible securities, or securities that are rated investment grade by at least one nationally recognized statistical rating organization unaffiliated with the depository institution or the issuer of the securities, and that have been marked to market daily. "Current market value" must be determined from reliable and regularly available price quotations. This provision does not, in itself, expand bank powers under the National Bank Act or other banking statutes.

c. Other exceptions

Paragraph (4) specifically permits the Board to make additional exceptions to paragraph (1) for well capitalized depository institutions, if the transactions are fully secured in accordance with section 23A(c) of the Federal Reserve Act and the aggregate amount of covered transactions of the institution with all affiliated securities affiliates, excluding purchases of U.S. Government and agency securities and extensions of credit for intraday clearing, do not exceed 10 percent of the institution's capital stock and surplus.

2. Credit enhancement restricted

Subsection (b)(1) of section 11 prohibits a depository institution affiliated with a securities affiliate from directly or indirectly extending credit or issuing or entering into another type of credit facility, asset purchase agreement, indemnity, guarantee, or insurance, for the purpose of enhancing the marketability of securities underwritten by the securities affiliate. Paragraph (2) requires the Board to define the phrase "for the purpose of enhancing the marketability of a securities issue" for purposes of paragraph (1).

Paragraph (3) exempts bank eligible securities from the restrictions in paragraph (1). Paragraph (4) allows, under certain restrictions, well capitalized depository institutions to provide credit enhancements.

3. Prohibition on financing purchase of securities being underwritten

Subsection (c)(1) of section 11 prohibits a bank holding company or any of its subsidiaries, other than a securities affiliate, from knowingly extending or arranging for an extension of credit, directly or indirectly, secured by or for the purpose of purchasing any security being underwritten by an affiliated securities affiliate. The prohibition applies to any security that is, or during the past 30 days has been, the subject of a distribution in which such securities affiliate participates as an underwriter or member of a selling group. The federal securities law also currently regulate these extensions of credit, and paragraph (5) provides that nothing in subsection (c) is intended in any manner to authorize an extension of credit by a securities affiliate except in compliance with applicable provisions of the Exchange Act and any rules or interpretations issued thereunder.

In order to demonstrate compliance with this firewell, a bank holding company or subsidiary may, but is not required to, obtain an express written acknowledgement from the borrower that the credit is not secured by or for the purpose of purchasing a security during the distribution period or for 30 days thereafter. It is intended that a customer be fully informed by the organization regarding the prohibition in this section and in the federal securities laws before a written acknowledgment is obtained.

Paragraph (3) excepts from the prohibitions in paragraph (1) bank financing of bank eligible securities. Under paragraph (4), the Board may, after consultation with and considering the views of the SEC, permit a bank holding company or any of if its subsidiaries, including a depository institution or its subsidiaries, to extend credit for the purpose of purchasing any other security, if the

bank holding company is adequately capitalized, the holding company's lead depository institution is well capitalized, well capitalized depository institutions control at least 80 percent of the depository institution assets controlled by the holding company, and all depository institutions controlled by the bank holding company are at least adequately capitalized.

4. Restriction on extending credit to make payments on securities

Subsection (d)(1) of section 11 prohibits any depository institution affiliated with a securities affiliate from, directly or indirectly, extending credit to an issuer of securities underwritten by the securities affiliate where the purpose of the credit is to pay the principal of, or interest or dividends on, those securities. This prohibition does not apply to an extension of credit for a documented purpose (other than paying principal, interest, or dividends) if the timing, maturity, and other terms of the credit, taken as a whole, are substantially different from those of the underwritten securities.

Paragraph (3) exempts bank eligible securities from the restriction imposed in paragraph (1). Paragraph (4) provides an exemption from the restrictions in paragraph (1) for well capitalized institutions if certain conditions are met.

5. Director and senior executive officer interlocks restricted

Subsection (e)(1) of section 10 requires the Board to prescribe the circumstances under which senior officers and directors of a securities affiliate may serve at the same time as a director or senior officer of an affiliated depository institution.

Paragraph (2) lists the factors that the Board should consider in issuing any regulation or order under paragraph (1).

Paragraph (3) permits directors and senior executive officer interlocks between a securities affiliate and an affiliated depository institution if the aggregate assets of that institution and all affiliated depository institutions do not exceed $500 million. The $500-million limitation will be adjusted annually for inflation occurring after December 31, 1995.

Paragraph (4) provides that any conditions the Board may prescribe regarding interlocks involving senior officers and directors may not prohibit interlocks involving a securities affiliate and a Regulation K subsidiary of an affiliated depository institution.

6. Disclosure required

Subsections (f) and (g) of section 11 require a securities affiliate and an affiliated insured depository institution to make a number of written disclosures to their customers. In particular the securities affiliate must conspicuously disclose in writing that the securities sold, offered, or recommended are not deposits, are not insured by the FDIC, are not guaranteed by an affiliated depository institution, are not otherwise an obligation of a depository institution (unless such is the case), and (if appropriate) are subject to market risk. In addition, the securities affiliate must disclose that it is not a depository institution, that it is a corporation separate from any depository institution, and that it may be underwriting or dealing in the securities being sold, offered, or recommended, and if so, would have a financial interest in the transaction. The Board may

prescribe additional disclosures, and, in any event, shall consult with the SEC in prescribing any disclosures applicable to registered broker-dealers.

An insured depository institution may not express any opinion on the value of, or the advisability of purchasing or selling nonbanking products sold by the institution or any affiliate unless the institution conspicuously discloses in writing to the customer that the institution or the affiliate has a financial interest in the transaction, if that is the case. The institution must also disclose that the nonbanking products are not deposits, are not insured by the FDIC, are not guaranteed by the institution, or any other affiliated insured depository institution, and with regard to any investment component, are subject to investment risk, and that an affiliate, if involved, is not an insured depository institution and is a corporation separate from any insured depository institution.

Subsection (g)(3) requires that whenever any insured depository institution or securities affiliates opens an account for the purpose of selling non-banking products to a customer, that it must obtain a one time acknowledgement of receipt of such disclosures that the nondeposit investment is (1) not a deposit, (2) is not insured by the FDIC, and (3) is not guaranteed by the institution or any other affiliated insured depository institution. The acknowledgement of receipt must include the date of receipt with the customer's name, address, and account number.

There is a special rule for an "accredited investor" as defined by section 2(15) of the Securities Act of 1933 ("Securities Act"). Any insured depository institution or securities affiliates must make the required disclosures to an accredited investor. However, obtaining a signed acknowledgement of receipt from the accredited investor is optional.

7. Improper disclosure of confidential customer information prohibited

Subparagraph (h) prohibits the disclosure of nonpublic information about a customer by a depository institution subsidiary of a bank holding company to an affiliated securities affiliate or vice versa unless it is clearly and conspicuously disclosed to the customer that such information may be communicated between the depository institution and the securities affiliate and the customer is given the opportunity, prior to the time that the information is initially communicated, to direct that such information should not be disclosed. "Nonpublic customer information" does not include: (1) a customer's name and address, unless the customer has specified otherwise; (2) information obtainable from unaffiliated credit bureaus or similar companies in the ordinary course of business; or (3) information customarily provided to unaffiliated credit bureaus or similar companies in the ordinary course of business by depository institutions not affiliated with securities affiliates, or broker-dealers not affiliated with depository institutions.

8. Underwriting securities representing obligations originated by affiliate restricted

Subparagraph (1) prohibits a securities affiliate from underwriting securities secured by or representing an interest in mortgages

or other obligations originated or purchased by an affiliated depository institution or subsidiary of such an institution, unless those securities either (1) are rated by at least one unaffiliated, nationally recognized statistical rating organization; or, (2) are issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association, or represent interests in such securities. The Board may grant additional exceptions.

9. Reciprocal arrangements prohibited

Subparagraph (j) prohibits evasion of the restrictions and limitations contained in section 11 or other Federal law on interaffiliate transactions through reciprocal arrangements between bank holding companies.

10. Safeguards apply to certain subsidiaries

Subsection (k)(1) of section 11 prohibits any subsidiary of a securities affiliate from doing anything that section 11 prohibits the securities affiliate from doing. Paragraph (2) prohibits any subsidiary of a depository institution from doing anything that section 11 prohibits the institution from doing.

11. Authority to modify or impose additional safeguards; interpretive authority

Subsection (l) permits the Board, by regulation or order, to adopt additional limitations or modify existing limitations on relationships or transactions among depository institutions, their affiliates, and their customers.

In exercising its authority under subsection (l) to impose additional restrictions or to make modifications, the Board must find that its proposed action is consistent with the purposes of the FSCA, including the avoidance of any significant risk to the safety and soundness of depository institutions or the federal deposit insurance funds, enhancement of the financial stability of bank holding companies, prevention of the subsidization of securities affiliates by depository institutions, the avoidance of conflicts of interest and other abuses, and the application of the principle of national treatment and equality of competitive opportunity between securities affiliates owned by domestic bank holding companies and those owned by foreign banks operating in the United States.

The Board is to conduct a biennial review of the restrictions it imposes under this subsection.

12. Compliance programs required

Subsection (m) requires each appropriate federal banking agency and the SEC to establish a program for enforcing compliance with subtitle A and with the definitions of "broker" and "dealer" in the Exchange Act by entities under their supervision. Subsection (m) also requires that these programs provide a mechanism for the agencies to share information concerning compliance with the FSCA by depository institutions and their affiliates including affiliated SEC-registered brokers or dealers and to respond to any complaints from customers about inappropriate cross-marketing of securities products or inadequate disclosure. Without limiting the au-

thority of the appropriate federal banking agencies, this paragraph also grants to the SEC authority to take enforcement actions against a securities affiliate for a violation of any firewall in section 11 that places limitations or restrictions on the conduct or activities of securities affiliates as if those firewalls were provisions of the federal securities laws.

The appropriate federal banking agencies, after consultation with and consideration of the views of the SEC, may require any depository institution that has effected securities transactions pursuant to the exceptions from the definitions of "broker" and "dealer" contained in sections 3(a)(4)(C) and 3(a)(5) of the Exchange Act to submit such information as the agencies determine is necessary to monitor compliance with those sections. It is intended that in implementing any information requests that such requests take into account the size and activities of the institutions and do not cause undue reporting burdens. However, it is the intent of this Committee that banks document their use of the exceptions. The appropriate federal banking agencies must make any such information available to the SEC solely for the purpose of determining compliance with sections 3(a)(4)(C) and 3(a)(5) of the Exchange Act.

The appropriate federal banking agencies also are directed to use, to the maximum extent practicable, examinations reports for any broker, dealer, investment adviser, or investment company made by or on behalf of the SEC, a registered securities association, or a national securities exchange and to defer to such exams for compliance with the federal securities laws. The appropriate federal banking agencies must defer to the SEC regarding all interpretations and enforcement of the federal securities laws relating to the activities and conduct of brokers, dealers, investment advisers, and investment companies.

In order to improve agency coordination and reduce regulatory burden, subsection (m) adopts an interagency coordination requirement regarding enforcement actions taken against an entity that is subject to the supervisory authority of both the SEC and an appropriate Federal banking agency. The SEC must give the appropriate federal banking agency notice upon the commencement of any disciplinary or law enforcement proceedings against any broker, dealer, investment company, investment adviser, or SID of a depository institution, that is registered with the SEC and is affiliated with a depository institution. The SEC also must provide the same type of notice concerning any bank holding company, depository institution, or subsidiary of such company or institution, if the proposed action relates to subtitle A of title I or subtitles A and B of title II and the appropriate federal banking agencies are required to provide the SEC with the same type of notice concerning any broker, dealer, investment company, or investment adviser that is registered under the federal securities laws. The notice required to be provided by the SEC may be provided promptly after the action is taken if the Commission determines that protection of investors requires immediate action and prior notice is not practical under the circumstances. Similarly, the appropriate federal banking agency may provide notice after the action is taken, if the agency determines that concerns for the safety and soundness of a depository

institution or its affiliates require immediate action and prior notice is not practical under the circumstances.

In addition to providing prior notice of a proposed action, the SEC and the appropriate federal banking agencies are required, to the extent practical, to coordinate supervisory actions based on applicable law where the actions are based on the same or related events or practices.

13. Uninsured wholesale operations of foreign banks

Under subsection (n), the safeguards and firewalls mentioned above (except those provided in subsections (l) and (m)) do not apply to the uninsured wholesale operations of foreign banks so long as the foreign bank's U.S. operations comply with sections 23A and 23B of the Federal Reserve Act and meet certain capital requirements.

Because the FSCA provides that FSHCs may acquire wholesale financial institutions (WFIs) that are not insured by the FDIC, section 11(n) of the FSCA allows the uninsured branches and agencies of a foreign bank generally to be treated like uninsured WFIs for purposes of the FSCA, subject to a number of conditions. The conditions include the prohibition of a foreign bank and its affiliates from accepting FDIC-insured deposits; transactions between any U.S. branch or agency of the foreign bank and the securities affiliate being subject to sections 23A and 23B restrictions on dealing with affiliates; and the requirement that a foreign bank receive a determination from the Board that it meets capital standards comparable to those established for a well-capitalized FSHC. In these circumstances, firewalls between the foreign bank and the securities affiliate generally would be the same as between a WFI and a securities affiliate, with such modifications or limits as may be appropriate in the interests of national treatment.

AMENDMENT TO THE FEDERAL RESERVE ACT

Section 23B(b)(1)(B) of the Federal Reserve Act currently prohibits a member bank or any of its subsidiaries from knowingly acquiring any security "during the existence of any underwriting or selling syndicate" if any affiliate of the bank is a principal underwriter of the security. Section 104(b) amends section 23B(b)(1)(B) to apply the prohibition to the 30 day period after the underwriting or selling syndicate terminates.

EXEMPTION FROM SECTION 305(b) OF THE FEDERAL POWER ACT

Section 305(b) of the Federal Power Act prohibits a person from serving simultaneously as an officer or director of "any bank, trust company, banking association, or firm that is authorized by law to underwrite or participate in the marketing of securities of a public utility." 16 U.S.C. § 825d(b). Section 104(c) provides an exception permitting an officer or director of a public utility to serve simultaneously as an officer or director of a securities affiliate permitted by section 10 or a depository institution permitted by section 5136(b) of the Revised Statutes (as amended by subtitle D) to underwrite or participate in marketing securities (including commercial paper) of a public utility, so long as the securities affiliate or institution does not actually underwrite or participate in marketing

securities of the particular public utility for which the person serves or proposes to serve as an officer or director.

AMENDMENT TO THE RIGHT TO FINANCIAL PRIVACY ACT

The Right to Financial Privacy Act currently permits the five member supervisory agencies of the Federal Financial Institutions Examination Council and the SEC to exchange financial records or other information with respect to a financial institution, holding company, or any subsidiary of a depository institution or holding company. Section 104(d) makes conforming amendments to the Right to Financial Privacy Act to permit these agencies to exchange examination reports as well.

SEPARATION OF BANKING AND COMMERCE

Section 104(e) requires the Board in implementing the FSHCA to protect depository institutions and preserve the separation of banking and commerce.

Section 105. Ownership of shares of certain companies by financial services holding companies

Section 105 adds a new section 4(k) of the FSHCA to permit securities firms, many of which currently engage in a broad range of financial activities, to continue those activities which the Board determines are "financial" in nature, after acquiring an insured bank. Recognizing that securities firms may also be engaged in "nonfinancial" activities, this new section provides a transition period during which the firm must conform its nonfinancial activities to the requirements of the BHCA.

1. Financial activities

New section 4(k)(1) of the BHCA permits a bank holding company to retain ownership or control of a company (or its successor) that is not otherwise permissible for a FSHC to own if the company engages solely in financial activities. To qualify to hold a company engaged in financial activities, the company must have been a securities firm prior to becoming a bank holding company. A company qualifies as a securities firm if more than 50 percent of the aggregate gross revenues of the holding company for the two year period prior to becoming a holding company involved securities activities. Nonbanking activities that are permissible for a bank holding company (other than securities activities) are excluded from the calculation of the company's business. A qualifying securities firm may retain shares of any company engaged in activities that the Board determines to be financial if the firm acquired the shares of the company more than 2 years before becoming a holding company, and the aggregate investment of the holding company in shares of all "financial companies" under this paragraph does not exceed 10% of the total consolidated capital and surplus of the holding company.

In addition, a FSHC may retain ownership of nonconforming financial companies if, as of the date of enactment, the FSHC was exempt from the provisions of section 4 of the BHCA pursuant to section 4(d), it continues to engage only in the same general lines of business and related activities, and 80% of the gross revenues

of the FSHC as of the date of enactment, was attributable to conforming financial activities.

Furthermore, the aggregate investment by the holding company in shares of all such companies may not exceed 10 percent of the holding company's total consolidated capital and surplus, as determined based on statutory accounting or generally accepted accounting principles.

2. Nonfinancial activities

New section 4(k)(2) of the BHCA permits a qualifying securities firm to retain for 5 years ownership of any nonfinancial company that it owned on the date it became a holding company. The Board may extend this period for an additional 5 years if necessary to avert substantial loss to the bank holding company and if the Board finds that the bank holding company has made a good faith effort to divest the shares.

During the period prior to divestiture of the nonfinancial firm, neither the bank holding company nor the nonfinancial firm may acquire any interest in or assets of any company and the nonfinancial firm may not engage in any activities it was not engaged in on the day before its parent company became a bank holding company.

3. Restrictions on joint marketing

Section (4)(k)(3) also imposes joint marketing restrictions on depository institutions and the same companies to which subsection (k) applies unless the product or service involved in the joint marketing is permissible for bank holding companies under section 10 or section 4(c)(8).

Section 106. Provisions applicable to limited purpose banks

Section 106(a) provides an exception from the growth cap, crossmarketing and activities restrictions (other than a continuing restriction on activities that would have resulted in the institution being considered a bank before the enactment of Competitive Equality Banking Act (CEBA)) for qualified limited-purpose banks. Most of the 22 institutions that are currently subject to these restrictions are engaged in financial activities, and it is only these companies that the Committee intends to be eligible for the relief granted by section 106(a). Consequently, in order for a company to qualify, the overall nature of its activities, based on its consolidated revenues, must be financial in nature, and at least 51% of the company's consolidated revenues, based on generally accepted accounting principles, would have to be derived (with no more than minor occasional fluctuations) from activities in which financial services holding companies are permitted to engage (e.g. activities permissible under sections 4(c)(8) and (10). The remaining activities must be predominantly financial in nature and may include non-conforming financial activities (i.e. activities not authorized under section 4(c)(8)), and a company could not engage in substantial commercial activities such as manufacturing or industrial activities.

ASSET GROWTH RESTRICTION

Eligible limited-purpose bank owners are not subject to the annual 7% asset growth limitation if the limited-purpose bank itself, and all other insured depository institutions controlled by such company, are well capitalized and well managed. Moreover, if the bank, or any affiliate, engages in securities activities described in section 10(a) of the FSHCA, they must comply with the safeguards contained in section 10(f).

The section requires the company controlling a limited-purpose bank to notify the Board in writing of its eligibility for the exception from the 7% growth limitation. The notice is deemed to be effective unless the Board disapproves it within 60 days. The purpose of the 60 day period is to allow the Board to evaluate the company's eligibility for the exception. (i.e., that it engages predominantly in qualified financial services, and that its bank and other insured depository institutions are well capitalized and well managed, and that if the bank has a securities affiliate, it complies with the securities firewalls contained in section 10(f). If the Board is able to make this evaluation within a shorter time period, the Committee expects that it would notify the company of that fact so that the exception could become effective before the expiration of the 60-day period.

This section provides that, if the bank ceases to be well capitalized, it must be divested unless it is restored to the well capitalized level within 12 months. The requirement also applies in the event the bank again ceases to be well capitalized. If the bank ceases to be adequately capitalized, it must be divested unless it is restored to the adequately capitalized level within 30 days. It is the intention of the Committee that these capital standards, and the divestiture penalties for ceasing to meet them, apply to limited-purpose banks in any year in which they increase their assets by more than 7%. A company will not be considered to have qualified for purposes of clause (I) of this section unless it has notified the Board of eligibility for the exemption. A company controlling a depository institution which ceases to be well managed becomes subject to the asset growth limitation at the end of the 12-month period during which it ceased to be well capitalized.

ACTIVITIES RESTRICTION

Subsection 106(a) also establishes a procedure for eligible limited-purpose banks to qualify for an exception form the limitation (in subsection 4(f)(3)(B)(f) of the FSHCA) on engaging in new banking activities. Eligible banks must notify the Board of their intention to engage in a lawful banking activity in which the bank did not engage prior to March 5, 1987. The amendment does not permit such activity to include one that, prior to the Competitive Equality Amendments of 1987 would have resulted in the institution becoming a "bank." The subsection provides that the Board may disapprove a proposed new activity as "unsafe and unsound" within 60 days of receiving the bank's notice.

CROSSMARKETING LIMITATION

Eligible limited-purpose banks are permitted under this section to crossmarket affiliates products or services, and bank affiliates are permitted to offer or market the bank's products or services, to the extent permissible under law, regulation or order for banks or FSHCs under subsections 4(c)(8) or (15). The provision also specifies that authorization to banks or FSHCs to offer products and services is deemed to apply to limited-purpose banks regardless of whether the authority was conferred by statute, regulation or order.

DIVESTITURE REQUIREMENT

Companies which control limited-purpose banks must either divest the banks, or register as bank holding companies, if they fail to comply with the asset growth, crossmarketing, activities and other requirements set forth in the FSHCA which entitle them to the exemption from FSHC status. Section 103(g) modifies these requirements for eligible limited-purpose bank owners, by providing, in effect a "right to cure" any condition (or cease any activity) that would ordinarily be grounds for a divestiture order. These companies may avoid the divestiture requirement by ceasing the nonconforming activity or correcting a nonconforming condition within 12 months. The Committee intends the 12-month period established under this subsection to commence from the date the company learns that an activity or condition is not permissible for such company or the bank it controls.

Section 106(c) allows for the conversion of companies controlling nonbank banks into FSHCs. Nonbank holding companies predominantly engaged in the above specified activities and which have all their insured depository institutions well capitalized would have 18 months after the date of enactment to convert to a FSHC. If the company converts within the 18-month period, the company could retain its investments (made before January 1, 1995), in companies engaging in financial activities not authorized by the Board under section 4(c)(8). The holding company would be subject to the asset growth and joint marketing restrictions provided for in section 4(k) of the FSHCA. In addition, if the company controls or owns any company not permitted under section 4, that company would have to comply with the five-year divestiture and crossmarketing requirements of section 4(k). Finally, section 106(c) allows the converted nonbank holding company to elect reduced supervision under section 5(g) of the FSHCA.

Section 107. Securities company affiliations of FDIC insured banks

A. Limitations on affiliations of banks and securities firms

Section 107 adds a new section 18(s) to the FDIA that restricts affiliations between a bank and a securities company. Paragraph (1) prohibits any bank from being an affiliate of any company that, directly or indirectly, acts as an underwriter or dealer of securities unless the affiliation has been approved under section 10 of the BHCA or the securities company confines its underwriting and dealing activities to only securities described in section 10(g) of the

BHCA. Paragraph (2) exempts trust company banks, credit card banks, industrial banks, and federal or insured branches from the prohibition in paragraph (1).

Paragraph (3) permits an affiliation that existed on January 1, 1995, to continue notwithstanding paragraph (1). Paragraph (3) also permits an insured bank that has such an affiliation to form new affiliations with companies engaged in underwriting or dealing in securities, but does not authorize a company with a grandfathered bank to acquire any additional bank.

B. Definitions

Paragraph (4) adds several definitions to the FDIA.

1. Broker and dealer

Subparagraph (C) and subparagraph (D) incorporate the definitions of "dealer" and "broker" in sections 3(a)(5) and 3(a)(4) of the Exchange Act.

2. Security

The definition of "security" in subparagraph (D) parallels that in new section 10(k)(7) of the BHCA.

3. Underwriter

Subparagraph (E) incorporates the definition of "underwriter" in section 2(11) of the Securities Act.

C. Broker-dealer registration

Section 107 also adds a new subsection (t) to the FDIA that provides that an insured bank may not use the United States mails or any means or instrumentality of interstate commerce to act as a broker or dealer without registration under the Exchange Act, except to the extent permitted under the definitions of "broker" and "dealer" contained in sections 3(a)(4) of 3(a)(5) of that Act, or as otherwise exempt pursuant to rules adopted by the SEC.

Section 107 adds a new subsection (u) that requires the federal banking agencies to use to the maximum extent practicable examination reports made by or on behalf of the SEC, a registered securities association, or a national securities exchange, of a broker-dealer, investment adviser, or investment company. It is expected that the federal banking agencies will seldom find it necessary to generate their own examination reports. The federal banking agencies shall defer to such examination reports with respect to the interpretation and application of the federal securities laws.

Section 107 also requires the FDIC to conduct a study of the risks posed to the deposit insurance funds of (1) affiliations between insured depository institutions with securities affiliates and other affiliates engaged in underwriting and dealing in securities; and (2) any activity described in section 10(a) in which insured depository institutions may engage. If the FDIC concludes that the risk of any such activities or affiliations is greater than the risk posed by activities specifically authorized by statute prior to January 1, 1995, the FDIC must treat such conclusion as a factor in setting semiannual assessments for deposit insurance.

Section 108. Authority to terminate grandfather rights under the International Banking Act of 1978

Section 108 amends section 8(c) of the International Banking Act of 1978 (IBA) by adding a new paragraph (3) to permit termination of the grandfathering authority granted by the IBA and other statutes to foreign banks to retain certain companies engaged in securities activities. This grandfathering was necessary because of the restrictions contained in the Glass-Steagall Act. With the repeal of these Glass-Steagall restrictions, foreign banks with grandfathered securities affiliates would be permitted to retain these grandfathered securities companies on the same terms that other banking organizations are permitted to establish a securities affiliate. In order to assure national treatment and so as not to disturb other activities that may continue to be entitled to grandfather rights under the IBA, new section 8(c)(3) only applies to securities activities that the Board determines have been authorized for financial services holding companies generally.

The legislation provides that foreign banks should no longer be entitled to grandfather rights for securities activities after the foreign bank has received approval to conduct those activities pursuant to section 10 of the BHCA. In order to provide both competitive equality between domestic and foreign banks and fairness to the foreign banks that have relied for many years on their grandfather rights, the foreign bank is granted three years in which to have an application approved under section 10. Failing such approval within this time period, the Board may terminate or impose firewalls and other limits on the foreign bank's securities activities. In addition, the loss of grandfather rights is designed to apply to specific securities activities approved by the Board for FSHCs. Accordingly, if the Board finds, some, but not all, of a foreign bank's grandfathered securities activities are authorized for a section 10 affiliate, the foreign bank shall be entitled to retain its grandfather rights for the activities that are not authorized for a FSHC.

Section 109. Effect on state laws prohibiting the affiliation of banks and securities companies

Section 7 of the BHCA currently provides that the Act does not restrict the States' authority over companies, banks, bank holding companies, and subsidiaries of those entities. 12 U.S.C. § 1846. Section 109(a) adds two exceptions. First, a State may not limit or prohibit an affiliation between a bank or bank holding company and a securities affiliate solely because the securities affiliate is engaged in securities activities described in subparagraphs (A) and (B) of section 10(a)(1). Second, a State may not limit or prohibit the insurance activities of a subsidiary of a FSHC solely because it is no longer exempt under certain laws. This provision is not intended to affect the authority of any bank to engage in any activity authorized for such bank under the law of the bank's home State except for section 18(s) of the FDIA as amended by this Act and Title II of this Act.

In section 109(b), the Committee adopted express language to clarify that, in general, no provision of the FSCA "may be construed as affecting the authority of any bank to engage in any activity authorized for such bank under the law of such bank's home

state." This preservation of State-authorized activities applies to any insured State nonmember bank that elects to become or merge into a wholesale financial institution, thereby becoming a State member bank. It is the Committee's intent that, except as provided in the three specific exceptions to section 109(b), the Board should exercise its exemptive authority granted by new section 9B(c)(4) of the Federal Reserve Act to preserve the authority of a State nonmember bank or its subsidiaries to engage in any activity authorized for such bank or subsidiaries under the law of its home State.

Section 110. Municipal securities

Section 110 amends section 5136 of the Revised Statutes to permit national banks, subject to the existing municipal securities regulatory scheme, to underwrite and deal in any municipal revenue bonds secured by a pledge of revenues, including certain exempt facility bonds used to finance airports, mass commuting facilities, docks and wharfs and water pollution control facilities where the governmental authority on behalf of which the bonds are issued is treated for federal income tax purposes as the sole owner of the facility being financed. Underwriting and dealing in municipal revenue bonds pursuant to the new authority contained in this section is permissible only for national banks that are well capitalized and that engage generally in the business of banking. This provision is not intended to amend any other provision of this section, including that provision which grants to national banks the ability to deal in, underwrite or purchase for their own account certain housing, university, and dormitory bonds.

Section 111. Interagency agreement relating to retail sales of certain nondeposit investment products

Section 111 adds a new subsection (v) to section 18 of the FDIA which requires the appropriate federal banking agencies to jointly prescribe, after consultation with and consideration of the views of the SEC, standards regarding sales of mutual funds and annuities by depository institutions that are not registered as brokers under the Exchange Act. The standards must, at a minimum, establish requirements relating to sales practices, disclosures and advertising, compensation of sales personnel with respect to referrals or transactions, training and qualifications for personnel involved in such transactions, and the setting and circumstances under which the transactions may be effected and referrals made. These standards replace the existing interagency guidelines currently in effect, and shall be substantially similar to SEC regulations.

Section 112. Effective date

Section 112 provides that the amendments made by subtitle A will become effective 90 days after the date of enactment of the FSCA.

SUBTITLE B—INVESTMENT BANK HOLDING COMPANIES

Section 116. Investment bank holding companies

Section 116 establishes a new category of bank holding companies, known as IBHCs, that will be permitted to engage in a wider range of financial activities than generally is permitted for bank holding companies provided that such companies control only wholesale financial institutions that do not accept insured deposits or deposits under $100,000. To account for the broader scope of financial activities permitted for IBHCs, an IBHC may not own an insured depository institution and an IBHC may not acquire a securities affiliate unless all WFIs owned by the IBHC are well capitalized.

Subsection (a) amends section 2 of the BHCA to add a definition of "wholesale financial institution" and "investment bank holding company." A WFI must be a member of the Federal Reserve System subject to examination and regulation under the Federal Reserve Act. Thus, the term "wholesale financial institution" is defined as any institution that is an uninsured state member bank authorized pursuant to the Federal Reserve Act. The term "investment bank holding company" is defined as any bank holding company that controls a WFI and a section 10 securities affiliate. If the company is a foreign bank, it must also meet the requirements imposed in new section 12 of the BHCA.

Subsection (b) amends the BHCA to add a new section 12 to establish a framework to permit certain affiliations under the umbrella of an IBHC. Section 12(a)(1) authorizes IBHCs to own companies engaged in any activity that the Board determines to be financial in nature or incidental to a financial activity. Section 12(a)(1)(B) permits IBHCs to hold shares of companies that are engaged in nonfinancial and financial activities (other than those permitted under section 12) provided that such investment does not at any time exceed 7.5 percent of the consolidated total risk-weighted assets of the IBHC (excluding assets of companies held under this subparagraph). The amount invested by the IBHC in any one company, including all affiliates of such company other than preexisting affiliates of such IBHC, may not exceed 25 percent of the total capital and surplus of the IBHC.

Section 12(a)(1)(C) permits firms whose activities in the United States on January 1, 1995 were predominately securities activities to engage fully in all commodities activities if the firm was engaged, directly or indirectly, in the United States, on January 1, 1995, in any commodity activity which was not then permissible for a bank holding company to conduct in the United States. The Committee intends that activities relating to the trading, sale or investment in commodities and underlying physical properties shall be construed broadly and shall include owning and operating properties and facilities required to extract, process, store and transport commodities.

Section 12(a)(1)(D) provides that a qualified investor will not be or be deemed to be an IBHC, a FSHC, a bank holding company or a similar organization or, with limited exceptions, be deemed to control any such company or a subsidiary. A qualified investor is a domestic firm that owns from 10 to 45 percent of an IBHC which,

before it became an IBHC, had more than 50 percent of its assets employed directly or indirectly in securities activities, including underwriting, trading and investing. There are restrictions imposed on cross-marketing of the qualified investor's products or services and on the use of a common name. This provision is intended to make the two-way street effective for certain securities firms whose parent companies have significant minority shareholders.

To the extent that an IBHC becomes subject to capital requirements because it cannot make the election referred to in section 124 of the FSCA, the Committee expects that those requirements will be risk-based and will not include a leverage test. Moreover, the Committee expects that the Board will be flexible in applying capital standards to such IBHCs in recognition of their special characteristics, including (i) the uninsured status and wholesale funding base of WFI affiliates, (ii) the nature of the capital requirements applicable to securities and other regulated subsidiaries, which may involve the raising of capital in forms not technically qualifying as capital under bank capital standards, (iii) the ownership structure of certain securities firms, and (iv) the absence of holding company capital requirements with respect to many of the U.S. and foreign firms with which IBHCs must compete.

Transactions between a WFI and its affiliates are subject to sections 23A and 23B of the Federal Reserve Act. A securities affiliate and a WFI are not subject to the "firewalls" contained in section 11 except for any restriction adopted by the Board pursuant to its authority under paragraph (12) of that section. A subsidiary of a WFI will be subject to any restriction adopted by the Board under paragraph (12) to the same extent as its parent institution. In addition, the compliance programs that the SEC and the appropriate Federal banking agencies are required to establish pursuant to paragraph (13) will apply to a WFI and its affiliated securities affiliate.

Subsection (b) also allows certain treatment to foreign banks, subject to certain conditions.

A foreign bank may qualify for treatment as an IBHC even if it does not establish a WFI, provided that it meets the criteria set forth in section 12(b).

In that regard, a WFI cannot be insured by the FDIC and generally cannot accept initial deposits of under $100,000 other than on an incidental or occasional basis. As noted previously, many foreign banks operate in the United States only through uninsured offices that cannot accept initial retail deposits of under $100,000 except on a de minimis basis. In light of this, section 12(b) of the FSCA would allow a foreign bank that operates uninsured branches or agencies in the United States to be treated as an IBHC subject to a determination by the Board that the foreign bank or its parent company meets conditions designed to assure a level playing field as compared with U.S. banking organizations. If the foreign bank has branches or agencies in the United States, the conditions of section 12(b) must be met even if the foreign bank also owns or controls a WFI.

Under section 12(b), the foreign bank and any company that controls such foreign bank may request a determination from the Board that it be treated as an IBHC. A determination may be

granted if neither the foreign bank nor any of its affiliates accept any FDIC-insured deposits; any transactions between any U.S. branch or agency of the foreign bank, and the securities affiliate and any company acquired under the broader investment authority of an IBHC by the foreign bank or any parent company of the foreign bank would be subject to sections 23A and 23B restrictions on affiliate transactions; and the foreign bank must meet risk-based capital standards comparable to those established for a WFI, and would be treated as a wholesale financial institution for purposes of certain restrictions, such as the prohibition on cross-marketing, subject to such modifications as the Board deems appropriate in light of national treatment considerations.

Any foreign bank or company that receives a determination that it may be treated as an IBHC would no longer be eligible to make investments or conduct activities in the United States under the authority of section 2(h) of the BHCA. (Section 2(h), subject to a number of restrictions, allows foreign non-financial affiliates of foreign banks to own companies in the United States that operate in the same non-financial lines of business as their parents conduct outside the United States.) If a foreign bank chooses to be treated as an IBHC, it must limit its investments in the United States to those permissible for an IBHC. This restriction is necessary because, since IBHCs are allowed to invest in commercial companies subject to the restrictions of the FSHCA, a foreign bank would have an advantage over domestic banking organizations if it could make investments under both the investment bank holding company authority and the authority of section 2(h).

An IBHC is permitted to invest up to 7.5 percent of its consolidated total risk-weighted assets in shares of companies engaged in activities in the United States not otherwise permitted to financial services holding companies. For foreign banks, "consolidated total risk-weighted assets" means total risk-weighted assets held by the foreign bank or its parent company in the United States through controlled entities such as U.S. branches, agencies, or subsidiaries. Thus, the foreign bank or company may invest a percentage of its U.S.-based assets in activities not otherwise permitted to holding companies. Although this percentage is based on U.S.-held assets, and not on total assets of the foreign bank or company, the foreign bank or company is not constrained by U.S. law in its investments outside the United States. Consequently, a foreign bank may devote its entire percentage of eligible assets to investments held only in the United States, while a U.S. IBHC must comply with its applicable percentage on a worldwide basis. In light of these circumstances, U.S. and foreign banking organizations would have available to them equal opportunities to take advantage of this authority.

In that regard new section 12(c) of the FSHCA provides that a foreign bank is not eligible for the treatment afforded foreign banks with respect to firewalls under section 11(n) or IBHCs under section 12(b) unless the home country of the foreign bank provides the same competitive opportunities to U.S. banks as it affords to domestic banks in the home country. This provision would not operate to change any obligations that might exist under the North American Free Trade Agreement. In addition, a foreign bank can-

not operate a branch or agency in the U.S. if the foreign entity was established in order to evade certain strictures concerning the operation of a domestic WFL.

Section 117. Wholesale financial institutions

Section 117 amends the Federal Reserve Act by adding a new section 9B which authorizes WFIs to become members of the Federal Reserve System. Section 9B provides that WFI will be subject to the Federal Reserve Act to the same extent and in the same manner as a State member insured bank except that a WFI may only terminate membership on the terms and conditions set by the Board and with the prior written approval of the Board.

Section 9B also contains special capital requirements applicable to WFIs including the requirement that the Board adopt capital requirements that are sufficiently higher than the capital levels applicable to State member insured banks to take into account that WFIs accept uninsured deposits and to provide for the safe and sound operation of such institutions without undue risk to creditors or other persons, including Federal Reserve banks, engaged in transactions with the institution. It is expected that wholesale financial institutions should generally meet the requirements for well capitalized insured banks. The Board may adjust capital standards for WFIs consistent with safety and soundness concerns and international risk-based capital standards taking into account global competitiveness to permit WFIs to effectively compete in markets, such as the government securities market.

Section 9B also provides that WFIs will be subject to the prompt corrective action provisions contained in section 38 of the FDIA with certain changes to reflect the status of WFIs as uninsured institutions. In addition WFIs will be subject to the enforcement provisions contained in the FDIA and the Bank Merger Act as if they were state member insured banks. WFIs will also be considered banking institutions for purposes of the International Lending Supervision Act and the Board will be the appropriate federal banking agency for that Act and under the FDIA.

A WFI is subject to limitations on the deposits it may receive. Subject to regulations issued by the Board, a WFI may not receive initial deposits of $100,000 or less other than on an incidental and occasional basis. Deposits of that amount received on an incidental basis may not represent more than 5 percent of the institution's total deposits. In addition, deposits of a WFI may not be insured by the FDIC and the Board must issue regulations concerning advertising and disclosure to ensure that there is no confusion concerning the application of deposit insurance to such deposits.

The Board may also prescribe additional requirements concerning: (1) limitations on transactions with affiliates to prevent an affiliate from gaining access to credit from a Federal Reserve bank; (2) special clearing balance requirements; and (3) any other requirements necessary to promote the safety and soundness of the WFI or to protect creditors. The Board also has broad exemptive authority provided any exemption is consistent with safety and soundness of the WFI and the protection of creditors and other persons, including Federal Reserve banks, engaged in transactions with the WFI. The Board also is authorized to appoint a conserva-

tor for a WFI to the same extent and in the same manner as the OCC is authorized to appoint a conservator for a national bank under the Bank Conservation Act.

In order to permit existing insured banks to become WFIs, section 117 adds a new section 8A to the FDIA. Subsection (a) of section 8A permits a State-chartered or national bank to terminate its status as an insured institution after providing 6 months prior notice to the FDIC, to the Board, and to its depositors. An insured bank may terminate its insurance if the deposit insurance fund of which the bank is a member has met or exceeds its designated reserve ratio and the bank pays an exit fee to the FDIC or the bank receives regulatory approval and pays the appropriate exit fee. Subsection (d) provides that insured banks that terminate their insurance may not accept any deposits unless the institution becomes a WFI. Subsection (e) provides that institutions that terminate their insured status must pay an exit fee to the FDIC as provided for in subsection (e) of section 8A. Subsection (f) provides for temporary deposit insurance and assessments during the transition period. Subsection (g) requires that, during the transaction period, institutions may only advertise that insurance on deposits received by the institution is temporary and that deposits made after a certain date will not be insured. Subsection (h) contains notice requirements applicable to the notice to be provided to the FDIC and depositors.

While H.R. 1062 allows a WFI to borrow at the Board's discount window under the same terms as a State member bank, the Committee does not expect the Board to use the discount window to bail out WFIs. Furthermore, it is the Committee's intent that the Board will only use the discount window with regard to WFIs for general short term adjustment purposes. Accordingly, section 117(c) requires the Board to submit a detailed report to the Congress at the end of any year in which a WFI borrows funds from the Board.

SUBTITLE C—FINANCIAL ACTIVITIES

Section 121. Financial activities

Section 121 modifies the "closely related to banking" test under the BHCA to a "financial in nature or incidental to such financial activities" test for purposes of authorizing non-banking activities for FSHCs. In deciding what new activities fall under the new test, the Board must take into account changes and reasonably expected changes in the marketplace as well as changes and reasonably expected changes in technology. In addition, the Board is to take into account activities approved for U.S. banks overseas when determining "financial in nature."

The new financial test incorporates all of the activities that the Board has previously determined to be closely related to banking under the BHCA, including any lending activity (including ownership of credit-card banks, trust companies, mortgage companies, consumer finance companies, factoring companies, and any other type of lending institution or financial intermediary); financial data processing/transmission services (including ownership of companies engaged in wire-transfers of money, debit cards, stored-value cards, point-of-sale systems, etc.); leasing activities; issuing and distribut-

ing travelers checks and other payment instruments; consumer financial counseling and other related financial advisory services; futures commission merchant activities; derivatives clearing activities; investment advisory activities; and any other activity previously approved by the Board under the closely related test.

The change from the current "closely related to banking" test in the BHCA to a "financial in nature" test also broadens the types of activities that FSHCs may conduct, directly or through subsidiaries. In particular, the FSCA is intended to permit FSHCs to engage in any financial activity that develops or may develop as a result of changes or reasonably expected changes in the marketplace in which these companies compete as well as in the technology for providing financial services. In that regard, the Committee recognizes the integral role that technology, particularly in the computer and data processing areas, plays in the financial services industry, and the increasing importance it will hold for the assimilation of information and the delivery of new services by FSHCs.

Section 121 also permits FSHCs to engage in activities that are incidental to financial activities. Incidental activities would include activities that are necessary or appropriate to the conduct of the financial activity. The Board has broad flexibility in determining activities that are financial in nature, and, where appropriate, to distinguish between activities that may be conducted by affiliates of insured depository institutions from those that may be conducted by affiliates of uninsured wholesale financial institutions.

In determining which activities may be considered "financial in nature", the Board is required to take into account activities previously authorized under the Board's Regulation K (12 C.F.R. 211.23(f)(5)(iii)(B)) for U.S. banks overseas. These previously authorized activities include: commercial and other banking activities; financing including commercial and consumer financing, mortgage banking and factoring; leasing that is the equivalent of an extension of credit; fiduciary duties; servicing activities and holding premises used in other operations; investment, financial or economic advisory services; computer and data processing services; management consulting; travel agency services; arrangement of passenger transportation; futures commission merchant activities; engaging in swap transactions subject to certain conditions; and accounting, auditing and bookkeeping services. It would be expected that the Board would authorize comparable activities for domestic institutions to the extent not prohibited, as described below.

While section 121 amends section 4(c)(8) of the BHCA to permit FSHCs to acquire ownership or control of the shares of companies engaged in activities "financial in nature" or "incidental to such financial activities", the amendment maintains the current language of the BHCA that such companies may not "provide insurance as a principal, agent, or broker" except in the limited circumstances addressed by subparagraphs (A) through (G) of section 4(c)(8). These prohibitions and limited exceptions were enacted as part of the Garn-St Germain Depository Institutions Act in 1982 and are not modified by section 121 of H.R. 1062. Accordingly, the prohibition against underwriting and sale of title insurance, activities that have been prohibited by the Board under its existing rulings and

interpretations under section 4(c)(8), continue to be effective under the amendment to that section made by the bill.

The current restrictions should be maintained by the Board and future applications of a similar nature should be rejected.

The Committee also notes that real estate brokerage is not currently a permissible activity for bank holding companies. It is the intent of the Committee that the current restrictions on real estate activities under the Board's Regulation Y (12 C.F.R. 225) be continued and, as a consequence, real estate brokerage should not be found by the Board to be "financial in nature."

Finally, it is the intent of the Committee that the term "incidental to banking" be more narrowly construed than the term "financial in nature," and that banks should not engage in these types of activities within banks or bank subsidiaries.

Section 122. No prior approval required for well capitalized and well managed financial services holding companies

Section 122 allows certain FSHCs to engage in certain transactions without having to provide prior notice to the Board. Under the section, no prior notice would be required for previously authorized activities conducted by well capitalized, well managed institutions. New activities not previously authorized would be considered under expedited procedures.

Section 123. Streamlined examination and reporting requirements for all financial services holding companies

Section 123 authorizes the Board to oversee a FSHC and its subsidiaries through the submission of reports from and streamlined examinations of the FSHC and its subsidiaries. It is the intent of the Committee that the Board will process orders authorizing activities in as expeditious a manner as possible. In cases where an application for authorization is taking an undue length of time, the applicant may go to the Board Ombudsman for assistance in moving the process forward. The Ombudsman reports to the Board's Supervisory Governor who will seek to insure that the application process will operate efficiently.

Section 124. Holding company supervision for financial services holding companies engaged primarily in nonbanking activities

Section 124 allows a different supervisory structure for holding companies engaged primarily in nonbanking activities. FHSCs with depository institution and foreign bank assets less than 10% of the consolidated total risk-weighted assets of the holding company and that are less than $5 billion could elect to be under limited reporting and examination requirements and minimal approval requirements for new activities. IBHCs with WFI assets less than 25% of the consolidated total risk-weighted assets of the holding company and that are less than $15 billion could elect to be under the same limited supervision. The dollar limitations are to be adjusted annually for inflation and the Board may increase both the dollar amounts and the percentage, as it deems appropriate. All depository institutions controlled by the FSHC or IBHC must be well capitalized and (except for recent acquisitions) well managed (defined as having a composite rating of CAMEL 1 or 2. In addition, if the

FSHC controls an insured depository institution, the FSHC must provide a written guarantee acceptable to the FDIC to maintain, on an ongoing basis, the capital of its depository institutions at "well capitalized" levels. This guarantee would be capped at an amount equal to ten percent of the assets and would be payable in the event the insured institution fails or is sold with federal assistance. Furthermore, to be eligible for the lesser institution fails or is sold with federal assistance. Furthermore, to be eligible for the lesser supervision, the lead insured depository institution and insured depository institutions controlling 80 percent of the aggregate risk-weighted assets must have achieved a satisfactory record of meeting community credit needs or better, under the Community Reinvestment Act. This requirement would not apply to IBHCs as such companies are not subject to the Community Reinvestment Act.

Holding companies which elect limited supervision under Section 124 would be subject to the following supervision. First, the holding company would not need formal federal regulatory approval to engage de novo or to make any acquisition of a company engaged exclusively in previously approved financial (or incidental to financial) activities. The company would have to provide written notice to the Board no later than ten days after commencing the activity or consummating the acquisition.

Second, the FSHC capital would not have to comply with holding company capital requirements so long as the FSHC demonstrates, through reports or other information, that it has the resources available to meet the FDIC guarantee. Third, the Board would have access to all reports submitted to other agencies, internal and external audit reports, and exam reports of other agencies.

The Board may require the FSHC to file such reports as are needed to inform the Board regarding the nature of the operations and financial conditions of the FSHC and its affiliates; the risks within the FSHC system that may affect any affiliated depository institution; and compliance with the provisions of the FSHCA and provisions governing transactions and relationships between depository institutions and their affiliates.

Fourth, a FSHC or its non-depository institution affiliates are not subject to examination, except when the Board makes a finding that the risk from, or any transactions with, any non-depository institution affiliate may have a material effect on the safety and soundness of any affiliated depository institution or if the FSHC does not appear to have sufficient resources to meet its guarantee. In addition, the Board may conduct an examination of the FSHC and its affiliates if the Board determines that the actions of the IBHC or its subsidiaries pose a material risk to its depository institution or if it is unable to determine if the risk management system of the IBHC is adequate or if the FSHC is in compliance with the Act and regulations.

Section 125. Conversion of unitary S&L holding companies to financial services holding companies

Section 125 allows a unitary savings and loan holding company to convert to a FSHC without having to seek prior approval from the Board under Sections 3(a), 4(c)(8) and 4(c)(13). In order to take advantage of the expedited conversion procedure, the company and

its depository institutions must act within 18 months after enactment of the FSCA, meet certain capital requirements, be well managed, and provide advance notice to the Board. A holding company which takes advantage of the streamlined procedure may retain ownership in companies as provided for in new section 4(k) of the act, so long as at least 75 percent of the holding company's revenue for the past two years involves securities activities and section 4(c)(8) activities.

Section 126. Financial services advisory committee

Section 126 establishes a new "Financial Services Advisory Committee" (FSAC) which is given the authority to confer with regulators on the impact the FSCA has on the U.S. financial services industry, especially small and independent depository institutions, and to request documents from and make recommendations to them concerning matters under the regulators' jurisdiction. The FSAC is comprised of nine members, all non-government employees, with one member being appointed by the Secretary of Treasury, two by the OCC, two by the Director of the OTS, two by the Board, and two by the Board of the FDIC. At least three of the members are to be individuals who represent small and independent depository institutions. The FSAC is meant to focus on banking issues solely, and not securities or commodities issues.

Section 127. Coordination with State law

Section 127 preserves the rights of States to impose higher safety and soundness standards for depository institutions or consumer protection standards than those imposed in the FSCA, except as specifically provided in section 109.

Section 128. Conforming Amendments to the Bank Holding Company Act of 1956

Section 128 makes a number of conforming amendments to the BHCA of 1956 including the recasting of the BHCA as the Financial Services Holding Company Act and redesignating "bank holding companies" as "financial services holding companies." The section also provides definitions for a number of terms, including "securities affiliate", "insured depository institition", and "lead depository institution."

Section 129. Conforming Amendments to the Bank Holding Company Act of 1970

Section 129 replaces the term "bank holding company" in the Bank Holding Company Act Amendments of 1970 with the term "financial services holding company."

Section 130. Credit Cards for Business Purposes

Section 130 amends the BHCA to allow credit card banks to issue corporate credit cards. The BHCA currently prohibits credit card banks, which are specifically exempted under the definition of "bank" in the BHCA (as amended by CEBA) from making commercial loans. The amendment contained in this section provides that corporate credit cards are not commercial loans. In adopting the amendment, it is not the intent to derogate the prohibition in

present law on commercial lending by credit card banks. The purpose of the amendment is to clarify that this prohibition does not preclude the provisions of credit card accounts for business purposes. For example, many companies arrange for their employees to have credit cards to use when traveling on company business or entertaining on official business. Corporate credit cards offered by a credit card bank could not be used, however, as a way to meet any company's general commercial financing needs.

SUBTITLE D—INTERAGENCY BANKING AND FINANCIAL SERVICES ADVISORY COMMITTEE

Section 141 establishes a Banking and Financial Services Advisory Committee (BFSAC) comprised of the Board Chairman, the Chairperson of the FDIC, the Chairperson of the SEC, the Chairperson of the Commodities Futures Trade Commission, the OCC, and the Secretary of the Treasury, who will serve as Chair of the Committee. The function of the BFSAC is to consider matters of mutual interest to the member agencies and to consider making recommendations to the Board regarding the types of activities that may be financial in nature for purposes of implementing the FSHCA and to the OCC regarding the types of activities that may be incidental to banking for purposes of section 5136 of the Revised Statutes. The BFSAC would effectively complement functional regulation while providing an interagency policy forum for ascertaining permissible activities for FSHCs, including IBHCs, and national banks. The BFSAC recommendations are to be forwarded to the Board and OCC for their consideration. The Board or OCC is required to provide a written explanation to the BFSAC when the Board or OCC do not adopt the recommendations of the BFSAC. The BFSAC also may make legislative or administrative recommendations to improve the supervision, efficiency, and competitiveness of the financial services industry. Recommendations issued by the BFSAC will be printed in the Federal Register and reported to the respective House and Senate Banking Committee. Through this process, the newly established BFSAC will provide the opportunity to minimize regulatory overlap while reducing the risks of regulatory gaps.

TITLE II—FUNCTIONAL REGULATION

Subtitle A—Brokers and Dealers

Section 201. Definition of broker

Section 3(a)(4) of the Exchange Act currently excludes banks from its definition of "broker." 15 U.S.C. § 78o(a)(4). As a result, banks that directly conduct brokerage activities are exempt from the registration and most other requirements applicable to SEC-registered brokers under the Exchange Act.

Section 201 amends the Exchange Act's definition of "broker" to include banks subject to certain exemptions. As a general matter, a bank will be considered a broker (1) if the bank "publicly solicits" brokerage business, (2) if the bank receives "incentive compensation" for brokerage business, or (3) to the extent that the bank conducts brokerage activities through a SID of the bank.

Section 201 contains other exemptions that provide that a bank that publicly solicits brokerage business or receives incentive compensation for brokerage business is not subject to broker-dealer registration and regulation under the Exchange Act if the bank limits its brokerage activities to ten categories described below. These exemptions recognize that it may not be appropriate, in certain limited circumstances, to require a bank to register as a broker-dealer.

1. Networking exemption

A bank will not be deemed a "broker" if it offers brokerage services to its customers in connection with a "networking" arrangement in which the bank contracts with a registered broker-dealer, whether or not affiliated with the bank, to provide brokerage services on a bank's premises. This provision is intended to codify the guidance offered by the banking agencies. As such the Committee intends that the situation be avoided where banks are literally confronted with having to comply with different and potentially conflicting sets of rules established by federal securities and banking regulators. These networking activities must be conducted at a location that is clearly identified and physically separate from the retail deposit-taking activities of the bank. There is one exception available from the space limitation to be utilized only where it is physically impossible to have a separation. In such circumstances, it is expected that the bank will make additional efforts, such as increased supervision, to ensure that there is no customer confusion. As part of networking arrangements, banks frequently designate employees who become licensed registered representatives under the supervision of the broker-dealer for the purpose of conducting brokerage transactions. These employees, known as "dual employees" are associated persons of the broker and receive incentive compensation. Such employees are subject to regulation and disciplinary actions by the self-regulatory organizations and the SEC in connection with their brokerage activities. The Committee expects that banks engaged in networking activities with brokers and dealers and their associated persons (including dual employees) will also be fully subject to such conditions as the SEC or a self-regulatory organization may prescribe by rule pursuant to existing rulemaking authority, such as sections 10(b) and 15(c) of the Exchange Act. Bank employees who have not received substantially equivalent training may only perform clerical or ministerial functions and may not receive incentive compensation. The Committee expects that tellers and other bank employees, while located in the routine deposit taking area, will not make general or specific investment recommendations regarding securities, qualify a customer as eligible to purchase securities, or accept orders for securities. Other provisions govern advertising and promotional material and disclosure requirements.

2. Trust activities

A bank will not be deemed a "broker" if it conducts brokerage transactions in the course of conducting its trust activities, including securities safe-keeping, self-directed individual retirement accounts and managing agency accounts, unless the bank (1) receives

incentive compensation for the brokerage (as opposed to trust) activities or (2) publicly solicits brokerage business other than by advertising such activities in conjunction with advertising other trust activities.

3. Exemption for transactions in certain permissible securities

A bank will not be deemed a "broker" if it conducts brokerage transactions in "exempted securities" under the Exchange Act, such as United States Government securities, commercial paper bankers' acceptances, and commercial bills. For purposes of this exemption, municipal securities are not treated as "exempted securities." This exemption also applies to other securities (except municipal securities) that are bank-eligible securities but that have not been included in the definition of "exempted securities." Bank transactions in government securities will, of course, continue to be subject to the requirements of section 15C of the Exchange Act.

4. Municipal securities

A bank that effects transactions in municipal securities, subject to the requirements of section 15B of the Exchange Act, will not be deemed a "broker."

5. Employee and shareholder benefit plan accounts

A bank will not be deemed a "broker" if it conducts brokerage transactions for employee or shareholder benefit plan accounts. Such accounts include bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment, or similar plans.

6. Money market sweep accounts

A bank will not be deemed a "broker" if it conducts brokerage transactions for the purpose of investing or reinvesting depositors' funds in money market accounts.

7. Affiliate transactions

A bank will not be deemed a "broker" if it conducts brokerage transactions for the account of any affiliate, as that term is defined in section 2 of the BHCA.

8. Private placements

A bank that is not affiliated with a securities affiliate under section 10 of the BHCA will not be deemed a "broker" if the bank sells securities exclusively to accredited investors (as defined in section 3 of the Securities Act) as part of a primary offering of securities by an issuer not involving a public offering. A bank that is affiliated with a securities affiliate may engage in such private placements of securities for one year after the affiliation without being deemed a "broker." After the one year period, a bank can conduct private placement activities within a "separately identifiable department" within the bank. Such a department must register as a broker-dealer under the Exchange Act.

A SID of a bank will be fully subject to all of the provisions of the Exchange Act applicable to "brokers," including those relating to registration with the SEC pursuant to section 15 of the Ex-

change Act, membership in a self-regulatory organization, and membership in the Securities Investor Protection Corporation; provided, however, that if a bank of which a SID is a part is adequately capitalized (as defined by the bank's appropriate federal banking agency), the SID shall be deemed to be in compliance with the net capital rule adopted pursuant to paragraph (c)(3) of the Exchange Act.

It is anticipated that bank SIDs that are registered as broker-dealers will comply fully with SEC and self-regulatory organization rules (other than capital). However, the SEC has rulemaking authority, in consultation with the appropriate federal banking agencies, to take into account the special characteristics of a SID of a bank. Such rulemaking authority is in addition to the SEC's existing rulemaking authority with respect to brokers under the Exchange Act.

9. De minimis exemption

A bank will not be deemed a "broker" if it limits a brokerage activities to fewer than 800 transactions per year in securities for which a ready market exists plus 200 other transactions per year in any other types of securities. Securities transactions that qualify for any other exemption are not counted for purposes of calculating the number of transactions under this exemption. This exemption is only available if the bank does not have a subsidiary or an affiliate that is a registered broker-dealer.

10. Safekeeping and custody services

Subsection (x) contains an exemption for safekeeping, clearance, settlement and custody services, to the extent those services have traditionally been performed by banks. It reflects the distinction between the common understanding of "brokerage" as executing trades for the account of others on a securities exchange or in the over-the-counter market and traditional banking functions related to settling trades (actual delivery and payment), which usually takes place several days afterward. A bank should not be treated as a broker solely because it holds securities in safekeeping for others, collects dividends or provides other custody services with respect to securities, clears or settles transactions in securities by book-entry or otherwise, facilitates the lending, borrowing or pledging (including selling or purchasing subject to repurchase or resale agreements) of securities by book-entry or otherwise. A bank also should be permitted to provide a variety of other traditional banking services associated with the clearance and settlement process, such as extending credit, providing money transfer services and receiving deposits without being treated as a broker.

11. "Banking products" exemption

A bank will not be deemed a "broker" if it engages in securities transactions through a separately identifiable department or division that the Federal Reserve determines in the future should be deemed to be "banking products." It is expected that the Board will grant this exception only with respect to traditional and customary banking products. This determination should not affect whether a

particular product is deemed to be a security for purposes of the federal securities laws.

12. Banks subject to section 15(e)

Section 201 excludes from the definition of "broker" banks that are subject to section 15(e) of the Exchange Act and to any restrictions and requirements the SEC deems appropriate.

Section 202. Definition of dealer

Section 3(a)(5) of the Exchange Act currently excludes banks from the definition of "dealer." Section 202 amends section 3(a)(5) to include banks within the general definition of dealer, but creates five specific exemptions for banks that are similar to the "broker" exemptions. Section 202 preserves the existing distinction between dealer activities and non-dealer principal transactions, including bank investment and trading portfolio transactions for its own account, as reflected in current SEC interpretive positions.

A bank will not be deemed a "dealer" because of transactions it conducts in "exempted securities", such as United States Government securities, commercial paper, bankers' acceptances, and commercial bills. For purposes of this exemption, municipal securities are not treated as "exempted securities." The definition of "exempted securities" also is amended to include bank-eligible securities that are not otherwise "exempted securities". In addition, a bank will not be deemed a "dealer" if it buys and sells municipal securities subject to the requirements of section 15B of the Exchange Act. In addition, banks that engage in government securities activities will continue to be subject to section 15C of the Exchange Act.

A bank will not be deemed a "dealer" because it buys and sells securities for investment purposes for the bank or for accounts for which the bank acts as a trustee or fiduciary. This exemption from dealer registration includes all accounts handled throughout trust departments, including trustee and managed agency accounts, directed agency accounts, and custodial accounts.

A bank that is not affiliated with a securities affiliate under section 10 of the BHCA will not have to register as a "dealer" if it engages in issuing or selling securities that are exclusively backed by or represent an interest in obligations originated or purchased by the bank, its affiliates, or its subsidiaries, provided that the underlying obligations are 1-4 family residential mortgages, consumer receivables, or consumer leases. This exception is only available if the underlying obligations include exclusively obligations originated or purchased by the bank, its affiliates, or its subsidiaries. A bank that does have a securities affiliate may engage in such activities for one year after the affiliation without being deemed a "dealer." A bank that would be required to register as a dealer because of its activities could conduct these activities in a SID. Such a SID would have to register as a broker-dealer under the Exchange Act.

A bank will not be deemed a "dealer" if it buys and sells through a SID securities that the Federal Reserve determines in the future should be deemed to be "banking products." It is expected that the Board will only grant this exception with respect to traditional and customary banking products. This determination should not affect

whether a particular product is deemed to be a security for purposes of the federal securities laws.

A SID of a bank will be subject to most of the provisions of the Exchange Act applicable to "dealers," including those relating to registration with the SEC pursuant to section 15C of the Exchange Act, membership in a self-regulatory organization, and membership in the Securities Investor Protection Corporation; provided, however, that if a bank of which a SID is a part is adequately capitalized (as defined by the bank's appropriate federal banking agency), the SID shall be deemed to be in compliance with the net capital rule adopted pursuant to paragraph (c)(3) of the Exchange Act.

The SEC has rulemaking authority, in consultation with the appropriate federal banking agencies, to take into account the special characteristics of a SID of a bank. Such rulemaking authority is in addition to the SEC's existing rulemaking authority with respect to dealers under the Exchange Act.

Section 203. Power to exempt from the definitions of broker and dealer

Section 203 adds a new section 3(e) to the Exchange Act, authorizing the SEC to exempt by regulation or order any person or class of persons from the definition of "broker" or "dealer" if the SEC finds that the exemption is consistent with the public interest, the protection of investors, and the purposes of the Exchange Act.

Section 204. Margin requirements

Section 204 amends section 7(d) of the Exchange Act to clarify that a bank may lend to a broker-dealer for any ordinary business purpose, other than for the purpose of purchasing securities for the broker's own account, without those loans being subject to the margin provisions.

Section 204 also amends section 8(a) to permit a broker-dealer to borrow from any person provided that such person agrees to comply with the provisions of the Federal Reserve Act that relate to the use of credit to finance transactions in securities.

SUBTITLE B—BANK INVESTMENT COMPANY ACTIVITIES

Section 211. Custody of investment company assets by affiliated bank

Section 211(a) amends section 17(f) of the Investment Company Act (15 U.S.C. § 80a–17(f) to clarify the SEC's authority to adopt regulations governing the custody of investment company assets by affiliated banks. A registered investment company is permitted to place its assets with a bank that is an affiliated person, promoter, organizer, sponsor, or principal underwriter for such a company in accordance with such regulations or orders that the SEC may adopt after written consultation with the appropriate federal banking agency.

Section 26(a) of the Investment Company Act currently prohibits a principal underwriter or depositor of a unit investment trust from selling securities issued by the trust unless the trust, by appropriate agreement, designates as trustee or custodian a bank meeting certain qualifications. 15 U.S.C. § 80a–26(a)(1). Section 211(b)

amends section 26(a) to further provide that the SEC may prescribe, by regulation or order, conditions under which an affiliated bank may serve as trustee or custodian, after written consultation with the appropriate federal banking agency.

This section also amends section 36(a) of the Investment Company Act to permit the SEC to bring a civil action alleging breach of fiduciary duty involving personal misconduct against a person who acts as custodian for a registered investment company. The SEC may already bring such actions against persons acting as investment advisers, officers, directors, or depositors of an investment company and against principal underwriters of an open-end company or unit investment trust.

In addition to addressing the conditions under which an affiliated bank could serve as a fund's custodian, the rules adopted under this provision could address issues arising under the affiliated transaction provisions of the Investment Company Act when an affiliated bank serves as custodian, or could provide exemptions from those provisions for certain types of services provided by affiliated custodians.

The amendments to section 17 of the Investment Company Act do not affect the SEC's staff position that affiliated custodians must comply with the SEC's self custody rule (rule 17f–2). Banks currently providing custodial services to investment companies or unit investment trusts may continue to do so under existing SEC standards until the SEC adopts rules. At that time, banks will have to conform such activities to the SEC's rules.

Section 212. Indebtedness to affiliated person

Section 10(f) of the Investment Company Act currently prohibits a registered investment company from purchasing any security (except a security of which it is the issuer) during the existence of any underwriting or selling syndicate if a principal underwriter of the security is an officer, director, member of any advisory board, investment adviser, or employee of the investment company or affiliate of such a party (unless the investment company is itself acting as a principal underwriter). 15 U.S.C. § 80a–10(f). Section 212 amends section 10(f) to authorize the SEC to adopt rules or issue orders that would govern investment company acquisitions or securities during an underwriting or selling syndicate if the issuer has a material relationship with the adviser of the investment company or any person controlling, controlled by, or under common control with the adviser. Under this provision, the SEC would have the authority to define "material lending relationship" by rule or regulation. Rulemaking authority, rather than a blanket prohibition, preserves flexibility to allow these types of acquisitions, where beneficial, to go forward.

Section 213. Lending to an affiliated investment company

Section 18(f) of the Investment Company Act prohibits a registered open-end investment company (mutual fund) from issuing "senior securities" but allows a mutual fund to borrow from a bank under certain circumstances. 15 U.S.C. § 80a–18(f). Section 18(a) of the Investment Company Act limits the extent to which closed-end investment companies may issue senior securities. Section 213

adds a new section 18(l), making it unlawful for any affiliated person of an investment company (including both open-end and closed-end funds) to loan money to the investment company in contravention of such rules, regulations, or orders as the SEC may prescribe.

Section 214. Independent directors

Section 2(a)(19)(A)(v) of the Investment Company Act currently defines "interested person" of an investment company to include any registered broker or dealer and any affiliated person of such broker or dealer. 15 U.S.C. § 80a–2(a)(19)(A)(v). Section 214 amends section 2(a)(19)(A)(v) to include in the definition of "interested person" of an investment company any person or any affiliate of a person who during the preceding six-month period has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for an investment company (or another investment company in the same complex or private advisory accounts over which the investment company's adviser has brokerage discretion). Section 214 of the bill also adds new subparagraph (iv) to section 2(a)(19)(A) of the Investment Company Act to include within the definition of interested person any person, that within the last six months, has loaned money to an investment company (or another investment company in the same complex or private advisory accounts over which the investment company's adviser has borrowing authority).

Section 10(c) of the Investment Company Act currently prohibits a registered investment company from having a majority of its board of directors consist of individuals who are officers, directors, or employees of any one bank. 15 U.S.C. § 80a–10(c). Section 214(b) amends section 10(c) to extend this prohibition to any one bank and its subsidiaries, and any one FSHC and its affiliates and subsidiaries.

Section 215. Additional SEC disclosure authority

Section 215 amends section 35(a) of the Investment Company Act to prohibit a registered investment company or a person selling any security issued by a registered investment company from representing or implying that the company or the security is guaranteed, sponsored, recommended or approved by the United States or its agencies or instrumentalities; insured by the FDIC; or guaranteed by or otherwise an obligation of any depository institution. Such a person would also be required to disclose that the security is not insured by the FDIC, is not guaranteed by an affiliated depository institution, and is not otherwise an obligation of such a bank or institution in accordance with rules, regulations, or orders prescribed by the SEC. This provision is similar to the requirement placed on securities affiliates under section 10(f)(6) of the BHCA.

This section is designed to allow the SEC to address potential investor confusion concerning the availability of federal deposit insurance for investments in mutual funds affiliated with banks. Therefore, the Committee would not expect the SEC to adopt rules where the potential for such confusion does not exist.

Section 35(d) of the Investment Company Act currently prohibits a registered investment company from adopting as part of its name any words that the SEC determines by order to be deceptive or

misleading. Section 215(b) amends section 35(d) to specifically authorize the SEC to adopt rules or regulations or to issue orders to prevent the use of deceptive or misleading names. In addition, section 215(b) of the bill further prohibits a registered investment company that has a depository institution or its affiliates as an affiliated person, promoter, or principal underwriter from adopting as part of its name or title any word that is the same or similar to, or a variation of, the name or title of such bank in contravention of such rules, regulations, or orders as the SEC may prescribe.

Section 216. Definition of broker under the Investment Company Act of 1940

Section 216 amends the definition of "broker" in section 2(a)(6) of the Investment Company Act to reflect section 201's amended definition of that term in the Exchange Act. The amended definition continues to exclude any person, including a bank, that would be deemed a "broker" solely because such person is an underwriter for one or more investment companies.

Section 217. Definition of dealer under the Investment Company Act of 1940

Section 217 similarly amends the definition of "dealer" in section 2(a)(11) of the Investment Company Act to reflect section 202's amended definition of that term in the Exchange Act. The amended definition continues to exclude insurance companies and investment companies.

Section 218. Removal of the exclusion from the definition of investment adviser for banks that advise investment companies

Section 202(a)(11) of the Investment Advisers Act currently excludes any bank or bank holding company from the Act's definition of "investment adviser." 15 U.S.C. § 80b–2(a)(11). Section 218(a) amends section 202(a)(11) to remove this exclusion for banks or bank holding companies that serve as investment advisers to registered investment companies. Section 218(a) of the bill also allows a bank to establish a SID to act as an investment adviser, in which case only the SID, and not the bank, would be required to register. The SEC would have the same regulatory authority over such a bank SID with respect to its investment company advisory activities as it has over other investment advisers.

Section 218(b) adds section 202(a)(25) to the Investment Advisers Act to define a "separately identifiable department or division" of a bank as a unit that is separately supervised and whose records are separately maintained to permit independent examination and enforcement of the Investment Advisers Act and the Investment Company Act.

Section 219. Definition of broker under the Investment Advisers Act of 1940

Section 219 amends the definition of "broker" in section 202(a)(3) of the Investment Advisers Act (15 U.S.C. § 80b–2(a)3)) to reflect section 110's amended definition of that term in the Exchange Act. The amended definition continues to exclude any person, including

a bank, that would be deemed a "broker" solely because such person is an underwriter for one or more investment companies.

Section 220. Definition of dealer under the Investment Advisers Act of 1940

Section 220 similarly amends the definition of "dealer" in section 2(a)(7) of the Investment Advisers Act (15 U.S.C. § 80b–2(a)(7)) to reflect section 111's amended definition of that term in the Exchange Act. The amended definition continues to exclude insurance companies and investment companies.

Section 221. Interagency consultation

Section 221 adds a new section 210A to the Investment Advisers Act to require the appropriate federal banking agency to share with the SEC the results of any examination, reports, records, or other information that the agency may have access to with respect to the investment advisory activities of any bank holding company, bank, or subsidiary or SID thereof, any of which is required to be registered as an investment adviser, to the extent necessary for the SEC to carry out is statutory responsibilities. Similarly, the SEC must provide all such information to the appropriate Federal banking agency to permit that agency to carry out its statutory responsibilities.

Section 222. Treatment of bank common trust funds

Section 3(c)(3) of the Investment Company Act currently exempts bank common trust funds from the definition of investment company under the Investment Company Act. 15 U.S.C. § 80b–3(c)(3). To qualify for the exemption, common trust funds must be maintained by a bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank as trustee, executor, administrator, or guardian. Section 222(c) amends section 3(c)(3) to clarify that the common trust fund exemption is only available to a fund that is employed by a bank solely as an aid to the administration of trusts, estates or other accounts maintained for a fiduciary purpose. Shares in the fund may not be offered for sale to the public or advertised, except in connection with the ordinary advertising of the bank's fiduciary services. In addition, a bank would be able to charge a common trust fund fees and expenses consistent with State and federal fiduciary law.

Section 3(a)(2) of the Securities Act currently exempts any interest or participation in a bank common trust fund from the Securities Act. 15 U.S.C. § 78c(a)(2). Section 222(a) amends section 3(a)(2) to provide that interests in the common trust fund, in order to be exempted from the Securities Act, must fall within the amended definition of "common trust" fund under section 3(c)(3) of the Investment Company Act. Similarly, section 3(a)(12)(A)(iii) of the Exchange Act currently includes any interest or participation in a bank common trust fund in the definition of "exempted security" under the Exchange Act. Id. § 78c(a)(12)(A)(iii). Section 222(b) amends section 3(a)(12)(A)(iii) to require that the common trust fund must fall within the amended definition of "common trust fund" under section 3(c)(3).

Section 222(d) provides that it is the sense of the Congress that the Internal Revenue Code should be amended to provide that any transfer of all or substantially all of the assets of a common trust fund to a registered investment company as a result of a merger, conversion, reorganization, or similar transaction shall not result in a taxable event for the participants in the common trust fund.

Section 223. Investment advisers prohibited from having controlling interest in registered investment company

Section 223 amends section 15 of the Investment Company Act to add a new subsection (g) to require an investment adviser of an investment company, or an affiliated person of the adviser, that holds a controlling interest in that investment company in a trustee or fiduciary capacity to comply with certain pass-through or echo-voting requirements. There is a separate voting procedure for shares held in a trustee or fiduciary capacity with respect to any employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (ERISA).

Subsection (g) is intended to address certain conflicts that may arise when an investment adviser to a mutual fund also holds voting control over the fund through shares held in a trustee or fiduciary capacity. To ensure that the investment adviser does not use its fiduciary authority to further its own interests, such as perpetuating its status as an investment adviser, subparagraph (g)(1) would require that, in those situations where the investment adviser holds a controlling interest in the mutual fund, voting authority be transferred to another unaffiliated person; that shares held in a fiduciary capacity be voted pro rata to those shares held in a non-fiduciary capacity, or that shares be voted in some other manner permitted by SEC rules or regulations. Because, under well-established principles of fiduciary law, a fiduciary has an obligation to vote the shares in the best interests of its fiduciary clients and without regard to the fiduciary's own needs, transferring the power to vote to another might be deemed to be an improper delegation or abdication of the fiduciary's responsibilities. Similar concerns are presented by voting fiduciary shares pro rata.

Consequently, subsection (g)(1)(A) provides that for employee benefit plans subject to the ERISA the investment adviser fiduciary should transfer the power to vote the shares of the mutual fund to another person acting in a fiduciary capacity with respect to that plan. In this way, the investment adviser fiduciary will merely transfer the power to vote to another fiduciary, such as the plan administrator or plan sponsor, that will exercise voting authority in accordance with ERISA requirements. Transferring the power to vote to another fiduciary is neither an improper delegation of voting authority nor an improper exercise of voting responsibilities by the investment adviser fiduciary in violation of ERISA.

In any event, a safe harbor is provided by subparagraph (g)(3) stating that an investment adviser fiduciary will not be deemed to have acted unlawfully or to have breached a fiduciary duty under state or federal law solely by reason of having acted in accordance with the requirements of clauses (i), (ii), or (iii). An investment adviser fiduciary can, thus, be assured that if it complies with this

paragraph or SEC rules and regulations promulgated thereunder, it will not later be found liable for breach of its fiduciary duties.

Because fiduciary customers have adequate protection under applicable state and federal fiduciary precedent, subsection (g) will not apply to investment companies consisting solely of assets held in a trustee or fiduciary capacity. Rather, the protections offered by subsection (g) are only meant to protect those investors who are not fiduciary customers of the bank and are minority holders of the advised mutual fund.

Finally, church pension boards are primarily responsible for holding and investing the assets of their respective denominational employee benefit plans and programs. However, in some cases these pension boards may also hold and invest other church assets (such as church agency funds or church endowments). These other church assets may be held in other than a trustee or fiduciary capacity. Therefore, the exemption provided in paragraph (2) of the bill may not be available to investment companies advised by church pension boards. Paragraph (4) of subsection (g) would permit a church pension board which may hold some assets in other than a trustee or fiduciary capacity to nonetheless rely on the exemption.

Section 224. Conforming change in definition

Section 224 amends the definition of "bank" in section 2(a)(5) of the Investment Company Act by replacing the reference to "a banking organization organized under the laws of the United States" with a reference to "a depository institution" as defined in the FDIA.

Section 225. Effective date

This subtitle shall become effective 270 days after the date of enactment of the FSCA.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

BANKING ACT OF 1933

* * * * * * *

[SEC. 20. After one year from the date of the enactment of this Act, no member bank shall be affiliated in any manner described in section 2(b) hereof with any corporation, association, business trust, or other similar organization engaged principally in the issue, flotation, underwriting, public sale, or distribution at wholesale or retail or through syndicate participation of stocks, bonds, debentures, notes, or other securities: *Provided*, That nothing in this paragraph shall apply to any such organization which shall have been placed in formal liquidation and which shall transact no business except such as may be incidental to the liquidation of its affairs.

[For every violation of this section the member bank involved shall be subject to a penalty not exceeding $1,000 per day for each day during which such violation continues. Such penalty may be assessed by the Federal Reserve Board, in its discretion, and, when so assessed, may be collected by the Federal reserve bank by suit or otherwise.

[If any such violation shall continue for six calendar months after the member bank shall have been warned by the Federal Reserve Board to discontinue the same, (a) in the case of a national bank, all the rights, privileges, and franchises granted to it under the National Bank Act may be forfeited in the manner prescribed in section 2 of the Federal Reserve Act, as amended (U.S.C., title 12, secs. 141, 222–225, 281–286, and 502) or, (b) in the case of a State member bank, all of its rights and privileges of membership in the Federal Reserve System may be forfeited in the manner prescribed in section 9 of the Federal Reserve Act, as amended (U.S.C., title 12, secs. 321–332).]

* * * * * * *

SEC. 32. No officer, director, or employee of any corporation or unincorporated association, no partner or employee of any partnership, and no individual, primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities, shall serve the same time as an officer, director, or employee of any member bank except in limited classes of cases in which the Board of Governors of the Federal Reserve System may allow such service by general regulations when in the judgment of the said Board it would not unduly influence the investment policies of such member bank or the advice it gives its customers regarding investments. *This section shall not apply so as to prohibit an officer, director, or employee of a securities affiliate (as defined in section 2 of the Financial Services Company Act of 1995) from serving at the same time as an officer, director, or employee of a member bank affiliated with that securities affiliate pursuant to section 10 of such Act. This section shall not apply so as to prohibit an officer, director, or employee of an investment company registered under the Investment Company Act of 1940 or an investment adviser registered under the Investment Advisers Act of 1940 from serving at the same time as an officer, director, or employee of a member bank.*

* * * * * * *

BANK HOLDING COMPANY ACT OF 1956

Be is enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That this Act may be cited as the "Bank Holding Company Act of 1956".]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Financial Services Holding Company Act of 1995".

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Acquisition of bank shares or assets.
Sec. 4. Interests in nonbanking organizations.
Sec. 5. Administration.
Sec. 6. Conversion of unitary savings and loan holding companies to financial services holding companies.
Sec. 7. Reservation of rights to States.
Sec. 8. Penalties.
Sec. 9. Judicial review.
Sec. 10. Securities activities.
Sec. 11. Safeguards relating to securities activities.
Sec. 12. Investment bank holding companies and other financial activities.
Sec. 13. Saving provision.
Sec. 14. Separability of provisions.

(c) REFERENCES IN OTHER LAWS.—Any reference in any Federal or State law to a provision of the Bank Holding Company Act of 1956 shall be deemed to be a reference to the corresponding provision of this Act.

DEFINITIONS

SEC. 2. (a)(1) Except as provided in paragraph (5) of this subsection, "[bank holding company] *financial services holding company*" means any company which has control over any bank or over any company that is or becomes a [bank holding company] *financial services holding company* by virtue of this Act.

* * * * * * *

(5) Notwithstanding any other provision of this subsection—

(A) No bank and no company owning or controlling voting shares of a bank is a [bank holding company] *financial services holding company* by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraphs (2) and (3) of subsection (g) of this section. For the purpose of the preceding sentence, bank shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto; except that this limitation is applicable in the case of a bank or company acquiring such shares prior to the date of enactment of the Bank Holding Company Act Amendments of 1970 only if the bank or company has the right consistent with its obligations under the instrument, agreement, or other arrangement establishing the fidiciary relationship to divest itself of such voting rights and fails to exercise that right to divest within a reasonable period not to exceed one year after the date of enactment of the Bank Holding Company Act Amendments of 1970.

(B) No company is a [bank holding company] *financial services holding company* by virtue of its ownership or control of shares acquired by it in connection with its underwriting of securities if such shares are held only for such period of time as will permit the sale thereof on a reasonable basis.

(C) No company formed for the sole purpose of participating in a proxy solicitation is a [bank holding company] *financial services holding company* by virtue of its control of voting rights of shares acquired in the course of such solicitation.

(D) No company is a [bank holding company] *financial services holding company* by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The Board is authorized upon application by a company to extend, from time to time for not more than one year at a time, the two-year period referred to herein for disposing of any shares acquired by a company in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years.

(E) No company is a [bank holding company] *financial services holding company* by virtue of its ownership or control of any State-chartered bank or trust company which—

(i) is wholly owned by thrift institutions or savings banks; and

(ii) is restricted to accepting—

(I) deposits from thrift institutions or savings banks;

(II) deposits arising out of the corporate business of the thrift institutions or savings banks that own the bank or trust company; or

(III) deposits of public moneys.

(F) No trust company or mutual savings bank which is an insured bank under the Federal Deposit Insurance Act is a [bank holding company] *financial services holding company* by virtue of its direct or indirect ownership or control of one bank located in the same State, if (i) such ownership or control existed on the date of enactment of the Bank Holding Company Act Amendments of 1970 and is specifically authorized by applicable State law, and (ii) the trust company or mutual savings bank does not after that date acquire an interest in any company that, together with any other interest it holds in that company, will exceed 5 per centum of any class of the voting shares of that company, except that this limitation shall not be applicable to investments of the trust company or mutual savings bank, direct and indirect, which are otherwise in accordance with the limitations applicable to national banks under section 5136 of the Revised Statutes. (12 U.S.C. 24)

(6) For the purposes of this Act, any successor to a [bank holding company] *financial services holding company* shall be deemed to be a [bank holding company] *financial services holding company* from the date on which the predecessor company became a [bank holding company] *financial services holding company. Any company that was a bank holding company on the day before the date of enactment of the Financial Services Competitiveness Act of 1995 shall, for purposes of this chapter, be deemed to have been a financial services holding company as of the date on which the company became a bank holding company.*

* * * * * * *

(c) BANK DEFINED.—For purposes of this Act—

(1) IN GENERAL.—Except as provided in paragraph (2), the term "bank" means any of the following:

(A) * * *

* * * * * * *

(C) A wholesale financial institution.

(2) EXCEPTIONS.—The term "bank" does not include any of the following:

(A) * * *

* * * * * * *

(F) An institution which—

(i) engages only in credit card operations *including the provision of credit card accounts for business purposes*;

* * * * * * *

(v) does not engage in the business of making commercial loans *(other than the provision of credit card accounts for business purposes in connection with the credit card operations referred to in clause (i)).*

* * * * * * *

(d) "Subsidiary", with respect to a specified [bank holding company] *financial services holding company*, means (1) any company 25 per centum or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly owned or controlled by such [bank holding company] *financial services holding company*, or is held by it with power to vote; (2) any company the election of a majority of whose directors is controlled in any manner by such [bank holding company] *financial services holding company*; or (3) any company with respect to the management or policies of which such [bank holding company] *financial services holding company* has the power, directly or indirectly, to exercise a controlling influence, as determined by the Board, after notice and opportunity for hearing.

(e) The term "successor" shall include any company which acquires directly or indirectly from a [bank holding company] *financial services holding company* shares of any bank, when and if the relationship between such company and the [bank holding company] *financial services holding company* is such that the transaction effects no substantial change in the control of the bank or beneficial ownership of such shares of such bank. The Board may, by regulation, further define the term "successor" to the extent necessary to prevent evasion of the purposes of this Act.

(f) "Board" means the Board of Governors of the Federal Reserve System.

(g) For the purposes of this Act—

(1) shares owned or controlled by any subsidiary of a [bank holding company] *financial services holding company* shall be deemed to be indirectly owned or controlled by such [bank holding company] *financial services holding company*;

(2) shares held or controlled directly or indirectly by trustees for the benefit of (A) a company, (B) the shareholders or members of a company, or (C) the employees (whether exclusively or not) of a company, shall be deemed to be controlled by such company; and

(3) shares transferred after January 1, 1966, by any [bank holding company] *financial services holding company* (or by any company which, but for such transfer, would be a [bank holding company] *financial services holding company*) directly or indirectly to any transferee that is indebted to the transferor, or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor unless the Board, after opportunity for hearing, determines that the transferor is not in fact capable of controlling the transferee.

(h)(1) Except as provided by paragraph (2), the application of this Act and of section 23A of the Federal Reserve Act (12 U.S.C. 371), as amended, shall not be affected by the fact that a transaction takes place wholly or partly outside the United States or that a company is organized or operates outside the United States.

(2) Except as provided in paragraph (3), the prohibitions of section 4 of this Act shall not apply to shares of any company organized under the laws of a foreign country (or to shares held by such company in any company engaged in the same general line of business as the investor company or in a business related to the business of the investor company) that is principally engaged in business outside the United States if such shares are held or acquired by a [bank holding company] *financial services holding company* organized under the laws of a foreign country that is principally engaged in the banking business outside the United States. For the purpose of this subsection, the term "section 2(h)(2) company" means any company whose shares are held pursuant to this paragraph.

* * * * * * *

(4) No domestic office or subsidiary of a [bank holding company] *financial services holding company* or subsidiary thereof holding shares of a section 2(h)(2) company may extend credit to a domestic office or subsidiary of such section 2(h)(2) company on terms more favorable than those afforded similar borrowers in the United States.

(5) No domestic banking office or bank subsidiary of a [bank holding company] *financial services holding company* that controls a section 2(h)(2) company may offer or market products or services of such section 2(h)(2) company, or permit its products or services to be offered or marketed by or through such section 2(h)(2) company, unless such products or services were being so offered or marketed as of March 5, 1987, and then only in the same manner in which they were being offered or marketed as of that date.

* * * * * * *

(n) INCORPORATED DEFINITIONS.—For purposes of this Act, the terms "*depository institution*", "insured depository institution", "appropriate Federal banking agency", "default", "in danger of default", and "State bank supervisor" have the same meanings as in section 3 of the Federal Deposit Insurance Act.

(o) OTHER DEFINITIONS.—For purposes of this Act, the following definitions shall apply:

[(1) ADEQUATELY CAPITALIZED.—The term "adequately capitalized" means a level of capitalization which meets or exceeds all applicable Federal regulatory capital standards.]

(1) LEAD DEPOSITORY INSTITUTION.—The term "lead depository institution" means the largest depository institution controlled by the financial services holding company, based on a comparison of the average total assets controlled by each depository institution during the previous 12-month period.

* * * * * * *

(4) HOME STATE.—The term "home State" means—

(A) with respect to a national bank, the State in which the main office of the bank is located;

(B) with respect to a State bank, the State by which the bank is chartered; and

(C) with respect to a [bank holding company] *financial services holding company*, the State in which the total deposits of all banking subsidiaries of such company are the largest on the later of—

(i) July 1, 1966; or

(ii) the date on which the company becomes a [bank holding company] *financial services holding company* under this Act.

(5) HOST STATE.—The term "host State" means—

(A) with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch; and

(B) with respect to a [bank holding company] *financial services holding company*, a State, other than the home State of the company, in which the company controls, or seeks to control, a bank subsidiary.

(6) OUT-OF-STATE BANK.—The term "out-of-State bank" means, with respect to any State, a bank whose home State is another State.

(7) OUT-OF-STATE [BANK HOLDING COMPANY] *FINANCIAL SERVICES HOLDING COMPANY*.—The term "out-of-State [bank holding company] *financial services holding company*" means, with respect to any State, a [bank holding company] *financial services holding company* whose home State is another State.

(8) INSURED DEPOSITORY INSTITUTION FOR CERTAIN SECTIONS.—Notwithstanding subsection (n), the terms "depository institution" and "insured depository institution" include, for purposes of paragraph (1) and sections 4(k), 10, and 11, any branch, agency, or commercial lending company operated in the United States by a foreign bank.

(9) WELL MANAGED.—The term "well managed" means—

(A) in the case of any company or depository institution which receives examinations, the achievement of—

(i) a CAMEL composite rating of 1 or 2 (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of such company or institution; and

(ii) at least a satisfactory rating for management, if such rating is given; or

(B) in the case of a company or depository institution that has not received an examination rating, the existence and use of managerial resources which the Board determines are satisfactory.

(p) SECURITIES AFFILIATE.—The term "securities affiliate" means any company—

(1) that is (or is required to be) registered under the Securities Exchange Act of 1934 as a broker or dealer; and

(2) the acquisition or retention of the shares or assets of which the Board has approved under section 10.

(q) CAPITAL TERMS.—

(1) DEPOSITORY INSTITUTIONS.—With respect to depository institutions, the terms "well capitalized," "adequately capitalized" and "undercapitalized" have the meanings given to such terms in accordance with section 38(b) of the Federal Deposit Insurance Act.

(2) FINANCIAL SERVICES HOLDING COMPANY.—The following definitions shall apply with respect to financial services holding companies:

(A) ADEQUATELY CAPITALIZED.—The term "adequately capitalized" means a level of capitalization which meets or exceeds the required minimum level established by the Board for each relevant capital measure for financial services holding companies.

(B) WELL CAPITALIZED.—The term "well capitalized" means a level of capitalization which meets or exceeds the required capital levels established by the Board for well capitalized financial services holding companies.

(3) OTHER CAPITAL TERMS.—The terms "tier 1" and "risk-weighted assets" have the meaning given those terms in the capital guidelines or regulations established by the Board for financial services holding companies.

(r) FOREIGN BANK TERMS.—For purposes of subsections (s) and (u), sections 4(k), 10, and 11, and subsections (b) and (c) of section 12—

(1) the terms "agency", "branch", and "commercial lending company" have the same meaning as in section 1(b) of the International Banking Act of 1978.

(2) the term "foreign bank" means a foreign bank (as defined in section 1(b) of the International Banking Act of 1978) which operates a branch, agency or commercial lending company, or owns or controls a bank, in the United States.

(s) WHOLESALE FINANCIAL INSTITUTION.—The term "wholesale financial institution" means any institution that is an uninsured State member bank authorized pursuant to section 9B of the Federal Reserve Act.

(t) INVESTMENT BANK HOLDING COMPANY.—The term "investment bank holding company" means any financial services holding company that—

(1) controls a company engaged in underwriting corporate equity securities pursuant to section 10;

(2) controls a wholesale financial institution; and

(3) if the company is a foreign bank that operates a branch, agency or commercial lending company in the United States, or

is a company that controls such foreign bank, is treated as an investment bank holding company because such bank or company meets the criteria in section 12(b) and has received the determination required by such section.

ACQUISITION OF BANK SHARES OR ASSETS

SEC. 3. (a) It shall be unlawful, except with the prior approval of the Board, (1) for any action to be taken that causes any company to become a [bank holding company] *financial services holding company*; (2) for any action to be taken that causes a bank to become a subsidiary of a [bank holding company] *financial services holding company*; (3) for any [bank holding company] *financial services holding company* to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than 5 per centum of the voting shares of such bank; (4) for any [bank holding company] *financial services holding company* or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank; or (5) for any [bank holding company] *financial services holding company* to merge or consolidate with any other [bank holding company] *financial services holding company*. Notwithstanding the foregoing this prohibition shall not apply to (A) shares acquired by a bank, (i) in good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in section 2(b) and except as provided in paragraphs (2) and (3) of section 2(g), or (ii) in the regular course of securing or collecting a debt previously contracted in good faith, but any shares acquired after the date of enactment of this Act in securing or collecting any such previously contracted debt shall be disposed of within a period of two years from the date on which they were acquired; (B) additional shares acquired by a [bank holding company] *financial services holding company* in a bank in which such [bank holding company] *financial services holding company* owned or controlled a majority of the voting shares prior to such acquisition; or (C) the acquisition, by a company, of control of a bank in a reorganization in which a person or group of persons exchanges their shares of the bank for shares of a newly formed [bank holding company] *financial services holding company* and receives after the reorganization substantially the same proportional share interest in the holding company as they held in the bank except for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under State or Federal law if—

(i) immediately following the acquisition—

(I) the [bank holding company] *financial services holding company* meets the capital and other financial standards prescribed by the Board by regulation for such a [bank holding company] *financial services holding company*; and

* * * * * * *

(b)(1) NOTICE AND HEARING REQUIREMENTS.—Upon receiving from a company any application for approval under this section, the Board shall give notice to the Comptroller of the Currency, if

the applicant company or any bank the voting shares or assets of which are sought to be required is a national banking association or a District bank, or to the appropriate supervisory authority of the interested State, if the applicant company or any bank the voting shares or assets of which are sought to be acquired is a State bank, in order to provide for the submission of the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be. The views and recommendations shall be submitted within thirty calendar days of the date on which notice is given, or within ten calendar days of such date if the Board advises the Comptroller of the Currency or the State supervisory authority that an emergency exists requiring expeditious action. If the thirty-day notice period applies and if the Comptroller of the Currency or the State supervisory authority so notified by the Board disapproves the application in writing within this period, the Board shall forthwith give written notice of that fact to the applicant. Within three days after giving such notice to the applicant, the Board shall notify in writing the applicant and the disapproving authority of the date for commencement of a hearing by it on such application. Any such hearing shall be commenced not less than ten or more than thirty days after the Board has given written notice to the applicant of the action of the disapproving authority. The length of any such hearing shall be determined by the Board, but it shall afford all interested parties a reasonable opportunity to testify at such hearing. At the conclusion thereof, the Board shall, by order, grant or deny the application on the basis of the record made at such hearing. In the event of the failure of the Board to act on any application for approval under this section within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted. Notwithstanding any other provision of this subsection, if the Board finds that it must act immediately on any application for approval under this section in order to prevent the probable failure of a bank or [bank holding company] *financial services holding company* involved in a proposed acquisition, merger, or consolidation transaction, the Board may dispense with the notice requirements of this subsection, and if notice is given, the Board may request that the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be, be submitted immediately in any form or by any means acceptable to the Board. If the Board has found pursuant to this subsection either that an emergency exists requiring expeditious action or that it must act immediately to prevent probable failure, the Board may grant or deny any such application without a hearing not withstanding any recommended disapproval by the appropriate supervisory authority.

(2) WAIVER IN CASE OF BANK IN DANGER OF CLOSING.—If the Board receives a certification described in section 13(f)(8)(D) of the Federal Deposit Insurance Act from the appropriate Federal or State chartering authority that a bank is in danger of closing, the Board may dispense with the notice and hearing requirements of paragraph (1) with respect to any application received by the Board relating to the acquisition of such bank, the [bank holding com-

pany] *financial services holding company* which controls such bank, or any other affiliated bank.

(c) FACTORS FOR CONSIDERATION BY BOARD.—

(1) * * *

* * * * * * *

(4) TREATMENT OF CERTAIN BANK STOCK LOANS.—Notwithstanding any other provision of law, the Board shall not follow any practice or policy in the consideration of any application for the formation of a one-bank holding company if following such practice or policy would result in the rejection of such application solely because the transaction to form such [one-bank holding company] *1-bank financial services holding company* involves a bank stock loan which is for a period of not more than twenty-five years. The previous sentence shall not be construed to prohibit the Board from rejecting any application solely because the other financial arrangements are considered unsatisfactory. The Board shall consider transactions involving bank stock loans for the formation of a [one-bank holding company] *1-bank financial services holding company* having a maturity of twelve years or more on a case by case basis and no such transaction shall be approved if the Board believes the safety or soundness of the bank may be jeopardized.

* * * * * * *

(d) INTERSTATE BANKING.—

(1) APPROVALS AUTHORIZED.—

(A) ACQUISITION OF BANKS.—The Board may approve an application under this section by a [bank holding company] *financial services holding company* that is adequately capitalized and adequately managed to acquire control of, or acquire all or substantially all of the assets of, a bank located in a State other than the home State of such [bank holding company] *financial services holding company*, without regard to whether such transaction is prohibited under the law of any State.

(B) PRESERVATION OF STATE AGE LAWS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), the Board may not approve an application pursuant to such subparagraph that would have the effect of permitting an out-of-State [bank holding company] *financial services holding company* to acquire a bank in a host State that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State.

* * * * * * *

(D) EFFECT ON STATE CONTINGENCY LAWS.—No provision of this subsection shall be construed as affecting the applicability of a State law that makes an acquisition of a bank contingent upon a requirement to hold a portion of such bank's assets available for call by a State-sponsored housing entity established pursuant to State law, if—

(i) the State law does not have the effect of discriminating against out-of-State banks, out-of-State [bank

holding companies] *financial services holding companies*, or subsidiaries of such banks or [bank holding companies] *financial services holding companies*;

* * * * * * *

(2) CONCENTRATION LIMITS.—

(A) * * *

* * * * * * *

(C) EFFECTIVENESS OF STATE DEPOSIT CAPS.—No provision of this subsection shall be construed as affecting the authority of any State to limit, by statute, regulation, or order, the percentage of the total amount of deposits of insured depository institutions in the State which may be held or controlled by any bank or [bank holding company] *financial services holding company* (including all insured depository institutions which are affiliates of the bank or [bank holding company] *financial services holding company*) to the extent the application of such limitation does not discriminate against out-of-State banks, out-of-State [bank holding companies] *financial services holding companies*, or subsidiaries of such banks or holding companies.

(D) EXCEPTIONS TO SUBPARAGRAPH (B).—The Board may approve an application pursuant to paragraph (1)(A) without regard to the applicability of subparagraph (B) with respect to any State if—

(i) there is a limitation described in subparagraph (C) in a State statute, regulation, or order which has the effect of permitting a bank or [bank holding company] *financial services holding company* (including all insured depository institutions which are affiliates of the bank or [bank holding company] *financial services holding company*) to control a greater percentage of total deposits of all insured depository institutions in the State than the percentage permitted under subparagraph (B); or

(ii) the acquisition is approved by the appropriate State bank supervisor of such State and the standard on which such approval is based does not have the effect of discriminating against out-of-State banks, out-of-State [bank holding companies] *financial services holding companies*, or subsidiaries of such banks or holding companies.

* * * * * * *

(e) Every bank that is a holding company and every bank that is a subsidiary of such company shall become and remain an insured depository institution as such term is defined in section 3 of the Federal Deposit Insurance Act. *This subsection shall not apply to a wholesale financial institution that is controlled by an investment bank holding company that controls no banks other than wholesale financial institutions.*

(f) SAVINGS BANK SUBSIDIARIES OF [BANK HOLDING COMPANIES] *FINANCIAL SERVICES HOLDING COMPANIES*.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act (other than paragraphs (2) and (3)), any qualified savings bank which is a subsidiary of a [bank holding company] *financial services holding company* may engage, directly or through a subsidiary, in any activity in which such savings bank may engage (as a State chartered savings bank) pursuant to express, incidental, or implied powers under any statute or regulation, or under any judicial interpretation of any law, of the State in which such savings bank is located.

(2) INSURANCE ACTIVITIES.—Except as provided in paragraph (3), any insurance activities of any qualified savings bank which is a subsidiary of a [bank holding company] *financial services holding company* shall be limited to insurance activities allowed under section 4(c)(8).

(3) SAVINGS BANK LIFE INSURANCE.—Any qualified savings bank permitted, as of March 5, 1987, to engage in the sale or underwriting of savings bank life insurance may sell or underwrite such insurance after such savings bank is a subsidiary of a [bank holding company] *financial services holding company* if—

(A) the savings bank is located in the State of Connecticut, Massachusetts, or New York;

(B) such activity is expressly authorized by the law of the State in which such savings bank is located;

(C) the savings bank retains its character as a savings bank;

(D) such activity is carried out by the savings bank directly and not by—

(i) any subsidiary or affiliate of the savings bank; or

(ii) the [bank holding company] *financial services holding company* which controls such savings bank;

(E) such activity is carried out by the savings bank in accordance with any residency or employment limitations set forth in the savings bank life insurance statute in effect on March 5, 1987, in the State in which such bank is located; and

(F) such activity is otherwise carried out in the same manner as savings bank life insurance activity is carried out in the State in which such bank is located by savings banks which are not subsidiaries of any [bank holding company] *financial services holding company* registered under this Act.

* * * * * * *

(5) SPECIAL ASSET AGGREGATION RULE FOR PURPOSES OF PARAGRAPH (3).—For the sole purpose of determining whether a qualified savings bank may continue to sell and underwrite savings bank life insurance in accordance with this subsection after control of such savings bank is acquired by a [bank holding company] *financial services holding company*, the assets of any other bank affiliated with, or under contract to affiliate with, such savings bank as of March 5, 1987, shall be treated as assets of the savings bank in determining whether such [bank holding company] *financial services holding company* is a savings bank holding company.

INTERESTS IN NONBANKING ORGANIZATIONS

SEC. 4. (a) Except as otherwise provided in this Act, no [bank holding company] *financial services holding company* shall—

(1) after the date of enactment of this Act acquire direct or indirect ownership or control of any voting shares of any company which is not a bank, or

(2) after two years from the date as of which it becomes a [bank holding company] *financial services holding company*, [or in the case of a company which has been continuously affiliated since May 15, 1955, with a company which was registered under the Investment Company Act of 1940, prior to May 15, 1955, in such a manner as to constitute an affiliated company within the meaning of that Act, after December 31, 1978, or, in the case of any company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on the date of such enactment, after December 31, 1980,] retain direct or indirect ownership or control of any voting shares of any company which is not a bank or [bank holding company] *financial services holding company* or engage in any activities other than (A) those of banking or of managing or controlling banks and other subsidiaries authorized under this Act or of furnishing services to or performing services for its subsidiaries, and (B) those permitted under [paragraph (8) of subsection (c) of this section subject to all the conditions specified in such paragraph or in any order or regulation issued by the Board under such paragraph] *subsection (c)(8) or section 4(k), 10, or 11, subject to all the conditions specified in those provisions or in any order or regulation issued by the Board under those provisions*: *Provided*, That a company covered in 1970 may also engage in those activities in which directly or through a subsidiary (i) it was lawfully engaged on June 30, 1968 (or on a date subsequent to June 30, 1968 in the case of activities carried on as the result of the acquisition by such company or subsidiary, pursuant to a binding written contract entered into on or before June 30, 1968, of another company engaged in such activities at the time of the acquisition), and (ii) it has been continuously engaged since June 30, 1968 (or such subsequent date). The Board by order, after opportunity for hearing, may terminate the authority conferred by the preceding proviso on any company to engage directly or through a subsidiary in any activity otherwise permitted by that proviso if it determines, having due regard to the purposes of this Act, that such action is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices; and in the case of any such company controlling a bank having bank assets in excess of $60,000,000 on or after the date of enactment of the Bank Holding Company Act Amendments of 1970 the Board shall determine, within two years after such date (or, if later, within two years after the date on which the bank assets first exceed $60,000,000), whether the authority conferred by the preceding proviso with respect to such company should be terminated as provided in

this sentence. Nothing in this paragraph shall be construed to authorize any [bank holding company] *financial services holding company* referred to in the preceding proviso, or any subsidiary thereof, to engage in activities authorized by that proviso through the acquisition, pursuant to a contract entered into after June 30, 1968, of any interest in or the assets of a going concern engaged in such activities. Any company which is authorized to engage in any activity pursuant to the preceding proviso or subsection (d) of this section but, as a result of action of the Board, is required to terminate such activity may (notwithstanding any otherwise applicable time limit prescribed in this paragraph) retain the ownership or control of shares in any company carrying on such activity for a period of ten years from the date on which its authority was so terminated by the Board. [Notwithstanding any other provision of this paragraph, if any company that became a bank holding company as a result of the enactment of the Competitive Equality Amendments of 1987 acquired, between March 5, 1987, and the date of the enactment of such Amendments, an institution that became a bank as a result of the enactment of such Amendments, that company shall, upon the enactment of such Amendments, immediately come into compliance with the requirements of this Act.]

The Board is authorized, upon application by a [bank holding company] *financial services holding company*, to extend the two-year period referred to in paragraph (2) above from time to time as to such [bank holding company] *financial services holding company* for not more than one year at a time, if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall in the aggregate exceed three years. Notwithstanding any other provision of this Act, the period ending December 31, 1980, referred to in paragraph (2) above, may be extended by the Board of Governors to December 31, 1984, but only for the divestiture by a bank holding company of real estate or interests in real estate lawfully acquired for investment or development. In making its decision whether to grant such extension, the Board shall consider whether the company has made a good faith effort to divest such interests and whether such extension is necessary to avert substantial loss to the company.

(b) [After two years from the date of enactment of this Act, no] *No* certificate evidencing shares of any bank holding company shall bear any statement purporting to represent shares of any other company except a bank or a bank holding company, nor shall the ownership, sale, or transfer of shares of any bank holding company be conditioned in any manner whatsoever upon the ownership, sale, or transfer of shares of any other company except a bank or a bank holding company.

(c) The prohibitions in this section shall not apply to (i) any company that was on January 4, 1977, both a [bank holding company] *financial services holding company* and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of the Internal Revenue Code of 1954, or to any labor, agricultural, or horticultural organization to which all or substantially all of the assets of such company are hereafter transferred, or (ii) a company

covered in 1970 more than 85 per centum of the voting stock of which was collectively owned on June 30, 1968, and continuously thereafter, directly or indirectly, by or for members of the same family, or their spouses, who are lineal descendants of common ancestors; and such prohibitions shall not, with respect to any other [bank holding company] *financial services holding company*, apply to—

(1) * * *

(2) shares acquired by a [bank holding company] *financial services holding company* or any of its subsidiaries in satisfaction of a debt previously contracted in good faith, but such shares shall be disposed of within a period of two years from the date on which they were acquired, except that the Board is authorized upon application by such [bank holding company] *financial services holding company* to extend such period of two years from time to time as to such holding company for not more than one year at a time if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall extend beyond a date five years after the date on which such shares were acquired;

(3) shares acquired by such [bank holding company] *financial services holding company* from any of its subsidiaries which subsidiary has been requested to dispose of such shares by any Federal or State authority having statutory power to examine such subsidiary, but such [bank holding company] *financial services holding company* shall dispose of such shares within a period of two years from the date on which they were acquired;

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(7) shares of an investment company which is not a [bank holding company] *financial services holding company* and which is not engaged in any business other than investing in securities, which securities do not include more than 5 per centum of the outstanding voting shares of any company;

(8) [shares of any company the activities of which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto, but for purposes of this subsection it is not closely related to banking or managing or controlling banks for a bank holding company to provide] *shares of any company the activities of which the Board after due notice has determined (by order, regulation, or advisory opinion) to be financial in nature or incidental to such financial activities. In determining whether an activity is financial in nature or incidental to financial activities, the Board shall take into account changes or reasonably expected changes in the marketplace in which financial services holding companies compete as well as changes or reasonably expected changes in the technology by which these services are delivered. In addition, the Board shall take into account activities considered financial activities or banking or financial operations for purposes of the regulation of the Board designated as "Regulation K" (12 C.F.R. 211.23 (f)(5)(iii)(B)) as in effect on the date of the enactment of the Financial Services Competitiveness*

Act of 1995. Any activity that the Board has determined, by order or regulation that is in effect on such date to be so closely related to banking or managing or controlling banks as to be a proper incident thereto shall be deemed to be of a financial nature for purposes of this paragraph without further action by the Board (subject to the same terms and conditions contained in such order or regulation, unless modified by the Board), but for purposes of this subsection it shall not be closely related to banking or managing or controlling banks or financial in nature or incidental to a financial activity for a financial services holding company to provide insurance as a principal, agent, or broker except (A) where the insurance is limited to assuring repayment of the outstanding balance due on a specific extension of credit by a [bank holding company] *financial services holding company* or its subsidiary in the event of the death, disability, or involuntary unemployment of the debtor; (B) in the case of a finance company which is a subsidiary of a [bank holding company] *financial services holding company*, where the insurance is also limited to assuring repayment of the outstanding balance on an extension of credit in the event of loss or damage to any property used as collateral on such extention of credit and, during the period beginning on the date of the enactment of this subparagraph and ending on December 31, 1982, such extension of credit is not more than $10,000 ($25,000 in the case of an extension of credit which is made to finance the purchase of a residential manufactured home and which is secured by such residential manufactured home) and for any given year after 1982, such extension of credit is not more than an amount equal to $10,000 ($25,000 in the case of an extension of credit which is made to finance the purchase of a residential manufactured home and which is secured by such residential manufactured home) increased by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published monthly by the Bureau of Labor Statistics for the period beginning on January 1, 1982, and ending on December 31 of the year preceding the year in which such extension of credit is made; (C) any insurance agency activity in a place that (i) has a population not exceeding five thousand (as shown by the last preceding decennial census), or (ii) the [bank holding company] *financial services holding company*, after notice and opportunity for a hearing, demonstrates has inadequate insurance agency facilities; (D) any insurance agency activity which was engaged in by the [bank holding company] *financial services holding company* or any of its subsidiaries on May 1, 1982, or which the Board approved for such company or any of its subsidiaries on or before May 1, 1982, including (i) sales of insurance at new locations of the same [bank holding company] *financial services holding company* or the same subsidiary or subsidiaries with respect to which insurance was sold on May 1, 1982, or approved to be sold on or before May 1, 1982, if such new locations are confined to the State in which the principal place of business of the [bank holding company] *financial services holding company* is located, any State or States immediately adjacent to such State,

and any State or States in which insurance activities were conducted by the [bank holding company] *financial services holding company* or any of its subsidiaries on May 1, 1982, or were approved to be conducted by the [bank holding company] *financial services holding company* or any of its subsidiaries on or before May 1, 1982, and (ii) sales of insurance coverages which may become available after May 1, 1982, so long as those coverages insure against the same types of risks as, or are otherwise functionally equivalent to, coverages sold on May 1, 1982, or approved to be sold on or before May 1, 1982 (for purposes of this subparagraph, activities engaged in or approved by the Board on May 1, 1982, shall include activities carried on subsequent to that date as the result of an application to engage in such activities pending on May 1, 1982, and approved subsequent to that date or of the acquisition by such company pursuant to a binding written contract entered into on or before May 1, 1982, of another company engaged in such activities at the time of the acquisition); (E) any insurance activity where the activity is limited solely to supervising on behalf of insurance underwriters the activities of retail insurance agents who sell (i) fidelity insurance and property and casualty insurance on the real and personal property used in the operations of the [bank holding company] *financial services holding company* or any of its subsidiaries, and (ii) group insurance that protects the employees of the [bank holding company] *financial services holding company* or any of its subsidiaries; (F) any insurance agency activity engaged in by a [bank holding company] *financial services holding company*, or any of its subsidiaries, which [bank holding company] *financial services holding company* has total assets of $50,000,000 or less: *Provided, however*, That such a [bank holding company] *financial services holding company* and its subsidiaries may not engage in the sale of life insurance or annuities except as provided in subparagraph (A), (B), or (C); or (G) where the activity is performed, or shares of the company involved are owned, directly or indirectly, by a [bank holding company] *financial services holding company* which is registered with the Board of Governors of the Federal Reserve System and which, prior to January 1, 1971, was engaged, directly or indirectly, in insurance agency activities as a consequence of approval by the Board prior to January 1, 1971. [In determining whether a particular activity is a proper incident to banking or managing or controlling banks the Board shall consider whether its performance by an affiliate of a holding company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.] In orders and regulation under this subsection, the Board may differentiate between activities commenced de novo and activities commenced by the acquisition, in whole or in part, of a going concern *and between activities commenced by affiliates of different classes of banks*. Notwithstanding any other provision of this Act, if the Board

finds that an emergency exists which requires the Board to act immediately on any application under this subsection involving a thrift institution, and the primary Federal regulator of such institution concurs in such finding, the Board may dispense with the notice and hearing requirement of this subsection and the Board may approve or deny any such application without notice or hearing. If an application is filed under this paragraph in connection with an application to make an acquisition pursuant to section 13(f) of the Federal Deposit Insurance Act, the Board may dispense with the notice and hearing requirement of this paragraph and the Board may approve or deny the application under this paragraph without notice or hearing. If an application described in the preceding sentence is approved, the Board shall publish in the Federal Register, not later than 7 days after such approval is granted, the order approving the application and a description of the nonbanking activities involved in the acquisition;

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(10) shares lawfully acquired and owned prior to May 9, 1956, by a bank which is a [bank holding company] *financial services holding company*, or by any of its wholly owned subsidiaries;

(11) shares owned directly or indirectly by a company covered in 1970 in a company which does not engage in any activities other than those in which the [bank holding company] *financial services holding company*, or its subsidiaries, may engage by virtue of this section, but nothing in this paragraph authorizes any [bank holding company] *financial services holding company*, or subsidiary thereof, to acquire any interest in or the assets of any going concern (except pursuant to a binding written contract entered into before June 30, 1968, or pursuant to another provision of this Act) other than one which was a subsidiary on June 30, 1968;

(12) shares retained or acquired, or activities engaged in, by any company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on the date of such enactment, or by any subsidiary thereof, if such company—

(A) within the applicable time limits prescribed in subsection (a)(2) of this section (i) ceases to be a [bank holding company] *financial services holding company*, or (ii) ceases to retain direct or indirect owership or control of those shares and to engage in those activities not authorized under this section; and

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(13) shares of, or activities conducted by, any company which does no business in the United States except as an incident to its international or foreign business, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this Act and would be in the public interest; [or]

(14) shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a [bank holding company] *financial services holding company* has not been disapproved by the Board pursuant to this paragraph, except that such investments, whether direct or indirect, in such shares shall not exceed 5 per centum of the [bank holding company's] *financial services holding company's* consolidated capital and surplus.

(A)(i) No [bank holding company] *financial services holding company* shall invest in an export trading company under this paragraph unless the Board has been given sixty days' prior written notice of such proposed investment and within such period has not issued a notice disapproving the proposed investment or extending for up to another thirty days the period during which such disapproval may be issued.

(ii) The period for disapproval may be extended for such additional thirty-day period only if the Board determines that a [bank holding company] *financial services holding company* proposing to invest in an export trading company has not furnished all the information required to be submitted or that in the Board's judgment any material information submitted is substantially inaccurate.

(iii) The notice required to be filed by a [bank holding company] *financial services holding company* shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

(iv) The Board may disapprove any proposed investment only if—

(I) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition, or conflicts of interest;

(II) the Board finds that such investment would affect the financial or managerial resources of a [bank holding company] *financial services holding company* to an extent which is likely to have a materially adverse effect on the safety and soundness of any subsidiary bank of such [bank holding company] *financial services holding company*, or

(III) the [bank holding company] *financial services holding company* fails to furnish the information required under clause (iii).

(v) LEVERAGE.—The Board may not disapprove any proposed investment solely on the basis of the anticipated or proposed asset-to-equity ratio of the export trading company with respect to which such investment is proposed, unless the anticipated or proposed annual average asset-to-equity ratio is greater than 20-to-1.

(vi) Within three days after a decision to disapprove an investment, the Board shall notify the [bank holding company] *financial services holding company* in writing of the

disapproval and shall provide a written statement of the basis for the disapproval.

(vii) A proposed investment may be made prior to the expiration of the disapproval period if the Board issues written notice of its intent not to disapprove the investment.

(B)(i) The total amount of extensions of credit by a [bank holding company] *financial services holding company* which invests in an export trading company, when combined with all such extensions of credit by all the subsidiaries of such [bank holding company] *financial services holding company*, to an export trading company shall not exceed at any one time 10 per centum of the [bank holding company's] *financial services holding company's* consolidated capital and surplus. For purposes of the preceding sentence, an extension of credit shall not be deemed to include any amount invested by a [bank holding company] *financial services holding company* in the shares of an export trading company.

(ii) No provision of any other Federal law in effect on October 1, 1982, relating specifically to collateral requirements shall apply with respect to any such extension of credit.

(iii) No [bank holding company] *financial services holding company* or subsidiary of such company which invests in an export trading company may extend credit to such export trading company or to customers of such export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(C) For purposes of this paragraph, an export trading company—

(i) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that any [bank holding company] *financial services holding company* which invests in such export trading company may do so under applicable Federal and State banking laws and regulations; and

* * * * * * *

(D) A [bank holding company] *financial services holding company* which invests in an export trading company may be required, by the Board, to terminate its investment or may be made subject to such limitations or conditions as may be imposed by the Board, if the Board determines that the export trading company has taken positions in commodities or commodity contracts, in securities, or in foreign exchange, other than as may be necessary in the course of the export trading company's business operations.

(E) Notwithstanding any other provision of law, an Edge Act corporation, organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611–631), which is a subsidi-

ary of a [bank holding company] *financial services holding company*, or an agreement corporation, operating subject to section 25 of the Federal Reserve Act (12 U.S.C. 601–604(a)), which is a subsidiary of a [bank holding company] *financial services holding company*, may invest directly and indirectly in the aggregate up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of a corporation not engaged in banking) in the voting stock or other evidences of ownership in one or more export trading companies.

(i) * * *

* * * * * * *

(iii) the term "[bank holding company] *financial services holding company*" shall include a bank which (I) is organized solely to do business with other banks and their officers, directors, or employees; (II) is owned primarily by the banks with which it does business; and (III) does not do business with the general public. No such other bank, owning stock in a bank described in this clause that invests in an export trading company, shall extend credit to an export trading company in an amount exceeding at any one time 10 per centum of such other bank's capital and surplus; and

* * * * * * *

(H) INVENTORY.—

(i) NO GENERAL LIMITATION.—The Board may not prescribe by regulation any maximum dollar amount limitation on the value of goods which an export trading company may maintain in inventory at any time.

(ii) SPECIFIC LIMITATION BY ORDER.—Notwithstanding clause (i), the Board may issue an order establishing a maximum dollar amount limitation on the value of goods which a particular export trading company may maintain in inventory at any time (after such company has been operating for a reasonable period of time) if the Board finds that, under the facts and circumstances, such limitation is necessary to prevent risks that would affect the financial or managerial resources of an investor [bank holding company] *financial services holding company* to an extent which would be likely to have a materially adverse effect on the safety and soundness of any subsidiary bank of such [bank holding company.] *financial services holding company; or*

(15) shares of a securities affiliate in accordance with section 10.

The Board shall include in its annual report to the Congress a description and a statement of the reasons for approval of each activity approved by it by order or regulation under such paragraph during the period covered by the report.

(d) To the extent that such action would not be substantially at variance with the purposes of this Act and subject to such condi-

tions as it considers necessary to protect the public interest, the Board by order, after opportunity for hearing, may grant exemptions from the provisions of this section to any [bank holding company] *financial services holding company* which controlled one bank prior to July 1, 1968, and has not thereafter acquired the control of any other bank in order (1) to avoid disrupting business relationships that have existed over a long period of years without adversely affecting the banks or communities involved, or (2) to avoid forced sales of small locally owned banks to purchasers not similarly representative of community interests, or (3) to allow retention of banks that are so small in relation to the holding company's total interests and so small in relation to the banking market to be served as to minimize the likelihood that the bank's powers to grant or deny credit may be influenced by a desire to further the holding company's other interests.

(e) With respect to shares which were not subject to the prohibitions of this section as originally enacted by reason of any exemption with respect thereto but which were made subject to such prohibitions by the subsequent repeal of such exemption, no [bank holding company] *financial services holding company* shall retain direct or indirect ownership or control of such shares after five years from the date of the repeal of such exemption, except as provided in paragraph (2) of subsection (a). Any [bank holding company] *financial services holding company* subject to such five-year limitation on the retention of nonbanking assets shall endeavor to divest itself of such shares promptly and such [bank holding company] *financial services holding company* shall report its progress in such divestiture to the Board two years after repeal of the exemption applicable to it and annually thereafter.

(f) CERTAIN COMPANIES NOT TREATED AS [BANK HOLDING COMPANIES] *FINANCIAL SERVICES HOLDING COMPANIES*.—

(1) IN GENERAL.—Except as provided in paragraph (9), any company which—

(A) on March 5, 1987, controlled an institution which became a bank as a result of the enactment of the Competitive Equality Amendments of 1987; and

(B) was not a bank holding company on the day before the date of the enactment of the Competitive Equality Amendments of 1987,

shall not be treated as a [bank holding company] *financial services holding company* for purposes of this Act solely by virtue of such company's control of such institution.

* * * * * * *

(3) LIMITATION ON BANKS CONTROLLED BY PARAGRAPH (1) COMPANIES.—

(A) FINDINGS.—The Congress finds that banks controlled by companies referred to in paragraph (1) may, because of relationships with affiliates, be involved in conflicts of interest, concentration of resources, or other effects adverse to bank safety and soundness, and may also be able to compete unfairly against banks controlled by [bank holding companies] *financial services holding companies* by combining banking services with financial services not per-

missible for [bank holding companies] *financial services holding companies*. The purpose of this paragraph is to minimize any such potential adverse effects or inequities by temporarily restricting the activities of banks controlled by companies referred to in paragraph (1) until such time as the Congress has enacted proposals to allow, with appropriate safeguards, all banks or [bank holding companies] *financial services holding companies* to compete on a more equal basis with banks controlled by companies referred to in paragraph (1) or, alternatively, proposals to permanently restrict the activities of banks controlled by companies referred to in paragraph (1).

(B) LIMITATIONS.—Until such time as the Congress has taken action pursuant to subparagraph (A), a bank controlled by a company described in paragraph (1) shall not—

(i) engage in any activity in which such bank was not lawfully engaged as of March 5, 1987;

(ii) offer or market products or services of an affiliate that are not permissible for [bank holding companies] *financial services holding companies* to provide under subsection (c)(8), or permit its products or services to be offered or marketed in connection with products and services of an affiliate, unless—

(I) the Board, by regulation, has determined such products and services are permissible for [bank holding companies] *financial services holding companies* to provide under subsection (c)(8);

(II) such products and services are described in section 20 of the Banking Act of 1933 and the Board, by regulation, has permitted [bank holding companies] *financial services holding companies* to offer or market such products or services, but has prohibited [bank holding companies] *financial services holding companies* and their affiliates from principally engaging in the offering or marketing of such products or services; or

* * * * * * *

(D) EXCEPTION TO RESTRICTION ON ASSET GROWTH, ACTIVITIES, AND CERTAIN CROSS-MARKETING RESTRICTIONS.—

(i) QUALIFICATION FOR EXCEPTION FROM GROWTH RESTRICTION.—A bank controlled by a company described in paragraph (1) shall not be subject to the limitation contained in subparagraph (B)(iv) if the company meets the requirements of this subparagraph and the requirements described in paragraph (14).

(ii) QUALIFICATION FOR EXCEPTION FROM ACTIVITIES RESTRICTION.—Notwithstanding subparagraph (B)(i), a bank controlled by a company described in paragraph (1) that meets the requirements of clause (i) may engage in an activity authorized under applicable law (other than an activity that would have resulted in the institution being a bank for purposes of this Act, as in effect on the day before the date of the enactment of the

Competitive Equality Banking Act of 1987, based on the activities each bank conducted on March 5, 1987, as reported to the Board) if such bank, at least 60 days before commencing such activity, has notified the Board of the bank's intention to commence such activity and either—

(I) the Board has notified such bank that the Board will not disapprove the proposed activity as unsafe or unsound; or

(II) the Board has not, within 60 days after receiving such notice, disapproved the proposal on the basis of such criteria.

(iii) QUALIFICATION FOR EXCEPTION FROM CROSS-MARKETING RESTRICTION.—Notwithstanding subparagraph (B)(ii), a bank controlled by a company described in paragraph (1) that meets the requirements of clause (i) may offer or market products or services of an affiliate or permit the bank's products or services to be offered or marketed in connection with products or services of an affiliate if such products or services are offered or marketed only to the extent permissible for banks or financial services holding companies to provide by law, regulation, or order under paragraph (8) or (15) of subsection (c).

(iv) EXCEPTION FROM DIVESTITURE REQUIREMENT FOR BANKS RESTORED TO WELL CAPITALIZED LEVEL.—If any bank controlled by a company that meets the requirements of clause (i) ceases to be well capitalized, the company shall divest control of such bank in accordance with paragraph (4) unless—

(I) within 12 months after the date the bank ceases to be well capitalized, the capital of the bank is restored to the well capitalized level; and

(II) after the end of such 12-month period, the bank remains well capitalized, subject to the capital restoration requirements in subclause (I).

(v) ACTION REQUIRED IF BANK CEASES TO BE ADEQUATELY CAPITALIZED.—If any bank controlled by a company that meets the requirements of clause (i) ceases to be adequately capitalized, the company shall, within 30 days after the date as of which the bank ceases to be adequately capitalized—

(I) execute an agreement with the Board to divest control of such bank in accordance with paragraph (4); or

(II) restore the capital of the bank to at least the adequately capitalized level.

(4) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—If any company described in paragraph (1) loses the exemption provided under such paragraph by operation of paragraph (2), such company shall divest control of each bank it controls within 180 days after such company becomes a [bank holding company] *financial services holding company* due to the loss of such exemption. *If any company described in paragraph (1)*

which meets the requirements of paragraph (3)(D)(i) fails to qualify for the exemption provided under paragraph (2), such company shall divest, in accordance with this paragraph, control of each bank the company controls unless, within 12 months after the date that the company fails to comply with the provisions of paragraph (2), the company has corrected the condition or ceased the activity that led to the failure to comply.

(5) SUBSECTION CEASES TO APPLY UNDER CERTAIN CIRCUMSTANCES.—This subsection shall cease to apply to any company described in paragraph (1) if such company—

(A) registers as a [bank holding company] *financial services holding company* under section 5(a) of this Act;

* * * * * * *

(9) TYING PROVISIONS.—A company described in paragraph (1) shall be—

(A) treated as a [bank holding company] *financial services holding company* for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 and section 22(h) of the Federal Reserve Act and any regulation prescribed under any such section; and

(B) subject to the restrictions of section 106 of the Bank Holding Company Act Amendments of 1970, in connection with any transaction involving the products or services of such company or affiliate and those of a bank affiliate, as if such company or affiliate were a bank and such bank were a subsidiary of a [bank holding company] *financial services holding company*.

* * * * * * *

(14) QUALIFICATIONS FOR COMPANIES UNDER PARAGRAPH (3)(D).—A company meets the requirements of paragraph (3)(D)(i) if—

(A) the company (based on consolidated revenues) engages in activities that are financial (including activities not authorized under subsection (c)(8)) and predominantly in—

(i) banking;

(ii) activities that the Board has determined under subsection (c)(8) to be financial in nature or incidental to such financial activities;

(iii) activities permitted under sections subparagraph (A) or (B) of section 10(a)(1); and

(iv) other activities that would be permissible for such company as a financial services holding company (other than as an investment bank holding company);

(B) all insured depository institutions controlled by such company are well capitalized and well managed;

(C) the bank and any affiliate of the bank that is engaged in securities activities described in section 10(a) comply with the safeguards contained in section 11 as if that affiliate were a securities affiliate; and

(D) the company has provided at least 60 days prior written notice to the Board and, during that period, the Board has not disapproved the proposal.

(15) CONVERSION OF CERTAIN COMPANIES TO FINANCIAL SERVICES HOLDING COMPANIES.—

(A) IN GENERAL.—During the 18-month period beginning on the date of the enactment of the Financial Services Competitiveness Act of 1995, any company described in paragraph (1) may become a financial services holding company if—

(i) the company (on a consolidated basis) engages in activities that are financial (including activities not authorized under subsection (c)(8)) and predominantly in—

(I) banking,

(II) activities that the Board has determined under subsection (c)(8) to be financial in nature or incidental to such financial activities;

(III) activities permitted under subparagraph (A) or (B) of section 10(a)(1); and

(IV) other activities that would be permissible for such company as a financial services holding company (other than an investment bank holding company);

(ii) all insured depository institutions controlled by such company are well capitalized and well managed;

(iii) the company provides written notice to the Board under sections 4 and 10 at least 60 days before the company becomes a financial services holding company; and

(iv) the Board does not object to such transaction before the end of such 60-day period.

(B) RETENTION OF FINANCIAL COMPANIES.—

(i) IN GENERAL.—Notwithstanding subsection (a), a company that becomes a financial services holding company pursuant to subparagraph (A) may retain direct or indirect ownership or control of voting shares of any company that engages solely in activities that the Board finds to be financial but which the Board has not authorized under subsection (c)(8) (and such other financial activities that the Board has authorized) if the financial services holding company acquired the shares of such company, or of each company to which such company is a successor, before January 1, 1995.

(ii) LIMITS ON EXPANSION FOLLOWING REGISTRATION.—A company that becomes a financial services holding company pursuant to this paragraph, and any company whose shares are owned or controlled by a financial services holding company pursuant to this paragraph, shall be subject to the limitations contained in paragraphs (2)(C) and (3) of section 4(k) as if the activities or shares of such company were conducted or held pursuant to section 4(k)(2).

(iii) PERIOD TO CONFORM OTHER ACTIVITIES.—Notwithstanding subsection (a), a company that becomes a financial services holding company pursuant to subparagraph (A) may retain direct or indirect ownership

or control of voting shares of any company not otherwise permitted under this section for the period provided in, and subject to the conditions contained in, paragraphs (2) and (3) of section 4(k).

(C) ELECTION FOR REDUCED SUPERVISION.—Any company that becomes a financial services holding company pursuant to subparagraph (A) may elect to be governed by the provisions of paragraphs (3), (4), (5), and (6) of section 5(g), subject to the requirements of such section, if—

(i) the company, and any insured depository institution controlled by such company, meet the requirements of section 5(g) (other than the requirements of paragraph (2)(A) of such section);

(ii) the company does not acquire more than 5 percent of the shares of any additional depository institution after the date that such company becomes a financial services holding company; and

(iii) no depository institution controlled by such company acquires, establishes, or operates an additional branch office after the date that the company becomes a financial services holding company.

(g) LIMITATIONS ON CERTAIN BANKS.—

(1) IN GENERAL.—Notwithstanding any other provision of this section (other than the last sentence of subsection (a)(2)), a [bank holding company] *financial services holding company* which controls an institution that became a bank as a result of the enactment of the Competitive Equality Amendments of 1987 may retain control of such institution if such institution does not—

(A) engage in any activity after the date of the enactment of such Amendments which would have caused such institution to be a bank (as defined in section 2(c), as in effect before such date) if such activities had been engaged in before such date; or

(B) increase the number of locations from which such institution conducts business after March 5, 1987.

(2) LIMITATIONS CEASE TO APPLY UNDER CERTAIN CIRCUMSTANCES.—The limitations contained in paragraph (1) shall cease to apply to a bank described in such paragraph at such time as the acquisition of such bank, by the [bank holding company] *financial services holding company* referred to in such paragraph, would not be prohibited under section 3(d) of this Act if—

(A) an application for such acquisition were filed under section 3(a) of this Act; and

(B) such bank were treated as an additional bank (under section 3(d)).

(h) TYING PROVISIONS.—

(1) APPLICABLE TO CERTAIN EXEMPT INSTITUTIONS AND PARENT COMPANIES.—An institution described in subparagraph (D), (F), (G), (H), (I), or (J) of section 2(c)(2) shall be treated as a bank, and a company that controls such an institution shall be treated as a [bank holding company] *financial services holding company*, for purposes of section 106 of the Bank

Holding Company Act Amendments of 1970 and section 22(h) of the Federal Reserve Act and any regulation prescribed under any such section.

(2) APPLICABLE WITH RESPECT TO CERTAIN TRANSACTIONS.—A company that controls an institution described in subparagraph (D), (F), (G), (H), (I), or (J) of section 2(c)(2) and any of such company's other affiliates, shall be subject to the tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 in connection with any transaction involving the products or services of such company or affiliate and those of such institution, as if such company or affiliate were a bank and such institution were a subsidiary of a [bank holding company] *financial services holding company*.

(i) ACQUISITION OF SAVINGS ASSOCIATIONS.—

(1) IN GENERAL.—The Board may approve an application by any [bank holding company] *financial services holding company* under subsection (c)(8) to acquire any savings association in accordance with the requirements and limitations of this section.

(2) PROHIBITION ON TANDEM RESTRICTIONS.—In approving an application by a [bank holding company] *financial services holding company* to acquire a savings association, the Board shall not impose any restriction on transactions between the savings association and its holding company affiliates, except as required under sections 23A and 23B of the Federal Reserve Act or any other applicable law.

(3) ACQUISITION OF INSOLVENT SAVINGS ASSOCIATIONS.—

(A) IN GENERAL.—Notwithstanding any other provision of this Act, any qualified savings association which became a federally chartered stock company in December of 1986 and which [is] *was* acquired by any bank holding company without Federal financial assistance after June 1, 1991, and before March 1, 1992, and any subsidiary of any such association, may after such acquisition continue to engage within the home State of the qualified savings association in insurance agency activities in which any Federal savings association (or any subsidiary thereof) may engage in accordance with the Home Owners' Loan Act and regulations pursuant to such Act if the qualified savings association or subsidiary thereof was continuously engaged in such activity from June 1, 1991, to the date of the acquisition.

* * * * * * *

(j) NOTICE PROCEDURES FOR NONBANKING ACTIVITIES.—

(1) GENERAL NOTICE PROCEDURE.—

(A) NOTICE REQUIREMENT.—[No bank holding company] *Except as provided in paragraph (3) or section 10(b)(3), no financial services holding company* may engage in any nonbanking activity or acquire or retain ownership or control of the shares of a company engaged in activities based on [subsection (c)(8) or (a)(2)] *subsection (a)(2), (c)(8), (c)(15), or (k)* without providing the Board with written notice of the proposed transaction or activity at least 60 days

before the transaction or activity is proposed to occur or commence.

(B) CONTENTS OF NOTICE.—The notice submitted to the Board shall contain such information as the Board shall prescribe by regulation or by specific request in connection with a particular notice.

(C) PROCEDURE FOR AGENCY ACTION.—

(i) * * *

(ii) EXTENSION OF PERIOD.—The Board may extend the 60-day period referred to in clause (i) for an additional 30 days. The Board may further extend the period with the agreement of the [bank holding company] *financial services holding company* submitting the notice pursuant to this subsection.

* * * * * * *

(E) EXTENSION OF PERIOD.—In the case of any notice to engage in, or to acquire or retain ownership or control of shares of any company engaged in, any activity pursuant to [subsection (c)(8) or (a)(2)] *subsection (a)(2), (c)(8), (c)(15), or (k)* that has not been previously approved by regulation, the Board may extend the notice period under this subsection for an additional 90 days. [The Board may further extend the period with the agreement of the bank holding company submitting the notice pursuant to this subsection.] *In no event may the Board, without the agreement of the financial services holding company submitting the notice, extend the notice period under this subparagraph beyond the period that ends 180 days after the date that a notice is filed with the Board or the relevant Federal reserve bank in accordance with the regulations of the Board.*

(2) GENERAL STANDARDS FOR REVIEW.—

(A) CRITERIA.—In connection with a notice under this subsection, the Board shall consider whether performance of the activity by a [bank holding company] *financial services holding company* or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(B) CRITERIA FOR NOTICES INVOLVING SECURITIES AFFILIATES.—In considering any notice that involves the acquisition of shares of a securities affiliate pursuant to section 4(c)(15), the Board shall apply the criteria and safeguards contained in this paragraph and in sections 10 and 11.

[(B)] *(C)* GROUNDS FOR DISAPPROVAL.—The Board may deny any proposed transaction or activity for which notice has been submitted pursuant to this subsection if the [bank holding company] *financial services holding company* submitting such notice neglects, fails, or refuses to furnish the Board all the information required by the Board.

[(C)] *(D)* CONDITIONAL ACTION.—Nothing in this subsection limits the authority of the Board to impose conditions in connection with an action under this section.

(3) NO NOTICE REQUIRED FOR CERTAIN TRANSACTIONS.—Notwithstanding paragraph (1), no notice under subsection (c)(8) or (a)(2)(B) is required for a proposal by a financial services holding company to engage in any activity (other than an activity described in subparagraph (A) or (B) of section 10(a)(1)) or acquire or retain the shares or assets of any company (other than a securities affiliate) if the proposal qualifies under paragraph (4).

(4) CRITERIA FOR STATUTORY APPROVAL.—A proposal qualifies under this paragraph if all of the following criteria are met:

(A) FINANCIAL CRITERIA.—Both before and immediately after the proposed transaction—

(i) the acquiring financial services holding company is well capitalized;

(ii) the lead depository institution of such holding company is well capitalized;

(iii) well capitalized depository institutions control at least 80 percent of the aggregate total risk-weighted assets of depository institutions controlled by such holding company; and

(iv) no depository institution controlled by such holding company is undercapitalized.

(B) MANAGERIAL CRITERIA.—

(i) WELL MANAGED.—At the time of the transaction, the acquiring financial services holding company, the lead depository institution of such holding company, and depository institutions that control at least 80 percent of the aggregate total risk-weighted assets of depository institutions controlled by such holding company are well managed.

(ii) LIMITATION ON POORLY MANAGED INSTITUTIONS.—No depository institution which is controlled by the acquiring financial services holding company has received any of the lowest 2 composite ratings at the later of the institution's most recent examination or subsequent review.

(iii) RECENTLY ACQUIRED INSTITUTIONS.—Depository institutions acquired by the financial services holding company during the 12-month period ending on the date of the proposed transaction may be excluded for purposes of clause (ii) if—

(I) the financial services holding company has developed a plan acceptable to the appropriate Federal banking agency for the institution to restore the capital and management of the institution; and

(II) all such depository institutions represent, in the aggregate, less than 25 percent of the total risk-weighted assets of all depository institutions controlled by the financial services holding company.

(C) ACTIVITIES PERMISSIBLE.—Following consummation of the proposed transaction, the financial services holding company engages directly or through a subsidiary solely in—

(i) activities that are permissible under subsection (c)(8), as determined by the Board by any regulation, order, or advisory opinion under such subsection that is in effect at the time of the proposed transaction, subject to all of the restrictions, terms, and conditions of such subsection and such regulation, order, or advisory opinion; and

(ii) such other activities as are otherwise permissible under this Act, subject to the restrictions, terms and conditions, including any prior notice or approval requirements, provided in this Act.

(D) SIZE OF ACQUISITION.—

(i) ASSET SIZE.—The book value of the total risk-weighted assets acquired does not exceed 10 percent of the consolidated total risk-weighted assets of the acquiring financial services holding company.

(ii) CONSIDERATION.—The gross consideration to be paid for the securities or assets does not exceed 15 percent of the consolidated tier 1 capital of the acquiring financial services holding company.

(E) NOTICE NOT OTHERWISE WARRANTED.—For proposals described in paragraph (5)(B), the Board has not, before the conclusion of the period described in such paragraph, advised the financial services holding company that a notice under paragraph (1) is required.

(5) NOTIFICATION.—

(A) COMMENCEMENT OF ACTIVITIES APPROVED BY RULE.—A financial services holding company that qualifies under paragraph (4) and proposes to engage de novo, directly or through a subsidiary, in any activity that is permissible under subsection (c)(8), as determined by the Board by regulation, may commence that activity without prior notice to the Board.

(B) SUBSEQUENT NOTICE.—A financial services holding company that commences an activity under subsection (c)(8) without prior notice to the Board shall provide written notice to the Board no later than 10 business days after commencing the activity.

(C) ACTIVITIES PERMITTED BY ORDER AND ACQUISITIONS.—

(i) IN GENERAL.—At least 12 business days prior to commencing any activity (other than an activity described in subparagraph (A)) or acquiring shares or assets of any company in a proposal that qualifies under paragraph (4), the financial services holding company shall provide written notice to the Board of the proposal, unless the Board determines that no notice or a shorter notice period is appropriate.

(ii) DESCRIPTION OF PROPOSED ACTIVITIES.—A notice under clause (i) shall include a description of the pro-

posed activities and the terms of any proposed acquisition.

(6) ADJUSTMENT OF AMOUNTS.—The Board may, by regulation, adjust the amounts and the manner in which the percentage of depository institutions is calculated under subparagraph (B)(i), (B)(iii)(II), or (D) of paragraph (4) if the Board determines that any such adjustment is consistent with safety and soundness and the purposes of this Act.

(7) EXPEDITED PROCEDURE FOR NEW ACTIVITIES.—

(A) EXPEDITED PREACQUISITION REVIEW.—After the end of the 12-day period referred to in paragraph (5)(C) and subject to any final ruling under subparagraph (B), a financial services holding company may acquire a company engaged in activities that the company believes are financial in nature for purposes of subsection (c)(8) and that the Board has not previously reviewed under such subsection if—

(i) the proposal qualifies under all of the criteria in paragraph (4) other than paragraph (4)(C);

(ii) the financial services holding company provides the notice required under paragraph (5)(C), and includes with such notice an explanation of the facts and circumstances that provide a reasonable basis for concluding that the proposed activities are financial in nature or incidental to such financial activities; and

(iii) before the end of such 12-day period, the Board has not—

(I) required a notice under paragraph (1) with respect to the proposed transaction; or

(II) advised the financial services holding company that the company has failed to provide a reasonable basis for concluding that the proposed activities are financial in nature or incidental to such financial activities.

(B) POSTACQUISITION REVIEW.—

(i) NOTICE PROCEDURE.—A financial services holding company which is permitted to make an acquisition under this paragraph shall file a notice with the Board in accordance with paragraph (1) before the end of the 30-day period beginning on the date of the consummation of the acquisition.

(ii) LIMITED REVIEW.—The Board's review of a postconsummation notice required under this subparagraph shall be limited to determining whether the proposed activities are permissible under subsection (c)(8), including whether the proposal meets the criteria in paragraph (2)(A).

(iii) CONDITIONAL ACTION.—No provision of this paragraph shall be construed as limiting in any way the authority of the Board under this section to impose conditions on the conduct of any activity or the ownership of any company.

(iv) DIVESTITURE OF IMPERMISSIBLE ACTIVITIES.—If the Board determines that any proposed activity is not permissible under subsection (c)(8), the financial serv-

ices holding company shall terminate the activity or divest the company acquired in reliance on this paragraph before the end of the 2-year period beginning on the date of such determination.

(C) INITIAL DECISION NOT PREJUDICIAL TO SUBSEQUENT DETERMINATION.—A decision by the Board under subparagraph (A) not to require a notice under paragraph (1) during the 12-day period referred to in such subparagraph shall not prejudice the Board's decision under subparagraph (B).

(k) OWNERSHIP OF SHARES OF CERTAIN COMPANIES BY FINANCIAL SERVICES HOLDING COMPANIES.—

(1) NONCONFORMING FINANCIAL COMPANIES.—Notwithstanding section 4(a), a financial services holding company may retain direct or indirect ownership or control of voting shares of any company that—

(A) engages solely in activities that the Board finds to be financial but which the Board has not authorized under section 4(c)(8) (and such other financial activities that the Board has authorized) if—

(i) the financial services holding company acquired the shares of a company engaged in such activities or of each company to which the company engaged in such activities is a successor more than 2 years before the date that such financial services holding company becomes a financial services holding company;

(ii) the aggregate investment by the financial services holding company in shares of all such companies does not exceed 10 percent of the total consolidated capital and surplus of the financial services holding company as of the date that the holding company becomes a financial services holding company or as of the date of any additional investment by the financial services holding company in such shares;

(iii) more than 50 percent of the aggregate gross revenues of the financial services holding company and the subsidiaries of such holding company for each of the 2 calendar years before the date the holding company becomes a financial services holding company were attributable to securities activities described in subparagraphs (A) and (B) of section 10(a)(1), as determined without taking into account any activities (other than securities activities) in which financial services holding companies were permitted to engage before the date of the enactment of the Financial Services Competitiveness Act of 1995; and

(iv) the company engaged in such activities continues to engage only in activities that such company conducted as of the date that such financial services holding company becomes a financial services holding company (or other activities permitted under section 4(c)(8) or section 10); or

(B) engages in activities not authorized under section 4 if—

(i) the financial services holding company held the shares of any company engaged in such activities as of the date of the enactment of the Financial Services Competitiveness Act of 1995 and the financial services holding company was then exempt from the provisions of section 4 pursuant to section 4(d) as of such date;

(ii) the company engaged in such activities continues to engage only in the same general lines of business and related activities that such company conducted as of the date of the enactment of the Financial Services Competitiveness Act of 1995 (or other activities permitted under section 4(c) or section 10); and

(iii) 80 percent of the aggregate gross revenues of the financial services holding company and the subsidiaries of such holding company as of the date of the enactment of the Financial Services Competitiveness Act of 1995 was attributable to—

(I) ownership and operation of depository institutions;

(II) activities that are financial in nature as determined by the Board pursuant to section 4(c)(8);

(III) activities permissible under section 10; and

(IV) such other activities that would be permissible generally for the holding company as a financial services holding company (other than as an investment bank holding company).

(2) NONFINANCIAL COMPANIES.—

(A) IN GENERAL.—Notwithstanding section 4(a), a financial services holding company described in paragraph (1)(A)(iii) may, during the 5-year period beginning on the date that the company becomes a financial services holding company, retain direct or indirect ownership or control of voting shares of any company that the financial services holding company owns or controls on the date such holding company becomes a financial services holding company.

(B) EXTENSION OF DIVESTITURE PERIOD.—The Board may extend the period described in subparagraph (A) for an additional period not to exceed 5 years if the Board—

(i) determines that such extension is necessary to avert substantial loss to the financial services holding company; and

(ii) finds that the financial services holding company has made good faith efforts to divest such shares.

(C) NO EXPANSION OF NONFINANCIAL COMPANIES PRIOR TO DIVESTITURE.—Unless an acquisition or activity is permitted in accordance with section 3 or 4(c)—

(i) no financial services holding company, and no company whose shares are owned or controlled by a financial services holding company in accordance with this paragraph, may acquire any interest in or assets of any other company, and

(ii) no company whose shares are owned or controlled by a financial services holding company pursuant to this paragraph may engage directly or indirectly

in any activity that the company did not conduct on the day before the financial services holding company registered as a financial services holding company.

(3) RESTRICTIONS ON JOINT MARKETING.—No depository institution (and no subsidiary of such institution) shall—

(A) offer or market, directly or indirectly through any arrangement, any product or service of any affiliate whose shares are owned or controlled by the financial services holding company pursuant to this subsection or section 10(j); or

(B) permit any of such depository institution's or subsidiary's products or services to be offered or marketed, directly or indirectly through any arrangement, by or through any affiliate whose shares are owned or controlled by the financial services holding company pursuant to this subsection or section 10(j),

unless, in a case involving an affiliate held under this subsection, the product or service is permissible for financial services holding companies to provide under section 4(c)(8) or 10.

(4) DEPOSITORY INSTITUTION DEFINED.—For purposes of paragraph (3), the term "depository institution" includes a foreign bank.

ADMINISTRATION

SEC. 5. (a) [Within one hundred and eighty days after the date of enactment of this Act, or within] *Within* one hundred and eighty days after becoming a [bank holding company] *financial services holding company*, [whichever is later,] each [bank holding company] *financial services holding company* shall register with the Board on forms prescribed by the Board, which shall include such information with respect to the financial condition and operations, management, and intercompany relationships of the [bank holding company] *financial services holding company* and its subsidiaries, and related matters, as the Board may deem necessary or appropriate to carry about the purposes of this Act. The Board may, in its discretion, extend the time within which a [bank holding company] *financial services holding company* shall register and file the requisite information.

(b) The Board is authorized to issue such regulations and orders as may be necessary to enable it to administer and carry out the purposes of this Act, *including the protection of depository institutions and the separation of banking and commerce,* and prevent evasions thereof.

[(c) The Board from time to time may require reports under oath to keep it informed as to whether the provisions of this Act and such regulations and orders issued thereunder have been complied with; and the Board may make examinations of each bank holding company and each subsidiary thereof, the cost of which shall be assessed against, and paid by, such holding company. The Board shall, as far as possible, use the reports of examinations made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority for the purposes of this section.]

(c) REPORTS AND EXAMINATIONS.—

(1) PURPOSES.—

(A) IN GENERAL.—The purpose of this subsection is to authorize the Board, through reports and examinations, to gather information from a financial services holding company and the subsidiaries of any such holding company regarding the structure, activities, and financial condition of the financial services holding company and such subsidiaries so that the Board can monitor risks within the holding company system that could adversely affect any depository institution subsidiary of the holding company and may monitor and enforce compliance with this Act.

(B) PURPOSE NOT TO IMPOSE ADDITIONAL BURDENS ON HOLDING COMPANIES.—It is the intended purpose of this subsection that the Board shall—

(i) exercise the Board's authority to collect information under this section in a manner that is the least burdensome to financial services holding companies and the subsidiaries of such companies; and

(ii) rely, to the fullest extent possible, on reports prepared for and examinations conducted by or for other Federal and State supervisors.

(C) PURPOSE TO REQUIRE CAREFULLY TAILORED EXAMINATIONS.—It is the intended purpose of this subsection that the Board shall tailor the focus and scope of any examination under this section to a financial services holding company or to any subsidiary of such company which, because of financial conditions, activities, operations of such subsidiary, the transactions between such subsidiary and other affiliates, or the size of any such subsidiary poses a potential material risk to a depository institution subsidiary of such holding company.

(2) REPORTS.—

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

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

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

(B) USE OF EXISTING REPORTS.—

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

(ii) AVAILABILITY.—A financial services holding company or a subsidiary of such company shall provide to

the Board, at the request of the Board, a report referred to in clause (i).

(3) EXAMINATIONS.—

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

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

(ii) inform the Board of the—

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

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

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

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

(i) the holding company; and

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

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

(D) DEFERENCE TO OTHER EXAMINATIONS.—The Board shall, to the fullest extent possible, use the reports of examination made of—

(i) any registered broker or dealer by or on behalf of the Securities Exchange Commission, and

(ii) any other subsidiary that the Board finds to be comprehensively supervised under relevant Federal or State law by a Federal or state agency or authority.

(E) CONFIDENTIALITY OF REPORTED INFORMATION.—

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

(ii) COMPLIANCE WITH REQUESTS FOR INFORMATION.—No provision of this subparagraph shall be construed as authorizing the Board to withhold information from Congress, or preventing the Board from complying with a request for information from any other Federal department or agency for purposes within the scope of such department's or agency's jurisdiction, or from complying with an order of a court of competent jurisdiction in an action brought by the United States or the Board.

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

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

(F) COSTS.—The cost of any examination conducted by the Board under this section may be assessed against, and made payable by, such holding company.

* * * * * * *

(e)(1) Notwithstanding any other provision of this Act, the Board may, whenever it has reasonable cause to believe that the continuation by a [bank holding company] *financial services holding company* of any activity or of ownership or control of any of its nonbank subsidiaries, other than a nonbank subsidiary of a bank, constitutes a serious risk to the financial safety, soundness, or stability of a [bank holding company] *financial services holding company* subsidiary bank and is inconsistent with sound banking principles or with the purposes of this Act or with the Financial Institutions Supervisory Act of 1966, order the [bank holding company] *financial services holding company* or any such nonbank subsidiaries, after due notice and opportunity for hearing, and after considering the views of the bank's primary supervisor, which shall be the Comptroller of the Currency in the case of a national bank or the Federal Deposit Insurance Corporation and the appropriate State supervisory authority in the case of an insured nonmember bank, to terminate such activities or to terminate (within one hundred and twenty days or such longer period as the Board may direct in unusual circumstances) its ownership or control of any such subsidiary either by sale or by distribution of the shares of the subsidiary to the shareholders of the [bank holding company] *financial services holding company*. Such distribution shall be pro rata with respect to all of the shareholders of the distributing [bank

holding company] *financial services holding company*, and the holding company shall not make any charge to its shareholders arising out of such a distribution.

* * * * * * *

(g) REDUCED SUPERVISION OF COMPANIES CONTROLLING PRINCIPALLY NONDEPOSITORY INSTITUTIONS.—

(1) ELECTION.—

(A) IN GENERAL.—Any financial services holding company that qualifies under paragraph (2) may make an election to be governed by the approval, capital, reporting and examination requirements of paragraphs (3), (4), (5) and (6) by—

(i) filing a written notice of such election with the Board; and

(ii) if applicable, providing a written guarantee to the Federal Deposit Insurance Corporation pursuant to paragraph (2).

(B) EFFECTIVE PERIOD OF ELECTION.—An election under subparagraph (A) shall remain in effect—

(i) so long as the financial services holding company continues to qualify under paragraph (2); or

(ii) until the financial services holding company revokes the election.

(2) CRITERIA FOR ELECTION.—A financial services holding company may make an election under paragraph (1) if the company meets all of the following criteria:

(A) COMPANY PRINCIPALLY CONTROLS NONDEPOSITORY COMPANIES.—

(i) FINANCIAL SERVICES HOLDING COMPANIES WITH DEPOSITORY INSTITUTIONS.—In the case of a financial services holding company (other than an investment bank holding company), the consolidated total risk-weighted assets of all depository institutions and foreign banks (as defined in section 1(b)(7) of the International Banking Act of 1978) controlled by the financial services holding company—

(I) constitute less than 10 percent of the consolidated total risk-weighted assets of such company; and

(II) are less than $5,000,000,000.

(ii) INVESTMENT BANK HOLDING COMPANIES.—In the case of an investment bank holding company, the consolidated total risk-weighted assets of all wholesale financial institutions controlled by the investment bank holding company—

(I) constitute less than 25 percent of the consolidated total risk-weighted assets of such company; and

(II) are less than $15,000,000,000.

(iii) INFLATION ADJUSTMENT.—The dollar limitation contained in clauses (i)(II) and (ii)(II) shall be adjusted annually after December 31, 1995, by the annual percentage increase in the Consumer Price Index for

Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

(iv) AUTHORITY TO INCREASE LIMITS.—The Board may increase any the percentages referred to in clauses (i)(I) and (ii)(I) and the dollar amounts described in clauses (i)(II) and (ii)(II) as the Board may determine to be appropriate.

(B) WELL CAPITALIZED INSTITUTIONS.—Each depository institution controlled by the financial services holding company is well capitalized.

(C) WELL MANAGED INSTITUTIONS.—

(i) IN GENERAL.—Each depository institution controlled by the financial services holding company received a CAMEL composite rating of 1 or 2 (or an equivalent rating under an equivalent rating system) in the most recent examination of such institution.

(ii) EXCLUSION FOR NEWLY ACQUIRED INSTITUTIONS.—A depository institution acquired by a financial services holding company during the 12-month period ending on the date of the election by such company under paragraph (1) may be excluded for purposes of clause (i) if the financial services holding company has developed a plan acceptable to the appropriate Federal banking agency (for such institution) to restore the capital and management of the institution.

(D) HOLDING COMPANY GUARANTEE.—

(i) IN GENERAL.—The financial services holding company provides a written guarantee acceptable to the Federal Deposit Insurance Corporation to maintain the capital levels of each insured depository institution controlled by the financial services holding company at not less than the levels required for such institution to remain well capitalized.

(ii) LIMITATION ON LIABILITY.—The liability of a financial services holding company under a guarantee provided under this subparagraph shall not exceed an amount equal to 10 percent of the total risk-weighted assets of the insured depository institution, measured as of the date that the institution becomes under capitalized.

(iii) DURATION OF GUARANTEE.—Notwithstanding paragraph (1), a financial services holding company that has elected treatment under this subsection shall continue to be bound by the guarantee made under this subsection until released in accordance with this subparagraph.

(iv) RELEASE FROM LIABILITY.—The Board shall release a financial services holding company from the guarantee applicable with respect to any depository institution subsidiary of such company—

(I) upon the written request of the financial services holding company to revoke the company's election under paragraph (1) if the Board determines that each depository institution controlled by the

financial services holding company is well capitalized and well managed at the time of such revocation;

(II) in the case of a financial services holding company which no longer meets the requirements of subparagraph (A), upon a determination by the Board that each depository institution controlled by the financial services holding company is well capitalized and well managed;

(III) upon the written request of the financial services holding company following the divestiture of control of the depository institution in a transaction that does not require Federal assistance if the Board determines that, immediately following the divestiture, the depository institution is or will be well capitalized; or

(IV) upon a determination by the Board, after consultation with the Federal Deposit Insurance Corporation, that, subject to the limit on liability provided in clause (ii), the financial services holding company has fully performed under the guarantee.

(E) RESPONSIVENESS TO COMMUNITY NEEDS.—The lead insured depository institution subsidiary of the financial services holding company and insured depository institutions controlling at least 80 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by the financial services holding company have achieved a "satisfactory record of meeting community credit needs", or better, during the most recent examination of such insured depository institutions.

(3) NO NOTICE OR APPROVAL REQUIRED FOR CERTAIN PURPOSES UNDER PARAGRAPHS (8), (13), OR (15) OF SECTION 4(C).—

(A) IN GENERAL.—Notwithstanding paragraphs (8), (13), and, in the case of an investment bank holding company, (15) of section 4(c), a financial services holding company that has in effect an election under paragraph (1), and any subsidiary of such holding company, may, without prior notice to, or the approval of, the Board under paragraph (8), (13), or, in the case of an investment bank holding company, (15) of section 4(c), engage de novo in any activity, or acquire shares of any company engaged in any activity, if—

(i) the Board has determined, by order or regulation in effect at the time the company or subsidiary commences to engage in such activity or acquire such shares, that the activity is permissible for a financial services holding company or a subsidiary of such company to engage in under paragraph (8) or (13) of section 4(c) (and regulations prescribed under such paragraphs); and

(ii) the activity is conducted in compliance with all conditions and limitations applicable to such activity

under any regulation, order, or advisory opinion prescribed or issued by the Board.

(B) SUBSEQUENT NOTICE.—A financial services holding company that commences to engage in an activity, or makes an acquisition, in accordance with subparagraph (A) shall inform the Board of such fact, in writing, not later than 10 days after commencing the activity or consummating the acquisition.

(4) CAPITAL.—

(A) IN GENERAL.—The Board shall not (by regulation or order), directly or indirectly, establish or apply minimum capital requirements to a financial services holding company which has in effect an election under paragraph (1) unless the Board concludes, on the basis of all information available to the Board, that the financial services holding company is not maintaining sufficient financial resources to meet fully any guarantee required under paragraph (2).

(B) CRITERIA FOR CONSIDERATION.—For purposes of making a determination under subparagraph (A), the Board shall consider, in addition to any other relevant considerations, the financial condition and the adequacy of the capital of each of the depository institutions controlled by the financial services holding company.

(5) REPORTS.—

(A) IN GENERAL.—The reporting requirements contained in subsection (c)(2) shall apply to a financial services holding company which qualifies under this subsection, to the extent provided by the Board.

(B) EXEMPTIONS FROM REPORTING REQUIREMENTS.—

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

(ii) CRITERIA FOR CONSIDERATION.—In granting any exemption under clause (i), the Board shall consider, among other factors—

(I) whether information of the type required under this paragraph is available from a supervisory agency (as defined in section 1101(7) of the Right to Financial Privacy Act of 1978), the Commodity Futures Trading Commission, or a foreign regulatory body of a similar type;

(II) the primary business of the company; and

(III) the nature and extent of domestic or foreign regulations of the company's activities.

(6) EXAMINATIONS.—

(A) LIMITED USE OF EXAMINATION AUTHORITY FOR FINANCIAL SERVICES HOLDING COMPANIES.—The Board shall not examine, under this section, any financial services holding company described in paragraph (2)(A)(i) for which an election is in effect under paragraph (1) or any subsidiary

(other than a depository institution) of such holding company unless—

(i) the Board determines, on the basis of all information available to the Board, that—

(I) the operations or activities of the financial services holding company or any subsidiary of such company, or any transaction involving such company or subsidiary and an affiliated depository institution, may pose a material risk to the safety and soundness of any depository institution owned by such holding company; or

(II) the financial services holding company does not appear to have sufficient resources to meet the guarantee required under paragraph (2); or

(ii) the Board is unable to accomplish the purposes described in subsection (c)(3)(A) without such examinations.

(B) LIMITED USE OF EXAMINATION AUTHORITY FOR INVESTMENT BANK HOLDING COMPANIES.—The Board shall not examine, under this section, any investment bank holding company described in paragraph (2)(A)(ii) which has an election in effect under paragraph (1) or any subsidiary (other than a depository institution) of such holding company unless—

(i) the Board determines that the operations or activities of the investment bank holding company or any subsidiary of such company, or any transaction involving such company or subsidiary and an affiliated depository institution, may pose a material risk to the safety and soundness of any depository institution owned by such holding company; or

(ii) the Board is unable to determine from reports the nature of the operations, financial condition, activities, or effectiveness of the risk management systems of the investment bank holding company or any subsidiary of such company, or to assess compliance with the provisions of this Act and those governing transactions and relationships between any depository institution controlled by the investment bank holding company and the investment bank holding company or any of such subsidiaries.

(C) RESTRICTED FOCUS AND DEFERENCE IN EXAMINATIONS.—The Board shall limit the focus and scope of any examination, under this section, of a financial services holding company or investment bank holding company for which an election is in effect under paragraph (1) or of any subsidiary (other than a depository institution) of such holding company and shall defer to examinations conducted by the Securities Exchange Commission or other supervisors in accordance with subparagraphs (B), (C), and (D) of subsection (c)(3).

SEC. 6. CONVERSION OF UNITARY SAVINGS AND LOAN HOLDING COMPANIES TO FINANCIAL SERVICES HOLDING COMPANIES.

(a) STREAMLINED PROCEDURE FOR CONVERSION.—

(1) IN GENERAL.—During the 18-month period beginning on the date of the enactment of the Financial Services Competitiveness Act of 1995, no approval shall be required under section 3(a) or paragraph (8) or (13) of section 4(c) for any qualified savings and loan holding company to become a financial services holding company for any company that, both prior to January 1, 1995, and on the date of enactment of the Financial Services Competitiveness Act of 1995, is a savings and loan holding company if the requirements of paragraph (2) are met.

(2) ELIGIBILITY REQUIREMENTS.—A qualified savings and loan holding company shall be eligible to become a financial services holding company pursuant to paragraph (1) if—

(A) the company becomes a financial services holding company as the result of the conversion of a savings association controlled by such company as of the date of enactment of the Financial Services Competitiveness Act of 1995 into a bank;

(B) the company is adequately capitalized before and immediately after the conversion referred to in subparagraph (A);

(C) all depository institutions controlled by such company are well capitalized before and immediately after such conversion;

(D) all depository institutions controlled by such company are well managed before the conversion;

(E) the Board would not be prohibited under any provision of section 3(d) from approving the transaction;

(F) the activities of the company and of each subsidiary of the company comply with this Act (and regulations prescribed under this Act); and

(G) the company provides the Board with at least 30 days written notice of the proposed conversion, and, before the expiration of such 30-day period, the Board has not objected to the company becoming a financial services holding company based on the criteria contained in this subsection.

(3) QUALIFIED SAVINGS AND LOAN HOLDING COMPANY DEFINED.—For purposes of this subsection, the term "qualified savings and loan holding company" means any company which became a savings and loan holding company before January 1, 1995, and is a savings and loan holding company as of the date of the enactment of the Financial Services Competitiveness Act of 1995.

(b) LIMITED RETENTION OF EXISTING INVESTMENTS.—Any holding company which converts to a financial services holding company in accordance with subsection (a) may retain direct or indirect ownership or control of voting shares of any company as provided in, and subject to, section 4(k) if—

(1) the holding company controlled 1 or more savings associations in accordance with section 10(c)(3) of the Home Owners Loan Act before January 1, 1995, and as of the date of the enactment of the Financial Services Competitiveness Act of 1995;

(2) the investment in voting shares and the financial services holding company meet the requirements of section 4(k) (other than paragraph (1)(A)(iii) of such section); and

(3) more than 75 percent of the revenues of the financial services holding company for each of the 2 calendar years before the date such company became a financial services holding company involved securities activities described in subparagraphs (A) and (B) of section 10(a)(1) and activities that the Board has determined to be permissible under section 4(c)(8).

RESERVATION OF RIGHTS TO STATES

SEC. 7. (a) IN GENERAL.—No provision of this Act shall be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to companies, banks, [bank holding companies] *financial services holding companies*, and subsidiaries thereof.

(b) STATE TAXATION AUTHORITY NOT AFFECTED.—No provision of this Act shall be construed as affecting the authority of any State or political subdivision of any State to adopt, apply, or administer any tax or method of taxation to any bank, [bank holding company] *financial services holding company*, or foreign bank, or any affiliate of any bank, [bank holding company] *financial services holding company*, or foreign bank, to the extent that such tax or tax method is otherwise permissible by or under the Constitution of the United States or other Federal law.

(c) AFFILIATIONS AND ACTIVITIES.—No State may prohibit or limit—

(1) the affiliation of a bank or financial services holding company with a securities affiliate solely because the securities affiliate is engaged in activities described in subparagraph (A) or (B) of section 10(a)(1); or

(2) the insurance or other activities of a subsidiary of a financial services holding company solely because the financial services holding company is no longer exempt under this Act pursuant to section 4(d).

PENALTIES

SEC. 8. (a) CRIMINAL PENALTY.—

(1) Whoever knowingly violates any provision of this Act or, being a company, violates any regulation or order issued by the Board under this Act, shall be imprisoned not more than 1 year, fined not more than $100,000 per day for each day during which the violation continues, or both.

(2) Whoever, with the intent to deceive, defraud, or profit significantly, knowingly violates any provision of this Act shall be imprisoned not more than 5 years, fined not more than $1,000,000 per day for each day during which the violation continues, or both. Every officer, director, agent, and employee of a [bank holding company] *financial services holding company* shall be subject to the same penalties for false entries in any book, report, or statement of such [bank holding company] *financial services holding company* as are applicable to officers, directors, agents, and employees of member banks for false entries in any books, reports, or statements of member banks under section 1005 of title 18, United States Code.

* * * * * * *

(c) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to a [bank holding company] *financial services holding company* (including a separation caused by the deregistration of such a company) shall not affect the jurisdiction and authority of the Board to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such holding company (whether such date occurs before, on, or after the date of the enactment of this subsection).

* * * * * * *

[AMENDMENTS TO INTERNAL REVENUE CODE OF 1954

[SEC. 10. (a) Subchapter O of chapter 1 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new part:

["PART VIII—DISTRIBUTIONS PURSUANT TO BANK HOLDING COMPANY ACT OF 1956

["Sec. 1101. Distributions pursuant to Bank Holding Company Act of 1956.
["Sec. 1102. Special rules.
["Sec. 1103. Definitions.

["SEC. 1101. DISTRIBUTIONS PURSUANT TO BANK HOLDING COMPANY ACT OF 1956.

["(a) DISTRIBUTIONS OF CERTAIN NON-BANKING PROPERTY.—

["(1) DISTRIBUTIONS OF PROHIBITED PROPERTY.—If—

["(A) a qualified bank holding corporation distributes prohibited property (other than stock received in an exchange to which subsection (c)(2) applies)—

["(i) to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or

["(ii) to a shareholder, in exchange for its preferred stock; or

["(iii) to a security holder, in exchange for its securities; and

["(B) the Board has, before the distribution, certified that the distribution of such prohibited property is necessary or appropriate to effectuate section 4 of the Bank Holding Company Act of 1956,

then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

["(2) DISTRIBUTIONS OF STOCK AND SECURITIES RECEIVED IN AN EXCHANGE TO WHICH SUBSECTION (C)(2) APPLIES.—If—

["(A) a qualified bank holding corporation distributes—

["(i) common stock received in an exchange to which subsection (c)(2) applies to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or

[“(ii) common stock received in an exchange to which subsection (c)(2) applies to a shareholder, in exchange for its common stock; or

[“(iii) preferred stock or common stock received in an exchange to which subsection (c)(2) applies to a shareholder, in exchange for its preferred stock; or

[“(iv) securities or preferred or common stock received in an exchange to which subsection (c)(2) applies to a security holder, in exchange for its securities; and

[“(B) any preferred stock received has substantially the same terms as the preferred exchanged, and any securities received have substantially the same terms as the securities exchanged,

[then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

[“(3) NON PRO RATA DISTRIBUTIONS.—Paragraphs (1) and (2) shall apply to a distribution whether or not the distribution is pro rata with respect to all of the shareholders of the distributing qualified bank holding corporation.

[“(4) EXCEPTION.—This subsection shall not apply to any distributions by a corporation which has made any distribution pursuant to subsection (b).

[“(5) DISTRIBUTIONS INVOLVING GIFT OR COMPENSATION.—

[“In the case of a distribution to which paragraph (1) or (2) applies, but which—

[“(A) results in a gift, see section 2501, and following, or

[“(B) has the effect of the payment of compensation, see section 61(a)(1).

[“(b) CORPORATION CEASING TO BE A BANK HOLDING COMPANY.—

[“(1) DISTRIBUTIONS OF PROPERTY WHICH CAUSE A CORPORATION TO BE A BANK HOLDING COMPANY.—If—

[“(A) a qualified bank holding corporation distributes property (other than stock received in an exchange to which subsection (c)(3) applies)—

[“(i) to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or

[“(ii) to a shareholder, in exchange for its preferred stock; or

[“(iii) to a security holder, in exchange for its securities; and

[“(B) the Board has, before the distribution, certified that—

[“(i) such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2(a) of the Bank Holding Company Act of 1956) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank or a bank holding company before any property of the same kind was distributed under this subsection or exchanged under subsection (c)(3); and

[“(ii) the distribution is necessary or appropriate to effectuate the policies of such Act,

then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

[“(2) DISTRIBUTIONS OF STOCK AND SECURITIES RECEIVED IN AN EXCHANGE TO WHICH SUBSECTION (C)(3) APPLIES.—If—

[“(A) a qualified bank holding corporation distributes—

[“(i) common stock received in an exchange to which subsection (c)(3) applies to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or

[“(ii) common stock received in an exchange to which subsection (c)(3) applies to a shareholder, in exchange for its common stock; or

[“(iii) preferred stock or common stock received in an exchange to which subsection (c)(3) applies to a shareholder, in exchange for its preferred stock; or

[“(iv) securities or preferred or common stock received in an exchange to which subsection (c)(3) applies to a security holder, in exchange for its securities; and

[“(B) any preferred stock received has substantially the same terms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged,

then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

[“(3) NON PRO RATA DISTRIBUTIONS.—Paragraphs (1) and (2) shall apply to a distribution whether or not the distribution is pro rata with respect to all of the shareholders of the distributing qualified bank holding corporation.

[“(4) EXCEPTION.—This subsection shall not apply to any distribution by a corporation which has made any distribution pursuant to subsection (a).

[“(5) DISTRIBUTION INVOLVING GIFT OR COMPENSATION.—

[“In the case of a distribution to which paragraph (1) or (2) applies, but which—

[“(A) results in a gift, see section 2501, and following, or

[“(B) has the effect of the payment of compensation, see section 61(a)(1).

“(c) PROPERTY ACQUIRED AFTER MAY 15, 1995.—

[“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), subsection (a) or (b) shall not apply to—

[“(A) any property acquired by the distributing corporation after May 15, 1995, unless (i) gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b), or (ii) such property was received by it in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) such property was acquired by the distributing corporation in a transaction in which gain was not recognized under section 305(a) or section 332, or under section 354 with re-

spect to a reorganization described in section 368(a)(1) (E) or (F), or

[“(B) any property which was acquired by the distributing corporation in a distribution with respect to stock acquired by such corporation after May 15, 1995, unless such stock was acquired by such corporation (i) in a distribution (with respect to stock held by it on May 15, 1995, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b), or (ii) in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) in a transaction in which gain was not recognized under section 305(a) or section 332, or under section 354 with respect to a reorganization described in section 368(a)(1) (E) or (F), or

[“(C) any property acquired by the distributing corporation in a transaction in which gain was not recognized under section 332, unless such property was acquired from a corporation which, if it had been a qualified bank holding corporation, could have distributed such property under subsection (a)(1) or (b)(1).

[“(2) EXCHANGES INVOLVING PROHIBITED PROPERTY.—If—

[“(A) Any qualified bank holding corporation exchanges (i) property, which, under subsection (a) (1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except property described in subsection (b) (1) (B) (i)), for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such property;

[“(B) immediately after the exchange, the qualified bank holding corporation distributes all of such stock in a manner prescribed in subsection (a) (2) (A); and

[“(C) before such exchange, the Board has certified (with respect to the property exchanged which consists of property which, under subsection (a) (1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that the exchange and distribution are necessary or appropriate to effectuate section 4 of the Bank Holding Company Act of 1956,

then paragraph (1) shall not apply with respect to such distribution.

[“(3) EXCHANGES INVOLVING INTERESTS IN BANKS.—If—

[“(A) any qualified bank holding corporation exchanges (i) property which, under subsection (b) (1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except prohibited property), for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such property;

[“(B) immediately after the exchange, the qualified bank holding corporation distributes all of such stock in a manner prescribed in subsection (b) (2) (A); and

[“(C) before such exchange, the Board has certified (with respect to the property exchanged which consists of property which, under subsection (b) (1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that—

[“(i) such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2 (a) of the Bank Holding Company Act of 1956) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank or a bank holding company before any property of the same kind was distributed under subsection (b) (1) or exchanged under this paragraph; and

[“(ii) the exchange and distribution are necessary or appropriate to effectuate the policies of such Act,

then paragraph (1) shall not apply with respect to such distribution.

[“(d) DISTRIBUTIONS TO AVOID FEDERAL INCOME TAX.—

[“(1) PROHIBITED PROPERTY.—Subsection (a) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after May 15, 1955, to any corporation, property (other than prohibited property) as part of a plan one of the principal purposes of which is the distribution of the earnings and profits of any corporation.

[“(2) BANKING PROPERTY.—Subsection (b) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after May 15, 1955, to any corporation, property (other than property described in subsection (b) (1) (B) (i)) as part of a plan one of the principal purposes of which is the distribution of the earnings and profits of any corporation.

[“(3) CERTAIN CONTRIBUTIONS TO CAPITAL.—In the case of a distribution a portion of which is attributable to a transfer which is a contribution to the capital of a corporation, made after May 15, 1955, and prior to the date of the enactment of this part, if subsection (a) or (b) would apply to such distribution but for the fact that, under paragraph (1) or (2) (as the case may be) of this subsection, such contribution to capital is part of a plan one of the principal purposes of which is to distribute the earnings and profits of any corporation, then, notwithstanding paragraph (1) or (2), subsection (a) or (b) (as the case may be) shall apply to that portion of such distribution not attributable to such contribution to capital, and shall not apply to that portion of such distribution attributable to such contribution to capital.

[“(e) FINAL CERTIFICATION.—

[“(1) FOR SUBSECTION (a).—Subsection (a) shall not apply with respect to any distribution by a corporation unless the Board certifies that, before the expiration of the period per-

mitted under section 4(a) of the Bank Holding Company Act of 1956 (including any extensions thereof granted to such corporation under such section 4(a)), the corporation has disposed of all the property the disposition of which is necessary or appropriate to effectuate section 4 of such Act (or would have been so necessary or appropriate if the corporation had continued to be a bank holding company).

[“(2) FOR SUBSECTION (b).—

[“(A) Subsection (b) shall not apply with respect to any distribution by any corporation unless the Board certifies that, before the expiration of the period specified in subparagraph (B), the corporation has ceased to be a bank holding company.

[“(B) The period referred to in subparagraph (A) is the period which expires 2 years after the date of the enactment of this part or 2 years after the date on which the corporation becomes a bank holding company, whichever date is later. The Board is authorized, on application by any corporation, to extend such period from time to time with respect to such corporation for not more than one year at a time if, in its judgment, such an extension would not be detrimental to the public interest; except that such period may not in any case be extended beyond the date 5 years after the date of the enactment of this part or 5 years after the date on which the corporation becomes a bank holding company, whichever date is later.

[“(f) CERTAIN EXCHANGES OF SECURITIES.—In the case of an exchange described in subsection (a)(2)(A)(iv) or subsection (b)(2)(A)(iv), subsection (a) or subsection (b) (as the case may be) shall apply only to the extent that the principal amount of the securities received does not exceed the principal amount of the securities exchanged.

[“SEC. 1102. SPECIAL RULES.

[“(a) BASIS OF PROPERTY ACQUIRED IN DISTRIBUTIONS.—If, by reason of section 1101, gain is not recognized with respect to the receipt of any property, then, under regulations prescribed by the Secretary or his delegate—

[“(1) if the property is received by a shareholder with respect to stock, without the surrender by such shareholder of stock, the basis of the property received and of the stock with respect to which it is distributed shall, in the distributee's hands, be determined by allocating between such property and such stock the adjusted basis of such stock; or

[“(2) if the property is received by a shareholder in exchange for stock or by a security holder in exchange for securities, the basis of the property received shall, in the distributee's hands, be the same as the adjusted basis of the stock or securities exchanged, increased by—

[“(A) the amount of the property received which was treated as a dividend, and

[“(B) the amount of gain to the taxpayer recognized on the property received (not including any portion of such gain which was treated as a dividend).

[“(b) PERIODS OF LIMITATION.—The periods of limitation provided in section 6501 (relating to limitations on assessment and collection) shall not expire, with respect to any deficiency (including interest and additions to the tax) resulting solely from the receipt of property by shareholders in a distribution which is certified by the Board under subsection (a), (b), or (c) of section 1101, until five years after the distributing corporation notifies the Secretary or his delegate (in such manner and with such accompanying information as the Secretary or his delegate may by regulations prescribe) that the period (including extensions thereof) prescribed in section 4 (a) of the Bank Holding Company Act of 1956, or section 1101 (e) (2) (B), whichever is applicable, has expired; and such assessment may be made notwithstanding any provision of law or rule of law which would otherwise prevent such assessment.

[“(c) ALLOCATION OF EARNINGS AND PROFITS.—

[“(1) DISTRIBUTION OF STOCK IN A CONTROLLED CORPORATION.—In the case of a distribution by a qualified bank holding corporation under section 1101 (a) (1) or (b) (1) of stock in a controlled corporation, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation shall be made under regulations prescribed by the Secretary or his delegate.

[“(2) EXCHANGES DESCRIBED IN SECTION 1101 (C) (2) OR (3).—In the case of any exchange described in section 1101 (c) (2) or (3), proper allocation with respect to the earnings and profits of the corporation transferring the property and the corporation receiving such property shall be made under regulations prescribed by the Secretary or his delegate.

[“(3) DEFINITION OF CONTROLLED CORPORATION.—For purposes of paragraph (1), the term ‘controlled corporation’ means a corporation with respect to which at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock is owned by the distributing qualified bank holding corporation.

[“(d) ITEMIZATION OF PROPERTY.—In any certification under this part, the Board shall make such specification and itemization of property as may be necessary to carry out the provisions of this part.

[“SEC. 1103. DEFINITIONS.

[“(a) BANK HOLDING COMPANY.—For purposes of this part, the term ‘bank holding company’ has the meaning assigned to such term by section 2 of the Bank Holding Company Act of 1956.

[“(b) QUALIFIED BANK HOLDING CORPORATION.—

[“(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of this part the term ‘qualified bank holding corporation’ means any corporation (as defined in section 7701 (a) (3)) which is a bank holding company and which holds prohibited property acquired by it—

[“(A) on or before May 15, 1955,

[“(B) in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, or

[“(C) in exchange for all of its stock in an exchange described in section 1101 (c) (2) or (c) (3).

[“(2) LIMITATIONS.—

[“(A) A bank holding company shall not be a qualified bank holding corporation, unless it would have been a bank holding company on May 15, 1955, if the Bank Holding Company Act of 1956 had been in effect on such date, or unless it is a bank holding company determined solely by reference to—

[“(i) property acquired by it on or before May 15, 1955,

[“(ii) property acquired by it in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, and

[“(iii) property acquired by it in exchange for all of its stock in an exchange described in section 1101 (c) (2) or (3).

[“(B) A bank holding company shall not be a qualified bank holding corporation by reason of property described in subparagraph (B) of paragraph (1) or clause (ii) of subparagraph (A) of this paragraph, unless such property was acquired in a distribution with respect to stock, which stock was acquired by such bank holding company—

[“(i) on or before May 15, 1955,

[“(ii) in a distribution (with respect to stock held by it on May 15, 1955, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b) of section 1101, or

[“(iii) in exchange for all of its stock in an exchange described in section 1101 (c) (2) or (3).

[“(C) A corporation shall be treated as a qualified bank holding corporation only if the Board certifies that it satisfies the foregoing requirements of this subsection.

[“(c) PROHIBITED PROPERTY.—For purposes of this part, the term ‘prohibited property’ means, in the case of any bank holding company, property (other than nonexempt property) the disposition of which would be necessary or appropriate to effectuate section 4 of the Bank Holding Company Act of 1956 if such company continued to be a bank holding company beyond the period (including any extensions thereof) specified in subsection (a) of such section or in section 1101 (e) (2) (B) of this part, as the case may be. The term ‘prohibited property’ does not include shares of any company held by a bank holding company to the extent that the prohibitions of section 4 of the Bank Holding Company Act of 1956 do not apply to the ownership by such bank holding company of such property by reason of subsection (c) (5) of such section.

[“(d) NONEXEMPT PROPERTY.—For purposes of this part, the term ‘nonexempt property’ means—

[“(1) obligations (including notes, drafts, bills of exchange, and bankers’ acceptances) having a maturity at the time of issuance of not exceeding 24 months, exclusive of days of grace;

[“(2) securities issued by or guaranteed as to principal or interest by a government or subdivision thereof or by any instrumentality of a government or subdivision; or

[“(3) money, and the right to receive money not evidenced by a security or obligation (other than a security or obligation described in paragraph (1) or (2)).

[“(e) BOARD.—For purposes of this part, the term ‘Board’ means the Board of Governors of the Federal Reserve System.”

[(b) The table of parts for subchapter O of chapter 1 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following:

[“Part VIII. Distributions pursuant to Bank Holding Company Act of 1956.”

[(c) The amendments made by this section shall apply with respect to taxable years ending after the date of the enactment of this Act.]

SEC. 10. SECURITIES ACTIVITIES.

(a) ACTIVITIES PERMISSIBLE FOR SECURITIES AFFILIATES.—

(1) IN GENERAL.—A securities affiliate may engage in 1 or more of the following activities:

(A) Underwrite, deal in, broker, place, or distribute securities of any type, provide investment advice regarding securities of any type, and engage in other securities activities as determined by the Board.

(B) Sponsor, organize, control, manage, and act as investment adviser to an investment company.

(C) Engage in, or acquire the shares of a company engaged in, any activity if—

(i) a provision of section 4(c) permits financial services holding companies generally to engage in that activity or acquire those shares; and

(ii) either—

(I) the Board permits the financial services holding company to engage in that activity or acquire those shares through the securities affiliate; or

(II) a provision of section 4(c) permits the financial services holding company to engage in such activity or acquire such shares without the Board’s approval.

(2) FACTOR TO BE CONSIDERED.—In making determinations pursuant to this section, the Board shall take into account the need for securities firms affiliated with banks to be innovative and competitive.

(b) ACQUIRING INTEREST IN SECURITIES AFFILIATE.—

(1) NOTICE REQUIRED.—A financial services holding company shall not, without complying with and receiving approval pursuant to the notice procedure in section 4(j)(1), directly or indirectly acquire or retain more than 5 percent of the voting shares of, or all or substantially all of the assets of, a securities affiliate (or a company that would be a securities affiliate if the Board permitted the financial services holding company to acquire that company).

(2) CRITERIA FOR APPROVAL.—The Board shall disapprove a notice required under paragraph (1) unless the Board deter-

mines that the requirements of the following subparagraphs have been met:

(A) CAPITAL.—

(i) DEPOSITORY INSTITUTIONS.—

(I) The lead depository institution of the financial services holding company is well capitalized.

(II) Well capitalized depository institutions control at least 80 percent of the aggregate total risk-weighted assets of depository institutions controlled by the financial services holding company.

(III) All depository institutions controlled by the financial services holding company are well capitalized or adequately capitalized.

(ii) RECENTLY ACQUIRED DEPOSITORY INSTITUTIONS.—Depository institutions acquired by a financial services holding company during the 12-month period preceding the submission of a notice under paragraph (1) may be excluded for purposes of clause (i)(II) if—

(I) the financial services holding company has submitted a plan to the appropriate Federal banking agency to restore the capital of the institution and the plan has been accepted by such agency; and

(II) all such institutions that are excluded for the purposes of clause (i)(II) represent, in the aggregate, less than 25 percent of the aggregate total risk-weighted assets of all depository institutions controlled by the financial services holding company.

(iii) FINANCIAL SERVICES HOLDING COMPANY.—The financial services holding company is (and immediately after the acquisition of a securities affiliate would continue to be) adequately capitalized under the capital standards applicable, if any, to such financial services holding company.

(iv) FOREIGN BANKS AND COMPANIES.—For purposes of applying this subsection and other provisions of this section, the Board shall establish and apply comparable capital standards for the acquisition, retention, and operation of a securities affiliate in the United States by a foreign bank that operates a branch or agency or owns or controls a bank or commercial lending company in the United States, and any company that owns or controls such a foreign bank, giving due regard to the principle of national treatment and equality of competitive opportunity.

(B) ALTERNATIVE CAPITAL TREATMENT FOR WELL CAPITALIZED FINANCIAL SERVICES HOLDING COMPANIES.—

(i) IN GENERAL.—A financial services holding company and the depository institution subsidiaries of such company shall be deemed to have met the capital requirements set forth in subparagraph (A) if—

(I) the holding company files a written notice with the Board of such company's election to meet

such capital requirements in the manner provided in this subparagraph;

(II) all depository institutions controlled by the financial services holding company are at least adequately capitalized; and

(III) the financial services holding company is (and immediately after the acquisition of a securities affiliate would continue to be) well capitalized.

(ii) LOSSES INCURRED BY FDIC.—A financial services holding company which makes an election under clause (i) in connection with the acquisition of control of any securities affiliate shall be liable for any loss incurred by the Federal Deposit Insurance Corporation, or any loss which the Federal Deposit Insurance Corporation reasonably anticipates incurring in connection with—

(I) the default of any insured depository institution controlled by the financial services holding company; or

(II) any assistance provided by the Corporation to any insured depository institution in danger of default that is controlled by the financial services holding company.

(C) MANAGERIAL RESOURCES.—

(i) IN GENERAL.—The financial services holding company and each depository institution subsidiary of such company—

(I) are well managed; and

(II) were well managed during the 12-month period preceding the acquisition of a securities affiliate (but for purposes of this subparagraph the Board may disregard any depository institution acquired by the financial services holding company during that period).

(ii) SECURITIES ACTIVITIES.—The financial services holding company has the managerial resources to conduct the proposed securities activities safely and soundly.

(D) INTERNAL CONTROLS.—The financial services holding company has established adequate policies and procedures to manage financial and operational risks, to provide reasonable assurance of compliance with this section and other applicable laws, and to provide reasonable assurance of maintenance of corporate separateness within the financial services holding company.

(E) NO DETRIMENTAL EFFECT ON FINANCIAL SERVICES HOLDING COMPANY OR ITS SUBSIDIARY DEPOSITORY INSTITUTIONS.—The acquisition of a securities affiliate would not adversely affect the safety and soundness of—

(i) the financial services holding company; or

(ii) any depository institution subsidiary of the financial services holding company.

(F) CONCENTRATION OF RESOURCES.—The acquisition of a securities affiliate would not result in an undue concentration of resources in the financial services business.

(G) RESPONSIVENESS TO COMMUNITY NEEDS.—The lead insured depository institution subsidiary of the financial services holding company and insured depository institutions controlling at least 80 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by the financial services holding company have achieved a "satisfactory record of meeting community credit needs", or better, during the most recent examination of such insured depository institutions.

(3) LIMITED NOTICE PROCEDURES FOR PROPOSALS BY WELL CAPITALIZED AND WELL MANAGED COMPANIES TO ACQUIRE ADDITIONAL SECURITIES AFFILIATES.—A financial services holding company may, without providing the notice required under paragraph (1), directly or indirectly acquire the shares or substantially all of the assets of any company that is engaged in activities described in subparagraph (A) or (B) of subsection (a)(1), if—

(A) the financial services holding company previously received the Board's approval under paragraph (1) to control a securities affiliate and continues to control the securities affiliate pursuant to that approval;

(B) the acquisition proposal qualifies under section 4(j)(4);

(C) the financial services holding company provides the written notification required in section 4(j)(5); and

(D) the acquisition would not result in an undue concentration of resources in the financial services business.

(c) ADDITIONAL INVESTMENT IN SECURITIES AFFILIATE.—

(1) PRIOR NOTICE REQUIRED.—A financial services holding company that has acquired control of a securities affiliate under this section shall not, directly or indirectly, make any additional investment in the securities affiliate that is considered capital for purposes of any capital requirement imposed on the securities affiliate under the Securities Exchange Act of 1934 (other than an extension of credit under a revolving credit agreement approved by the Board), unless the financial services holding company gives the Board prior written notice of the proposed investment and the Board—

(A) issues a written statement of the Board's intent not to disapprove the notice; or

(B) does not disapprove the notice within 30 days after the notice is filed.

(2) NO PRIOR NOTICE REQUIRED FOR CERTAIN FINANCIAL SERVICES HOLDING COMPANIES.—

(A) IN GENERAL.—A financial services holding company shall not be required to provide prior notice under paragraph (1) if after making any investment described in paragraph (1)—

(i) the financial services holding company would be adequately capitalized under the capital standards applicable, if any, to such financial services holding com-

pany and each of the financial services holding company's subsidiary depository institutions would be well capitalized; and

(ii) the financial services holding company and each of its subsidiary depository institutions are well managed (but for purposes of this clause the Board may disregard any depository institution acquired by the financial services holding company during the previous 12-month period).

(B) SUBSEQUENT NOTICE.—A financial services holding company that makes an investment pursuant to subparagraph (A) shall provide written notice to the Board of the additional investment within 10 days after making the investment.

(3) CRITERIA FOR DISAPPROVING NOTICE.—The Board may disapprove a notice filed under paragraph (1) if—

(A) any depository institution affiliate of the securities affiliate is undercapitalized; or

(B) the Board determines that the financial services holding company would be undercapitalized under the capital standards applicable, if any, to such financial services holding company after making the investment or that the investment would otherwise be unsafe or unsound.

(4) EMERGENCY APPROVAL.—Notwithstanding any provision of this subsection, in the event of adverse market conditions, or concerns regarding the financial or operational condition of the securities affiliate, the Board may approve any additional investment in the securities affiliate on an emergency basis if such additional investment does not adversely affect the safety and soundness of all insured depository institution affiliates of such securities affiliate and does not diminish the ability of the financial services holding company to maintain an appropriate amount of capital in all such insured depository institutions.

(d) PROVISIONS APPLICABLE IF AFFILIATED DEPOSITORY INSTITUTION CEASES TO BE WELL CAPITALIZED.—

(1) HOLDING COMPANY ACTION REQUIRED IF AFFILIATED INSTITUTIONS ARE NOT WELL CAPITALIZED.—

(A) APPLICABILITY.—This paragraph shall apply if—

(i) the lead depository institution of the financial services holding company is not well capitalized, or

(ii) well capitalized depository institutions do not control at least 80 percent of the aggregate total risk-weighted assets of depository institutions affiliated with the securities affiliate.

(B) CAPITAL MAINTENANCE AGREEMENT.—Within 30 days after subparagraph (A) becomes applicable with respect to any financial services holding company, such company shall execute an agreement with the Board—

(i) to meet the capital requirements of subparagraph (A) within a reasonable period of time; or

(ii) to divest control of the depository institution in an orderly manner within 180 days, or within such additional period of time as the Board may determine is reasonably required in order to effect such divestiture.

(C) RESTRICTIONS ON CERTAIN SECURITIES ACTIVITIES.—If a financial services holding company fails to meet the requirements of, or comply with the agreement executed pursuant to, subparagraph (B), a securities affiliate of such financial services holding company shall not, beginning 180 days after subparagraph (A) becomes applicable with respect to such company, agree to underwrite or deal in, any securities other than—

(i) securities expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in;

(ii) securities backed by or representing interests in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations; or

(iii) securities issued by an open-end investment company registered under the Investment Company Act of 1940.

(D) EXCEPTION.—The Board may permit the securities affiliate of a financial services holding company described in subparagraph (C) to underwrite or deal in securities not described in clauses (i) through (iii) of such subparagraph for a period of 1 year from the date on which subparagraph (A) first becomes applicable with respect to such company, if—

(i) the financial services holding company submits a capital restoration plan to the Board specifying the steps the financial services holding company will take to meet the requirements of subsection (b)(2)(A), and containing such other information as the Board may require; and

(ii) the Board approves the plan.

(E) EXTENSION OF PERIOD.—

(i) IN GENERAL.—Upon application by a financial services holding company, the Board may extend, for not more than 1 year at a time, the period provided in subparagraph (C).

(ii) MAXIMUM EXTENSION.—No extension under clause (i) of the period provided in subparagraph (C) shall, in the aggregate, exceed 2 years.

(2) DIVESTITURE OF SECURITIES AFFILIATE.—

(A) IN GENERAL.—A financial services holding company shall divest itself of the securities affiliate if any of the financial services holding company's subsidiary depository institutions has been undercapitalized for more than 6 months.

(B) EXTENDING TIME.—The Board may provide additional time, not exceeding 18 months, for a divestiture under subparagraph (A) if—

(i) the appropriate Federal banking agency or, in the case of a foreign bank or company that owns or controls a foreign bank, the Board, has approved the undercapitalized institution's capital restoration plan; and

(ii) the Board determines that the securities affiliate poses no significant risk to any affiliated depository institution.

(e) SECURITIES AFFILIATE EXCLUDED IN DETERMINING WHETHER FINANCIAL SERVICES HOLDING COMPANY IS ADEQUATELY CAPITALIZED.—

(1) IN GENERAL.—In determining whether a financial services holding company is adequately capitalized—

(A) the financial services holding company's capital and total assets shall each be reduced by—

(i) an amount equal to the amount of the financial services holding company's equity investment in any securities affiliate; and

(ii) an amount equal to the amount of any extensions of credit by the financial services holding company to any securities affiliate that are considered capital for purposes of any capital requirement imposed on the securities affiliate under section 15(c)(3) of the Securities Exchange Act of 1934; and

(B) the securities affiliate's assets and liabilities shall not be consolidated with those of the financial services holding company.

(2) EXCEPTION FOR NONSECURITIES ACTIVITIES.—Paragraph (1) shall not apply to the extent that the Board determines by regulation or order that—

(A) an item described in such paragraph relates to activities which are not described in subparagraph (A) or (B) of subsection (a)(1); or

(B) another method of adjusting capital is more appropriate to ensure the safety and soundness of depository institutions.

(f) SAFEGUARDS.—Each financial services holding company and each subsidiary of any such company shall comply with all applicable safeguard requirements of section 11.

(g) ACTIVITIES NOT PERMISSIBLE FOR DEPOSITORY INSTITUTIONS.—

(1) IN GENERAL.—A financial services holding company that acquires control of a securities affiliate shall not, after the end of the 1-year period beginning on the date of such acquisition, permit any depository institution, or any subsidiary of any depository institution, which is controlled by such holding company—

(A) to engage, directly or indirectly, in the United States—

(i) in underwriting securities backed by or representing interests in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations originated or purchased by the institution or its affiliates, other than—

(I) securities backed by or representing an interest in 1—4 family residential mortgages originated or purchased by the depository institution or any affiliate or subsidiary of the institution; or

(II) securities backed by or representing an interest in consumer receivables or consumer leases originated or purchased by the depository institution or any affiliate or subsidiary of the institution; or

(ii) in underwriting or dealing in any other securities, except securities expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in; or

(B) to make an equity investment in any securities affiliate.

(2) EXCEPTION FOR CERTAIN EDGE ACT AND AGREEMENT CORPORATIONS.—The limitations in paragraph (1)(A) shall not apply with respect to activities conducted by a subsidiary of a financial services holding company which is held pursuant to section 25 or 25A of the Federal Reserve Act or section 4(c)(13) of this Act.

(3) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed as permitting a securities affiliate to accept deposits in contravention of section 21 of the Banking Act of 1933.

(h) APPROVAL OF SECURITIES ACTIVITIES UNDER SECTION 4(c)(8) RESTRICTED.—The Board shall deny any notice or application by a financial services holding company under authority of section 4(c)(8) to engage in, or acquire the shares of a company engaged in, underwriting or dealing in securities in the United States, other than securities expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in.

(i) BANKERS' BANKS.—

(1) IN GENERAL.—For purposes of this section, each shareholder of or participant in a company that controls a depository institution described in section 5169(b)(1) of the Revised Statutes of the United States or in a similar statute of any State, and each subsidiary of such a shareholder or participant, shall be treated as if such shareholder, participant, or subsidiary were a subsidiary of that company.

(2) EXCEPTION.—This subsection shall not apply with respect to a shareholder or participant in a company described in subparagraph (A) (or any subsidiary of such shareholder or participant) if the shareholder or participant, and the affiliates of any such shareholder or participant, do not, in the aggregate, control more than 5 percent of any class of voting shares of such company.

(j) SHARES ACQUIRED IN CONNECTION WITH UNDERWRITING AND INVESTMENT BANKING ACTIVITIES.—

(1) IN GENERAL.—Notwithstanding section 4(a), a financial services holding company may directly or indirectly acquire or control, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the financial services holding company controls), or otherwise, shares, assets, or ownership interests (including without limitation debt or equity secu-

rities, partnership interests, trust certificates, or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in activities not authorized pursuant to section 4 if—

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

(B) such shares, assets, or ownership interests are acquired and held by a securities affiliate or an affiliate of a securities affiliate as part of a bona fide underwriting or investment banking activity, which includes investment activities engaged in for the purpose of appreciation and ultimate resale or other disposition of the investment, and such shares, assets, or ownership interests are held for such a period of time as will permit the sale or disposition thereof on a reasonable basis consistent with the nature of such activities; and

(C) during the period such shares, assets, or ownership interests are held, the financial services holding company does not actively manage or operate the company or entity except insofar as necessary to achieve the objectives of subparagraph (B).

(2) NO EXPANSION OF UNDERWRITING ACTIVITIES.—No provision of this subsection shall be construed as authorizing any financial services holding company, or any subsidiary of any such company, to underwrite or deal in any security.

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

(1) CAPITAL STOCK AND SURPLUS.—The term "capital stock and surplus" has the same meaning as in section 23A of the Federal Reserve Act.

(2) COVERED TRANSACTION.—The term "covered transaction" has the same meaning as in section 23A of the Federal Reserve Act.

(3) SECURITY.—

(A) IN GENERAL.—The term "security" has the meaning given to such term in section 3(a)(10) of the Securities Exchange Act of 1934.

(B) EXCEPTIONS.—For purposes of this section, other than subsection (a), the term "security" does not include any of the following:

(i) A contract of insurance.

(ii) A deposit account, savings account, certificate of deposit, or other deposit instrument issued by a depository institution.

(iii) A share account issued by a savings association if the account is insured by the Federal Deposit Insurance Corporation.

(iv) A banker's acceptance.

(v) A letter of credit issued by a depository institution.

(vi) A debit account at a depository institution arising from a credit card or similar arrangement.

(vii) A loan or loan participation (as determined by the Board).

(C) BOARD'S AUTHORITY TO EXEMPT TRADITIONAL BANKING PRODUCTS.—The Board may, by regulation or order and after consultation with and consideration of the views of the Securities and Exchange Commission, exempt a banking product from the definition of security if the Board determines that—

(i) the product is more appropriately regulated as a banking product; and

(ii) the exemption is otherwise consistent with the purposes of this section.

(D) DEFINITION FOR LIMITED PURPOSE.—The fact that a particular instrument is excluded pursuant to subparagraph (B) or (C) from the definition of security for purposes of this section shall not be construed as finding or implying that such instrument is or is not a security for purposes of Federal securities laws.

SEC. 11. SAFEGUARDS RELATING TO SECURITIES AFFILIATES.

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

(1) IN GENERAL.—No depository institution affiliated with a securities affiliate shall, directly or indirectly, do any of the following:

(A) Extend credit in any manner to the securities affiliate.

(B) Issue a guarantee, acceptance, or letter of credit, including an endorsement or a standby letter of credit, for the benefit of the securities affiliate.

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

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

(A) The extension of credit is incidental to clearing transactions in those securities through that depository institution.

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

(C) Either—

(i) the extension of credit is to be repaid before the close of business on the same business day; or

(ii) all of the following conditions are satisfied:

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

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

(III) Extensions of credit subject to this clause, when aggregated with all other covered transactions between the institution and all affiliated securities affiliates do not exceed 10 percent of the institution's capital stock and surplus.

(D) Either—

(i) the securities are securities expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in; or

(ii) the Board permits transactions under this paragraph in securities not described in clause (i) and the securities affiliate provides the depository institution with such additional security or other assurance of performance, if any, as the Board shall require to prevent such transactions from posing any appreciable risk to the institution.

(3) EXCEPTIONS FOR CERTAIN SECURITIES PURCHASED FOR A DEPOSITORY INSTITUTION'S OWN ACCOUNT.—Paragraph (1)(C) shall not apply with respect to purchases at the current market value (based on reliable and regularly available price quotations) of—

(A) securities expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in; or

(B) securities that—

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

(ii) are rated investment grade by at least 1 nationally recognized statistical rating organization.

(4) OTHER EXCEPTIONS.—The Board may make exceptions to paragraph (1) for well capitalized depository institutions if—

(A) the transaction is fully secured in accordance with section 23A(c) of the Federal Reserve Act; and

(B) the aggregate amount of covered transactions between the institution and all securities affiliates of the financial services holding company, excluding transactions permitted under paragraph (2)(C)(i) or (3)(A), does not exceed 10 percent of the institution's capital stock and surplus.

(b) CREDIT ENHANCEMENT RESTRICTED.—

(1) IN GENERAL.—No depository institution affiliated with a securities affiliate shall, directly or indirectly, extend credit, or issue or enter into a standby letter of credit, asset purchase agreement, indemnity, guarantee, insurance, or other facility, for the purpose of enhancing the marketability of a securities issue underwritten by the securities affiliate.

(2) DEFINITION OF TERM BY BOARD.—The Board shall prescribe a definition for the term "for the purpose of enhancing the marketability of a securities issue" for purposes of paragraph (1).

(3) EXCEPTION FOR BANK ELIGIBLE SECURITIES.—Paragraph (1) shall not apply with regard to securities expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in.

(4) APPLICATION TO WELL CAPITALIZED DEPOSITORY INSTITUTIONS.—

(A) IN GENERAL.—A well capitalized depository institution may engage in a transaction described in paragraph (1) if—

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

(ii) the institution and its securities affiliate have adopted appropriate procedures, including maintenance of necessary documentary records, to assure that any such extension of credit, standby letter of credit, asset purchase agreement, indemnity, guarantee, insurance or other facility, is on an arm's length basis.

(B) ARM'S LENGTH TRANSACTION DESCRIBED.—An extension of credit may be considered to be on an arm's length basis if the terms and conditions are substantially the same as those prevailing at the time for comparable transactions involving securities that are not underwritten by the securities affiliate.

(C) COMPLIANCE WITH PARAGRAPH (1).—The Board may require, by regulation or order, compliance with paragraph (1) by well capitalized depository institutions exempt under this paragraph in order to achieve any purpose specified in subsection (l).

(c) PROHIBITION ON FINANCING PURCHASE OF SECURITY BEING UNDERWRITTEN.—

(1) IN GENERAL.—No financial services holding company or subsidiary of a financial services holding company (other than a securities affiliate) shall knowingly extend or arrange for the extension of credit, directly or indirectly, secured by or for the purpose of purchasing any security while, or for 30 days after, that security is the subject of a distribution in which a securities affiliate of that financial services holding company participates as an underwriter or a member of a selling group.

(2) RELIANCE ON ACKNOWLEDGEMENT.—For purposes of paragraph (1), a financial services holding company or subsidiary may rely on an express written acknowledgement signed by the borrower that the credit is not secured by or for the purpose of purchasing a security described in this subparagraph.

(3) APPLICATION TO BANK ELIGIBLE SECURITIES.—Paragraph (1) shall not apply with regard to extensions of credit if the securities are securities expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in.

(4) APPLICATION TO WELL CAPITALIZED DEPOSITORY INSTITUTIONS.—The Board may make exceptions, by regulation or order, to paragraph (1) for an extension of credit, after consultation with and considering the views of the Securities and Exchange Commission, if—

(A) the financial services holding company is adequately capitalized;

(B) the financial services holding company's lead depository institution is well capitalized;

(C) well capitalized depository institutions control at least 80 percent of the assets of depository institutions controlled by the financial services holding company; and

(D) all depository institutions controlled by the financial services holding company are well capitalized or adequately capitalized.

(5) CONSISTENCY WITH THE FEDERAL SECURITIES LAWS.—No provision of this subsection shall be construed as permitting a securities affiliate to extend or maintain credit, or arrange for an extension of credit, except in compliance with applicable provisions of the Securities Exchange Act of 1934 and the regulations prescribed and interpretations issued under such Act.

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

(1) IN GENERAL.—No depository institution affiliated with a securities affiliate shall, directly or indirectly, extend credit to an issuer of securities underwritten by the securities affiliate for the purpose of paying the principal of those securities or interest or dividends on those securities.

(2) EXCEPTIONS FOR CERTAIN EXTENSIONS OF CREDIT.—Paragraph (1) shall not apply to an extension of credit for a documented purpose (other than paying principal, interest, or dividends) if the timing, maturity, and other terms of the credit, taken as a whole, are substantially different from those of the underwritten securities.

(3) EXCEPTIONS FOR BANK ELIGIBLE SECURITIES.—Paragraph (1) shall not apply with respect to any security expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in.

(4) APPLICATION TO WELL CAPITALIZED DEPOSITORY INSTITUTIONS.—

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

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

(ii) the depository institution has adopted appropriate procedures, including maintenance of necessary documentary records, to assure that any extension of credit by the depository institution to an issuer for the purpose of paying the principal, interest or dividends on securities underwritten by the securities affiliate is on an arm's length basis.

(B) ARM'S LENGTH TRANSACTION DESCRIBED.—An extension of credit may be considered to have been made on an arm's length basis if the terms and conditions are substantially the same as those prevailing at the time for comparable transactions with issuers whose securities are not underwritten by the securities affiliate.

(C) COMPLIANCE WITH SUBPARAGRAPH (A).—The Board may require, by regulation or order, compliance with paragraph (1) by well capitalized depository institutions exempt under this paragraph in order to achieve any purpose specified in subsection (l).

(e) COMMON DIRECTORS AND SENIOR EXECUTIVE OFFICERS.—

(1) IN GENERAL.—The Board shall, by regulation or order, prescribe the circumstances under which directors and senior executive officers of a securities affiliate may serve at the same time as directors or senior executive officers of any affiliated depository institutions.

(2) STANDARDS.—The Board, in issuing any regulation or order pursuant to paragraph (1), shall consider appropriate factors including—

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

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

(C) unfair competition in securities activities;

(D) improper exchange of customer information; or

(E) harm to customers of securities affiliates or depository institutions that could reasonably result from director and senior officer interlocks.

(3) EXCEPTION FOR SMALL FINANCIAL SERVICES HOLDING COMPANIES.—

(A) IN GENERAL.—Notwithstanding paragraph (1), a director or senior executive officer of a securities affiliate may serve at the same time as a director or senior executive officer of an affiliated depository institution if that institution and all affiliated depository institutions have, in the aggregate, total assets of not more than $500,000,000.

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

(4) EXCEPTION FOR CERTAIN REGULATION K AFFILIATES.—Paragraph (1) shall not prohibit a director or senior executive officer of a securities affiliate from serving at the same time as a director or senior executive officer of a depository institution which—

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

(B) is an affiliate of such securities affiliate; and

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

(f) DISCLOSURE REQUIRED BY SECURITIES AFFILIATE.—

(1) IN GENERAL.—At the time a securities account is opened, a securities affiliate shall conspicuously disclose in writing to each of its customers that—

(A) securities sold, offered, or recommended by the securities affiliate—

(i) are not deposits;

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

(iii) are not guaranteed by an affiliated insured depository institution;

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

(v) with regard to any product that includes any investment component, are subject to investment risks including possible loss of principal invested;

(B) the securities affiliate is not an insured depository institution, and is a corporation separate from any insured depository institution; and

(C) the securities affiliate may be underwriting or dealing in the securities being sold, offered or recommended, and if so, would have a financial interest in the transaction.

(2) FORM OF DISCLOSURE.—The disclosures required by paragraph (1) shall be made in clear and concise language that—

(A) is readily comprehensible to customers of the securities affiliate, and

(B) is designed to promote customer understanding that uninsured investment products are not deposits insured by the Federal Deposit Insurance Corporation.

(3) BOARD AUTHORITY.—Subject to paragraph (2), the Board may, in the Board's discretion, prescribe disclosures in addition to the disclosures prescribed by paragraph (1).

(g) DISCLOSURE REQUIRED BY INSURED DEPOSITORY INSTITUTIONS.—

(1) IN GENERAL.—No insured depository institution shall knowingly express any opinion on the value of, or the advisability of purchasing or selling, nonbanking products (as defined by the Board) sold by the insured depository institution or any affiliate of an insured depository institution unless the insured depository institution conspicuously discloses in writing to the customer that—

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

(B) the nonbanking products—

(i) are not deposits;

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

(iii) are not guaranteed by the institution or any other affiliated insured depository institution;

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

(v) with regard to any nonbanking product that includes any investment component, are subject to investment risks including possible loss of principal invested; and

(C) an affiliate, if involved, is not an insured depository institution (unless such is the case), and is a corporation separate from any insured depository institution (unless such is not the case).

(2) FORM OF DISCLOSURE.—The disclosures required by paragraph (1) shall be made in clear and concise language that—

(A) is readily comprehensible to customers of the insured depository institution, and

(B) is designed to promote customer understanding that nonbanking products are not deposits insured by the Federal Deposit Insurance Corporation.

(3) CUSTOMER ACKNOWLEDGEMENT OF DISCLOSURE.—

(A) IN GENERAL.—Whenever any insured depository institution or securities affiliate opens an account for the purpose of selling a nondeposit investment product or products to a customer, such insured depository institution or securities affiliate as the case may be, shall obtain a 1-time acknowledgment of receipt by the customer of such disclosures, including the date of receipt with the customer's name, address, and the account number.

(B) SPECIAL RULE FOR ACCREDITED INVESTORS.—In the case of any customer who is, or meets the requirements for, an accredited investor (as defined in section 2(15) of the Securities Act of 1933), the acknowledgment of the receipt of any disclosure described in subparagraph (A) may be obtained by the insured depository institution or securities affiliate at the time any account is opened by such customer.

(4) BOARD AUTHORITY.—Subject to paragraph (2), the Board, after consultation with the other appropriate Federal banking agencies, may prescribe disclosures in addition to the disclosures required by paragraph (1).

(h) IMPROPER DISCLOSURE OF CONFIDENTIAL CUSTOMER INFORMATION PROHIBITED.—

(1) IN GENERAL.—No depository institution subsidiary of a financial services holding company shall disclose to any affiliate of such institution which is not a depository institution, and no affiliate of such company which is not a depository institution shall disclose to any other affiliate which is a depository institution or a subsidiary of such an institution, any nonpublic customer information (including an evaluation of the creditworthiness of an issuer or other customer of that institution or securities affiliate), unless it is clearly and conspicuously disclosed that such information may be communicated among such persons and the customer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons.

(2) DEFINITION.—For purposes of paragraph (1), the term "nonpublic customer information" does not include—

(A) customers' names and addresses (unless a customer has specified otherwise);

(B) information that could be obtained from unaffiliated credit bureaus or similar companies in the ordinary course of business; or

(C) information that is customarily provided to unaffiliated credit bureaus or similar companies in the ordinary course of business by—

(i) depository institutions not affiliated with securities affiliates; or

(ii) brokers and dealers not affiliated with depository institutions.

(i) UNDERWRITING SECURITIES REPRESENTING OBLIGATIONS ORIGINATED BY AFFILIATE RESTRICTED.—A securities affiliate shall

not underwrite securities secured by or representing an interest in mortgages or other obligations originated or purchased by an affiliated depository institution or subsidiary of such an institution—

(1) unless those securities—

(A) are rated by at least 1 unaffiliated, nationally recognized statistical rating organization;

(B) are issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association; or

(C) represent interests in securities described in subparagraph (B); or

(2) except as permitted by the Board.

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

(1) 1 financial services holding company (or subsidiary of that financial services holding company) agrees to engage in a transaction with, or on behalf of, another financial services holding company (or subsidiary of that financial services holding company), in exchange for

(2) the agreement of the second financial services holding company referred to in paragraph (1) (or a subsidiary of that financial services holding company) to engage in any transaction with, or on behalf of, the first financial services holding company referred to in such paragraph (or any subsidiary of that financial services holding company), for the purpose of evading any requirement or restriction of Federal law on transactions between, or for the benefit of, affiliates of financial services holding companies.

(k) SAFEGUARDS APPLY TO CERTAIN SUBSIDIARIES.—Except as provided in this section—

(1) SECURITIES AFFILIATE.—No subsidiary of a securities affiliate may do anything that this section prohibits the securities affiliate from doing.

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

(l) AUTHORITY TO MODIFY AND IMPOSE ADDITIONAL SAFEGUARDS; INTERPRETIVE AUTHORITY.—

(1) IN GENERAL.—The Board may, by regulation or order—

(A) adopt additional limitations, restrictions or conditions on relationships or transactions among depository institutions, their affiliates, and their customers; and

(B) make any modification to any limitation, restriction, or condition imposed under this section on relationships or transactions among depository institutions, the affiliates of insured depository institutions, and the customers of such institutions or affiliates, including modifications in addition to those expressly provided for in this section.

(2) STANDARDS.—The Board may not exercise authority under paragraph (1) unless the Board finds that such action is consistent with the purposes of this Act, including—

(A) the avoidance of any significant risk to the safety and soundness of depository institutions or the Federal deposit insurance funds;

(B) the enhancement of the financial stability of financial services holding companies;

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

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

(E) the application of the principle of national treatment and equality of competitive opportunity between securities affiliates owned or controlled by domestic financial services holding companies and securities affiliates owned or controlled by foreign banks operating in the United States.

(3) BIENNIAL REVIEW.—Beginning 2 years after the date of enactment of the Financial Services Competitiveness Act of 1995, the Board shall, on a biennial basis—

(A) review all restrictions established pursuant to paragraph (1) to determine whether any such restrictions are required any longer to carry out the purposes of this Act; and

(B) modify or eliminate any such restriction that the Board determines is no longer required to carry out the purposes of this Act.

(m) COMPLIANCE PROGRAMS REQUIRED.—

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

(A) sharing information concerning compliance with subtitle A of title I or subtitle A or B of title II of the Financial Services Competitiveness Act of 1995, and the amendments made by such subtitles, by—

(i) brokers, dealers, investment advisers, or investment companies that are registered with the Securities and Exchange Commission that are affiliated with depository institutions, or are separately identifiable departments or divisions of depository institutions registered as brokers, dealers, or investment advisers; and

(ii) depository institutions and their affiliates;

(B) enforcing compliance with subtitle A of title I of the Financial Services Competitiveness Act of 1995, and the amendments made by such subtitle and paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934 by entities under its supervision; and

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

(2) DATA COLLECTION.—

(A) IN GENERAL.—The appropriate Federal banking agencies, after consultation with and consideration of the views of the Securities and Exchange Commission, may require any depository institution that has effected securities transactions pursuant to any exception enumerated in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934 to identify the exceptions relied upon and to

submit such information necessary to monitor compliance under such paragraphs.

(B) COMMISSION ACCESS.—The appropriate Federal banking agency shall make any information referred to in subparagraph (A) available to the Securities and Exchange Commission, upon the request of the Commission.

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

(3) COMMISSION'S ENFORCEMENT AUTHORITY.—Without limiting in any way the authority of the appropriate Federal banking agencies under this section, the Securities and Exchange Commission shall have the authority to enforce any subsection of this section against a securities affiliate as if such subsection were a provision of the Securities Exchange Act of 1934 to the extent that the subsection applies with respect to the conduct or activities of the securities affiliate.

(4) EXAMINATION REPORTS.—The appropriate Federal banking agencies shall, to the extent practicable, use the reports of examination of any broker, dealer, investment adviser, or investment company made by or on behalf of the Securities and Exchange Commission and reports made by or on behalf of a registered securities association or national securities exchange, and shall defer to such examinations for compliance with the Federal securities laws.

(5) INTERPRETATIONS OF THE FEDERAL SECURITIES LAWS.—The appropriate Federal banking agencies shall defer to the Securities and Exchange Commission regarding all interpretations and enforcement of the Federal securities laws relating to the application of the Federal securities laws to the activities and conduct of brokers, dealers, investment advisers, and investment companies.

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

(A) any broker, dealer, or investment adviser that—

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

(ii) is affiliated with, or is a separately identifiable department or division of, a depository institution;

(B) any investment company registered with the Securities and Exchange Commission that is an affiliate of or is advised by an investment adviser affiliated with a depository institution or by a separately identifiable department or division of a depository institution that is a registered investment adviser; or

(C) any financial services holding company, depository institution, or subsidiary of such company or institution, if the proposed action relates to subtitle A of title I or subtitle

A or B of title II of the Financial Services Competitiveness Act of 1995.

(7) NOTICE OF CERTAIN ACTIONS BY APPROPRIATE FEDERAL BANKING AGENCIES.—Upon the commencement of any disciplinary or law enforcement proceedings to enforce the provisions of subtitle A of title I of the Financial Services Competitiveness Act of 1995, or any amendment made by such subtitle, by an appropriate Federal banking agency against any broker, dealer, investment adviser, or investment company that is registered under the Federal securities laws and is affiliated with a depository institution or is a separately identifiable department or division of a depository institution, the appropriate Federal banking agency shall give notice to the Securities and Exchange Commission of the proposed action.

(8) IMMEDIATE ACTION ALLOWED BEFORE NOTICE.—The notice required under paragraph (6) or (7) may be provided promptly after action by the Securities and Exchange Commission or the appropriate Federal banking agency, if—

(A) the Commission determines that the protection of investors requires immediate action by the Commission and prior notice under paragraph (6) is not practical under the circumstances; or

(B) the appropriate Federal banking agency determines that concerns for the safety and soundness of a depository institution or its affiliate require immediate action by the agency and prior notice under paragraph (7) is not practical under the circumstances.

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

(10) INVESTMENT COMPANIES NOT AFFILIATED WITH A DEPOSITORY INSTITUTION.—The appropriate Federal banking agency shall not have authority under this Act or any other provision of law to inspect or examine any investment company registered under the Federal securities laws that is not—

(A) affiliated with a depository institution; or

(B) advised by an investment adviser affiliated with a depository institution or by a separately identifiable department or division of a depository institution that is a registered investment adviser.

(11) DEFINITION.—For purposes of this subsection, the term "Federal securities laws" means the provisions of Federal law governing securities activities that are within the jurisdiction of the Securities and Exchange Commission under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and the Trust Indenture Act of 1939.

(n) FOREIGN BANK FIREWALLS.—

(1) IN GENERAL.—A foreign bank that operates a branch, agency, or commercial lending company in the United States and accepts no deposits in the United States, either directly or through an affiliate, that are insured under the Federal Deposit

Insurance Act, and any affiliate of such foreign bank, shall not be subject to the restrictions of any subsection of this section, other than subsections (l) and (m), if the conditions described in paragraph (2) are met.

(2) CONDITIONS FOR APPLICABILITY OF EXCEPTION.—The conditions of this paragraph have been met with respect to any foreign bank referred to in paragraph (1) if—

(A) transactions between a securities affiliate of such foreign bank and any branch, agency or commercial lending company operated in the United States by such foreign bank comply with the provisions of sections 23A and 23B of the Federal Reserve Act as if the foreign bank were a member bank; and

(B) such foreign bank has received a determination from the Board that the bank meets capital standards comparable to those established by the Board for well capitalized financial services holding companies, giving due regard to the principle of national treatment and equality of competitive opportunity, subject to any changes the Board may adopt with respect to such standards.

(3) APPLICABILITY OF SUBSECTION (l) TO FOREIGN BANKS.—Any limitation, restriction, condition, or modification adopted by the Board under subsection (l) may be applied by the Board to—

(A) a foreign bank described in paragraph (1) (and any company that owns or controls such foreign bank);

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

(C) any other affiliate of such foreign bank in the United States,

if such limitation, restriction, condition, or modification is applied by regulation or order of general applicability under section 12(a)(2)(B)(ii) to wholesale financial institutions and securities affiliates controlled by investment bank holding companies, subject to such modifications, conditions, or exemptions as the Board deems appropriate, giving due regard to the principle of national treatment and equality of competitive opportunity.

SEC. 12. INVESTMENT BANK HOLDING COMPANIES.

(a) PERMISSIBLE AFFILIATIONS FOR INVESTMENT BANK HOLDING COMPANIES.—

(1) FINANCIAL ACTIVITIES.—

(A) ACTIVITIES AUTHORIZED.—An investment bank holding company may directly or indirectly own or control shares of any company engaged in any activity the Board has determined to be financial in nature or incidental to a financial activity (other than activities expressly limited under subsection (c)(8)), or any activity in compliance with subparagraph (B) or (C).

(B) INCIDENTAL ACTIVITIES.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), the aggregate investment by an investment bank holding company in shares of companies that engage in nonfinancial activities and financial activities (other than those otherwise permitted under this section)

shall not at any time exceed 7.5 percent (or such greater percentage as the Board may determine to be appropriate) of the consolidated total risk-weighted assets of the investment bank holding company (excluding assets of companies held pursuant to this subparagraph), except that the amount invested by the investment bank holding company in any 1 company (including all affiliates of such company other than preexisting affiliates of such investment bank holding company) may not exceed the amount which is equal to 25 percent of the total capital and surplus of such investment bank holding company.

(ii) APPLICABILITY TO SUCCESSOR IN INTEREST.—Any successor to any investment bank holding company referred to in clause (i) may retain any investments made pursuant to this subparagraph—

(I) during the 5-year period beginning on the date the succession is consummated; and

(II) with the consent of the Board, for an additional period not to exceed 5 years after the 5-year period referred to in subclause (I),

unless the Board determines that the retention of such investment would jeopardize the safety and soundness of any insured depository institution affiliate of such successor.

(iii) CROSS MARKETING RESTRICTIONS.—A wholesale financial institution shall not—

(I) offer or market, directly or through any arrangement, any product or service of an affiliate whose shares are owned or controlled by the investment bank holding company pursuant to this subparagraph or subparagraph (C); or

(II) permit any of such wholesale financial institution's or subsidiary's products or services to be offered or marketed, directly or through any arrangement, by or through any such affiliate.

(iv) USE OF COMMON NAME.—An investment bank holding company shall not permit a wholesale financial institution to adopt a name which is the same as or similar to, or a variation of, the name or title of an affiliate engaged in activities pursuant to subparagraph (B).

(C) COMMODITIES.—

(i) IN GENERAL.—An investment bank holding company predominantly engaged as of January 1, 1995, in securities activities in the United States (or any successor to any such company) may engage in, or directly or indirectly own or control shares of a company engaged in, activities related to the trading, sale, or investment in commodities and underlying physical properties that were not permissible for bank holding companies to conduct in the United States as of January 1, 1995, provided such investment bank holding company, or any subsidiary of such holding company, was engaged

directly, indirectly, or through any such company in any of such activities as of January 1, 1995, in the United States.

(ii) LIMITATION.—Notwithstanding subparagraphs (A) and (B), the aggregate investment by an investment bank holding company in activities under this subparagraph (other than those otherwise permitted under this section) shall not at any time exceed 5 percent of the total consolidated assets of the investment bank holding company.

(iii) SUCCESSOR DEFINED.—For purposes of this subparagraph and subparagraph (B), the term "successor" means, with respect to any investment bank holding company described in clause (i), any company that merges with, or acquires control of, such investment bank holding company.

(D) QUALIFIED INVESTOR IN AN INVESTMENT BANK HOLDING COMPANY.—

(i) IN GENERAL.—Notwithstanding any other provision of Federal or State law, a qualified investor—

(I) shall not be, or be deemed to be, an investment bank holding company, a financial services holding company, a bank holding company, or any similar organization; and

(II) shall not be deemed to control any such company or organization or any subsidiary of any such company or organization (other than for purposes of section 23A and 23B of the Federal Reserve Act),

by virtue of the investor's ownership or control of shares of an investment bank holding company.

(ii) QUALIFIED INVESTOR DEFINED.—For purposes of this subparagraph, the term "qualified investor" means any United States company (including a parent company and all subsidiaries of which the parent company holds at least 80 percent of the total voting equity securities) which since February 27, 1995, has directly or indirectly owned or controlled shares of capital stock representing at least 10 percent, and not more than 45 percent, of the outstanding voting shares or voting power of a company that—

(I) becomes an investment bank holding company or a subsidiary of an investment bank holding company; and

(II) before such company became an investment bank holding company or a subsidiary of an investment bank holding company, had more than 50 percent of the company's assets employed directly or indirectly in securities activities.

(iii) CROSS-MARKETING AND COMMON NAME.—A wholesale financial institution shall not—

(I) offer or market products or services of a qualified investor in the investment bank holding company of which the wholesale financial institution is an affiliate;

(II) permit the institution's products or services to be offered or marketed in connection with products or services of such qualified investor; or

(III) adopt a name which is the same as or similar to, or a variation of, the name or title of such qualified investor.

(iv) EXAMINATION AND REPORTING.—Notwithstanding any other provision of law, the Board may conduct examinations of, or require reports from, a qualified investor only to the extent that the Board reasonably determines that such examinations or reports are necessary—

(I) to ensure compliance with this subparagraph; or

(II) to the extent that the qualified investor is an affiliate of a wholesale financial institution for purposes of section 23A of the Federal Reserve Act, to ensure compliance with restrictions imposed by law or regulation on transactions between the qualified investor and such wholesale financial institution.

(E) SPECIAL RULE.—An investment bank holding company that owns and controls shares of a company pursuant to subparagraph (B) or (C) may not own or control shares of a company pursuant to section 4(k).

(F) CONSOLIDATED TOTAL RISK-WEIGHTED ASSETS.—For purposes of this paragraph, the following definitions shall apply:

(i) IN GENERAL.—The term "consolidated total risk-weighted assets" shall have the meaning given to such term in regulations prescribed by the Board as in effect on the date of the enactment of the Financial Services Competitive Act of 1995.

(ii) APPLICATION TO FOREIGN BANKS.—In the case of a foreign bank or a company that owns or controls a foreign bank, the term "consolidated total risk-weighted assets" means total risk-weighted assets held by the foreign bank or company in the United States in any United States branch, agency, or commercial lending company subsidiary, any depository institution controlled by the foreign bank or company, any subsidiary held under the authority of this section, section 3, 4, or 10 (other than paragraph (9) or (13) of section 4(c)), or section 25 or 25A of the Federal Reserve Act.

(2) SECURITIES ACTIVITIES.—

(A) INSTITUTIONS MUST BE WELL CAPITALIZED.—The Board shall disapprove a notice under section 10 by an investment bank holding company (or a company seeking to become an investment bank holding company) to acquire a securities affiliate if any wholesale financial institution controlled by the investment bank holding company is not well capitalized or would not be well capitalized following the transaction.

(B) TRANSACTIONS WITH AFFILIATES.—

(i) IN GENERAL.—A wholesale financial institution controlled by an investment bank holding company shall be treated as a bank for purposes of the provisions of sections 23A and 23B of the Federal Reserve Act.

(ii) OTHER RESTRICTIONS REGARDING SECURITIES AFFILIATES DETERMINED BY THE BOARD.—A securities affiliate of an investment bank holding company, and a wholesale financial institution controlled by an investment bank holding company, shall not be subject to the provisions of section 11, except that the securities affiliate and wholesale financial institution shall be subject to subsections (l) and (m) of such section in the same manner and to the same extent such paragraphs would apply if the wholesale financial institution were an insured depository institution.

(3) LIMITATION ON AFFILIATION WITH INSURED DEPOSITORY INSTITUTIONS.—An investment bank holding company may not, directly or indirectly, own or control—

(A) any bank, other than a wholesale financial institution;

(B) any savings association;

(C) any institution described in section 2(c)(2) (other than subparagraphs (C) and (G) of such section); or

(D) any institution that accepts—

(i) initial deposits of $100,000 or less, other than on an incidental or occasional basis, or

(ii) deposits that are insured under the Federal Deposit Insurance Act.

(4) NO DEPOSIT INSURANCE FUND LIABILITY.—No Federal deposit insurance funds may be used in connection with the failure of, or any proposed assistance to, a wholesale financial institution or an investment bank holding company.

(5) CAPITAL OF IBHC.—

(A) IN GENERAL.—The Board shall not impose any capital requirement on investment bank holding companies or subsidiaries of such companies (other than depository institutions) unless any such requirement is based upon appropriate risk-weighing considerations.

(B) APPLICABLE ACCOUNTING PRINCIPLES.—In applying any capital standard to investment bank holding companies, or subsidiaries of such companies, the Board shall utilize uniform accounting principles consistent with generally accepted accounting principles in accordance with section 37(a)(2) of the Federal Deposit Insurance Act.

(b) QUALIFICATION OF FOREIGN BANK AS INVESTMENT BANK HOLDING COMPANY.—

(1) IN GENERAL.—Any foreign bank that—

(A) operates a branch, agency or commercial lending company in the United States (and any company that owns or controls such foreign bank), including a foreign bank that does not own or control a wholesale financial institution; and

(B) controls a security affiliate that engages in underwriting corporate equity securities,

may request a determination from the Board that such bank or company be treated as an investment bank holding company.

(2) CONDITIONS FOR TREATMENT AS AN INVESTMENT BANK HOLDING COMPANY.—A foreign bank and a company that owns or controls a foreign bank may not be treated as an investment bank holding company unless the bank and company meet and continue to meet the following criteria:

(A) NO INSURED DEPOSITS.—No deposits held directly by a foreign bank or through an affiliate are insured under the Federal Deposit Insurance Act.

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

(C) TRANSACTIONS WITH AFFILIATES.—Transactions between a branch, agency, or commercial lending company subsidiary of the foreign bank in the United States, and any securities affiliate or company in which the foreign bank (or any company that owns or controls such foreign bank) has invested pursuant to subsection (a)(1)(B), comply with the provisions of sections 23A and 23B of the Federal Reserve Act in the same manner and to the same extent as such transactions would be required to comply with such sections if the bank were a member bank.

(3) TREATMENT AS A WHOLESALE BANK.—Any foreign bank which is, or is affiliated with a company which is, treated as an investment bank holding company under this subsection shall be treated as a wholesale financial institution for purposes of clauses (iii) and (iv) of subsection (a)(1)(B), subsection (a)(2)(B)(ii), and section 5(g), except that the Board may adopt such modifications, conditions, or exemptions as the Board deems appropriate, giving due regard to the principle of national treatment and equality of competitive opportunity.

(4) NONAPPLICABILITY OF OTHER EXEMPTION.—Any foreign bank or company which is treated as an investment bank holding company under this subsection shall not be eligible for any exemption described in section 2(h).

(c) ELIGIBILITY OF FOREIGN BANKS FOR CERTAIN TREATMENT.—

(1) RECIPROCAL NATIONAL TREATMENT.—

(A) IN GENERAL.—A foreign bank that operates a branch, agency or commercial lending company in the United States, and any company that owns or controls such a foreign bank, shall be eligible for the treatment afforded under subsection (b) or section 11(n) only if the home country of such foreign bank or company accords to United States banks the same competitive opportunities in banking as such country accords to domestic banks of such country.

(B) COORDINATION WITH NAFTA.—Subparagraph (A) shall not apply in derogation of any obligation under the North American Free Trade Agreement.

(C) HOME COUNTRY DEFINED.—For purposes of subparagraph (A), the term "home country" means, with respect to any foreign bank or company referred to in subparagraph (A), the country under the laws of which the foreign bank or company is organized.

(2) PREVENTION OF EVASION.—No foreign bank or bank owned by a former United States national may operate a branch or agency in the United State if the predominance of the assets of such bank were acquired in connection with a merger with, or purchase or assumption of all or substantially all the assets of, a wholesale financial institution.

(d) RULE FOR FINANCIAL SERVICES HOLDING COMPANIES.—For purposes of section 5(g)(2)(A)(ii), any foreign bank (as defined in section 1(b) of the International Banking Act of 1978) which is directly or indirectly owned, controlled, or operated by a company that—

(1) as of January 1, 1995, was registered as a bank holding company; or

(2) is a successor to any such bank holding company, shall be treated as a wholesale financial institution.

SAVING PROVISION

SEC. [11.] *13.* (a) Nothing herein contained shall be interpreted or construed as approving any act, action, or conduct which is or has been or may be in violation of existing law, nor shall anything herein contained constitute a defense to any action, suit, or proceeding pending or hereafter instituted on account of any prohibited antitrust or monopolistic act, action, or conduct, except as specifically provided in this section.

(b) ANTITRUST REVIEW.—

(1) IN GENERAL.—The Board shall immediately notify the Attorney General of any approval by it pursuant to section 3 of a proposed acquisition, merger, or consolidation transaction. If the Board has found that it must act immediately in order to prevent the probable failure of a bank or [bank holding company] *financial services holding company* involved in any such transaction, the transaction may be consummated immediately upon approval by the Board. If the Board has advised the Comptroller of the Currency or the State supervisory authority, as the case may be, of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the Board. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the Board or, if the Board has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the Board with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval. Any action brought under the antitrust laws arising out of an acquisition, merger, or consolidation transaction approved under section 3 shall be commenced prior to the earliest time under this subsection at which the transaction approval under section 3 might be con-

summated. The commencement of such an action shall stay the effectiveness of the Board's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented. In any judicial proceeding attacking any acquisition, merger, or consolidation transaction approved pursuant to section 3 on the ground that such transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), the standards applied by the court shall be identical with those that the Board is directed to apply under section 3 of this Act. Upon the consummation of an acquisition, merger, or consolidation transaction approved under section 3 in compliance with this Act and after the termination of any antitrust litigation commenced within the period prescribed in this section, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), but nothing in this Act shall exempt any [bank holding company] *financial services holding company* involved in such a transaction from complying with the antitrust laws after the consummation of such transaction.

* * * * * * *

SEPARABILITY OF PROVISIONS

SEC. [12.] *14.* If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

FEDERAL RESERVE ACT

* * * * * * *

SEC. 9B. WHOLESALE FINANCIAL INSTITUTIONS.

(a) APPLICATION FOR MEMBERSHIP AS WHOLESALE FINANCIAL INSTITUTION.—

(1) APPLICATION REQUIRED.—

(A) IN GENERAL.—Any bank incorporated by special law of any State, or organized under the general laws of any State, may apply to the Board of Governors of the Federal Reserve System to become a wholesale financial institution and to subscribe to the stock of the Federal reserve bank organized within the district where the applying bank is located.

(B) TREATMENT AS STATE MEMBER BANK.—Any application under subparagraph (A) shall be treated as an application to become a State member bank under, and shall be subject to the provisions of, section 9.

(2) INSURANCE TERMINATION.—No bank that is insured under the Federal Deposit Insurance Act may become a wholesale fi-

nancial institution unless it has met all requirements under that Act for voluntary termination of deposit insurance.

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

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

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

(A) the relevant capital levels and capital measures for each capital category shall be the levels specified by the Board for wholesale financial institutions in accordance with subsection (c);

(B) the provisions applicable to well capitalized insured depository institutions shall be inapplicable to wholesale financial institutions;

(C) the provisions authorizing or requiring an institution to be placed into receivership shall not apply to a wholesale financial institution, and, instead, the Board is authorized or required, as the case may be, to terminate the wholesale financial institution's membership in the Federal Reserve System or place the bank into conservatorship; and

(D) for purposes of applying the provisions of section 38 of the Federal Deposit Insurance Act to wholesale financial institutions, all references to the appropriate Federal banking agency or to the Corporation in that section shall be deemed to be references to the Board.

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

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

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

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

(1) LIMITATIONS ON DEPOSITS.—

(A) MINIMUM AMOUNT.—

(i) IN GENERAL.—Pursuant to such regulations as the Board may prescribe, no wholesale financial institution may receive initial deposits of $100,000 or less, other than on an incidental and occasional basis.

(ii) LIMITATION ON DEPOSITS OF LESS THAN $100,000.—No bank may be treated as a wholesale financial institution if the total amount of the initial deposits of $100,000 or less at such bank constitute more than 5 percent of the bank's total deposits.

(B) NO DEPOSIT INSURANCE.—No deposits held by a wholesale financial institution shall be insured deposits under the Federal Deposit Insurance Act.

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

(2) SPECIAL CAPITAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—

(A) MINIMUM CAPITAL LEVELS.—

(i) IN GENERAL.—The Board shall, by regulation, adopt capital requirements for wholesale financial institutions—

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

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

(ii) MINIMUM LEVERAGE RATIO.—The minimum leverage ratio of tier one capital to total assets of wholesale financial institutions shall be not less than the level required for a State member insured bank to be well capitalized unless the Board determines otherwise, consistent with safety and soundness.

(B) CAPITAL CATEGORIES FOR PROMPT CORRECTIVE ACTION.—For purposes of applying section 38 of the Federal Deposit Insurance Act with respect to any wholesale financial institution, the Board shall, by regulation, establish, for each relevant capital measure specified by the Board under subparagraph (A), the levels at which a wholesale financial institution is well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized.

(3) ADDITIONAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—In addition to any requirement other-

wise applicable to State member banks or applicable, under this section, to wholesale financial institutions, the Board may prescribe, by regulation or order, for wholesale financial institutions—

(A) limitations on transactions with affiliates to prevent an affiliate from gaining access to, or the benefits of, credit from a Federal reserve bank, including overdrafts at a Federal reserve bank;

(B) special clearing balance requirements; and

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

(i) promote the safety and soundness of the wholesale financial institution, or

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

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

(A) the promotion of the safety and soundness of the wholesale financial institution; and

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

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

(d) CONSERVATORSHIP AUTHORITY.—

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

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

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

(1) WHOLESALE FINANCIAL INSTITUTION.—The term "wholesale financial institution" means a bank whose application to become a wholesale financial institution and a State member bank has been approved by the Board under this section.

(2) DEPOSIT.—The term "deposit" has the meaning given to such term by the Board under this Act.

(3) STATE MEMBER INSURED BANK.—The term "State member insured bank" means a State member bank which is an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act).

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

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SEC. 10B. (a) * * *

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(c) REPORTS ON DISCOUNTS AND ADVANCES TO WHOLESALE FINANCIAL INSTITUTIONS.—

(1) IN GENERAL.—The Board shall submit a report to the Congress at the end of any year in which any wholesale financial institution has obtained a discount, advance, or other extension of credit from a Federal reserve bank.

(2) CONTENTS.—Any report submitted under paragraph (1) shall explain the circumstances and need for any discount, advance, or other extension of credit to a wholesale financial institution during the period covered by the report, including the type and amount of credit extended and the amount of credit remaining outstanding as of the date of the report.

* * * * * * *

SEC. 19. (a) * * *

(b) RESERVE REQUIREMENTS.—

(1) DEFINITIONS.—The following definitions and rules apply to this subsection, subsection (c), section 11A, the first paragraph of section 13, and the second, thirteenth, and fourteenth paragraphs of section 16:

(A) The term "depository institution" means—

(i) any insured bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act, *or any wholesale financial institution as defined in section 9B of this Act*;

* * * * * * *

RESTRICTIONS ON TRANSACTIONS WITH AFFILIATES

SEC. 23B. (a) * * *

(b) PROHIBITED TRANSACTIONS.—

(1) IN GENERAL.—A member bank or its subsidiary—

(A) * * *

(B) whether acting as principal or fiduciary, shall not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate *and for 30 days thereafter*, any security if a principal underwriter of that security is an affiliate of such bank.

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SECTION 1112 OF THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978

USE OF INFORMATION

SEC. 1112. (a) * * *

* * * * * * *

(e) Notwithstanding section 1101(6) or any other provision of [this title] *law*, the exchange of financial records, *examination reports*, or other information with respect to a financial institution , holding company, or a subsidiary of a depository institution or holding company, among and between the five member supervisory agencies of the Federal Financial Institutions Examination Council and the Securities and Exchange Commission is permitted.

FEDERAL DEPOSIT INSURANCE ACT

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SEC. 3. As used in this Act—

(a) * * *

* * * * * * *

(q) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" means—

(1) * * *

(2) the Board of Governors of the Federal Reserve System, in the case of—

[(A) any State member insured bank (except a District bank),]

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

* * * * * * *

SEC. 8. (a) TERMINATION OF INSURANCE.—

[(1) VOLUNTARY TERMINATION.—Any insured depository institution which is not—

[(A) a national member bank;

[(B) a State member bank;

[(C) a Federal branch;

[(D) a Federal savings association; or

[(E) an insured branch which is required to be insured under subsection (a) or (b) of section 6 of the International Banking Act of 1978,

may terminate such depository institution's status as an insured depository institution if such insured institution provides written notice to the Corporation of the institution's intent to terminate such status not less than 90 days before the effective date of such termination.

[(2)] *(1)* INVOLUNTARY TERMINATION.—

(A) * * *

* * * * * * *

[(3)] *(2)* HEARING; TERMINATION.—If, on the basis of the evidence presented at a hearing before the Board of Directors (or any person designated by the Board for such purpose), in

which all issues shall be determined on the record pursuant to section 554 of title 5, United States Code, and the written findings of the Board of Directors (or such person) with respect to such evidence (which shall be conclusive), the Board of Directors finds that any unsafe or unsound practice or condition or any violation specified in the notice to an insured depository institution under paragraph (2)(B) or subsection (w) has been established, the Board of Directors may issue an order terminating the insured status of such depository institution effective as of a date subsequent to such finding.

[(4)**]** *(3)* APPEARANCE; CONSENT TO TERMINATION.—Unless the depository institution shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its status as an insured depository institution and termination of such status thereupon may be ordered.

[(5)**]** *(4)* JUDICIAL REVIEW.—Any insured depository institution whose insured status has been terminated by order of the Board of Directors under this subsection shall have the right of judicial review of such order only to the same extent as provided for the review of orders under subsection (h) of this section.

[(6)**]** *(5)* PUBLICATION OF NOTICE OF TERMINATION.—The Corporation may publish notice of such termination and the depository institution shall give notice of such termination to each of its depositors at his last address of record on the books of the depository institution, in such manner and at such time as the Board of Directors may find to be necessary and may order for the protection of depositors.

[(7)**]** *(6)* TEMPORARY INSURANCE OF DEPOSITS INSURED AS OF TERMINATION.—After the termination of the insured status of any depository institution under the provisions of this subsection, the insured deposits of each depositor in the depository institution on the date of such termination, less all subsequent withdrawals from any deposits of such depositor, shall continue for a period of at least 6 months or up to 2 years, within the discretion of the Board of Directors, to be insured, and the depository institution shall continue to pay to the Corporation assessments as in the case of an insured depository institution during such period. No additions to any such deposits and no new deposits in such depository institution made after the date of such termination shall be insured by the Corporation, and the depository institution shall not advertise or hold itself out as having insured deposits unless in the same connection it shall also state with equal prominence that such additions to deposits and new deposits made after such date are not so insured. Such depository institution shall, in all other respects, be subject to the duties and obligations of an insured depository institution for the period referred to in the 1st sentence from the date of such termination, and in the event that such depository institution shall be closed on account of inability to meet the demands of its depositors within such period, the Corporation shall have the same powers and rights with respect

to such depository institution as in case of an insured depository institution.

[(8)] *(7)* TEMPORARY SUSPENSION OF INSURANCE.—

(A) * * *

* * * * * * *

[(9)] *(8)* FINAL DECISIONS TO TERMINATE INSURANCE.—Any decision by the Board of Directors to—

(A) * * *

* * * * * * *

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

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

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

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

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

(2) either—

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

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

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

(1) an insured savings association;

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

(3) any institution described in section 2(c)(2) of the Bank Holding Company Act of 1956.

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

(d) INSTITUTION MUST BECOME WHOLESALE FINANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING ACTIVITIES.—Any depository institution which voluntarily terminates such institution's status as an insured depository institution under this section may not, upon termination of insurance, accept any deposits unless the institution

is a wholesale financial institution under section 9B of the Federal Reserve Act.

(e) EXIT FEES.—

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

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

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

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

(2) TEMPORARY ASSESSMENTS; OBLIGATIONS AND DUTIES.—During the period specified in paragraph (1) with respect to any bank, the bank shall continue to pay assessments under section 7 as if the bank were an insured depository institution. The bank shall, in all other respects, be subject to the authority of the Corporation and the duties and obligations of an insured depository institution under this Act during such period, and in the event that the bank is closed due to an inability to meet the demands of the bank's depositors during such period, the Corporation shall have the same powers and rights with respect to such bank as in the case of an insured depository institution.

(g) ADVERTISEMENTS.—

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

(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS, AND SECURITIES.—Any certificate of deposit or other obligation or security issued by a State bank or a national bank after the effective date of the voluntary termination of the bank's insured status under this section shall be accompanied by a conspicuous, prominently displayed notice that such certificate of deposit or other obligation or security is not insured under this Act.

(h) NOTICE REQUIREMENTS.—

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

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

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

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

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SEC. 18. (a) * * *

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(s) SECURITIES AFFILIATIONS OF BANKS.—

(1) IN GENERAL.—A bank shall not be an affiliate of any company that, directly or indirectly, acts as an underwriter or dealer of any security, other than—

(A) a securities affiliate in accordance with section 10 of the Financial Services Holding Company Act of 1995; or

(B) a company that underwrites or deals only in securities described in section 10(g) of the Financial Services Holding Company Act of 1995.

(2) EXCEPTIONS.—

(A) CERTAIN BANKS NOT INCLUDED.—For purposes of this subsection, the term "bank" does not include—

(i) an insured bank described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Financial Services Holding Company Act of 1995; and

(ii) a Federal branch or an insured branch (as defined in section 3 of the Federal Deposit Insurance Act).

(B) AFFILIATIONS WITH EDGE ACT AND AGREEMENT CORPORATIONS.—Paragraph (1) shall not apply with respect to the affiliation of a bank with a company held pursuant to section 25 or 25A of the Federal Reserve Act or section 4(c)(13) of the Financial Services Holding Company Act of 1995.

(3) GRANDFATHER PROVISION.—This subsection shall not apply with respect to—

(A) an affiliation that existed on January 1, 1995; or

(B) any new affiliation by an insured bank that has an affiliation that would be prohibited if the affiliation were not covered by subparagraph (A).

(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) BROKER.—The term "broker" has the meaning given to such term in section 3(a)(4) of the Securities Exchange Act of 1934.

(B) DEALER.—The term "dealer" has the meaning given to such term in section 3(a)(5) of the Securities Exchange Act of 1934.

(C) SECURITY.—The term "security" has the meaning given to such term in section 10(k) of the Financial Services Holding Company Act of 1995.

(D) UNDERWRITER.—The term "underwriter" has the meaning given to such term in section 2(11) of the Securities Act of 1933.

(5) AFFILIATE.—For purposes of this subsection, a separately identifiable department or division (as defined in section 3(a) of the Securities Exchange Act of 1934) of a bank shall be deemed to be a company which is an affiliate of the bank.

(t) BROKER-DEALER REGISTRATION.—An insured bank may not use the United States mails or any means or instrumentality of interstate commerce to act as a broker or dealer without registration under the Securities Exchange Act of 1934—

(1) except to the extent permitted under the circumstances described in paragraph (4) or (5) of section 3(a) of such Act; or

(2) unless otherwise exempt from registrations as a broker or dealer pursuant to regulations prescribed by the Securities and Commission.

(u) EXAMINATION REPORTS.—The Federal banking agencies shall, to the maximum extent practicable, use the reports of examination of any broker, dealer, investment adviser, or investment company made by or on behalf of the Securities and Exchange Commission and reports made by or on behalf of a registered securities association or national securities exchange and shall defer to such examination for compliance with Federal securities laws.

(v) JOINT STANDARDS RELATING TO RETAIL SALES OF CERTAIN NONDEPOSIT INVESTMENT PRODUCTS.—

(1) IN GENERAL.—The appropriate Federal banking agencies shall jointly prescribe, after consulting with and considering the views of the Securities and Exchange Commission, standards applicable to any insured depository institution which—

(A) is not registered as a broker under the Securities Exchange Act of 1934; and

(B) effects transactions in securities issued by an investment company or annuities.

(2) SCOPE OF STANDARDS.—The standards required under paragraph (1) with respect to securities and annuities referred to in such paragraph shall, at a minimum, establish requirements with respect to—

(A) sales practices;

(B) disclosures and advertising in connection with transactions in such securities and annuities, including—

(i) the content, form, and timing of any such disclosure; and

(ii) disclaimers concerning the noninsured status of the security or annuity;

(C) the compensation of sales personnel with respect to referrals or transactions;

(D) the training of and qualifications for personnel involved in such transactions, including training in making an accurate judgment about the suitability of a particular investment product for a prospective customer; and

(E) the setting in which and the circumstances under which transactions may be effected, and referrals made, by sales personnel with respect to such securities and annuities.

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SECTION 8 OF THE INTERNATIONAL BANKING ACT OF 1978

NONBANKING ACTIVITIES

SEC. 8. (a) * * *

* * * * * * *

(c)(1) * * *

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(3) PARITY IN CONDUCT OF AUTHORIZED SECURITIES ACTIVITIES.—

(A) IN GENERAL.—Notwithstanding the provisions of paragraph (1) or any other provision of law, any authority conferred under this subsection on any foreign bank or company with respect to securities activities authorized for financial services holding companies in the United States shall terminate 30 days following approval by the Board of an application by such foreign bank or company under section 10 of the Financial Services Holding Company Act of 1995.

(B) AUTHORITY TO IMPOSE CONDITIONS.—If a foreign bank or company that engages directly or through an affiliate in any securities activity pursuant to paragraph (1) has not received approval by the Board under section 10 of the Financial Services Holding Company Act of 1995 to control a securities affiliate by the end of the 3-year period beginning on the effective date of such Act, the Board may impose such limitations and restrictions, including the termination of any activities conducted under paragraph (1) or a requirement that such activities be conducted in compliance with the safeguards of section 11 of such Act, as the Board considers appropriate consistent with the purposes of this Act and the Financial Services Holding Company Act of 1995.

SECTION 5136 OF THE REVISED STATUTES OF THE UNITED STATES

SEC. 5136. Upon duly making and filing articles of association and an organization certificate, the association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

First. To adopt and use a corporate seal.

* * * * * * *

Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this title. The business of dealing in securities and stock by the association shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock: *Provided*, That the association may purchase for its own account investment securities under such limitations and restrictions as the Comptroller of the Currency may by regulation prescribe. In no event shall the total amount of the investment securities of any one obligor or maker, held by the association for its own account, exceed at any time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund, except that this limitation shall not require any association to dispose of any securities lawfully held by it on the date of enactment of the Banking Act of 1935. As used in this section the term "investment securities" shall mean marketable obligations evidencing indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes and/or debentures commonly known as investment securities under such further definition of the term "investment securities" as may by regulation be prescribed by the Comptroller of the Currency. Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation. The limitations and restrictions herein contained as to dealing in, underwriting and purchasing for its own account, investment securities shall not apply to obligations of the United States, or general obligations of any State or of any political subdivision thereof, or obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969, or obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the thirteen banks for cooperatives or any of them or the Federal Home Loan Banks, or obligations which are insured by the Secretary of Housing and Urban Development under title XI of the National Housing Act, or obligations which are insured by the Secretary of Housing and Urban Development (hereafter in this sentence referred to as the "Secretary" pursuant to section 207 of the National Housing Act, if the debentures to be issued in payment of such insured obligations are guaranteed as to principal and interest by the United States, or obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association, or mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act or obligations of the Federal Fi-

nancing Bank or obligations of the Environmental Financing Authority or obligations or other instruments or securities of the Student Loan Marketing Association, or such obligations of any local public agency (as defined in section 110 (h) of the Housing Act of 1949) as are secured by an agreement between the local public agency and the Secretary in which the local public agency agrees to borrow from said Secretary and said Secretary agrees to lend to said local public agency, monies in an aggregate amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay, when due, the interest on and all installments (including the final installment) of the principal of such obligations, which monies under the terms of said agreement are required to be used for such payments, or such obligations of a public housing agency (as defined in the United States Housing Act of 1937, as amended) as are secured (1) by an agreement between the public housing agency and the Secretary in which the public housing agency agrees to borrow from the Secretary and the Secretary agrees to lend to the public housing agency, prior to the maturity of such obligations, monies in an amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of such obligations with interest to maturity thereon, which monies under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity, (2) by a pledge of annual contributions under an annual contributions contract between such public housing agency and the Secretary if such contract shall contain the covenant by the Secretary which is authorized by subsection (b) of section 22 of the United States Housing Act of 1937, as amended, and if the maximum sum and the maximum period specified in such contract pursuant to said subsection 22(b) shall not be less than the annual amount and the period for payment which are requisite to provide for the payment when due of all installments of principal and interest on such obligations, or (3) by a pledge or both annual contributions under an annual contributions contract containing the covenant by the Secretary which is authorized by section 6(g) of the United States Housing Act of 1937, and a loan under an agreement between the local public housing agency and the Secretary in which the public housing agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the public housing agency, prior to the maturity of the obligations involved, moneys in an amount which (together with any other moneys irrevocably committed under the annual contributions contract to the payment of principal and interest on such obligations) will suffice to provide for the payment when due of all installments of principal and interest on such obligations, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal and interest on such obligations at their maturity: *Provided,* That in carrying on the business commonly known as the safe-deposit business the association shall not invest in the capital stock of a corporation organized under the law of any State to conduct a safe-deposit business in an amount in excess of 15 per centum of the capital stock of the association actually paid in and unimpaired and 15 per centum of its

unimpaired surplus. The limitations and restrictions herein contained as to dealing in and underwriting investment securities shall not apply to obligations issued by the International Bank for Reconstruction and Development, the European Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the Inter-American Investment Corporation, or the International Finance Corporation, or obligations issued by any State or political subdivision or any agency of a State or political subdivision for housing, university, or dormitory purposes, which are at the time eligible for purchase by a national bank for its own account, nor to bonds, notes and other obligations issued by the Tennessee Valley Authority or by the United States Postal Service: *Provided,* That no association shall hold obligations issued by any of said organizations as a result of underwriting, dealing, or purchasing for its own account (and for this purpose obligations as to which it is under commitment shall be deemed to be held by it) in a total amount exceeding at any one time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation authorized to be created pursuant to title IX of the Housing and Urban Development Act of 1968, and may make investments in a partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of that Act. Notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock issued by any State housing corporation incorporated in the State in which the association is located and may make investments in loans and commitments for loans to any such corporation: *Provided,* That in no event shall the total amount of such stock held for its own account and such investments in loans and commitments made by the association exceed at any time 5 per centum of its capital stock actually paid in and unimpaired plus 5 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation organized solely for the purpose of making loans to farmers and ranchers for agricultural purposes, including the breeding, raising, fattening, or marketing of livestock. However, unless the association owns at least 80 per centum of the stock of such agricultural credit corporation the amount invested by the association at any one time in the stock of such corporation shall not exceed 20 per centum of the unimpaired capital and surplus of the association: *Provided further,* That notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock of a bank insured by the Federal Deposit Insurance Corporation or a holding company which owns or controls such an insured bank if the stock of such bank or company is owned exclusively (except to the extent directors' qualifying shares are required by law) by depository institutions or depository institution holding companies (as defined in section 3 of the Federal Deposit Insurance Act) and such bank or company and all subsidiaries thereof are engaged exclusively in providing services to or for other depository institutions,

their holding companies, and the officers, directors, and employees of such institutions and companies, and in providing correspondent banking services at the request of other depository institutions or their holding companies (also referred to as a "banker's bank"), but in no event shall the total amount of such stock held by the association in any bank or holding company exceed at any time 10 per centum of the associations capital stock and paid in and unimpaired surplus and in no event shall the purchase of such stock result in an association's acquiring more than 5 per centum of any class of voting securities of such bank or company. The limitations and restrictions contained in this paragraph as to an association purchasing for its own account investment securities shall not apply to securities that (A) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); (B) are small business related securities (as defined in section 3(a)(53) of the Securities Exchange Act of 1934); or (C) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)). The exception provided for the securities described in subparagraphs (A), (B), and (C) shall be subject to such regulations as the Comptroller of the Currency may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both. A national banking association may deal in, underwrite, and purchase for such association's own account qualified Canadian government obligations to the same extent that such association may deal in, underwrite, and purchase for such association's own account obligations of the United States or general obligations of any State or of any political subdivision thereof. For purposes of this paragraph—

(1) the term "qualified Canadian government obligations" means any debt obligation which is backed by Canada, any Province of Canada, or any political subdivision of any such Province to a degree which is comparable to the liability of the United States, any State, or any political subdivision thereof for any obligation which is backed by the full faith and credit of the United States, such State, or such political subdivision, and such term includes any debt obligation of any agent of Canada or any such Province or any political subdivision of such Province if—

(A) the obligation of the agent is assumed in such agent's capacity as agent for Canada or such Province or such political subdivision; and

(B) Canada, such Province, or such political subdivision on whose behalf such agent is acting with respect to such obligation is ultimately and unconditionally liable for such obligation; and

(2) the term "Province of Canada" means a Province of Canada and includes the Yukon Territory and the Northwest Territories and their successors.

Notwithstanding any limitation and restriction contained in this paragraph relating to dealing, underwriting, and purchasing securities and in addition to any authorization in this paragraph to deal in, underwrite or purchase securities, a national bank may deal in, underwrite, and purchase for such association's own ac-

count any obligation (including general and limited obligation bonds, revenue bonds and obligations that satisfy the requirements of section 142(b)(1) of the Internal Revenue Code of 1986) issued by or on behalf of any State or political subdivision of a State, including any municipal corporate instrumentalities of 1 or more States, or any public agency or authority of any State or political subdivision of a State, if the national bank—

(1) is well capitalized (as defined in section 38(b) of the Federal Deposit Insurance Act); and

(2) engages in the business of banking.

SECTION 106 OF THE BANK HOLDING COMPANY ACT AMENDMENTS OF 1970

SEC. 106. (a) As used in this section, the terms "bank", "[bank holding company] *financial services holding company*", "subsidiary", and "Board" have the meaning ascribed to such terms in section 2 of the Bank Holding Company Act of 1956. For purposes of this section only, the term "company", as used in section 2 of the Bank Holding Company Act of 1956, means any person, estate, trust, partnership, corporation, association, or similar organization, but does not include any corporation the majority of the shares of which are owned by the United States or by any State. The term "trust service" means any service customarily performed by a bank trust department.

(b)(1) A bank shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement—

(A) that the customer shall obtain some additional credit, property, or service from such bank other than a loan, discount, deposit, or trust service;

(B) that the customer shall obtain some additional credit, property, or service from a [bank holding company] *financial services holding company* of such bank, or from any other subsidiary of such [bank holding company] *financial services holding company*;

(C) that the customer provide some additional credit, property, or service to such bank, other than those related to and usually provided in connection with a loan, discount, deposit, or trust service;

(D) that the customer provide some additional credit, property, or service to a [bank holding company] *financial services holding company* of such bank, or to any other subsidiary of such [bank holding company] *financial services holding company*; or

(E) that the customer shall not obtain some other credit, property, or service from a competitor of such bank, a [bank holding company] *financial services holding company* of such bank, or any subsidiary of such [bank holding company] *financial services holding company*, other than a condition or requirement that such bank shall reasonably impose in a credit transaction to assure the soundness of the credit.

The Board may by regulation or order permit such exceptions to the foregoing prohibition as it considers will not be contrary to the purposes of this section.

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SECURITIES EXCHANGE ACT OF 1934

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TITLE I—REGULATION OF SECURITIES EXCHANGES

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DEFINITIONS AND APPLICATION OF TITLE

SEC. 3. (a) When used in this title, unless the context otherwise requires—

(1) * * *

* * * * * * *

[(4) The term "broker" means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank.

[(5) The term "dealer" means any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.]

(4) BROKER.—

(A) IN GENERAL.—The term "broker" means any person engaged in the business of effecting transactions in securities for the account of others.

(B) EXCLUSION OF BANKS.—The term "broker" does not include a bank unless such bank—

(i) publicly solicits the business of effecting securities transactions for the account of others;

(ii) is compensated for such business by the payment of commissions or similar remuneration based on effecting transactions in securities (other than fees calculated as a percentage of assets under management) in excess of the bank's incremental costs directly attributable to effecting such transactions (hereafter referred to as "incentive compensation"); or

(iii) is a separately identifiable department or division of the bank.

(C) EXEMPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be deemed to be a broker because it engages in any of the following activities under the conditions described:

(i) THIRD PARTY BROKERAGE ARRANGEMENTS.—The bank enters into a contractual or other arrangement with a broker or dealer registered under this title under which the broker or dealer offers brokerage services on or off the premises of the bank if—

(I) such broker or dealer is clearly identified as the person performing the brokerage services;

(II) the broker or dealer performs brokerage services in an area that is clearly marked and, unless made impossible by space or personnel considerations, physically separate from the routine deposit-taking activities of the bank;

(III) any materials used by the bank to advertise or promote generally the availability of brokerage services under the contractual or other arrangement clearly indicate that the brokerage service are being provided by the broker or dealer and not by the bank;

(IV) any materials used by the bank to advertise or promote generally the availability of brokerage services under the contractual or other arrangement are in compliance with the Federal securities laws before distribution;

(V) bank employees perform only clerical or ministerial functions in connection with brokerage transactions, including scheduling appointments with the associated persons of a broker or dealer and, on behalf of a broker or dealer, transmitting orders or handling customers funds or securities, except that bank employees who are not so qualified may describe in general terms investment vehicles under the contractual or other arrangement and accept customer orders on behalf of the broker or dealer if such employees have received training that is substantially equivalent to the training required for personnel qualified to sell securities pursuant to the requirements of a self-regulatory organization (as defined in section 3(a) of the Securities Exchange Act of 1934);

(VI) bank employees do not directly receive incentive compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the requirements of a self-regulatory organization (as so defined) except that the bank employees may receive nominal cash and noncash compensation for customer referrals if the cash compensation is a 1-time fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction;

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

(VIII) the broker or dealer informs each customer that the brokerage services are provided by the broker or dealer and not by the bank and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are

not insured by the Federal Deposit Insurance Corporation.

(ii) TRUST ACTIVITIES.—The bank engages in trust activities (including effecting transactions in the course of such trust activities) permissible for national banks under the first section of the Act of September 28, 1962, or for State banks under relevant State trust statutes or law (including securities safekeeping, self-directed individual retirement accounts, or managed agency accounts or other functionally equivalent accounts of a bank) unless the bank—

(I) publicly solicits brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities; or

(II) receives incentive compensation for such brokerage activities.

(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in exempted securities, other than municipal securities, or in commercial paper, bankers acceptances, commercial bills, qualified Canadian Government obligations as defined in section 5136 of the Revised Statues, obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969, obligations of the North American Development Bank, and obligations of any local public agency (as defined in section 110(h) of the Housing Act of 1949) or any public housing agency (as defined in the United States Housing Act of 1937) that are expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in.

(iv) MUNICIPAL SECURITIES.—The bank effects transactions in municipal securities.

(v) EMPLOYEE AND SHAREHOLDER BENEFIT PLANS.—The bank effects transactions as part of any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment, or similar plan for employees or shareholders of an issuer or its subsidiaries.

(vi) SWEEP ACCOUNTS.—The bank effects transactions as part of a program for the investment or reinvestment of bank deposit funds into any no-load, open-end management investment company registered under the Investment Company Act of 1940 that holds itself out as a money market fund.

(vii) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate of the bank, as defined in section 2 of the Financial Services Holding Company Act of 1995.

(viii) PRIVATE SECURITIES OFFERINGS.—The bank—

(I) effects sales as part of a primary offering of securities by an issuer, not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations issued thereunder;

(II) effects such sales exclusively to an accredited investor, as defined in section 3 of the Securities Act of 1933; and

(III) if affiliated with a securities affiliate, as provided under section 10 of the Financial Services Holding Company Act of 1995—

(aa) has not been so affiliated for more than 1 year; or

(bb) effects such sales through a separately identifiable department or division that itself shall be deemed to be a broker.

(ix) DE MINIMIS EXEMPTION.—If the bank does not have a subsidiary or affiliate registered as a broker or dealer under section 15, the bank effects, other than in transactions referenced in clauses (i) through (viii), not more than—

(I) 800 transactions in any calendar year in securities for which a ready market exists, and

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

(x) SAFEKEEPING AND CUSTODY SERVICES.—The bank, as part of customary banking activities—

(I) provides safekeeping or custody services with respect to securities, including the exercise of warrants or other rights on behalf of customers;

(II) clears or settles transactions in securities;

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

(IV) holds securities pledged by 1 customer to another customer or securities subject to resale agreements between customers or facilitates the pledging or transfer of such securities by book entry.

(xi) BANKING PRODUCTS.—The bank effects transactions that have been determined pursuant to section 10(k)(3)(C) to be more appropriately treated as banking products, if the bank effects such transactions through a separately identifiable department or division that itself shall be deemed to be a broker.

(D) EXEMPTION FOR ENTITIES SUBJECT TO SECTION 15(e).—The term "broker" does not include a bank that—

(i) was, immediately prior to the enactment of the Financial Services Competitiveness Act of 1995, subject to section 15(e); and

(ii) is subject to such restrictions and requirements as the Commission deems appropriate.

(5) DEALER.—

(A) IN GENERAL.—The term "dealer" means any person engaged in the business of buying and selling securities for his own account through a broker or otherwise.

(B) EXCEPTIONS.—Such term does not include—

(i) a person that buys or sells securities for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business; or

(ii) a bank, to the extent that the bank—

(I) buys and sells commercial paper, bankers acceptances, exempted securities (other than municipal securities), qualified Canadian Government obligations as defined in section 5136 of the Revised Statues, obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969, obligations of the North American Development Bank, and obligations of any local public agency (as defined in section 110(h) of the Housing Act of 1949) or any public housing agency (as defined in the United States Housing Act of 1937) that are expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in;

(II) buys and sells municipal securities;

(III) buys and sells securities for investment purposes for the bank or for accounts for which the bank acts as a trustee or fiduciary;

(IV) engages in the issuance or sale of designated asset-back securities through a grantor trust or otherwise and—

(aa) has not been affiliated with a securities affiliate under section 10 of the Financial Services Holding Company Act of 1995 for more than 1 year; or

(bb) effects such transactions through a separately identifiable department or division that itself shall be deemed to be a dealer; or

(V) buys and sells securities that have been determined pursuant to section 10(k)(3)(C) to be more appropriately treated as banking products, if a separately identifiable department or division that itself is deemed to be a broker or dealer for purposes of this Act engages in such purchases and sales.

(C) DESIGNATED ASSET-BACKED SECURITIES DEFINED.—For purposes of subparagraph (B)(ii)(IV), the term "designated asset-backed securities" means—

(i) securities backed by or representing an interest in 1-4 family residential mortgages originated or purchased by the bank, its affiliates, or its subsidiaries; and

(ii) securities backed by or representing an interest in consumer receivables or consumer leases originated or purchased by the bank, its affiliates, or its subsidiaries.

* * * * * * *

(12)(A) The term "exempted security" or "exempted securities" includes—

(i) * * *

* * * * * * *

[(iii) any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian;]

(iii) any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940;

* * * * * * *

(54) For purposes of paragraphs (4) and (5), the term "separately identifiable department or division" of a bank means a unit—

(A) that is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's activities, including the supervision of all bank employees engaged in the performance of such activities; and

(B) for which all of the records relating to its activities described in paragraphs (4) and (5) are separately maintained in or extractable from such unit's own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement of this Act and rules and regulations promulgated under this Act.

* * * * * * *

(e) EXEMPTION FROM DEFINITION OF BROKER OR DEALER.—The Commission, by regulation or order, upon its own motion or upon application, may conditionally or unconditionally exclude any person or class of persons from the definitions of "broker" or "dealer", if the Commission finds that such exclusion is consistent with the public interest, the protection of investors, and the purposes of this title.

* * * * * * *

MARGIN REQUIREMENTS

SEC. 7. (a) * * *

* * * * * * *

(d) It shall be unlawful for any person not subject to subsection (c) of this section to extend or maintain credit or to arrange for the extension or maintenance of credit for the purpose of purchasing or

carrying any security, in contravention of such rules and regulations as the Federal Reserve Board shall prescribe to prevent the excessive use of credit for the purchasing or carrying of or trading in securities in circumvention of the other provisions of this section. Such rules and regulations may impose upon all loans made for the purpose of purchasing or carrying securities limitations similar to those imposed upon members, brokers, or dealers by subsection (c) of this section and the rules and regulations thereunder. This subsection and the rules and regulations thereunder shall not apply (A) to a loan made by a person not in the ordinary course of his business, (B) to a loan on an exempted security, (C) to a loan to a dealer to aid in the financing of the distribution of securities to customers not through the medium of a national securities exchange, (D) to a loan by a bank on a security other than an equity security, [or (E)] *(E) to a loan to a broker or dealer by a member bank or any other person that has entered into an agreement pursuant to section 8(a) if the proceeds of the loan are to be used in the ordinary course of the broker's or dealer's business other than for the purpose of funding the purchase of securities for the account of such broker or dealer, or (F)* to such other loans as the Federal Reserve Board shall, by such rules and regulations as it may deem necessary or appropriate in the public interest or for the protection of investors, exempt, either unconditionally or upon specified terms and conditions or for stated periods, from the operation of this subsection and the rules and regulations thereunder.

* * * * * * *

RESTRICTIONS ON BORROWING BY MEMBERS, BROKERS, AND DEALERS

SEC. 8. It shall be unlawful for any registered broker or dealer, member of a national securities exchange, or broker or dealer who transacts a business in securities through the medium of any member of a national securities exchange, directly or indirectly—

(a) To borrow in the ordinary course of business as a broker or dealer on any security (other than an exempted security) registered on a national securities exchange except (1) from or through a member bank of the Federal Reserve Board, (2) from any [nonmember bank] *person other than a member bank* which shall have filed with the Federal Reserve Board an agreement, which is still in force and which is in the form prescribed by the Board, undertaking to comply with all provisions of this Act, the Federal Reserve Act, as amended, and the Banking Act of 1933, which are applicable to member banks and which relate to the use of credit to finance transactions in securities, and with such rules and regulations as may be prescribed pursuant to such provisions of law or for the purpose of preventing evasions thereof, or (3) in accordance with such rules and regulations as the Federal Reserve Board may prescribe to permit loans between such members and/or brokers and/or dealers, or to permit loans to meet emergency needs. Any such agreement filed with the Board of Governors of the Federal Reserve Board shall be subject to termination at any time by order of the Board, after appropriate notice and opportunity for hearing, because of any failure by [such bank] *such person* to comply with the provisions thereof or with such provisions of law or rules or

regulations; and, for any willful violation of such agreement, such bank shall be subject to the penalties provided for violations of rules and regulations prescribed under this title. The provisions of sections 21 and 25 of this title shall apply in the case of any such proceeding or order of the Federal Reserve Board in the same manner as such provisions apply in the case of proceedings and orders of the Commission. Subject to such rules and regulations as the Board of Governors of the Federal Reserve System adopt in the public interest and for the protection of investors, no person shall be deemed to have borrowed within the ordinary course of business, within the meaning of this subsection, by reason of a bona fide agreement for delayed delivery of a mortgage related security or a small business related security against full payment of the purchase price thereof upon such delivery within one hundred and eighty days after the purchase, or within such shorter period as the Board of Governors of the Federal Reserve System may prescribe by rule or regulation.

* * * * * * *

REGISTRATION AND REGULATION OF BROKERS AND DEALERS

SEC. 15. (a) * * *

* * * * * * *

(c)(1)(A) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which it is a member by means of any manipulative, deceptive, or other fraudulent device or contrivance.

* * * * * * *

(8)(A) The Commission may prescribe rules, after consultation with and considering the views of the appropriate Federal banking agencies, with respect to a broker or dealer that is a separately identifiable department or division of a bank as the Commission finds necessary in the public interest or for the protection of investors to take into account the characteristics of a separately identifiable department or division of a bank.

(B) If a bank of which a separately identifiable department or division is a part is adequately capitalized (as defined by the bank's appropriate Federal banking agency), the separately identifiable department or division that is a broker or dealer shall be deemed to be in compliance with the net capital rules adopted pursuant to paragraph (3).

* * * * * * *

INVESTMENT COMPANY ACT OF 1940

TITLE I—INVESTMENT COMPANIES

* * * * * * *

GENERAL DEFINITIONS

SEC. 2. (a) When used in this title, unless the context otherwise requires—

(1) * * *

* * * * * * *

(5) "Bank" means [(A) a banking institution organized under the laws of the United States] *(A) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or a branch or agency of a foreign bank (as such terms are defined in section 101(b) of the International Banking Act of 1978),* (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clause (A), (B), or (C) of this paragraph.

[(6) "Broker" means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank or any person solely by reason of the fact that such person is an underwriter for one or more investment companies.]

(6) "Broker" has the same meaning as in the Securities Exchange Act of 1934, except that it does not include any person solely by reason of the fact that such person is an underwriter for 1 or more investment companies.

* * * * * * *

[(11) "Dealer" means any person regularly engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, insurance company, or investment company, or any person insofar as he is engaged in investing, reinvesting, or trading in securities, or in owning or holding securities, for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.]

(11) The term "dealer" has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.

* * * * * * *

(19) "Interested person" of another person means—

(A) when used with respect to an investment company—

(i) * * *

* * * * * * *

[(v) any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such a broker or dealer, and]

(v) any person (other than a registered investment company) that, at any time during the preceding 6 months, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

(I) the investment company,

(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services, or

(III) any account over which the investment company's investment adviser has brokerage placement discretion,

or any affiliated person of such a person,

(vi) any person (other than a registered investment company) that, at any time during the preceding 6 months, has loaned money to—

(I) the investment company,

(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services, or

(III) any account for which the investment company's investment adviser has borrowing authority,

or any affiliated person of such a person, or

[(vi)**]** *(vii)* any natural person whom the Commission by order shall have determined to be an interested person by reason of having had, at any time since the beginning of the last two completed fiscal years of such company, a material business or professional relationship with such company or with the principal executive officer of such company or with any other investment company having the same investment adviser or principal underwriter or with the principal executive officer of such other investment company:

Provided, That no person shall be deemed to be an interested person of an investment company solely by reason of (aa) his being a member of its board of directors or advisory board or an owner of its securities, or (bb) his membership in the immediate family of any person specified in clause (aa) of this proviso; and

* * * * * * *

DEFINITION OF INVESTMENT COMPANY

SEC. 3. (a) * * *

* * * * * * *

(c) Notwithstanding subsection (a), none of the following persons is an investment company within the meaning of this title:

(1) * * *

* * * * * * *

(3) Any bank or insurance company; any savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, or any receiver, conservator, liquidator, liquidating agent, or similar official or person thereof or therefor; or any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian, *if—*

(A) such fund is employed by the bank solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose;

(B) except in connection with the ordinary advertising of the bank's fiduciary services, interests in such fund are not—

(i) advertised; or

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

(C) fees and expenses charged by such fund are not in contravention of fiduciary principles established under applicable Federal or State law.

* * * * * * *

AFFILIATIONS OF DIRECTORS

SEC. 10. (a) * * *

* * * * * * *

(c) No registered investment company shall have a majority of its board of directors consisting of persons who are officers, directors, or employees of any one [bank, except] *bank (and its subsidiaries) or any single financial services holding company (and its affiliates and subsidiaries), as those terms are defined in the Financial Services Holding Company Act of 1995, except* that, if on March 15, 1940, any registered investment company had a majority of its directors consisting of persons who are directors, officers, or employees of any one bank, such company may continue to have the same percentage of its board of directors consisting of persons who are directors, officers, or employees of such bank.

* * * * * * *

(f) No registered investment company shall knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security (except a security of which such company is the [issuer) a principal underwriter] *issuer)—*

(1) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of such registered company, or is a person (other than a company of the character described in section 12(d)(3) (A) and (B)) of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person, unless in acquiring such security such registered company is it-

self acting as a principal underwriter [for the issuer. The Commission] *for the issuer; or*

(2) the issuer of which has a material lending relationship with the adviser of such registered investment company or any person controlling, controlled by, or under common control with the adviser in contravention of such rules, regulations, or orders as the Commission may prescribe in the public interest and consistent with the protection of investors.

The Commission, by rules and regulations upon its own motion or by order upon application, may conditionally or unconditionally exempt any transaction or classes of transactions from any of the provisions of this subsection, if and to the extent that such exemption is consistent with the protection of investors.

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INVESTMENT ADVISORY AND UNDERWRITING CONTRACTS

SEC. 15. (a) * * *

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(g) CONTROLLING INTEREST IN INVESTMENT COMPANY PROHIBITED.—

(1) IN GENERAL.—If any investment adviser to a registered investment company, or an affiliated person of that investment adviser, holds a controlling interest in that registered investment company in a trustee or fiduciary capacity, such person shall—

(A) if it holds the shares in a trustee or fiduciary capacity with respect to any employee benefit plan subject to the Employee Retirement Income Security Act of 1974, transfer the power to vote the shares of the investment company through to another person acting in a fiduciary capacity with respect to the plan who is not an affiliated person of that investment adviser or any affiliated person thereof; or

(B) if it holds the shares in a trustee or fiduciary capacity with respect to any other person or entity other than an employee benefit plan subject to the Employee Retirement Income Security Act of 1974—

(i) transfer the power to vote the shares of the investment company through to—

(I) the beneficial owners of the shares;

(II) another person acting in a fiduciary capacity who is not an affiliated person of that investment adviser or any affiliated person thereof; or

(III) any person authorized to receive statements and information with respect to the trust who is not an affiliated person of that investment adviser or any affiliated person thereof;

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

(iii) vote the shares of the investment company as otherwise permitted under such rules, regulations, or orders as the Commission may prescribe for the protection of investors.

(2) EXEMPTION.—Paragraph (1) shall not apply to any investment adviser to a registered investment company, or an affiliated person of that investment adviser, holding shares of the investment company in a trustee or fiduciary capacity if that registered investment company consists solely of assets of held in such capacities.

(3) SAFE HARBOR.—No investment adviser to a registered investment company or any affiliated person of such investment adviser shall be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law solely by reason of acting in accordance with clause (i), (ii), or (iii) of paragraph (1)(B).

(4) CHURCH PLAN EXEMPTION.—Paragraph (1) shall not apply to any investment adviser to a registered investment company, or an affiliated person of that investment adviser, holding shares in such a capacity, if such investment adviser or such affiliated person is an organization described in section 414(e)(3)(A) of the Internal Revenue Code of 1986.

* * * * * * *

TRANSACTIONS OF CERTAIN AFFILIATED PERSONS AND UNDERWRITERS

SEC. 17. (a) * * *

* * * * * * *

[(f) Every registered]

(f) CUSTODY OF SECURITIES.—

(1) Every registered management company shall place and maintain its securities and similar investments in the custody of [(1)] *(A)* a bank or banks having the qualifications prescribed in paragraph (1) of section 26(a) of this title for the trustees of unit investment trusts; or [(2)] *(B)* a company which is a member of a national securities exchange as defined in the Securities Exchange Act of 1934, subject to such rules and regulations as the Commission may from time to time prescribe for the protection of investors; or [(3)] *(C)* such registered company, but only in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors.

(2) Subject to such rules, regulations, and orders as the Commission may adopt as necessary or appropriate for the protection of investors, a registered management company or any such custodian, with the consent of the registered management company for which it acts as custodian, may deposit all or any part of the securities owned by such registered management company in a system for the central handling of securities established by a national securities exchange or national securities association registered with the Commission under the Securities Exchange Act of 1934, or such other person as may be permitted by the Commission, pursuant to which system all securities of any particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of such securities.

(3) Rules, regulations, and orders of the Commission under this subsection, among other things, may make appropriate provision with respect to such matters as the earmarking, segregation, and hypothecation of such securities and investments, and may provide for or require periodic or other inspections by any or all of the following: Independent public accountants, employees and agents of the Commission, and such other persons as the Commission may designate.

(4) No such member which trades in securities for its own account may act as custodian except in accordance with rules and regulations prescribed by the Commission for the protection of investors.

(5) If a registered company maintains its securities and similar investments in the custody of a qualified bank or banks, the cash proceeds from the sale of such securities and similar investments and other cash assets of the company shall likewise be kept in the custody of such a bank or banks, or in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors, except that such a registered company may maintain a checking account in a bank or banks having the qualifications prescribed in paragraph (1) of section 26(a) of this title for the trustees of unit investment trusts with the balance of such account or the aggregate balances of such accounts at no time in excess of the amount of the fidelity bond, maintained pursuant to section 17(g) of this title, covering the officers or employees authorized to draw on such account or accounts.

(6) Notwithstanding any provision of this subsection, if a bank described in paragraph (1) or an affiliated person of such bank is an affiliated person, promoter, organizer, or sponsor of, or principal underwriter for the registered company, such bank may serve as custodian under this subsection in accordance with such rules, regulations, or orders as the Commission may prescribe, consistent with the protection of investors, after consulting in writing with the appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act.

* * * * * * *

CAPITAL STRUCTURE

SEC. 18. (a) * * *

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(l) Notwithstanding any provision of this section, it shall be unlawful for any affiliated person of a registered investment company or any affiliated person of such a person to loan money to such investment company in contravention of such rules, regulations, or orders as the Commission may prescribe in the public interest and consistent with the protection of investors.

* * * * * * *

UNIT INVESTMENT TRUSTS

SEC. 26. (a) No principal underwriter for or depositor of a registered unit investment trust shall sell, except by surrender to the

trustee for redemption, any security of which such trust is the issuer (other than short-term paper), unless the trust indenture, agreement of custodianship, or other instrument pursuant to which such security is issued—

(1) designates one or more trustees or custodians, each of which is a bank, and provides that each such trustee or custodian shall have at all times an aggregate capital, surplus, and undivided profits of a specified minimum amount, which shall not be less than $500,000 (but may also provide, if such trustee or custodian publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, that for the purposes of this paragraph the aggregate capital, surplus, and undivided profits of such trustee or custodian shall be deemed to be its aggregate capital, surplus, and undivided profits as set forth in its most recent report of condition so published), *except that, if the trustee or custodian described in this subsection is an affiliated person of such underwriter or depositor, the Commission may adopt rules and regulations or issue orders, consistent with the protection of investors, prescribing the conditions under which such trustee or custodian may serve, after consulting in writing with the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act)*;

* * * * * * *

UNLAWFUL REPRESENTATIONS AND NAMES

SEC. 35. ⟦(a) It shall be unlawful for any person, in issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company has been guaranteed, sponsored, recommended, or approved by the United States or any agency or officer thereof.⟧

(a) MISREPRESENTATION OF GUARANTEES.—

(1) IN GENERAL.—It shall be unlawful for any person, issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company—

(A) has been guaranteed, sponsored, recommended, or approved by the United States, or any agency, instrumentality or officer of the United States;

(B) has been insured by the Federal Deposit Insurance Corporation; or

(C) is guaranteed by or is otherwise an obligation of any bank or insured depository institution.

(2) DISCLOSURES.—Any person issuing or selling the securities of a registered investment company shall prominently disclose that the investment company or any security issued by the investment company—

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

(B) is not guaranteed by an affiliated insured depository institution; and

(C) is not otherwise an obligation of any bank or insured depository institution,

in accordance with such rules, regulations, or orders as the Commission may prescribe as reasonably necessary or appropriate in the public interest for the protection of investors, after consulting in writing with the appropriate Federal banking agencies.

(3) DEFINITIONS.—The terms "insured depository institution" and "appropriate Federal banking agency" have the meanings given to such terms in section 3 of the Federal Deposit Insurance Act.

* * * * * * *

[(d) It shall be unlawful for any registered investment company hereafter to adopt as a part of the name or title of such company, or of any security of which it is the issuer, any word or words which the Commission finds and by order declares to be deceptive or misleading. The Commission is authorized to bring an action in the proper district court of the United States or United States court of any Territory or other place subject to the jurisdiction of the United States alleging that the name or title of any registered investment company, or of any security which it has issued, is materially deceptive or misleading. If the court finds that the Commission's allegations in this respect, taking into consideration the history of the investment company and the length of time which it may have used any such name or title, are established, the court shall enjoin such investment company from continuing to use any such name or title.**]**

(d)(1) It shall be unlawful for any registered investment company to adopt as part of the name or title of such company, or of any securities of which it is the issuer, any word or words that the Commission finds are materially deceptive or misleading. The Commission may adopt such rules or regulations or issue such orders as are necessary or appropriate to prevent the use of deceptive or misleading names or titles by investment companies.

(2) It shall be deceptive and misleading for any registered investment company (A) that is an affiliated person of a bank or an affiliated person of such a person, or (B) for which a bank or an affiliated person of a bank acts as investment adviser, sponsor, promoter, or principal underwriter, to adopt, as part of the name or title of such company, or of any security of which it is an issuer, any word that is the same or similar to, or a variation of, the name or title of such bank or affiliated person thereof, in contravention of such rules, regulations, or orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

* * * * * * *

BREACH OF FIDUCIARY DUTY

SEC. 36. (a) The Commission is authorized to bring an action in the proper district court of the United States, or in the United States court of any territory or other place subject to the jurisdiction of the United States, alleging that a person serving or acting in one or more of the following capacities has engaged within five

years of the commencement of the action or is about to engage in any act or practice constituting a breach of fiduciary duty involving personal misconduct in respect of any registered investment company for which such person so serves or acts—

(1) as officer, director, member of any advisory board, investment adviser, or depositor; [or]

(2) as principal underwriter, if such registered company is an open-end company, unit investment trust, or face-amount certificate company[.]*; or*

(3) as custodian.

If such allegations are established, the court may enjoin such persons from acting in any or all such capacities either permanently or temporarily and award such injunctive or other relief against such person as may be reasonable and appropriate in the circumstances, having due regard to the protection of investors and to the effectuation of the policies declared in section 1(b) of this title.

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INVESTMENT ADVISORS ACT OF 1949

TITLE II—INVESTMENT ADVISERS

* * * * * * *

DEFINITIONS

SEC. 202. (a) When used in this title, unless the context otherwise requires—

(1) * * *

* * * * * * *

[(3) "Broker" means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank.]

(3) The term "broker" has the same meaning as in the Securities Exchange Act of 1934.

* * * * * * *

[(7) "Dealer" means any person regularly engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, insurance company, or investment company, or any person insofar as he is engaged in investing, reinvesting or trading in securities, or in owning or holding securities, for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.]

(7) The term "dealer" has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.

* * * * * * *

(11) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of se-

curities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities; but does not include (A) a bank, or any bank holding company as defined in the Bank Holding Company Act of 1956, which is not an [investment company] *investment company, except that the term "investment adviser" includes any bank or financial services holding company to the extent that such bank or financial services holding company acts as an investment adviser to a registered investment company, or if, in the case of a bank, such services are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser*; (B) any lawyer, accountant, engineer, or teacher whose performance of such services is solely incidental to the practice of his profession; (C) any broker or dealer whose performance of such services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor; (D) the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation; (E) any person whose advice, analyses, or reports relate to no securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall have been designated by the Secretary of the Treasury, pursuant to section 3(a)(12) of the Securities Exchange Act of 1934, as exempted securities for the purposes of that Act; or (F) such other persons not within the intent of this paragraph, as the Commission may designate by rules and regulations or order.

* * * * * * *

(25) The term "separately identifiable department or division" of a bank means a unit—

(A) that is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's investment adviser activities for 1 or more investment companies, including the supervision of all bank employees engaged in the performance of such activities; and

(B) for which all of the records relating to its investment adviser activities are separately maintained in or extractable from such unit's own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement of this Act or the Investment Company Act of 1940 and rules and regulations promulgated under this Act or the Investment Company Act of 1940.

* * * * * * *

SEC. 210A. CONSULTATION.

(a) EXAMINATION RESULTS AND OTHER INFORMATION.—

(1) The appropriate Federal banking agency shall provide the Commission upon request the results of any examination, reports, records, or other information as each may have access to with respect to the investment advisory activities of any financial services holding company, bank, or separately identifiable department or division of a bank, that is registered under section 203 of this title, or, in the case of a financial services holding company or bank, that has a subsidiary or a separately identifiable department or division registered under that section, to the extent necessary for the Commission to carry out its statutory responsibilities.

(2) The Commission shall provide to the appropriate Federal banking agency upon request the results of any examination, reports, records, or other information with respect to the investment advisory activities of any financial services holding company, bank, or separately identifiable department or division of a bank, any of which is registered under section 203 of this title, to the extent necessary for the agency to carry out its statutory responsibilities.

(b) EFFECT ON OTHER AUTHORITY.—Nothing herein shall limit in any respect the authority of the appropriate Federal banking agency with respect to such financial services holding company, bank, or department or division under any provision of law.

(c) DEFINITION.—For purposes of this section, the term "appropriate Federal banking agency" shall have the same meaning as in section 3 of the Federal Deposit Insurance Act.

* * * * * * *

SECTION 3 OF THE SECURITIES ACT OF 1933

EXEMPTED SECURITIES

SEC. 3. (a) Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities:

(1) Reserved.

(2) Any security issued or guaranteed by the United States or any Territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or Territory, or by any public instrumentality of one or more States or Territories, or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing; or any security issued or guaranteed by any bank; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve bank; [or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian] *or any interest or participation in any common trust fund or similar fund that is excluded from the definition*

of the term "investment company" under section 3(c)(3) of the Investment Company Act of 1940; or any security which is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103(c) of such Code (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security; or any interest or participation in a single trust fund, or in a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (B) an annuity plan which meets the requirements for the deduction of the employer's contributions under section 404(a)(2) of such Code, or (C) a governmental plan as defined in section 414(d) of such Code which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, other than any plan described in clause (A), (B), or (C) of this paragraph (i) the contributions under which are held in a single trust fund or in a separate account maintained by an insurance company for a single employer and under which an amount in excess of the employer's contribution is allocated to the purchase of securities (other than interests or participations in the trust or separate account itself) issued by the employer or any company directly or indirectly controlling, controlled by, or under common control with the employer, (ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of such Code, or (iii) which is a plan funded by an annuity contract described in section 403(b) of such Code. The Commission, by rules and regulations or order, shall exempt from the provisions of section 5 of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of the Internal Revenue Code of 1954, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title. For purposes of this paragraph, a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; and the term "bank" means any national bank, or any banking institution organized under the laws of

any State, territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official; except that in the case of a common trust fund or similar fund, or a collective trust fund, the term "bank" has the same meaning as in the Investment Company Act of 1940;

* * * * * * *

MINORITY VIEWS

We strongly support the principal purpose of H.R. 1062—to modernize this nation's financial services regulatory framework in order to improve U.S. financial services providers' competitiveness at home and abroad. The record before this Committee, and before our sister committee, the Committee on Banking and Financial Services, establishes a clear need for responsible changes to that framework.

However, as demonstrated by the testimony of the six panels of witnesses who testified before the joint hearings of this Committee's Subcommittee on Telecommunications and Finance and Subcommittee on Commerce, Trade and Hazardous Materials, there is great concern among those who represent the affected industries, those who speak on behalf of consumers and investors, and those who are called upon to administer and enforce our laws and regulations about the policy choices made by the Banking Committee in crafting H.R. 1062. As noted by SEC Chairman Arthur Levitt at the June 6 hearing, "H.R. 1062 as a whole . . . does not strike an optimal balance between preserving bank safety and soundness, and the needs of investors and the marketplace as a whole." Representative Christopher Cox observed that the bill was "not sufficiently visionary" and, with specific reference to the bill's new Interagency Banking and Financial Services Advisory Committee, created "excessive, burdensome, and duplicative" layers of new regulation. Representative Markey characterized the bill's regulatory and operational framework as "Byzantine." We agree.

As evidenced by the opening statement of the chairman of the Committee on Commerce, Representative Thomas J. Bliley, Jr., there are strong bipartisan reasons to oppose H.R. 1062. (That statement appears as an appendix to these views.) Our primary concerns can be summarized as follows:

SAFETY AND SOUNDNESS IS COMPROMISED

As introduced, H.R. 1062 (originally H.R. 18) required the most significant and risky securities activities to be carried out in a separately-capitalized, SEC-registered affiliate of the holding company. As reported by the Banking Committee, H.R. 1062 would now permit many of those securities activities to be carried out directly in the bank through separately identifiable departments or divisions (SIDs). We concede that the distinction between activities conducted in a "separately-capitalized affiliate" and those conducted "within a separate department in the bank" sounds technical and obtuse. But the distinction is crucial. The fact is that, if securities activities are conducted in a bank "SID," all of the bank's capital would be available to support the securities activities conducted in the bank SID. As such, the bank would not be insulated from risk, and the federal safety net, including federal deposit insurance,

would be put at risk if those securities activities led to significant losses.

Proponents of H.R. 1062's current structure argue that the securities activities that can be done in the bank in a SID, *e.g.*, mortgage-backed securities and private placements, are low-risk. However, this is not necessarily true. CMOs (collateralized mortgage obligations, a type of mortgage-backed security) are extremely complex, risky, and volatile and have caused huge, multi-million dollar losses to investors. "Private placement" describes the method of offering and selling a security and not the nature of the instrument that is the subject of a private placement transaction: while such a transaction does not carry the market risk of an "underwriting," the instrument being placed could be a "structured note" (a type of derivative security that has caused devastating losses) or a limited partnership interest such as figured in the billion dollar Prudential debacle. Allowing banks to deal in these instruments thus exposes banks to considerable risks and potential liability. All of this would be avoided if these securities activities were simply moved into a separately-capitalized affiliate of the bank's holding company.

H.R. 1062 also grants the Federal Reserve Board unfettered discretion to modify or tear down the "firewalls" between banks and securities firms. Firewalls protect against risk to insured deposits and prevent conflicts of interest between affiliated companies. The Banking Committee Report's Minority Views calls this power "ill conceived, unwarranted and potentially dangerous." An amendment to address this problem was offered and withdrawn during Committee consideration.

FUNCTIONAL REGULATION AND INVESTOR PROTECTION ARE ILLUSIONS

H.R. 1062 set out to create a level regulatory and competitive playing field by repealing the blanket exemptions for banks from registration and regulation under the federal securities laws. This should have permitted each of the affected industries to play under the same rules under the same expert regulator to achieve consistent protections for investors and markets and economical and efficient examinations and enforcement within the affected industries. However, as finally reported by the Banking Committee H.R. 1062 contained new "mini" exclusions for banks: specifically it provides eleven specific exclusions or exemptions for bank brokerage activities and five new exclusions or exemptions for bank dealer activities. This includes open-ended authority for the Federal Reserve Board to determine that certain "securities" should be "more appropriately treated as banking products" and permitted to remain in a bank SID. The bill's numerous new exemptions would leave a significant number of bank securities activities outside the regulatory framework and investor protections established under the federal securities laws. Moreover, the SEC testified that SIDs could pose practical problems relating to SEC examinations and enforcement.

H.R. 1062 also directs the federal banking regulators to adopt their own sales practice, disclosure, training and qualification, and other "standards." H.R 1062 does not require those standards to be substantially similar to requirements under the federal securities laws. For example, banks would not be charged with an express duty to supervise their employees' securities activities, a key inves-

tor protection. As noted by the SEC, in footnote 18 at page 12 of their June 6, 1995 Testimony, section 111 of H.R. 1062 follows the approach taken by the federal banking agencies when they adopted "guidelines" in their 1994 Interagency Statement. The guidelines provided in the Interagency Statement do not create a comprehensive securities regulatory scheme for banks. They are advisory rather than legally binding, and may not be legally enforceable by the bank regulators or by bank customers. Furthermore, the guidelines do not establish precise standards of conduct; banks are given wide latitude to establish procedures and policies to implement them. Finally, the existing guidelines create regulatory confusion and overlap because they purport to apply to registered broker-dealers that sell securities in association with banks. The new "standards" to be adopted under H.R. 1062 will likely perpetuate these problems.

The bill will not rationalize financial services regulation; it will further complicate it. Specifically, under the structures contemplated by the bill, some securities activities will be regulated by the SEC (in broker-dealer affiliates and in SEC-registered SIDs) and other securities activities will be regulated by bank regulators (in the bank and in bank regulator-regulated SIDs). Some securities activities may be regulated by both. This will inevitably result in conflicting and overlapping (and thus burdensome) regulation, and opportunities for regulated entities to play regulators off against one another in a dangerous regulatory race to the bottom. An amendment to address this problem was offered and withdrawn during Committee consideration.

H.R. 1062 FOSTERS UNFAIR COMPETITION

H.R. 1062 could seriously harm retail broker-dealers, especially the smaller firms that are the backbone of the securities industry. While we enthusiastically support greater competition in our securities markets, as well as in all other sectors of the financial services industry, it is essential that the rules be fairly and evenhandedly enforced and that the competitors not be endowed by the government with unfair advantages. While a handful of large securities firms and banks potentially benefit from this bill's authorization of certain new financial activities within a holding company structure, most of the securities industry appears to gain only federally-subsidized bank competitors. These banks have lower funding costs (as a result of being insured depository institutions) and will carry lower regulatory costs and burdens by virtue of the bill's numerous exclusions/exemptions noted above. For example, the number of securities transactions that banks are allowed to engage in and still qualify for the bill's de minimis exemption appears to be excessive. This appears to be especially true when compared with the number of average annualized transactions carried out currently by most small broker-dealers who are required to be registered with the SEC, thus putting these firms at a competitive disadvantage. (In calendar year 1993, the SEC supervised over 8,600 broker-dealers with 34,000 branch offices and over 470,000 registered representatives. The overwhelming majority of these broker-dealers are small businesses.)

Moreover, as noted by many of the witnesses before the Subcommittees, H.R. 1062 poses significant obstacles to a true "two-way street." H.R. 1062 requires that ownership of an insured depository institution be accomplished through a financial services holding company (FSHC). H.R. 1062 permits the FSHC to own a bank and a securities firm, but prohibits the FSHC from owning any "nonfinancial" company (such company must be divested within 5 years of the securities firm becoming an FSHC). While the bill provides that FSHCs may own certain "financial" companies up to 10% of the FSHC's capital and surplus (provided that any such company was acquired more than 2 years before the securities firm became an FSHC), the bill's definition of "financial" is unduly restrictive in that it excludes insurance and does not clearly include real estate, both of which are commonly though of as being financial. Because many securities firms have affiliates engaged in either or both of these activities, securities firms would have to divest or scale back considerably such operations in order to exercise the combined securities and banking powers granted by the bill. Insurance companies cannot avail themselves of the bill's competitive options at all.

THE FEDERAL RESERVE BOARD'S SWEEPING POWERS

Concerns also have been raised about the sweeping regulatory powers afforded to the Federal Reserve Board under this bill (especially provisions empowering the Federal Reserve to impose significant business limitations on securities firms) and their impact on securities firms within the new "investment bank holding companies" (and "financial services holding companies") as well as the impact on our innovative and vibrant securities markets. Moreover, H.R. 1062 replaces the Bank Holding Company Act's "closely related to banking" test with a "financial in nature or incidental to such financial activities" test for purposes of authorizing non-banking activities for financial services holding companies. This change broadens the types of activities that the Federal Reserve Board may permit FSHCs to conduct, directly or through subsidiaries. In determining what activities may be considered "financial in nature," the Board is required to take into account "changes or reasonably expected changes in the marketplace," "changes or reasonably expected changes in * * * technology," and activities previously authorized under the Board's Regulation K for U.S. banks overseas (the latter include commercial activities such as travel agencies—see Banking Committee Report pp. 102, 103). Accordingly, while H.R. 1062 has been described as "narrow" reform that only addresses the commingling of commercial banking and securities activities, it appears to give the Federal Reserve unbridled authority "by order, regulation or advisory opinion" to tear down the wall between banking and commerce and to create "universal banking" in this country without Congressional debate and instruction on a number of significant public policy questions. Among these portentous questions are whether federal deposit insurance and other components of the federal safety net should continue to extend to any such "universal bank."

UNRESOLVED QUESTIONS REGARDING THE POWERS OF THE COMPTROLLER OF THE CURRENCY

Concerns have been raised about attempts by the Comptroller of the Currency (OCC) (1) to authorize national banks to engage in a full range of securities activities in direct operating subsidiaries of banks, and (2) to use the National Bank Act to preempt and thus displace state insurance regulation of national banks' insurance sales. H.R. 1062 does not appear to resolve either concern.

For example, last year, the OCC issued a notice of proposed rulemaking to revise its rules as 12 CFR Part 5 governing corporate applications and notices (59 FR 61034 et seq. (November 24, 1994)) that, among other things, proposed to revise the current OCC regulations at § 5.34 to permit national banks to establish or acquire operating subsidiaries. The OCC proposed to allow these operating subsidiaries to engage in activities (including full securities underwriting and insurance agency and underwriting activities) that are currently prohibited or restricted when undertaken directly by banks. Both Representative Dingell, in a seminal legal analysis by letter to the OCC dated January 30, 1995, and Banking Committee Chairman James A. Leach, by letter to the OCC dated April 5, 1995, challenged the legality of the OCC proposal. H.R. 1062 does not address this issue. Theoretically, the OCC could go forward with its proposal and establish a competing scheme to the framework established by H.R. 1062.

Further, as stated above, the OCC issued a notice of proposed rulemaking in March of this year indicating that the OCC is considering an interpretative ruling that would preempt all State licensing and consumer protection laws, including those governing insurance underwriters and agents, in their applicability to national banks. 60 Fed. Reg. 11930 (March 3, 1995) The competitive consequences of this proposal are alarming. The implications for consumers are even worse. The OCC ruling would mean that national banks selling insurance would not have to be licensed or regulated by the States. Since virtually all consumer protections under State insurance law are tied to licensing statutes, consumers purchasing insurance from unlicensed national banks will be denied essential protections they receive when buying a comparable product from an insurer or insurance agent. Worse yet, there are no analogous protections available under federal or State banking law to the solvency and consumer protection rules of State insurance law. An amendment to address this problem was offered and withdrawn during Committee consideration.

PROCESS

On May 9, 1995, the Banking Committee favorably reported H.R. 1062 as amended. On May 11, 1995, the Banking Committee reconvened to reconsider the vote on which H.R. 1062 was favorably reported. That Committee again favorably reported H.R. 1062 as amended. On May 18, 1995, the Banking Committee filed its report (Rept. 104–127, Pt. 1), and H.R. 1062 was then referred to the Committee on Commerce for a period ending not later than June 16, 1995, for consideration of such matters within that legislation as fall within the Rule X jurisdiction of the Commerce Committee.

By letter dated May 24, 1995, the Speaker informed Chairman Bliley that Chairman Leach had agreed to extend this deadline to June 22, 1995 in light of the interruption of the 30-day sequential referral to this Committee by the Memorial Day District Work Period.

That same correspondence admonished Chairman Bliley to resist efforts "to rewrite matters within Banking's jurisdiction." Furthermore, admonitions by the Republican Leadership to make no changes in H.R. 1062 as reported by the Banking Committee were made throughout this Committee's review period. Of course, because the Banking Committee itself acted extensively on securities matters within the Commerce Committee's well-established Rule X jurisdiction, this stricture to move the Banking Committee bill to the Floor, as is, turned the referral to the Commerce Committee into a charade. It severely constrained, indeed cut off, the ability of the Members of this Committee to address the shortcomings in this legislation discussed above. The end result forces this Committee to report defective legislation to the Floor of the House, without amendment and without recommendation. Having raised these issues, we understand that the issues and amendments that we raised in Committee will be permitted to be addressed as Floor amendments. We express our hope that our Republican colleagues and all Members of the House will commit themselves to working cooperatively to develop a sounder, more responsible final product. This legislation, before it leaves the House, must do a better job of protecting depositors, investors, and taxpayers, while providing a competitive framework to take our financial services providers into the next century.

JOHN D. DINGELL.
EDWARD J. MARKEY.
HENRY A. WAXMAN.
RALPH M. HALL.
JOHN BRYANT.
EDOLPHUS TOWNS.
GERRY E. STUDDS.
FRANK PALLONE, JR.
PETER DEUTSCH.
RON KLINK.
BART STUPAK.

STATEMENT OF THE HONORABLE THOMAS J. BLILEY, JR., CHAIRMAN, HOUSE COMMERCE COMMITTEE

Thank you, Mr. Chairman.

Today the Subcommittee on Telecommunications and Finance, and the Subcommittee on Commerce, Trade and Hazardous Materials convene to mark up H.R. 1062, the Financial Services Competitiveness Act of 1995. As has been done several times before, the Commerce Committee has again been tasked with bringing its unique perspective to deliberations on legislation that proposes to redefine the structure of regulation in the banking, securities, and insurance industries. And once again our Subcommittees are faced with the impossible task of reconciling regulatory schemes that do not reflect the financial, technological, and business realities of the

modern market place. If it ever existed, the distinction between commercial banking is no more.

Commercial banking is no longer the taking of deposits and making loans. Today, banks are involved in myriads of financial transactions in which capital is raised through the private placement of equity and debt. Banks issue negotiable instruments derived from the securitization of mortgages, assets and commercial receivables. Indeed, to the extent that they have been permitted to do so through Section 20 affiliates, banks are a significant factor in the underwriting of corporate debt and equity.

And yet all these activities are conducted in a regulatory environment which was designed to provide extraordinary levels of government oversight of lending backed by federally insured deposits. The safety and soundness of the bank and the protection of the federal deposit insurance fund are the primary goals of the regulators and the laws that direct them. Investor protection and competitive equality with other financial service providers are implicit rather than explicit obligations of the regulators, and as such are assigned a lower, albeit still significant, level of regulatory priority.

Nor is the traditional definition of the business of the stockbroker relevant to our modern markets. Investment banking and other securities firms hold billions of dollars in money market funds that are the functional equivalent of bank accounts that accept deposits and pay interest. Commercial and consumer lending is a regular part of the business of some securities firms, as is the offering of credit cards and certificates of deposit.

Although the government gives an advantage to banks in the form of federal deposit insurance, government regulation of their competitors gives an advantage to brokers by protecting them from some types of competition. One example is the regulatory limit placed on the amount of securities business a Section 20 broker/dealer affiliate of a bank can do. Perhaps more importantly, government regulation insures that only brokers can exploit opportunities which require quick action and structural flexibility. The built in delay of the bank approval process insures that banks will not be able to move quickly enough to offer competition. Government regulation has become such an interference with the development of legitimate business that one bank regulator apparently feels obligated to regularly encourage banks to interpret the regulations placed upon them in the least restrictive and most expansive manner.

Although this Committee has reported financial services legislation in the past that eventually became law, in fact this issue has never been satisfactorily resolved. Banks and brokers have had to move towards offering the other's products to remain competitive with each other and with foreign financial institutions in an increasingly global market. The development of financial services reform of intense discussions with members of the House leadership, and weeks of meetings with the interested parties, it became apparent to me—as I said during our hearings last Thursday—that an affiliation approach is unworkable at this time. The parties are too far apart, and their commitment to their respective positions too firmly held, for such an approach to succeed at present.

It became clear that issues of public policy arise that make technical improvements in the operation of the bill premature, and equally clear that to attempt to do so would only jeopardize the prospect of enacting historic legislation modernizing our financial services industries.

For example, whether an accommodation on a capital requirement for a SIDD is possible is subject first to the determination of whether such an accommodation is desirable. I believe, as did Chairman Leach in his original bill, that securities business should be conducted in a separately capitalized broker/dealer affiliate of the holding company and not within the bank or its separate divisions.

The concept of the bank SIDD is, we are told, a necessary compromise that must be accepted or the bill will die. This Committee will not fail to meet its responsibility to move this issue to the Floor for debate and resolution. To accept the SIDD means to embrace the concept of exposing the capital of the bank to losses that occur as the result of its conducting an expanded securities business. On both sides of the aisle, many Members of the Commerce Committee question those notions. The Banking Committee went one way on this issue, and whether or not the Commerce Committee acquiesces is only an interim (and possibly divisive) question, since the very same issue will ultimately be reconsidered by the Committee of the Whole.

Unlike past instances where this measure has come before our Committee, we will not allow our disagreements over these issues to become an excuse to become destructive of the greater goal of enacting long-overdue modernization of financial services regulation.

Consequently, it is my intention to ask the Members of the Committee to report out the legislative product of the Banking Committee without recommendation or amendment. This will move the process forward to the Floor of the House and ultimate resolution by the Members.

I have obtained the consent of the Chairman of the Rules Committee to allow an amendment on the floor which will address the issue of moving new securities activities out of the bank and into a broker-dealer affiliate of the holding company.

I recognize that others on the Committee may dissent from this decision and markups are being held at the Subcommittee and Full Committee levels to provide them with the opportunity to state their positions and to offer amendments they deem appropriate. It is my personal intention to vote against any and all amendments to the bill at the Committee level.

I will close by thanking the Members of the Committee in advance for their patience, their hard work, and their understanding of the difficulty involved in the Committee's processing in so short a time a bill that is not only substantively complex but involves a significant number of policy decisions that will determine whether the financial system of this country will remain sound and whether it will be able to compete in the markets of the world.

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