106TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPT. 106–74, Part 3

FINANCIAL SERVICES ACT OF 1999

JUNE 15, 1999.—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

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 10]

The Committee on Commerce, to whom was referred the bill (H.R. 10) to enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, and other financial service providers, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

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

SECTION 1. SHORT TITLE; PURPOSES; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Financial Services Act of 1999".

(b) PURPOSES.—The purposes of this Act are as follows:

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

(2) To ensure the continued safety and soundness of depository institutions.

(3) To provide necessary and appropriate protections for investors and ensure fair and honest markets in the delivery of financial services.

(4) To avoid duplicative, potentially conflicting, and overly burdensome regulatory requirements through the creation of a regulatory framework for financial holding companies that respects the divergent requirements of each of the component businesses of the holding company, and that is based upon principles of strong functional regulation and enhanced regulatory coordination.

(5) To reduce and, to the maximum extent practicable, to eliminate the legal barriers preventing affiliation among depository institutions, securities firms, insurance companies, and other financial service providers and to provide a prudential framework for achieving that result.

(6) To enhance the availability of financial services to citizens of all economic circumstances and in all geographic areas.

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

(8) To ensure compliance by depository institutions with the provisions of the Community Reinvestment Act of 1977 and enhance the ability of depository institutions to meet the capital and credit needs of all citizens and communities, including underserved communities and populations.

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

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

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

Subtitle A—Affiliations

Sec. 101. Glass-Steagall Act reformed.
Sec. 102. Activity restrictions applicable to bank holding companies which are not financial holding companies.
Sec. 103. Financial holding companies.
Sec. 104. Operation of State law.
Sec. 105. Mutual bank holding companies authorized.
Sec. 105A. Public meetings for large bank acquisitions and mergers.
Sec. 106. Prohibition on deposit production offices.
Sec. 107. Clarification of branch closure requirements.
Sec. 108. Amendments relating to limited purpose banks.
Sec. 109. GAO study of economic impact on community banks, other small financial institutions, insurance agents, and consumers.
Sec. 110. Responsiveness to community needs for financial services.

Subtitle B—Streamlining Supervision of Financial Holding Companies

Sec. 111. Streamlining financial holding company supervision.
Sec. 112. Elimination of application requirement for financial holding companies.
Sec. 113. Authority of State insurance regulator and Securities and Exchange Commission.
Sec. 114. Prudential safeguards.
Sec. 115. Examination of investment companies.
Sec. 116. Limitation on rulemaking, prudential, supervisory, and enforcement authority of the Board.
Sec. 117. Equivalent regulation and supervision.
Sec. 118. Prohibition on FDIC assistance to affiliates and subsidiaries.
Sec. 119. Repeal of savings bank provisions in the Bank Holding Company Act of 1956.
Sec. 120. Technical amendment.

Subtitle C—Subsidiaries of National Banks

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

Subtitle D—Wholesale Financial Holding Companies; Wholesale Financial Institutions

CHAPTER 1—WHOLESALE FINANCIAL HOLDING COMPANIES

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

CHAPTER 2—WHOLESALE FINANCIAL INSTITUTIONS

Sec. 136. Wholesale financial institutions.

Subtitle E—Preservation of FTC Authority

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

Subtitle F—National Treatment

Sec. 151. Foreign banks that are financial holding companies.
Sec. 152. Foreign banks and foreign financial institutions that are wholesale financial institutions.
Sec. 153. Reciprocity.

Subtitle G—Federal Home Loan Bank System Modernization

Sec. 161. Short title.
Sec. 162. Definitions.
Sec. 163. Savings association membership.
Sec. 164. Advances to members; collateral.
Sec. 165. Eligibility criteria.
Sec. 166. Management of banks.
Sec. 167. Resolution Funding Corporation.
Sec. 168. Capital structure of Federal home loan banks.

Subtitle H—ATM Fee Reform

Sec. 171. Short title.
Sec. 172. Electronic fund transfer fee disclosures at any host ATM.
Sec. 173. Disclosure of possible fees to consumers when ATM card is issued.
Sec. 174. Feasibility study.
Sec. 175. No liability if posted notices are damaged.
Sec. 176. Effective date.

Subtitle I—Direct Activities of Banks

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

Subtitle J—Deposit Insurance Funds

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

Subtitle K—Miscellaneous Provisions

Sec. 191. Termination of "Know Your Customer" regulations.
Sec. 192. Study and report on Federal electronic fund Transfers.
Sec. 193. Study and report on adapting existing legislative requirements to online banking and lending.

TITLE II—FUNCTIONAL REGULATION

Subtitle A—Brokers and Dealers

Sec. 201. Definition of broker.
Sec. 202. Definition of dealer.
Sec. 203. Registration for sales of private securities offerings.
Sec. 204. Information sharing.
Sec. 205. Treatment of new hybrid products.
Sec. 206. Additional definitions.
Sec. 207. Government securities defined.
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Subtitle B—Bank Investment Company Activities

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Sec. 212. Lending to an affiliated investment company.
Sec. 213. Independent directors.
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Sec. 215. Definition of broker under the Investment Company Act of 1940.
Sec. 216. Definition of dealer under the Investment Company Act of 1940.
Sec. 217. Removal of the exclusion from the definition of investment adviser for banks that advise investment companies.
Sec. 218. Definition of broker under the Investment Advisers Act of 1940.
Sec. 219. Definition of dealer under the Investment Advisers Act of 1940.
Sec. 220. Interagency consultation.
Sec. 221. Treatment of bank common trust funds.
Sec. 222. Investment advisers prohibited from having controlling interest in registered investment company.
Sec. 223. Statutory disqualification for bank wrongdoing.
Sec. 224. Conforming change in definition.
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Subtitle C—Securities and Exchange Commission Supervision of Investment Bank Holding Companies

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

Subtitle D—Disclosure of Customer Costs of Acquiring Financial Products

Sec. 241. Improved and consistent disclosure.

TITLE III—INSURANCE

Subtitle A—State Regulation of Insurance

Sec. 301. State regulation of the business of insurance.
Sec. 302. Mandatory insurance licensing requirements.
Sec. 303. Functional regulation of insurance.
Sec. 304. Insurance underwriting in national banks.
Sec. 305. Title insurance activities of national banks and their affiliates.
Sec. 306. Expedited and equalized dispute resolution for Federal regulators.
Sec. 307. Consumer protection regulations.
Sec. 308. Certain State affiliation laws preempted for insurance companies and affiliates.
Sec. 309. Interagency consultation.
Sec. 310. Definition of State.

Subtitle B—Redomestication of Mutual Insurers

Sec. 311. General application.
Sec. 312. Redomestication of mutual insurers.
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Subtitle C—National Association of Registered Agents and Brokers

Sec. 321. State flexibility in multistate licensing reforms.
Sec. 322. National association of registered agents and brokers.
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Sec. 324. Relationship to the Federal Government.
Sec. 325. Membership.
Sec. 326. Board of directors.
Sec. 327. Officers.
Sec. 328. Bylaws, rules, and disciplinary action.
Sec. 329. Assessments.
Sec. 330. Functions of the NAIC.
Sec. 331. Liability of the Association and the directors, officers, and employees of the Association.
Sec. 332. Elimination of NAIC oversight.
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Sec. 335. Judicial review.
Sec. 336. Definitions.

Subtitle D—Rental Car Agency Insurance Activities

Sec. 341. Standard of regulation for motor vehicle rentals.

Subtitle E—Confidentiality

Sec. 351. Confidentiality of health and medical information.

TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES

Sec. 401. Prohibition on new unitary savings and loan holding companies.
Sec. 402. Retention of "Federal" in name of converted Federal savings association.

TITLE V—PRIVACY OF CONSUMER INFORMATION

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Sec. 502. Notice concerning divulging information.
Sec. 503. Enforcement.
Sec. 505. Definitions.
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Subtitle B—Fraudulent Access to Financial Information

Sec. 521. Privacy protection for customer information of financial institutions.
Sec. 522. Administrative enforcement.
Sec. 523. Criminal penalty.
Sec. 524. Relation to State laws.
Sec. 525. Agency guidance.
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Sec. 527. Definitions.

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

Subtitle A—Affiliations

SEC. 101. GLASS-STEAGALL ACT REFORMED.

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

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

SEC. 102. ACTIVITY RESTRICTIONS APPLICABLE TO BANK HOLDING COMPANIES WHICH ARE NOT FINANCIAL HOLDING COMPANIES.

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

"(8) shares of any company the activities of which had been determined by the Board by regulation or order under this paragraph as of the day before the date of the enactment of the Financial Services Act of 1999, to be so closely related to banking as to be a proper incident thereto (subject to such terms and conditions contained in such regulation or order, unless modified by the Board);".

(b) CONFORMING CHANGES TO OTHER STATUTES.—

(1) AMENDMENT TO THE BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.—Section 105 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1850) is amended by striking ", to engage directly or indirectly in a nonbanking activity pursuant to section 4 of such Act,".

(2) AMENDMENT TO THE BANK SERVICE COMPANY ACT.—Section 4(f) of the Bank Service Company Act (12 U.S.C. 1864(f)) is amended by striking the period and adding at the end the following: "as of the day before the date of enactment of the Financial Services Act of 1999.".

SEC. 103. FINANCIAL HOLDING COMPANIES.

(a) IN GENERAL.—The Bank Holding Company Act of 1956 is amended by inserting after section 5 (12 U.S.C. 1844) the following new section:

"SEC. 6. FINANCIAL HOLDING COMPANIES.

"(a) FINANCIAL HOLDING COMPANY DEFINED.—For purposes of this section, the term 'financial holding company' means a bank holding company which meets the requirements of subsection (b).

"(b) ELIGIBILITY REQUIREMENTS FOR FINANCIAL HOLDING COMPANIES.—

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

"(A) All of the subsidiary depository institutions of the bank holding company are well capitalized.

"(B) All of the subsidiary depository institutions of the bank holding company are well managed.

"(C) All of the subsidiary depository institutions of the bank holding company have achieved a rating, under the Community Reinvestment Act of 1977, of 'satisfactory record of meeting community credit needs', or better, at the most recent examination of each such institution;

"(D) The company has filed with the Board a declaration that the company elects to be a financial holding company and certifying that the company meets the requirements of subparagraphs (A), (B), and (C).

"(2) FOREIGN BANKS AND COMPANIES.—For purposes of paragraph (1), the Board shall establish and apply comparable capital and other operating standards to 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 foreign bank, giving due regard to the principle of national treatment and equality of competitive opportunity.

"(3) LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSITORY INSTITUTIONS.—

"(A) IN GENERAL.—If the requirements of subparagraph (B) are met, any depository institution acquired by a bank holding company during the 24-month period preceding the submission of a declaration under paragraph (1)(D) and any depository institution acquired after the submission of such declaration may be excluded for purposes of paragraph (1)(C) until the later of—

"(i) the end of the 24-month period beginning on the date the acquisition of the depository institution by such company is consummated; or

"(ii) the date of completion of the first examination of such depository institution under the Community Reinvestment Act of 1977 which is conducted after the date of the acquisition of the depository institution.

"(B) REQUIREMENTS.—The requirements of this subparagraph are met with respect to any bank holding company referred to in subparagraph (A) if—

"(i) the bank holding company has submitted an affirmative plan to the appropriate Federal banking agency to take such action as may be necessary in order for such institution to achieve a rating of 'satisfactory record of meeting community credit needs', or better, at the next examination of the institution; and

"(ii) the plan has been approved by such agency.

"(c) ENGAGING IN ACTIVITIES THAT ARE FINANCIAL IN NATURE.—

"(1) FINANCIAL ACTIVITIES.—Notwithstanding section 4(a), a financial holding company and a wholesale financial holding company may engage in any activity, and acquire and retain the shares of any company engaged in any activity, that the Board has determined (by regulation or order) to be—

"(A) financial in nature or incidental to such financial activities; or

"(B) complementary to activities that have been determined to be financial in nature under this subsection to the extent that the amount of such complementary activities remains small in relation to the authorized activities to which they are complementary.

"(2) FACTORS TO BE CONSIDERED.—In determining whether an activity is financial in nature or incidental to financial activities, the Board shall take into account—

"(A) the purposes of this Act and the Financial Services Act of 1999;

"(B) changes or reasonably expected changes in the marketplace in which bank holding companies compete;

"(C) changes or reasonably expected changes in the technology for delivering financial services; and

"(D) whether such activity is necessary or appropriate to allow a bank holding company and the affiliates of a bank holding company to—

"(i) compete effectively with any company seeking to provide financial services in the United States;

"(ii) use any available or emerging technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions, in providing financial services; and

"(iii) offer customers any available or emerging technological means for using financial services.

"(3) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—The following activities shall be considered to be financial in nature:

"(A) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.

"(B) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing.

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

"(D) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.

"(E) Underwriting, dealing in, or making a market in securities.

"(F) Engaging in any activity that the Board has determined, by order or regulation that is in effect on the date of enactment of the Financial Services Act of 1999, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in such order or regulation, as modified by the Board).

"(G) Engaging, in the United States, in any activity that—

"(i) a bank holding company may engage in outside the United States; and

"(ii) the Board has determined, under regulations issued pursuant to section 4(c)(13) of this Act (as in effect on the day before the date of enactment of the Financial Services Act of 1999) to be usual in connection with the transaction of banking or other financial operations abroad.

"(H) Directly or indirectly acquiring or controlling, 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 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 com-

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

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

"(ii) such shares, assets, or ownership interests are acquired and held by an affiliate of the financial holding company that is a registered broker or dealer that is engaged in securities underwriting activities, or an affiliate of such broker or dealer, as part of a bona fide underwriting or investment banking activity, including investment activities engaged in for the purpose of appreciation and ultimate resale or disposition of the investment;

"(iii) such shares, assets, or ownership interests are held only for such a period of time as will permit the sale or disposition thereof on a reasonable basis consistent with the nature of the activities described in clause (ii); and

"(iv) during the period such shares, assets, or ownership interests are held, the holding company does not actively participate in the day-to-day management or operation of such company or entity, except insofar as necessary to achieve the objectives of clause (ii).

"(I) Directly or indirectly acquiring or controlling, 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 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 any activity not authorized pursuant to this section if—

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

"(ii) such shares, assets, or ownership interests are acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance) or providing and issuing annuities;

"(iii) such shares, assets, or ownership interests represent an investment made in the ordinary course of business of such insurance company in accordance with relevant State law governing such investments; and

"(iv) during the period such shares, assets, or ownership interests are held, the financial holding company does not directly or indirectly participate in the day-to-day management or operation of the company or entity except insofar as necessary to achieve the objectives of clauses (ii) and (iii).

"(4) AUTHORIZATION OF NEW FINANCIAL ACTIVITIES.—The Board shall, by regulation or order, define, consistent with the purposes of this Act, the following activities as, and the extent to which such activities are, financial in nature or incidental to activities which are financial in nature:

"(A) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.

"(B) Providing any device or other instrumentality for transferring money or other financial assets.

"(C) Arranging, effecting, or facilitating financial transactions for the account of third parties.

"(5) POST-CONSUMMATION NOTIFICATION.—

"(A) IN GENERAL.—A financial holding company and a wholesale financial holding company that acquires any company, or commences any activity, pursuant to this subsection shall provide written notice to the Board describing the activity commenced or conducted by the company acquired no later than 30 calendar days after commencing the activity or consummating the acquisition.

"(B) APPROVAL NOT REQUIRED FOR CERTAIN FINANCIAL ACTIVITIES.—Except as provided in section 4(j) with regard to the acquisition of a savings association or in paragraph (6) of this subsection, a financial holding company and a wholesale financial holding company may commence any activity, or acquire any company, pursuant to paragraph (3) or any regulation prescribed or order issued under paragraph (4), without prior approval of the Board.

"(6) NOTICE REQUIRED FOR LARGE COMBINATIONS.—

"(A) IN GENERAL.—No financial holding company or wholesale financial holding company shall directly or indirectly acquire, and no company that becomes a financial holding company or a wholesale financial holding company shall directly or indirectly acquire control of, any company in the United States, including through merger, consolidation, or other type of business combination, that—

"(i) is engaged in activities permitted under this subsection or subsection (g); and

"(ii) has consolidated total assets in excess of $40,000,000,000,

unless such holding company has provided notice to the Board, not later than 60 days prior to such proposed acquisition or prior to becoming a financial holding company or wholesale financial holding company, and during that time period, or such longer time period not exceeding an additional 60 days, as established by the Board, the Board has not issued a notice disapproving the proposed acquisition or retention.

"(B) FACTORS FOR CONSIDERATION.—In reviewing any prior notice filed under this paragraph, the Board shall take into consideration—

"(i) whether the company is in compliance with all applicable criteria set forth in subsection (b) and the provisions of subsection (d);

"(ii) whether the proposed combination represents an undue aggregation of resources;

"(iii) whether the proposed combination poses a risk to the deposit insurance system;

"(iv) whether the proposed combination poses a risk to State insurance guaranty funds;

"(v) whether the proposed combination can reasonably be expected to be in the best interests of depositors or policyholders of the respective entities;

"(vi) whether the proposed transaction can reasonably be expected to further the purposes of this Act and produce benefits to the public; and

"(vii) whether, and the extent to which, any subsequent failure or default of the financial holding company or wholesale financial holding company, or any affiliate of any such company, after the proposed combination could have serious adverse effects on economic conditions or financial stability.

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

"(D) SOLICITATION OF VIEWS OF OTHER SUPERVISORY AGENCIES.—

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

"(I) the appropriate Federal banking agency of any bank involved;

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

"(III) the Secretary of the Treasury, the Attorney General, and the Federal Trade Commission.

"(ii) TIMING.—The views and recommendations of any agency provided notice under this paragraph shall be submitted to the Board not later than 30 calendar days after the date on which notice to the agency was given, unless the Board determines that another shorter time period is appropriate.

"(d) PROVISIONS APPLICABLE TO FINANCIAL HOLDING COMPANIES THAT FAIL TO MEET REQUIREMENTS.—

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

"(2) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—Within 45 days of receipt by a financial holding company of a notice given under paragraph (1) (or such additional period as the Board may permit), the company shall execute an agreement acceptable to the Board to comply with the requirements applicable to a financial holding company.

"(3) BOARD MAY IMPOSE LIMITATIONS.—Until the conditions described in a notice to a financial holding company under paragraph (1) are corrected, the

Board may impose such limitations on the conduct or activities of the company or any affiliate of the company as the Board determines to be appropriate under the circumstances.

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

"(A) execute and implement an agreement in accordance with paragraph (2);

"(B) comply with any limitations imposed under paragraph (3);

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

"(D) in the case of a notice of failure to comply with subparagraph (B) or (C) of subsection (b)(1), restore compliance with any such subparagraph by the date the next examination of the depository institution subsidiary is completed or by the end of such other period as the Board determines to be appropriate,

the Board may require such company, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the Board's discretion, to divest control of any depository institution subsidiary or, at the election of the financial holding company, instead to cease to engage in any activity conducted by such company or its subsidiaries pursuant to this section.

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

"(e) SAFEGUARDS FOR BANK SUBSIDIARIES.—A financial holding company shall assure that—

"(1) the procedures of the holding company for identifying and managing financial and operational risks within the company, and the subsidiaries of such company, adequately protect the subsidiaries of such company which are insured depository institutions or wholesale financial institutions from such risks;

"(2) the holding company has reasonable policies and procedures to preserve the separate corporate identity and limited liability of such company and the subsidiaries of such company, for the protection of the company's subsidiary insured depository institutions or wholesale financial institutions; and

"(3) the holding company complies with this section.

"(f) AUTHORITY TO RETAIN LIMITED NONFINANCIAL ACTIVITIES AND AFFILIATIONS.—

"(1) IN GENERAL.—Notwithstanding section 4(a), a company that is not a bank holding company or a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978) and becomes a financial holding company after the date of the enactment of the Financial Services Act of 1999 may continue to engage in any activity and retain direct or indirect ownership or control of shares of a company engaged in any activity if—

"(A) the holding company lawfully was engaged in the activity or held the shares of such company on September 30, 1997;

"(B) the holding company is predominantly engaged in financial activities as defined in paragraph (2); and

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

"(2) PREDOMINANTLY FINANCIAL.—For purposes of this subsection, a company is predominantly engaged in financial activities if the annual gross revenues derived by the holding company and all subsidiaries of the holding company (excluding revenues derived from subsidiary depository institutions), on a consolidated basis, from engaging in activities that are financial in nature or are incidental to activities that are financial in nature under subsection (c) represent at least 85 percent of the consolidated annual gross revenues of the company.

"(3) NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.—A financial holding company that engages in activities or holds shares pursuant to this subsection, or a subsidiary of such financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company which is engaged in any activity which the Board has not determined to be financial in nature or incidental to activities that are financial in nature under subsection (c).

"(4) CONTINUING REVENUE LIMITATION ON GRANDFATHERED COMMERCIAL ACTIVITIES.—Notwithstanding any other provision of this subsection, a financial holding company may continue to engage in activities or hold shares in compa-

nies pursuant to this subsection only to the extent that the aggregate annual gross revenues derived from all such activities and all such companies does not exceed 15 percent of the consolidated annual gross revenues of the financial holding company (excluding revenues derived from subsidiary depository institutions).

"(5) CROSS MARKETING RESTRICTIONS APPLICABLE TO COMMERCIAL ACTIVITIES.—An insured depository institution or wholesale financial institution controlled by a financial holding company shall not—

"(A) offer or market, directly or through any arrangement, any product or service of a company whose activities are conducted or whose shares are owned or controlled by the financial holding company pursuant to this subsection or subparagraph (H) or (I) of subsection (c)(3); or

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

"(6) TRANSACTIONS WITH NONFINANCIAL AFFILIATES.—An insured depository institution or wholesale financial institution controlled by a financial holding company or wholesale financial holding company may not engage in a covered transaction (as defined by section 23A(b)(7) of the Federal Reserve Act) with any affiliate controlled by the company pursuant to section 10(c), this subsection, or subparagraph (H) or (I) of subsection (c)(3).

"(7) SUNSET OF GRANDFATHER.—A financial holding company engaged in any activity, or retaining direct or indirect ownership or control of shares of a company, pursuant to this subsection, shall terminate such activity and divest ownership or control of the shares of such company before the end of the 10-year period beginning on the date of the enactment of the Financial Services Act of 1999. The Board may, upon application, extend such 10-year period by a period not to exceed an additional 5 years if such extension would not be detrimental to the public interest.

"(g) DEVELOPING ACTIVITIES.—A financial holding company and a wholesale financial holding company may engage directly or indirectly, or acquire shares of any company engaged, in any activity that the Board has not determined to be financial in nature or incidental to financial activities under subsection (c) if—

"(1) the holding company reasonably concludes that the activity is financial in nature or incidental to financial activities;

"(2) the gross revenues from all activities conducted under this subsection represent less than 5 percent of the consolidated gross revenues of the holding company;

"(3) the aggregate total assets of all companies the shares of which are held under this subsection do not exceed 5 percent of the holding company's consolidated total assets;

"(4) the total capital invested in activities conducted under this subsection represents less than 5 percent of the consolidated total capital of the holding company;

"(5) the Board has not determined that the activity is not financial in nature or incidental to financial activities under subsection (c);

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

"(7) the holding company provides written notification to the Board describing the activity commenced or conducted by the company acquired no later than 10 business days after commencing the activity or consummating the acquisition.".

(b) FACTORS FOR CONSIDERATION IN REVIEWING APPLICATION BY FINANCIAL HOLDING COMPANY TO ACQUIRE BANK.—Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)) is amended by adding at the end the following new paragraph:

"(6) 'TOO BIG TO FAIL' FACTOR.—In considering an acquisition, merger, or consolidation under this section involving a financial holding company, a wholesale financial holding company, or a company that would be any such holding company upon the consummation of the transaction, the Board shall consider whether, and the extent to which, any subsequent failure or default of the financial holding company or wholesale financial holding company, or any affiliate of any such company, after the consummation of the transaction could have serious adverse effects on economic conditions or financial stability.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended by adding at the end the following new subsection:

"(p) INSURANCE COMPANY.—For purposes of sections 5, 6, and 10, the term 'insurance company' includes any person engaged in the business of insurance to the extent of such activities.".

(2) 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 inserting "or in any complementary activity under section 6(c)(1)(B)" after "subsection (c)(8) or (a)(2)"; and

(2) in paragraph (3)—

(A) by inserting ", other than any complementary activity under section 6(c)(1)(B)," after "to engage in any activity"; and

(B) by inserting "or a company engaged in any complementary activity under section 6(c)(1)(B)" after "insured depository institution".

(d) REPORT.—

(1) IN GENERAL.—The Board of Governors of the Federal Reserve System shall submit a report to the Congress by the end of each of the 1st two 5-year periods beginning after the date of the enactment of this Act, containing a summary of new activities which are financial in nature, including grandfathered commercial activities, in which any financial holding company is engaged pursuant to subsection (c)(1) or (f) of section 6 of the Bank Holding Company Act of 1956 (as added by subsection (a)).

(2) OTHER CONTENTS.—Each report submitted to the Congress pursuant to paragraph (1) shall also contain the following:

(A) A discussion of actions by the Board of Governors of the Federal Reserve System, whether by regulation, order, interpretation, or guideline or by approval or disapproval of an application, with regard to activities of financial holding companies which are incidental to activities financial in nature or complementary to such financial activities.

(B) An analysis and discussion of the risks posed by commercial activities of financial holding companies to the safety and soundness of affiliate depository institutions.

(C) An analysis and discussion of the effect of mergers and acquisitions under section 6 of the Bank Holding Company Act of 1956 on market concentration in the financial services industry.

(D) An analysis and discussion, by the Board in consultation with the other Federal banking agencies (as defined in section 3(z) of the Federal Deposit Insurance Act), of the impact of the implementation of this Act, and the amendments made by this Act, on the extent of meeting community credit needs and capital availability under the Community Reinvestment Act of 1977.

SEC. 104. OPERATION OF STATE LAW.

(a) AFFILIATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict an insured depository institution or wholesale financial institution, or a subsidiary or affiliate thereof, from being affiliated directly or indirectly or associated with any person, as authorized or permitted by this Act or any other provision of Federal law.

(2) INSURANCE.—With respect to affiliations between insured depository institutions or wholesale financial institutions, or any subsidiary or affiliate thereof, and persons engaged in the business of insurance, paragraph (1) does not prohibit—

(A) any State from collecting information as may be necessary concerning proposed acquisitions or changes or continuations in control of any person engaged in the business of insurance in the State, as long as—

(i) the State makes reasonable efforts to first collect any such information from the insurance regulator of the State of domicile of such person; and

(ii) the collection of such information with regard to any such person, in the case of any State other than the State of domicile of such person, does not impede or delay any such acquisition or change or continuation in control; or

(B) in the case of a person engaged in the business of insurance which is the subject of an acquisition or change or continuation in control, the State of domicile of such person from reviewing or taking action (including approval or disapproval) with regard to the acquisition or change or continuation in control, as long as the State reviews and actions—

(i) are completed by the end of the 60-day period beginning on the later of the date the State received notice of the proposed action or the date the State received the information required under State law regarding such acquisition or change or continuation in control;

(ii) do not have the effect of discriminating, intentionally or unintentionally, against an insured depository institution or affiliate thereof or against any other person based upon affiliation with an insured depository institution; and

(iii) are based on standards or requirements relating to solvency or managerial fitness;

(C) any State from requiring an entity that is acquiring control of an entity that is engaged in the business of insurance and domiciled in that State to maintain or restore the capital requirements of that insurance entity to the level required under the capital regulations of general applicability in that State to avoid the requirement of preparing and filing with the insurance regulatory authority of that State a plan to increase the capital of the entity, except that any determination by the State insurance regulatory authority with respect to such requirement shall be made not later than 60 days after the date of notification under subparagraph (A);

(D) any State from taking actions with respect to the receivership or conservatorship of any insurance company;

(E) any State from restricting a change in the ownership of stock in an insurance company, or a company formed for the purpose of controlling such insurance company, for a period authorized by State law but not to exceed 5 years beginning on the date of the conversion of such company from mutual to stock form; or

(F) any State from requiring an organization which has been eligible at any time since January 1, 1987, to claim the special deduction provided by section 833 of the Internal Revenue Code of 1986 to meet certain conditions in order to undergo, as determined by the State, a reorganization, recapitalization, conversion, merger, consolidation, sale or other disposition of substantial operating assets, demutualization, dissolution, or to undertake other similar actions and which is governed under a State statute enacted on May 22, 1998, relating to hospital, medical, and dental service corporation conversions.

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

(A) IN GENERAL.—Subject to subsection (c) and the nondiscrimination provisions contained in such subsection, no provision in paragraph (1) shall be construed as affecting State laws, regulations, orders, interpretations, or other actions of general applicability relating to the governance of corporations, partnerships, limited liability companies or other business associations incorporated or formed under the laws of that State or domiciled in that State, or the applicability of the antitrust laws of any State or any State law that is similar to the antitrust laws.

(B) DEFINITION.—The term "antitrust laws" has the same meaning as in subsection (a) of the first section of the Clayton Act, and includes section 5 of the Federal Trade Commission Act to the extent that such section 5 relates to unfair methods of competition.

(b) ACTIVITIES.—

(1) IN GENERAL.—Except as provided in paragraph (3), and except with respect to insurance sales, solicitation, and cross marketing activities, which shall be governed by paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent an insured depository institution, wholesale financial institution, or subsidiary or affiliate thereof from engaging, or significantly interfere with the ability of any such person to engage, directly or indirectly, either by itself or in conjunction with a subsidiary, affiliate, or any other entity or person, in any activity authorized or permitted under this Act.

(2) INSURANCE SALES.—

(A) IN GENERAL.—In accordance with the legal standards for preemption set forth in the decision of the Supreme Court of the United States in Barnett Bank of Marion County N.A. v. Nelson, 517 U.S. 25 (1996), no State may, by statute, regulation, order, interpretation, or other action, prevent or significantly interfere with the ability of an insured depository institution or wholesale financial institution, or a subsidiary or affiliate thereof, to engage, directly or indirectly, either by itself or in conjunction with a subsidiary, affiliate, or any other party, in any insurance sales, solicitation, or cross-marketing activity.

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

(i) Restrictions prohibiting the rejection of an insurance policy by an insured depository institution, wholesale financial institution, or any subsidiary or affiliate thereof, solely because the policy has been issued or underwritten by any person who is not associated with such insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof, when such insurance is required in connection with a loan or extension of credit.

(ii) Restrictions prohibiting a requirement for any debtor, insurer, or insurance agent or broker to pay a separate charge in connection with the handling of insurance that is required in connection with a loan or other extension of credit or the provision of another traditional banking product by an insured depository institution, wholesale financial institution, or any subsidiary or affiliate thereof, unless such charge would be required when the insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof, is the licensed insurance agent or broker providing the insurance.

(iii) Restrictions prohibiting the use of any advertisement or other insurance promotional material by an insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof, that would cause a reasonable person to believe mistakenly that—

(I) a State or the Federal Government is responsible for the insurance sales activities of, or stands behind the credit of, the institution, affiliate, or subsidiary; or

(II) a State, or the Federal Government guarantees any returns on insurance products, or is a source of payment on any insurance obligation of or sold by the institution, affiliate, or subsidiary;

(iv) Restrictions prohibiting the payment or receipt of any commission or brokerage fee or other valuable consideration for services as an insurance agent or broker to or by any person, unless such person holds a valid State license regarding the applicable class of insurance at the time at which the services are performed, except that, in this clause, the term "services as an insurance agent or broker" does not include a referral by an unlicensed person of a customer or potential customer to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions.

(v) Restrictions prohibiting any compensation paid to or received by any individual who is not licensed to sell insurance, for the referral of a customer that seeks to purchase, or seeks an opinion or advice on, any insurance product to a person that sells or provides opinions or advice on such product, based on the purchase of insurance by the customer.

(vi) Restrictions prohibiting the release of the insurance information of a customer (defined as information concerning the premiums, terms, and conditions of insurance coverage, including expiration dates and rates, and insurance claims of a customer contained in the records of the insured depository institution or wholesale financial institution, or a subsidiary or affiliate thereof) to any person or entity other than an officer, director, employee, agent, subsidiary, or affiliate of an insured depository institution or a wholesale financial institution, for the purpose of soliciting or selling insurance, without the express consent of the customer, other than a provision that prohibits—

(I) a transfer of insurance information to an unaffiliated insurance company, agent, or broker in connection with transferring insurance in force on existing insureds of the insured depository institution or wholesale financial institution, or subsidiary or affiliate thereof, or in connection with a merger with or acquisition of an unaffiliated insurance company, agent, or broker; or

(II) the release of information as otherwise authorized by State or Federal law.

(vii) Restrictions prohibiting the use of health information obtained from the insurance records of a customer for any purpose, other than for its activities as a licensed agent or broker, without the express consent of the customer.

(viii) Restrictions prohibiting the extension of credit or any product or service that is equivalent to an extension of credit, lease or sale of property of any kind, or furnishing of any services or fixing or varying the consideration for any of the foregoing, on the condition or requirement that the customer obtain insurance from an insured depository institution, wholesale financial institution, a subsidiary or affiliate thereof, or a particular insurer, agent, or broker, other than a prohibition that would prevent any insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof—

(I) from engaging in any activity described in this clause that would not violate section 106 of the Bank Holding Company Act Amendments of 1970, as interpreted by the Board of Governors of the Federal Reserve System; or

(II) from informing a customer or prospective customer that insurance is required in order to obtain a loan or credit, that loan or credit approval is contingent upon the procurement by the customer of acceptable insurance, or that insurance is available from the insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof.

(ix) Restrictions requiring, when an application by a consumer for a loan or other extension of credit from an insured depository institution or wholesale financial institution is pending, and insurance is offered or sold to the consumer or is required in connection with the loan or extension of credit by the insured depository institution or wholesale financial institution or any affiliate or subsidiary thereof, that a written disclosure be provided to the consumer or prospective customer indicating that his or her choice of an insurance provider will not affect the credit decision or credit terms in any way, except that the insured depository institution or wholesale financial institution may impose reasonable requirements concerning the creditworthiness of the insurance provider and scope of coverage chosen.

(x) Restrictions requiring clear and conspicuous disclosure, in writing, where practicable, to the customer prior to the sale of any insurance policy that such policy—

(I) is not a deposit;

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

(III) is not guaranteed by the insured depository institution or wholesale financial institution or, if appropriate, its subsidiaries or affiliates or any person soliciting the purchase of or selling insurance on the premises thereof; and

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

(xi) Restrictions requiring that, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from an insured depository institution or wholesale financial institution, or its subsidiaries or affiliates, or any person soliciting the purchase of or selling insurance on the premises thereof, the credit and insurance transactions be completed through separate documents.

(xii) Restrictions prohibiting, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from an insured depository institution or wholesale financial institution or its subsidiaries or affiliates, or any person soliciting the purchase of or selling insurance on the premises thereof, inclusion of the expense of insurance premiums in the primary credit transaction without the express written consent of the customer.

(xiii) Restrictions requiring maintenance of separate and distinct books and records relating to insurance transactions, including all files relating to and reflecting consumer complaints, and requiring that such insurance books and records be made available to the appropriate State insurance regulator for inspection upon reasonable notice.

(C) CONSTRUCTION.—Nothing in this paragraph shall be construed to limit the applicability of the decision of the Supreme Court in Barnett Bank of Marion County N.A. v. Nelson, 517 U.S. 25 (1996), with respect to a State statute, regulation, order, interpretation, or other action that is not described in subparagraph (B).

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

(A) relate to, or are issued, adopted, or enacted for the purpose of regulating the business of insurance in accordance with the Act of March 9, 1945 (commonly known as the "McCarran-Ferguson Act");

(B) apply only to persons that are not insured depository institutions or wholesale financial institutions, but that are directly engaged in the business of insurance, except that such State statutes, regulations, interpretations, orders, and other actions may apply to—

(i) insured depository institutions and wholesale financial institutions engaged in providing savings bank life insurance as principal to the extent of regulating such insurance; and

(ii) insured depository institutions and wholesale financial institutions which are engaged in the business of insurance on behalf, directly or indirectly, of a company providing insurance as principal, such as by performing administrative or investment management or claims processing functions related to insurance, but only—

(I) to the extent of such functions;

(II) if such functions would normally be regulated by the insurance regulator of such State as part of the business of insurance;

(III) if the State statute, regulation, interpretation, order, or other action does not directly conflict with any Federal law expressly governing such function; and

(IV) if the State insurance regulator makes an effort to obtain any required information from the appropriate banking regulator of such insured depository institution or wholesale financial institution;

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

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

(4) FINANCIAL ACTIVITIES OTHER THAN INSURANCE.—No State statute, regulation, interpretation, order, or other action shall be preempted under subsection (b)(1) to the extent that—

(A) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, insurance sales, solicitations, or cross marketing activities covered under paragraph (2);

(B) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, the business of insurance activities other than sales, solicitations, or cross marketing activities, covered under paragraph (3);

(C) it does not relate to securities investigations, enforcement actions, registration, or licensure actions referred to in subsection (d); and

(D) it—

(i) does not distinguish by its terms between insured depository institutions, wholesale financial institutions, and subsidiaries and affiliates thereof engaged in the activity at issue and other persons or entities engaged in the same activity in a manner that is in any way adverse with respect to the conduct of the activity by any such insured depository institution, wholesale financial institution, or subsidiary or affiliate thereof engaged in the activity at issue;

(ii) as interpreted or applied, does not have, and will not have, an impact on insured depository institutions, wholesale financial institutions, or subsidiaries or affiliates thereof engaged in the activity at issue, or any person or entity affiliated therewith, that is substantially more adverse than its impact on other persons or entities engaged in the same activity that are not insured depository institutions, wholesale financial institutions, or subsidiaries or affiliates thereof, or persons or entities affiliated therewith;

(iii) does not effectively prevent an insured depository institution, wholesale financial institution, or subsidiary or affiliate thereof from engaging in activities authorized or permitted by this Act or any other provision of Federal law; and

(iv) does not conflict with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law.

(c) NONDISCRIMINATION.—

(1) IN GENERAL.—Except as provided in subsection (b)(2)(B), no State may, by statute, regulation, order, interpretation, or other action, regulate the insurance activities authorized or permitted under this Act or any other provision of Federal law of an insured depository institution or wholesale financial institution,

or subsidiary or affiliate thereof, to the extent that such statute, regulation, order, interpretation, or other action—

(A) distinguishes by its terms between insured depository institutions or wholesale financial institutions, or subsidiaries or affiliates thereof, and other persons or entities engaged in such activities, in a manner that is more adverse to insured depository institutions or wholesale financial institutions, or subsidiaries or affiliates thereof, than to other persons or entities providing the same products or services or engaged in the same activities that are not insured depository institutions, wholesale financial institutions, or subsidiaries or affiliates thereof, or persons or entities affiliated therewith;

(B)(i) as interpreted or applied, has or will have an impact on insured depository institutions or wholesale financial institutions, or subsidiaries or affiliates thereof, based on their status, that is substantially more adverse than its impact on other persons or entities providing the same products or services or engaged in the same activities that are not insured depository institutions, wholesale financial institutions, or subsidiaries or affiliates thereof, or persons or entities affiliated therewith; and

(ii) for purposes of this subparagraph, the term "based on their status" means—

(I) with respect to insured depository institutions and wholesale financial institutions, based on an attribute of insured depository institutions or wholesale financial institutions, such as a Federal charter or the insured status, either as a whole or with regard to a particular type or class of such institutions; and

(II) with respect to subsidiaries or affiliates of insured depository institutions or wholesale financial institutions, based on their relationship with such institutions;

(C) effectively prevents an insured depository institution or wholesale financial institution, or subsidiary or affiliate thereof, from engaging in insurance activities authorized or permitted by this Act or any other provision of Federal law; or

(D) conflicts with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law between insured depository institutions or wholesale financial institutions, or subsidiaries or affiliates thereof, and persons and entities engaged in the business of insurance.

(2) PROSPECTIVE APPLICATION.—Paragraph (1) shall not apply to any State statute, regulation, order, interpretation, or other action regarding any insurance sales, solicitation, or cross-marketing activity described in subsection (b)(2)(A) that was issued, adopted, enacted, or taken before January 1, 1999.

(d) LIMITATION.—Subsections (a) and (b) shall not be construed to affect the jurisdiction of the securities commission (or any agency or office performing like functions) of any State, under the laws of such State—

(1) to investigate and bring enforcement actions, consistent with section 18(c) of the Securities Act of 1933, with respect to fraud or deceit or unlawful conduct by any person, in connection with securities or securities transactions; or

(2) to require the registration of securities or the licensure or registration of brokers, dealers, or investment advisers (consistent with section 203A of the Investment Advisers Act of 1940), or the associated persons of a broker, dealer, or investment adviser (consistent with such section 203A).

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

(1) INSURED DEPOSITORY INSTITUTION.—The term "insured depository institution" includes any foreign bank that maintains a branch, agency, or commercial lending company in the United States.

(2) STATE.—The term "State" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHORIZED.

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

"(2) REGULATIONS.—A bank holding company organized as a mutual holding company shall be regulated on terms, and shall be subject to limitations, comparable to those applicable to any other bank holding company.".

SEC. 105A. PUBLIC MEETINGS FOR LARGE BANK ACQUISITIONS AND MERGERS.

(a) BANK HOLDING COMPANY ACT OF 1956.—Section 3(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)(2)) is amended—

(1) by striking "FACTORS.—In every case" and inserting "FACTORS.—

"(A) IN GENERAL.—In every case"; and

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

"(B) PUBLIC MEETINGS.—In each case involving 1 or more insured depository institutions each of which has total assets of $1,000,000,000 or more, the Board shall, as necessary and on a timely basis, conduct public meetings in 1 or more areas where the Board believes, in the sole discretion of the Board, there will be a substantial public impact.".

(b) FEDERAL DEPOSIT INSURANCE ACT.—Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended by adding at the end the following new paragraph:

"(12) PUBLIC MEETINGS.—In each merger transaction involving 1 or more insured depository institutions each of which has total assets of $1,000,000,000 or more, the responsible agency shall, as necessary and on a timely basis, conduct public meetings in 1 or more areas where the agency believes, in the sole discretion of the agency, there will be a substantial public impact.".

(c) NATIONAL BANK CONSOLIDATION AND MERGER ACT.—The National Bank Consolidation and Merger Act (12 U.S.C. 215 et seq.) is amended by adding at the end the following new section:

"SEC. 6. PUBLIC MEETINGS FOR LARGE BANK CONSOLIDATIONS AND MERGERS.

"In each case of a consolidation or merger under this Act involving 1 or more banks each of which has total assets of $1,000,000,000 or more, the Comptroller shall, as necessary and on a timely basis, conduct public meetings in 1 or more areas where the Comptroller believes, in the sole discretion of the Comptroller, there will be a substantial public impact.".

(d) HOME OWNERS' LOAN ACT.—Section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1463) is amended by adding at the end the following new paragraph:

"(7) PUBLIC MEETINGS FOR LARGE DEPOSITORY INSTITUTION ACQUISITIONS AND MERGERS.—In each case involving 1 or more insured depository institutions each of which has total assets of $1,000,000,000 or more, the Director shall, as necessary and on a timely basis, conduct public meetings in 1 or more areas where the Director believes, in the sole discretion of the Director, there will be a substantial public impact.".

SEC. 106. PROHIBITION ON DEPOSIT PRODUCTION OFFICES.

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

(1) by inserting ", the Financial Services Act of 1999," after "pursuant to this title"; and

(2) by inserting "or such Act" after "made by this title".

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

SEC. 107. CLARIFICATION OF BRANCH CLOSURE REQUIREMENTS.

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

SEC. 108. AMENDMENTS RELATING TO LIMITED PURPOSE BANKS.

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

(1) in paragraph (2)(A)(ii)—

(A) by striking "and" at the end of subclause (IX);

(B) by inserting "and" after the semicolon at the end of subclause (X); and

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

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

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

"(B) any bank subsidiary of such company engages in any activity in which the bank was not lawfully engaged as of March 5, 1987, unless the bank is well managed and well capitalized;

"(C) any bank subsidiary of such company both—

"(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties; and

"(ii) engages in the business of making commercial loans (and, for purposes of this clause, loans made in the ordinary course of a credit card operation shall not be treated as commercial loans); or

"(D) after the date of the enactment of the Competitive Equality Amendments of 1987, any bank subsidiary of such company permits any overdraft (including any intraday overdraft), or incurs any such overdraft in such bank's account at a Federal reserve bank, on behalf of an affiliate, other than an overdraft described in paragraph (3)."; and

(3) by striking paragraphs (3) and (4) and inserting the following new paragraphs:

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

"(A) such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the bank and the affiliate; or

"(B) such overdraft—

"(i) is permitted or incurred on behalf of an affiliate which is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York; and

"(ii) is fully secured, as required by the Board, by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book entry system.

"(4) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—If any company described in paragraph (1) fails to qualify for the exemption provided under such paragraph by operation of paragraph (2), such exemption shall cease to apply to such company and such company shall divest control of each bank it controls before the end of the 180-day period beginning on the date that the company receives notice from the Board that the company has failed to continue to qualify for such exemption, unless before the end of such 180-day period, the company has—

"(A) corrected the condition or ceased the activity that caused the company to fail to continue to qualify for the exemption; and

"(B) implemented procedures that are reasonably adapted to avoid the reoccurrence of such condition or activity.".

SEC. 109. GAO STUDY OF ECONOMIC IMPACT ON COMMUNITY BANKS, OTHER SMALL FINANCIAL INSTITUTIONS, INSURANCE AGENTS, AND CONSUMERS.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study of the projected economic impact and the actual economic impact that the enactment of this Act will have on financial institutions, including community banks, registered brokers and dealers and insurance companies, which have total assets of $100,000,000 or less, insurance agents, and consumers.

(b) REPORTS TO THE CONGRESS.—

(1) IN GENERAL.—The Comptroller General of the United States shall submit reports to the Congress, at the times required under paragraph (2), containing the findings and conclusions of the Comptroller General with regard to the study required under subsection (a) and such recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate.

(2) TIMING OF REPORTS.—The Comptroller General shall submit—

(A) an interim report before the end of the 6-month period beginning after the date of the enactment of this Act;

(B) another interim report before the end of the next 6-month period; and

(C) a final report before the end of the 1-year period after such second 6-month period,"

SEC. 110. RESPONSIVENESS TO COMMUNITY NEEDS FOR FINANCIAL SERVICES.

(a) STUDY.—The Secretary of the Treasury, in consultation with the Federal banking agencies (as defined in section 3(z) of the Federal Deposit Insurance Act) and the Securities and Exchange Commission, shall conduct a study of the extent to which adequate services are being provided as intended by the Community Rein-

vestment Act of 1977, including services in low- and moderate-income neighborhoods and for persons of modest means, as a result of the enactment of this Act.

(b) REPORT.—Before the end of the 2-year period beginning on the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Federal banking agencies and the Securities and Exchange Commission, shall submit a report to the Congress on the study conducted pursuant to subsection (a) and shall include such recommendations as the Secretary determines to be appropriate for administrative and legislative action with respect to institutions covered under the Community Reinvestment Act of 1977.

Subtitle B—Streamlining Supervision of Financial Holding Companies

SEC. 111. STREAMLINING FINANCIAL HOLDING COMPANY SUPERVISION.

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) REPORTS.—

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

"(i) its financial condition, systems for monitoring and controlling financial and operating risks, and transactions with depository institution subsidiaries of the holding company; and

"(ii) compliance by the company or subsidiary with applicable provisions of 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 bank holding company or any subsidiary of such company has provided or been required to provide to other Federal and State supervisors or to appropriate self-regulatory organizations.

"(ii) AVAILABILITY.—A bank 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).

"(iii) REQUIRED USE OF PUBLICLY REPORTED INFORMATION.—The Board shall, to the fullest extent possible, accept in fulfillment of any reporting or recordkeeping requirements under this Act information that is otherwise required to be reported publicly and externally audited financial statements.

"(iv) REPORTS FILED WITH OTHER AGENCIES.—In the event the Board requires a report from a functionally regulated nondepository institution subsidiary of a bank holding company of a kind that is not required by another Federal or State regulator or appropriate self-regulatory organization, the Board shall request that the appropriate regulator or self-regulatory organization obtain such report. If the report is not made available to the Board, and the report is necessary to assess a material risk to the bank holding company or any of its subsidiary depository institutions or compliance with this Act, the Board may require such subsidiary to provide such a report to the Board.

"(C) DEFINITION.—For purposes of this subsection, the term 'functionally regulated nondepository institution' means—

"(i) a broker or dealer registered under the Securities Exchange Act of 1934;

"(ii) an investment adviser registered under the Investment Advisers Act of 1940, or with any State, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;

"(iii) an insurance company subject to supervision by a State insurance commission, agency, or similar authority; and

"(iv) an entity subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities.

"(2) EXAMINATIONS.—

"(A) EXAMINATION AUTHORITY.—

"(i) IN GENERAL.—The Board may make examinations of each bank holding company and each subsidiary of a bank holding company.

"(ii) FUNCTIONALLY REGULATED NONDEPOSITORY INSTITUTION SUBSIDIARIES.—Notwithstanding clause (i), the Board may make examinations of a functionally regulated nondepository institution subsidiary of a bank holding company only if—

"(I) the Board has reasonable cause to believe that such subsidiary is engaged in activities that pose a material risk to an affiliated depository institution, or

"(II) based on reports and other available information, the Board has reasonable cause to believe that a subsidiary is not in compliance with this Act or with provisions relating to transactions with an affiliated depository institution and the Board cannot make such determination through examination of the affiliated depository institution or bank holding company.

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

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

"(ii) inform the Board of—

"(I) the financial and operational risks within the holding company system that may pose a threat to the safety and soundness of any subsidiary depository institution of such holding company; and

"(II) the systems for monitoring and controlling such risks; and

"(iii) monitor compliance with the provisions of this Act and those governing transactions and relationships between any subsidiary depository institution and its affiliates.

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

"(i) the bank holding company; and

"(ii) any subsidiary of the holding company that, because of—

"(I) the size, condition, or activities of the subsidiary; or

"(II) the nature or size of transactions between such subsidiary and any depository institution which is also a subsidiary of such holding company,

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

"(D) DEFERENCE TO BANK EXAMINATIONS.—The Board shall, to the fullest extent possible, use, for the purposes of this paragraph, the reports of examinations of depository institutions made by the appropriate Federal and State depository institution supervisory authority.

"(E) DEFERENCE TO OTHER EXAMINATIONS.—The Board shall, to the fullest extent possible, address the circumstances which might otherwise permit or require an examination by the Board by forgoing an examination and instead reviewing the reports of examination made of—

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

"(ii) any investment adviser registered by or on behalf of either the Securities and Exchange Commission or any State, whichever is required by law;

"(iii) any licensed insurance company by or on behalf of any state regulatory authority responsible for the supervision of insurance companies; and

"(iv) any other subsidiary that the Board finds to be comprehensively supervised by a Federal or State authority.

"(3) CAPITAL.—

"(A) IN GENERAL.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, guidelines, standards, or requirements on any subsidiary of a financial holding company that is not a depository institution and—

"(i) is in compliance with applicable capital requirements of another Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority;

"(ii) is registered as an investment adviser under the Investment Advisers Act of 1940, or with any State, whichever is required by law; or

"(iii) is licensed as an insurance agent with the appropriate State insurance authority.

"(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to—

"(i) activities of a registered investment adviser other than investment advisory activities or activities incidental to investment advisory activities; or

"(ii) activities of a licensed insurance agent other than insurance agency activities or activities incidental to insurance agency activities.

"(C) LIMITATIONS ON INDIRECT ACTION.—In developing, establishing, or assessing holding company capital or capital adequacy rules, guidelines, standards, or requirements for purposes of this paragraph, the Board shall not take into account the activities, operations, or investments of an affiliated investment company registered under the Investment Company Act of 1940, unless the investment company is—

"(i) a bank holding company; or

"(ii) controlled by a bank holding company by reason of ownership by the bank holding company (including through all of its affiliates) of 25 percent or more of the shares of the investment company, and the shares owned by the bank holding company have a market value equal to more than $1,000,000.

"(4) FUNCTIONAL REGULATION OF SECURITIES AND INSURANCE ACTIVITIES.—The Board shall defer to—

"(A) the Securities and Exchange Commission with regard to all interpretations of, and the enforcement of, applicable Federal securities laws (and rules, regulations, orders, and other directives issued thereunder) relating to the activities, conduct, and operations of registered brokers, dealers, investment advisers, and investment companies;

"(B) the relevant State securities authorities with regard to all interpretations of, and the enforcement of, applicable State securities laws (and rules, regulations, orders, and other directives issued thereunder) relating to the activities, conduct, and operations of brokers, dealers, and investment advisers required to be registered under State law; and

"(C) the relevant State insurance authorities with regard to all interpretations of, and the enforcement of, applicable State insurance laws (and rules, regulations, orders, and other directives issued thereunder) relating to the activities, conduct, and operations of insurance companies and insurance agents.".

SEC. 112. ELIMINATION OF APPLICATION REQUIREMENT FOR FINANCIAL HOLDING COMPANIES.

(a) PREVENTION OF DUPLICATIVE FILINGS.—Section 5(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(a)) is amended by adding the following new sentence at the end: "A declaration filed in accordance with section 6(b)(1)(D) shall satisfy the requirements of this subsection with regard to the registration of a bank holding company but not any requirement to file an application to acquire a bank pursuant to section 3.".

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

(1) by striking "Financial Institutions Supervisory Act of 1966, order" and inserting "Financial Institutions Supervisory Act of 1966, at the election of the bank holding company—

"(A) order"; and

(2) by striking "shareholders of the bank holding company. Such distribution" and inserting "shareholders of the bank holding company; or

"(B) order the bank holding company, after due notice and opportunity for hearing, and after consultation with the primary supervisor for the bank, which shall be the Comptroller of the Currency in the case of a national bank, and the Federal Deposit Insurance Corporation and the appropriate State supervisor in the case of an insured nonmember bank, to terminate (within 120 days or such longer period as the Board may direct) the ownership or control of any such bank by such company.

The distribution referred to in subparagraph (A)".

SEC. 113. AUTHORITY OF STATE INSURANCE REGULATOR AND SECURITIES AND EXCHANGE COMMISSION.

(a) BANK HOLDING COMPANIES.—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) AUTHORITY OF STATE INSURANCE REGULATOR AND THE SECURITIES AND EXCHANGE COMMISSION.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, any regulation, order, or other action of the Board which requires a bank holding company to provide funds or other assets to a subsidiary insured depository institution shall not be effective nor enforceable if—

"(A) such funds or assets are to be provided by—

"(i) a bank holding company that is an insurance company, a broker or dealer registered under the Securities Exchange Act of 1934, or an investment company registered under the Investment Company of 1940; or

"(ii) an affiliate of the depository institution which is an insurance company or a broker or dealer registered under such Act; and

"(B) the State insurance authority for the insurance company or the Securities and Exchange Commission for the registered broker, dealer, or investment company, as the case may be, determines in writing sent to the holding company and the Board that the holding company shall not provide such funds or assets because such action would have a material adverse effect on the financial condition of the insurance company or the broker, dealer, or investment company, as the case may be.

"(2) NOTICE TO STATE INSURANCE AUTHORITY OR SEC REQUIRED.—If the Board requires a bank holding company, or an affiliate of a bank holding company, which is an insurance company or a broker, dealer, or investment company described in paragraph (1)(A) to provide funds or assets to an insured depository institution subsidiary of the holding company pursuant to any regulation, order, or other action of the Board referred to in paragraph (1), the Board shall promptly notify the State insurance authority for the insurance company or the Securities and Exchange Commission, as the case may be, of such requirement.

"(3) DIVESTITURE IN LIEU OF OTHER ACTION.—If the Board receives a notice described in paragraph (1)(B) from a State insurance authority or the Securities and Exchange Commission with regard to a bank holding company or affiliate referred to in that paragraph, the Board may order the bank holding company to divest the insured depository institution not later than 180 days after receiving the notice, or such longer period as the Board determines consistent with the safe and sound operation of the insured depository institution.

"(4) CONDITIONS BEFORE DIVESTITURE.—During the period beginning on the date an order to divest is issued by the Board under paragraph (3) to a bank holding company and ending on the date the divestiture is completed, the Board may impose any conditions or restrictions on the holding company's ownership or operation of the insured depository institution, including restricting or prohibiting transactions between the insured depository institution and any affiliate of the institution, as are appropriate under the circumstances.".

(b) SUBSIDIARIES OF DEPOSITORY INSTITUTIONS.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 45. AUTHORITY OF STATE INSURANCE REGULATOR AND SECURITIES AND EXCHANGE COMMISSION.

"(a) IN GENERAL.—Notwithstanding any other provision of law, any regulation, order, or other action of the appropriate Federal banking agency which requires a subsidiary to provide funds or other assets to an insured depository institution shall not be effective nor enforceable if—

"(1) such funds or assets are to be provided by a subsidiary which is an insurance company, a broker or dealer registered under the Securities Exchange Act of 1934, or an investment company registered under the Investment Company Act of 1940; and

"(2) the State insurance authority for the insurance company or the Securities and Exchange Commission for the registered broker or dealer or the investment company, as the case may be, determines in writing sent to the insured depository institution and the appropriate Federal banking agency that the subsidiary shall not provide such funds or assets because such action would have a material adverse effect on the financial condition of the insurance company or the broker, dealer, or investment company, as the case may be.

"(b) NOTICE TO STATE INSURANCE AUTHORITY OR SEC REQUIRED.—If the appropriate Federal banking agency requires a subsidiary, which is an insurance company, a broker or dealer, or an investment company described in subsection (a)(1) to provide funds or assets to an insured depository institution pursuant to any regulation, order, or other action of the appropriate Federal banking agency referred to in subsection (a), the appropriate Federal banking agency shall promptly notify the State insurance authority for the insurance company or the Securities and Exchange Commission, as the case may be, of such requirement.

"(c) DIVESTITURE IN LIEU OF OTHER ACTION.—If the appropriate Federal banking agency receives a notice described in subsection (a)(2) from a State insurance authority or the Securities and Exchange Commission with regard to a subsidiary referred to in that subsection, the appropriate Federal banking agency may order the insured depository institution to divest the subsidiary not later than 180 days after receiving the notice, or such longer period as the appropriate Federal banking agency determines consistent with the safe and sound operation of the insured depository institution.

"(d) CONDITIONS BEFORE DIVESTITURE.—During the period beginning on the date an order to divest is issued by the appropriate Federal banking agency under subsection (c) to an insured depository institution and ending on the date the divestiture is complete, the appropriate Federal banking agency may impose any conditions or restrictions on the insured depository institution's ownership or operation of the subsidiary including restricting or prohibiting transactions between the insured depository institution and the subsidiary, as are appropriate under the circumstances.".

SEC. 114. PRUDENTIAL SAFEGUARDS.

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

"(h) PRUDENTIAL SAFEGUARDS.—

"(1) IN GENERAL.—The Board may, by regulation or order, impose restrictions or requirements on relationships or transactions between a depository institution subsidiary of a bank holding company and any affiliate of such depository institution (other than a subsidiary of such institution) which the Board finds is consistent with the public interest, the purposes of this Act, the Financial Services Act of 1999, the Federal Reserve Act, and other Federal law applicable to depository institution subsidiaries of bank holding companies and the standards in paragraph (2).

"(2) STANDARDS.—The Board may exercise authority under paragraph (1) if the Board finds that such action will have any of the following effects:

"(A) Avoid any significant risk to the safety and soundness of depository institutions or any Federal deposit insurance fund.

"(B) Enhance the financial stability of bank holding companies.

"(C) Avoid conflicts of interest or other abuses.

"(D) Enhance the privacy of customers of depository institutions.

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

"(3) REVIEW.—The Board shall regularly—

"(A) review all restrictions or requirements established pursuant to paragraph (1) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including any purpose described in paragraph (2); and

"(B) modify or eliminate any restriction or requirement the Board finds is no longer required for such purposes.".

SEC. 115. EXAMINATION OF INVESTMENT COMPANIES.

(a) EXCLUSIVE COMMISSION AUTHORITY.—

(1) IN GENERAL.—Except as provided in paragraph (3), the Commission shall be the sole Federal agency with authority to inspect and examine any registered investment company that is not a bank holding company or a savings and loan holding company.

(2) PROHIBITION ON BANKING AGENCIES.—Except as provided in paragraph (3), a Federal banking agency may not inspect or examine any registered investment company that is not a bank holding company or a savings and loan holding company.

(3) CERTAIN EXAMINATIONS AUTHORIZED.— Nothing in this subsection prevents the Federal Deposit Insurance Corporation, if the Corporation finds it

necessary to determine the condition of an insured depository institution for insurance purposes, from examining an affiliate of any insured depository institution, pursuant to its authority under section 10(b)(4) of the Federal Deposit Insurance Act, as may be necessary to disclose fully the relationship between the depository institution and the affiliate, and the effect of such relationship on the depository institution.

(b) EXAMINATION RESULTS AND OTHER INFORMATION.—The Commission shall provide to any Federal banking agency, upon request, the results of any examination, reports, records, or other information with respect to any registered investment company to the extent necessary for the agency to carry out its statutory responsibilities.

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

(1) BANK HOLDING COMPANY.—The term "bank holding company" has the same meaning as in section 2 of the Bank Holding Company Act of 1956.

(2) COMMISSION.—The term "Commission" means the Securities and Exchange Commission.

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

(4) REGISTERED INVESTMENT COMPANY.—The term "registered investment company" means an investment company which is registered with the Commission under the Investment Company Act of 1940.

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

SEC. 116. LIMITATION ON RULEMAKING, PRUDENTIAL, SUPERVISORY, AND ENFORCEMENT AUTHORITY OF THE BOARD.

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

"SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SUPERVISORY, AND ENFORCEMENT AUTHORITY OF THE BOARD.

"(a) LIMITATION ON DIRECT ACTION.—

"(1) IN GENERAL.—The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this Act or section 8 of the Federal Deposit Insurance Act against or with respect to a regulated subsidiary of a bank holding company unless the action is necessary to prevent or redress an unsafe or unsound practice or breach of fiduciary duty by such subsidiary that poses a material risk to—

"(A) the financial safety, soundness, or stability of an affiliated depository institution; or

"(B) the domestic or international payment system.

"(2) CRITERIA FOR BOARD ACTION.—The Board shall not take action otherwise permitted under paragraph (1) unless the Board finds that it is not reasonably possible to effectively protect against the material risk at issue through action directed at or against the affiliated depository institution or against depository institutions generally.

"(b) LIMITATION ON INDIRECT ACTION.—The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this Act or section 8 of the Federal Deposit Insurance Act against or with respect to a financial holding company or a wholesale financial holding company where the purpose or effect of doing so would be to take action indirectly against or with respect to a regulated subsidiary that may not be taken directly against or with respect to such subsidiary in accordance with subsection (a).

"(c) ACTIONS SPECIFICALLY AUTHORIZED.—Notwithstanding subsection (a), the Board may take action under this Act or section 8 of the Federal Deposit Insurance Act to enforce compliance by a regulated subsidiary with Federal law that the Board has specific jurisdiction to enforce against such subsidiary.

"(d) REGULATED SUBSIDIARY DEFINED.—For purposes of this section, the term 'regulated subsidiary' means any company that is not a bank holding company and is—

"(1) a broker or dealer registered under the Securities Exchange Act of 1934;

"(2) an investment adviser registered by or on behalf of either the Securities and Exchange Commission or any State, whichever is required by law, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;

"(3) an investment company registered under the Investment Company Act of 1940;

"(4) an insurance company or an insurance agency, with respect to the insurance activities and activities incidental to such insurance activities, subject to supervision by a State insurance commission, agency, or similar authority; or

"(5) an entity subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities.".

SEC. 117. EQUIVALENT REGULATION AND SUPERVISION.

(a) IN GENERAL.—Notwithstanding any other provision of law, the provisions of—

(1) section 5(c) of the Bank Holding Company Act of 1956 (as amended by this Act) that limit the authority of the Board of Governors of the Federal Reserve System to require reports from, to make examinations of, or to impose capital requirements on bank holding companies and their nonbank subsidiaries or that require deference to other regulators; and

(2) section 10A of the Bank Holding Company Act of 1956 (as added by this Act) that limit whatever authority the Board might otherwise have to take direct or indirect action with respect to bank holding companies and their nonbank subsidiaries,

shall also limit whatever authority that a Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act) might otherwise have under any statute to require reports, make examinations, impose capital requirements or take any other direct or indirect action with respect to bank holding companies and their nonbank subsidiaries (including nonbank subsidiaries of depository institutions), subject to the same standards and requirements as are applicable to the Board under such provisions.

(b) CERTAIN EXAMINATIONS AUTHORIZED.—No provision of this section shall be construed as preventing the Federal Deposit Insurance Corporation, if the Corporation finds it necessary to determine the condition of an insured depository institution for insurance purposes, from examining an affiliate of any insured depository institution, pursuant to its authority under section 10(b)(4) of the Federal Deposit Insurance Act, as may be necessary to disclose fully the relationship between the depository institution and the affiliate, and the effect of such relationship on the depository institution.

SEC. 118. PROHIBITION ON FDIC ASSISTANCE TO AFFILIATES AND SUBSIDIARIES.

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

SEC. 119. REPEAL OF SAVINGS BANK PROVISIONS IN THE BANK HOLDING COMPANY ACT OF 1956.

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

"(f) [Repealed].".

SEC. 120. TECHNICAL AMENDMENT.

Section 2(o)(1)(A) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(o)(1)(A)) is amended by striking "section 38(b)" and inserting "section 38".

Subtitle C—Subsidiaries of National Banks

SEC. 121. PERMISSIBLE ACTIVITIES FOR SUBSIDIARIES OF NATIONAL BANKS.

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

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

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

"SEC. 5136A. SUBSIDIARIES OF NATIONAL BANKS.

"(a) SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED TO ENGAGE IN FINANCIAL ACTIVITIES.—

"(1) EXCLUSIVE AUTHORITY.—No provision of section 5136 or any other provision of this title LXII of the Revised Statutes shall be construed as authorizing a subsidiary of a national bank to engage in, or own any share of or any other interest in any company engaged in, any activity that—

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

"(B) is conducted under terms or conditions other than those that would govern the conduct of such activity by a national bank,

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

"(2) SPECIFIC AUTHORIZATION TO CONDUCT AGENCY ACTIVITIES WHICH ARE FINANCIAL IN NATURE.—A national bank may control a company that engages in agency activities that have been determined to be financial in nature or incidental to such financial activities pursuant to and in accordance with section 6(c) of the Bank Holding Company Act of 1956 if—

"(A) the company engages in such activities solely as agent and not directly or indirectly as principal;

"(B) the national bank is well capitalized and well managed, and has achieved a rating of satisfactory or better at the most recent examination of the bank under the Community Reinvestment Act of 1977;

"(C) all depository institution affiliates of the national bank are well capitalized and well managed, and have achieved a rating of satisfactory or better at the most recent examination of each such depository institution under the Community Reinvestment Act of 1977; and

"(D) the bank has received the approval of the Comptroller of the Currency.

"(3) DEFINITIONS.—

"(A) COMPANY; CONTROL; AFFILIATE; SUBSIDIARY.—The terms 'company', 'control', 'affiliate', and 'subsidiary' have the meanings given to such terms in section 2 of the Bank Holding Company Act of 1956.

"(B) WELL CAPITALIZED.—The term 'well capitalized' has the same meaning as in section 38 of the Federal Deposit Insurance Act and, for purposes of this section, the Comptroller shall have exclusive jurisdiction to determine whether a national bank is well capitalized.

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

"(i) in the case of a depository institution that has been examined, unless otherwise determined in writing by the appropriate Federal banking agency—

"(I) the achievement of a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of the depository institution; and

"(II) at least a rating of 2 for management, if that rating is given; or

"(ii) in the case of any depository institution that has not been examined, the existence and use of managerial resources that the appropriate Federal banking agency determines are satisfactory.

"(D) OTHER INCORPORATED TERMS.—For purposes of this paragraph, the terms 'appropriate Federal banking agency' and 'depository institution' have the meanings given to such terms in section 3 of the Federal Deposit Insurance Act.

"(b) LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSITORY INSTITUTIONS.—Any depository institution which becomes affiliated with a national bank during the 24-month period preceding the submission of an application to acquire a subsidiary under subsection (a)(2), and any depository institution which becomes so affiliated after the approval of such application, may be excluded for purposes of subsection (a)(2)(C) during the 24-month period beginning on the date of such acquisition if—

"(1) the depository institution has submitted an affirmative plan to the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) to take such action as may be necessary in order for such institution to achieve a 'satisfactory record of meeting community credit needs', or better, at the next examination of the institution under the Community Reinvestment Act of 1977; and

"(2) the plan has been approved by the appropriate Federal banking agency.".

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

(1) by inserting ", or to be a subsidiary of any person, firm, corporation, association, business trust, or similar organization engaged (unless such subsidiary (A) was lawfully engaged in such securities activities as of September 15, 1997, or (B) is a nondepository subsidiary of (i) a foreign bank and is not also a sub-

sidiary of a domestic depository institution, or (ii) an unincorporated private bank that is in operation as of the date of the enactment of the Financial Services Act of 1999 and is not insured under the Federal Deposit Insurance Act)" after "to engage at the same time"; and

(2) by inserting "or any subsidiary of such bank, company, or institution" after "or private bankers".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) ANTITYING.—Section 106(a) of the Bank Holding Company Act Amendments of 1970 is amended by adding at the end the following new sentence: "For purposes of this section, a subsidiary of a national bank which engages in activities as an agent pursuant to section 5136A(a)(2) shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank.".

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

"(4) SUBSIDIARY OF NATIONAL BANK.—For purposes of this section, a subsidiary of a national bank which engages in activities as an agent pursuant to section 5136A(a)(2) shall be deemed to be an affiliate of the national bank and not a subsidiary of the bank.".

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

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

(2) by inserting after the item relating to section 5136 the following new item:

"5136A. Financial subsidiaries of national banks.".

SEC. 122. MISREPRESENTATIONS REGARDING DEPOSITORY INSTITUTION LIABILITY FOR OBLIGATIONS OF AFFILIATES.

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

"§ 1008. Misrepresentations regarding financial institution liability for obligations of affiliates

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

"(b) CRIMINAL PENALTY.—Whoever violates subsection (a) shall be fined under this title, imprisoned for not more than 5 year, or both.

"(c) INSTITUTION-AFFILIATED PARTY DEFINED.—For purposes of this section, the term 'institution-affiliated party' with respect to a subsidiary or affiliate has the same meaning as in section 3 of the Federal Deposit Insurance Act, except references to an insured depository institution shall be deemed to be references to a subsidiary or affiliate of an insured depository institution.

"(d) OTHER DEFINITIONS.—For purposes of this section, the terms 'affiliate', 'insured depository institution', and 'subsidiary' have same meanings as in section 3 of the Federal Deposit Insurance Act.".

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

"1008. Misrepresentations regarding financial institution liability for obligations of affiliates.".

SEC. 123. REPEAL OF STOCK LOAN LIMIT IN FEDERAL RESERVE ACT.

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

Subtitle D—Wholesale Financial Holding Companies; Wholesale Financial Institutions

CHAPTER 1—WHOLESALE FINANCIAL HOLDING COMPANIES

SEC. 131. WHOLESALE FINANCIAL HOLDING COMPANIES ESTABLISHED.

(a) DEFINITION AND SUPERVISION.—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. WHOLESALE FINANCIAL HOLDING COMPANIES.

"(a) COMPANIES THAT CONTROL WHOLESALE FINANCIAL INSTITUTIONS.—

"(1) WHOLESALE FINANCIAL HOLDING COMPANY DEFINED.—The term 'wholesale financial holding company' means any company that—

"(A) is registered as a bank holding company;

"(B) is predominantly engaged in financial activities as defined in section 6(f)(2);

"(C) controls 1 or more wholesale financial institutions;

"(D) does not control—

"(i) a bank other than a wholesale financial institution;

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

"(iii) a savings association; and

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

"(2) SAVINGS ASSOCIATION TRANSITION PERIOD.—Notwithstanding paragraph (1)(D)(iii), the Board may permit a company that controls a savings association and that otherwise meets the requirements of paragraph (1) to become supervised under paragraph (1), if the company divests control of any such savings association within such period not to exceed 5 years after becoming supervised under paragraph (1) as permitted by the Board.

"(3) COMPANIES SUPERVISED BY SECURITIES AND EXCHANGE COMMISSION.—Any wholesale financial institution holding company for which an election to be subject to supervision by the Commission is in effect under section 17(i) of the Securities Exchange Act of 1934 shall not be treated as a wholesale financial institution holding company, and shall not be subject to supervision by the Board, for purposes of this Act.

"(b) SUPERVISION BY THE BOARD.—

"(1) IN GENERAL.—The provisions of this section shall govern the reporting, examination, and capital requirements of wholesale financial holding companies.

"(2) REPORTS.—

"(A) IN GENERAL.—The Board from time to time may require any wholesale financial 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 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 the wholesale financial holding company or any subsidiary of such company has provided or been required to provide to other Federal and State supervisors or to appropriate self-regulatory organizations.

"(ii) AVAILABILITY.—A wholesale financial 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).

"(C) 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 regulation prescribed under this paragraph.

"(ii) CRITERIA FOR CONSIDERATION.—In making any determination under clause (i) with regard to any exemption under such clause, the Board shall consider, among such other factors as the Board may determine to be appropriate, the following 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) or a foreign regulatory authority of a similar type.

"(II) The primary business of the company.

"(III) The nature and extent of the domestic and foreign regulation of the activities of the company.

"(3) EXAMINATIONS.—

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

"(i) inform the Board regarding the nature of the operations and financial condition of the wholesale financial holding company and its subsidiaries;

"(ii) inform the Board regarding—

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

"(II) the systems of the holding company and its 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 the wholesale financial 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 wholesale financial holding company under this paragraph to—

"(i) the holding company; and

"(ii) any subsidiary (other than an insured depository institution subsidiary) of the holding company that, because of the size, condition, or activities of the subsidiary, the nature or size of transactions between such subsidiary and any affiliated depository institution, 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 holding company.

"(C) DEFERENCE TO BANK EXAMINATIONS.—The Board shall, to the fullest extent possible, use the reports of examination of depository institutions made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Director of 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, address the circumstances which might otherwise permit or require an examination by the Board by forgoing an examination and by instead reviewing the reports of examination made of—

"(i) any registered broker or dealer or any registered investment adviser by or on behalf of the Commission; and

"(ii) any licensed insurance company by or on behalf of any State government insurance agency responsible for the supervision of the insurance company.

"(E) CONFIDENTIALITY OF REPORTED INFORMATION.—

"(i) IN GENERAL.—Notwithstanding any other provision of law, the Board shall not be compelled to disclose any nonpublic 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 wholesale financial 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 the 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 any 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, the wholesale financial holding company.

"(4) CAPITAL ADEQUACY GUIDELINES.—

"(A) CAPITAL ADEQUACY PROVISIONS.—Subject to the requirements of, and solely in accordance with, the terms of this paragraph, the Board may adopt capital adequacy rules or guidelines for wholesale financial holding companies.

"(B) METHOD OF CALCULATION.—In developing rules or guidelines under this paragraph, the following provisions shall apply:

"(i) FOCUS ON DOUBLE LEVERAGE.—The Board shall focus on the use by wholesale financial holding companies of debt and other liabilities to fund capital investments in subsidiaries.

"(ii) NO UNWEIGHTED CAPITAL RATIO.—The Board shall not, by regulation, guideline, order, or otherwise, impose under this section a capital ratio that is not based on appropriate risk-weighting considerations.

"(iii) NO CAPITAL REQUIREMENT ON REGULATED ENTITIES.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, standards, guidelines, or requirements upon any subsidiary that—

"(I) is not a depository institution; and

"(II) is in compliance with applicable capital requirements of another Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority.

"(iv) LIMITATION.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, standards, guidelines, or requirements upon any subsidiary that is not a depository institution and that is registered as an investment adviser under the Investment Advisers Act of 1940, except that this clause shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to activities of a registered investment adviser other than investment advisory activities or activities incidental to investment advisory activities.

"(v) LIMITATIONS ON INDIRECT ACTION.—In developing, establishing, or assessing holding company capital or capital adequacy rules, guidelines, standards, or requirements for purposes of this paragraph, the Board shall not take into account the activities, operations, or investments of an affiliated investment company registered under the Investment Company Act of 1940, unless the investment company is—

"(I) a bank holding company; or

"(II) controlled by a bank holding company by reason of ownership by the bank holding company (including through all of its affiliates) of 25 percent or more of the shares of the investment company, and the shares owned by the bank holding company have a market value equal to more than $1,000,000.

"(vi) APPROPRIATE EXCLUSIONS.—The Board shall take full account of—

"(I) the capital requirements made applicable to any subsidiary that is not a depository institution by another Federal regulatory authority or State insurance authority; and

"(II) industry norms for capitalization of a company's unregulated subsidiaries and activities.

"(vii) INTERNAL RISK MANAGEMENT MODELS.—The Board may incorporate internal risk management models of wholesale financial holding companies into its capital adequacy guidelines or rules and may take account of the extent to which resources of a subsidiary depository institution may be used to service the debt or other liabilities of the wholesale financial holding company.

"(c) NONFINANCIAL ACTIVITIES AND INVESTMENTS.—

"(1) GRANDFATHERED ACTIVITIES.—

"(A) IN GENERAL.—Notwithstanding section 4(a), a company that becomes a wholesale financial holding company may continue to engage, directly or indirectly, in any activity and may retain ownership and control of shares of a company engaged in any activity if—

"(i) on the date of the enactment of the Financial Services Act of 1999, such wholesale financial holding company was lawfully engaged in that nonfinancial activity, held the shares of such company, or had entered into a contract to acquire shares of any company engaged in such activity; and

"(ii) the company engaged in such activity continues to engage only in the same activities that such company conducted on the date of the

enactment of the Financial Services Act of 1999, and other activities permissible under this Act.

"(B) NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.—A wholesale financial holding company that engages in activities or holds shares pursuant to this paragraph, or a subsidiary of such wholesale financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company which is engaged in any activity which the Board has not determined to be financial in nature or incidental to activities that are financial in nature under section 6(c).

"(C) LIMITATION TO SINGLE EXEMPTION.—No company that engages in any activity or controls any shares under subsection (f) of section 6 may engage in any activity or own any shares pursuant to this paragraph.

"(2) COMMODITIES.—

"(A) IN GENERAL.—Notwithstanding section 4(a), a wholesale financial holding company which was predominately engaged as of January 1, 1997, in financial 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, 1997, if such wholesale financial 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, 1997, in the United States.

"(B) LIMITATION.—The attributed aggregate consolidated assets of a wholesale financial holding company held under the authority granted under this paragraph and not otherwise permitted to be held by all wholesale financial holding companies under this section may not exceed 5 percent of the total consolidated assets of the wholesale financial holding company, except that the Board may increase such percentage of total consolidated assets by such amounts and under such circumstances as the Board considers appropriate, consistent with the purposes of this Act.

"(3) CROSS MARKETING RESTRICTIONS.—A wholesale financial holding company shall not permit—

"(A) any company whose shares it owns or controls pursuant to paragraph (1) or (2) to offer or market any product or service of an affiliated wholesale financial institution; or

"(B) any affiliated wholesale financial institution to offer or market any product or service of any company whose shares are owned or controlled by such wholesale financial holding company pursuant to such paragraphs.

"(d) QUALIFICATION OF FOREIGN BANK AS WHOLESALE FINANCIAL HOLDING COMPANY.—

"(1) IN GENERAL.—Any foreign bank, or any company that owns or controls a foreign bank, that operates a branch, agency, or commercial lending company in the United States, including a foreign bank or company that owns or controls a wholesale financial institution, may request a determination from the Board that such bank or company be treated as a wholesale financial holding company other than for purposes of subsection (c), subject to such conditions as the Board considers appropriate, giving due regard to the principle of national treatment and equality of competitive opportunity and the requirements imposed on domestic banks and companies.

"(2) CONDITIONS FOR TREATMENT AS A WHOLESALE FINANCIAL HOLDING COMPANY.—A foreign bank and a company that owns or controls a foreign bank may not be treated as a wholesale financial 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 (other than an institution described in subparagraph (D) or (F) of section 2(c)(2)) 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) TRANSACTION 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 and which engages in any activity pursuant to subsection (e) or (g) of section 6, 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 a wholesale financial holding company under this subsection shall be treated as a wholesale financial institution for purposes of subsections (c)(1)(C) and (c)(3) of section 9B of the Federal Reserve Act, and any such foreign bank or company shall be subject to paragraphs (3), (4), and (5) of section 9B(d) of the Federal Reserve Act, 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) SUPERVISION OF FOREIGN BANK WHICH MAINTAINS NO BANKING PRESENCE OTHER THAN CONTROL OF A WHOLESALE FINANCIAL INSTITUTION.—A foreign bank that owns or controls a wholesale financial institution but does not operate a branch, agency, or commercial lending company in the United States (and any company that owns or controls such foreign bank) may request a determination from the Board that such bank or company be treated as a wholesale financial holding company, except that such bank or company shall be subject to the restrictions of paragraphs (2)(A) and (3) of this subsection.

"(5) NO EFFECT ON OTHER PROVISIONS.—This section shall not be construed as limiting the authority of the Board under the International Banking Act of 1978 with respect to the regulation, supervision, or examination of foreign banks and their offices and affiliates in the United States.

"(6) APPLICABILITY OF COMMUNITY REINVESTMENT ACT OF 1977.—The branches in the United States of a foreign bank that is, or is affiliated with a company that is, treated as a wholesale financial holding company shall be subject to section 9B(b)(11) of the Federal Reserve Act as if the foreign bank were a wholesale financial institution under such section. The Board and the Comptroller of the Currency shall apply the provisions of sections 803(2), 804, and 807(1) of the Community Reinvestment Act of 1977 to branches of foreign banks which receive only such deposits as are permissible for receipt by a corporation organized under section 25A of the Federal Reserve Act, in the same manner and to the same extent such sections apply to such a corporation.".

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

"(24) ENFORCEMENT AUTHORITY OVER UNINSURED STATE MEMBER BANKS.—Section 3(u) of the Federal Deposit Insurance Act, subsections (j) and (k) of section 7 of such Act, and subsections (b) through (n), (s), (u), and (v) of section 8 of such Act shall apply to an uninsured State member bank in the same manner and to the same extent such provisions apply to an insured State member bank and any reference in any such provision to 'insured depository institution' shall be deemed to be a reference to 'uninsured State member bank' for purposes of this paragraph.".

SEC. 132. AUTHORIZATION TO RELEASE REPORTS.

(a) FEDERAL RESERVE ACT.—The last sentence of the eighth undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 326) is amended to read as follows: "The Board of Governors of the Federal Reserve System, at its discretion, may furnish reports of examination or other confidential supervisory information concerning State member banks or any other entities examined under any other authority of the Board to any Federal or State authorities with supervisory or regulatory authority over the examined entity, to officers, directors, or receivers of the examined entity, and to any other person that the Board determines to be proper.".

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

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

(A) by redesignating subparagraphs (G) and (H) as subparagraphs (H) and (I), respectively; and

(B) by inserting after subparagraph (F) the following new subparagraph: "(G) the Commodity Futures Trading Commission; or"; and

(2) in section 1112(e), by striking "and the Securities and Exchange Commission" and inserting ", the Securities and Exchange Commission, and the Commodity Futures Trading Commission".

SEC. 133. CONFORMING AMENDMENTS.

(a) BANK HOLDING COMPANY ACT OF 1956.—

(1) DEFINITIONS.—Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended by inserting after subsection (p) (as added by section 103(b)(1)) the following new subsections:

"(q) WHOLESALE FINANCIAL INSTITUTION.—The term 'wholesale financial institution' means a wholesale financial institution subject to section 9B of the Federal Reserve Act.

"(r) COMMISSION.—The term 'Commission' means the Securities and Exchange Commission.

"(s) DEPOSITORY INSTITUTION.—The term 'depository institution'—

"(1) has the meaning given to such term in section 3 of the Federal Deposit Insurance Act; and

"(2) includes a wholesale financial institution.".

(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.".

(3) INCORPORATED DEFINITIONS.—Section 2(n) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(n)) is amended by inserting "'insured bank'," after "'in danger of default'.".

(4) 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.".

(b) FEDERAL DEPOSIT INSURANCE ACT.—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 any wholesale financial institution subject to section 9B of the Federal Reserve Act;".

CHAPTER 2—WHOLESALE FINANCIAL INSTITUTIONS

SEC. 136. WHOLESALE FINANCIAL INSTITUTIONS.

(a) NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.—

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

"SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.

"(a) AUTHORIZATION OF THE COMPTROLLER REQUIRED.—A national bank may apply to the Comptroller on such forms and in accordance with such regulations as the Comptroller may prescribe, for permission to operate as a national wholesale financial institution.

"(b) REGULATION.—A national wholesale financial institution may exercise, in accordance with such institution's articles of incorporation and regulations issued by the Comptroller, all the powers and privileges of a national bank formed in accordance with section 5133 of the Revised Statutes of the United States, subject to section 9B of the Federal Reserve Act and the limitations and restrictions contained therein.

"(c) COMMUNITY REINVESTMENT ACT OF 1977.—A national wholesale financial institution shall be subject to the Community Reinvestment Act of 1977.".

(2) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136A (as added by section 121(d) of this title) the following new item:

"5136B. National wholesale financial institutions.".

(b) WHOLESALE FINANCIAL INSTITUTIONS.—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 may apply to the Board of Governors of the Federal Reserve System to become a State wholesale financial institution or to the Comptroller of the Currency to become a national wholesale financial institution and, as a wholesale financial institution, to subscribe to the stock of the Federal reserve bank organized within the district where the applying bank is located.

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

"(2) INSURANCE TERMINATION.—No bank the deposits of which are 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 or national 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;

"(B) subject to subparagraph (A), all references to the appropriate Federal banking agency or to the Corporation in that section shall be deemed to be references to the Comptroller of the Currency, in the case of a national wholesale financial institution, and to the Board, in the case of all other wholesale financial institutions; and

"(C) in the case of wholesale financial institutions, the purpose of prompt corrective action shall be to protect taxpayers and the financial system from the risks associated with the operation and activities of wholesale financial institutions.

"(3) ENFORCEMENT AUTHORITY.—Section 3(u), 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 or national banks and any reference in such sections to an insured depository institution shall be deemed to include 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 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 or a national bank.

"(6) BRANCHING.—Notwithstanding any other provision of law, a wholesale financial institution may establish and operate a branch at any location on such terms and conditions as established by, and with the approval of—

"(A) the Board, in the case of a State-chartered wholesale financial institution; and

"(B) the Comptroller of the Currency, in the case of a national bank wholesale financial institution.

"(7) ACTIVITIES OF OUT-OF-STATE BRANCHES OF WHOLESALE FINANCIAL INSTITUTIONS.—

"(A) GENERAL.—A State-chartered wholesale financial institution shall be deemed a State bank and an insured State bank and a national wholesale financial institution shall be deemed a national bank for purposes of paragraphs (1), (2), and (3) of section 24(j) of the Federal Deposit Insurance Act.

"(B) DEFINITIONS.—The following definitions shall apply solely for purposes of applying paragraph (1):

"(i) HOME STATE.—The term 'home State' means, with respect to a State-chartered wholesale financial institution, the State by which the institution is chartered.

"(ii) HOST STATE.—The term 'host State' means a State, other than the home State of the wholesale financial institution, in which the institution maintains, or seeks to establish and maintain, a branch.

"(iii) OUT-OF-STATE BANK.—The term 'out-of-State bank' means, with respect to any State, a wholesale financial institution whose home State is another State.

"(8) DISCRIMINATION REGARDING INTEREST RATES.—Section 27 of the Federal Deposit Insurance Act shall apply to State-chartered wholesale financial institutions in the same manner and to the same extent as such provisions apply to State member insured banks and any reference in such section to a State-chartered insured depository institution shall be deemed to include a reference to a State-chartered wholesale financial institution.

"(9) PREEMPTION OF STATE LAWS REQUIRING DEPOSIT INSURANCE FOR WHOLESALE FINANCIAL INSTITUTIONS.—The appropriate State banking authority may grant a charter to a wholesale financial institution notwithstanding any State constitution or statute requiring that the institution obtain insurance of its deposits and any such State constitution or statute is hereby preempted solely for purposes of this paragraph.

"(10) PARITY FOR WHOLESALE FINANCIAL INSTITUTIONS.—A State bank that is a wholesale financial institution under this section shall have all of the rights, powers, privileges, and immunities (including those derived from status as a federally chartered institution) of and as if it were a national bank, subject to such terms and conditions as established by the Board.

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

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

"(1) LIMITATIONS ON DEPOSITS.—

"(A) MINIMUM AMOUNT.—

"(i) IN GENERAL.—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 wholesale financial institution may receive initial deposits of $100,000 or less if such deposits constitute more than 5 percent of the institution's total deposits.

"(B) NO DEPOSIT INSURANCE.—Except as otherwise provided in section 8A(f) of the Federal Deposit Insurance Act, no deposits held by a wholesale financial institution shall be insured deposits under the Federal Deposit Insurance Act.

"(C) ADVERTISING AND DISCLOSURE.—The Board and the Comptroller of the Currency shall prescribe jointly 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) MINIMUM CAPITAL LEVELS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—The Board shall, by regulation, adopt capital requirements for wholesale financial institutions—

"(A) 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

"(B) 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.

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

"(A) limitations on transactions, direct or indirect, with affiliates to prevent—

"(i) the transfer of risk to the deposit insurance funds; or

"(ii) 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 any insured depository institution affiliate of the wholesale financial institution;

"(ii) prevent the transfer of risk to the deposit insurance funds; or

"(iii) 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 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 or any insured depository institution affiliate of the wholesale financial institution;

"(B) the protection of the deposit insurance funds; and

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

"(5) LIMITATION ON TRANSACTIONS BETWEEN A WHOLESALE FINANCIAL INSTITUTION AND AN INSURED BANK.—For purposes of section 23A(d)(1) of the Federal Reserve Act, a wholesale financial institution that is affiliated with an insured bank shall not be a bank.

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

"(d) CAPITAL AND MANAGERIAL REQUIREMENTS.—

"(1) IN GENERAL.—A wholesale financial institution shall be well capitalized and well managed.

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

"(3) AGREEMENT TO RESTORE INSTITUTION.—Within 45 days of receipt of a notice under paragraph (2) (or such additional period not to exceed 90 days as the Board may permit), the company shall execute an agreement acceptable to the Board to restore the wholesale financial institution to compliance with all of the requirements of paragraph (1).

"(4) LIMITATIONS UNTIL INSTITUTION RESTORED.—Until the wholesale financial institution is restored to compliance with all of the requirements of paragraph (1), the Board may impose such limitations on the conduct or activities of the company or any affiliate of the company as the Board determines to be appropriate under the circumstances.

"(5) FAILURE TO RESTORE.—If the company does not execute and implement an agreement in accordance with paragraph (3), comply with any limitation imposed under paragraph (4), restore the wholesale financial institution to well capitalized status within 180 days after receipt by the company of the notice described in paragraph (2), or restore the wholesale financial institution to well managed status within such period as the Board may permit, the company shall, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the Board's discretion, divest control of its subsidiary depository institutions.

"(6) WELL MANAGED DEFINED.—For purposes of this subsection, the term 'well managed' has the same meaning as in section 2 of the Bank Holding Company Act of 1956.

"(e) RESOLUTION OF WHOLESALE FINANCIAL INSTITUTIONS.—

"(1) CONSERVATORSHIP AND RECEIVERSHIP AUTHORITY.—

"(A) APPOINTMENT.—The Board may appoint a conservator or receiver 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 or receiver for a national bank.

"(B) POWERS.—The conservator or receiver for a wholesale financial institution shall exercise the same powers, functions, and duties, subject to the same limitations, as a conservator or receiver for a national bank.

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

"(3) BANKRUPTCY PROCEEDINGS.—The Comptroller of the Currency (in the case of a national wholesale financial institution) and the Board may direct the conservator or receiver of a wholesale financial institution to file a petition pursuant to title 11, United States Code, in which case, title 11, United States Code, shall apply to the wholesale financial institution in lieu of otherwise applicable Federal or State insolvency law.

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

(c) 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 (10) as paragraphs (1) through (9), 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, in the case of an insured State bank, or to the Corporation and the Comptroller of the Currency, in the case of an insured national bank authorized to operate as a wholesale financial institution, 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, in the case of an insured State bank, or the Corporation and the Comptroller of the Currency, in the case of an insured national bank authorized to operate as a wholesale financial institution, has approved 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; or

"(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.

"(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 subject to 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 by inserting ", or any wholesale financial institution subject to section 9B of this Act" after "such Act".

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

(1) BANKRUPTCY CODE DEBTORS.—Section 109(b)(2) of title 11, United States Code, is amended by striking "; or" and inserting the following: ", except that—

"(A) a wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act may be a debtor if a petition is filed at the direction of the Comptroller of the Currency (in the case of a wholesale financial institution established under section 5136B of the Revised Statutes of the United States) or the Board of Governors of the Federal Reserve System (in the case of any wholesale financial institution); and

"(B) a corporation organized under section 25A of the Federal Reserve Act may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; or".

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

"(d) Only a railroad and a person that may be a debtor under chapter 7 of this title, except that a stockbroker, a wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act, a corporation organized under section 25A of the Federal Reserve Act, or a commodity broker, may be a debtor under chapter 11 of this title.".

(3) DEFINITION OF FINANCIAL INSTITUTION.—Section 101(22) of title 11, United States Code, is amended to read as follows:

"(22) 'financial institution' means a person that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act, or corporation organized under section 25A of the Federal Reserve Act and, when any

such person is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741 of this title, such customer,".

(4) SUBCHAPTER V OF CHAPTER 7.—

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

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

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

"(e) Subchapter V of chapter 7 of this title applies only in a case under such chapter concerning the liquidation of a wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act, or a corporation organized under section 25A of the Federal Reserve Act.".

(B) WHOLESALE BANK LIQUIDATION.—Chapter 7 of title 11, United States Code, is amended by adding at the end the following:

"SUBCHAPTER V—WHOLESALE BANK LIQUIDATION

"§ 781. Definitions for subchapter

"In this subchapter—

"(1) the term 'Board' means the Board of Governors of the Federal Reserve System;

"(2) the term 'depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act, and includes any wholesale bank;

"(3) the term 'national wholesale financial institution' means a wholesale financial institution established under section 5136B of the Revised Statutes of the United States; and

"(4) the term 'wholesale bank' means a national wholesale financial institution, a wholesale financial institution established under section 9B of the Federal Reserve Act, or a corporation organized under section 25A of the Federal Reserve Act.

"§ 782. Selection of trustee

"Notwithstanding any other provision of this title, the conservator or receiver who files the petition shall be the trustee under this chapter, unless the Comptroller of the Currency (in the case of a national wholesale financial institution for which it appointed the conservator or receiver) or the Board (in the case of any wholesale bank for which it appointed the conservator or receiver) designates an alternative trustee. The Comptroller of the Currency or the Board (as applicable) may designate a successor trustee, if required.

"§ 783. Additional powers of trustee

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

"(1) to sell the wholesale bank to a depository institution or consortium of depository institutions (which consortium may agree on the allocation of the wholesale bank among the consortium);

"(2) to merge the wholesale bank with a depository institution;

"(3) to transfer contracts to the same extent as could a receiver for a depository institution under paragraphs (9) and (10) of section 11(e) of the Federal Deposit Insurance Act;

"(4) to transfer assets or liabilities to a depository institution;

"(5) to distribute property not of the estate, including distributions to customers that are mandated by subchapters III and IV of this chapter; or

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

"(A) the bridge bank shall be treated as a wholesale bank for the purpose of this subsection; and

"(B) any references in any such provision of law to the Federal Deposit Insurance Corporation shall be construed to be references to the appointing agency and that references to deposit insurance shall be omitted.

"(b) Any reference in this section to transfers of liabilities includes a ratable transfer of liabilities within a priority class.

"§ 784. Right to be heard

"The Comptroller of the Currency (in the case of a national wholesale financial institution), the Board (in the case of any wholesale bank), or a Federal reserve

bank (in the case of a wholesale bank that is a member of that bank) may raise and may appear and be heard on any issue in a case under this subchapter.

"§ 785. Expedited transfers

"The trustee may make a transfer pursuant to section 783 without prior judicial approval, if the Comptroller of the Currency (in the case of a national wholesale financial institution for which it appointed the conservator or receiver) or the Board (in the case of any wholesale bank for which it appointed the conservator or receiver) determines that the transfer would be necessary to avert serious adverse effects on economic conditions or financial stability.".

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

"SUBCHAPTER V—WHOLESALE BANK LIQUIDATION

"781. Definitions for subchapter.
"782. Selection of trustee.
"783. Additional powers of trustee.
"784. Right to be heard.
"785. Expedited transfers.".

(e) RESOLUTION OF EDGE CORPORATIONS.—The 16th undesignated paragraph of section 25A of the Federal Reserve Act (12 U.S.C. 624) is amended to read as follows:

"(16) APPOINTMENT OF RECEIVER OR CONSERVATOR.—

"(A) IN GENERAL.—The Board may appoint a conservator or receiver for a corporation organized under the provisions of this section to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator or receiver for a national bank, and the conservator or receiver for such corporation shall exercise the same powers, functions, and duties, subject to the same limitations, as a conservator or receiver for a national bank.

"(B) EQUIVALENT AUTHORITY.—The Board shall have the same authority with respect to any conservator or receiver appointed for a corporation organized under the provisions of this section under this paragraph and any such corporation as the Comptroller of the Currency has with respect to a conservator or receiver of a national bank and the national bank for which a conservator or receiver has been appointed.

"(C) TITLE 11 PETITIONS.—The Board may direct the conservator or receiver of a corporation organized under the provisions of this section to file a petition pursuant to title 11, United States Code, in which case, title 11, United States Code, shall apply to the corporation in lieu of otherwise applicable Federal or State insolvency law.".

Subtitle E—Preservation of FTC Authority

SEC. 141. AMENDMENT TO THE BANK HOLDING COMPANY ACT OF 1956 TO MODIFY NOTIFICATION AND POST-APPROVAL WAITING PERIOD FOR SECTION 3 TRANSACTIONS.

Section 11(b)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1849(b)(1)) is amended by inserting "and, if the transaction also involves an acquisition under section 4 or section 6, the Board shall also notify the Federal Trade Commission of such approval" before the period at the end of the first sentence.

SEC. 142. INTERAGENCY DATA SHARING.

To the extent not prohibited by other law, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System shall make available to the Attorney General and the Federal Trade Commission any data in the possession of any such banking agency that the antitrust agency deems necessary for antitrust review of any transaction requiring notice to any such antitrust agency or the approval of such agency under section 3, 4, or 6 of the Bank Holding Company Act of 1956, section 18(c) of the Federal Deposit Insurance Act, the National Bank Consolidation and Merger Act, section 10 of the Home Owners' Loan Act, or the antitrust laws.

SEC. 143. CLARIFICATION OF STATUS OF SUBSIDIARIES AND AFFILIATES.

(a) CLARIFICATION OF FEDERAL TRADE COMMISSION JURISDICTION.—Any person which directly or indirectly controls, is controlled directly or indirectly by, or is directly or indirectly under common control with, any bank or savings association (as such terms are defined in section 3 of the Federal Deposit Insurance Act) and is

not itself a bank or savings association shall not be deemed to be a bank or savings association for purposes of the Federal Trade Commission Act or any other law enforced by the Federal Trade Commission.

(b) SAVINGS PROVISION.—No provision of this section shall be construed as restricting the authority of any Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) under any Federal banking law, including section 8 of the Federal Deposit Insurance Act.

(c) HART–SCOTT–RODINO AMENDMENTS.—

(1) BANKS.—Section 7A(c)(7) of the Clayton Act (15 U.S.C. 18a(c)(7)) is amended by inserting before the semicolon at the end the following: ", except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 6 of the Bank Holding Company Act of 1956; and (B) does not require agency approval under section 3 of the Bank Holding Company Act of 1956".

(2) BANK HOLDING COMPANIES.—Section 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)) is amended by inserting before the semicolon at the end the following: ", except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 6 of the Bank Holding Company Act of 1956; and (B) does not require agency approval under section 4 of the Bank Holding Company Act of 1956".

SEC. 144. ANNUAL GAO REPORT.

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

(b) ANALYSIS.—Each report submitted under subsection (a) shall contain an analysis of—

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

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

(3) the acquisition patterns among depository institutions, depository institution holding companies, securities firms, and insurance companies including acquisitions among the largest 20 percent of firms and acquisitions within regions or other limited geographical areas.

(c) SUNSET.—This section shall not apply after the end of the 5-year period beginning on the date of the enactment of this Act.

Subtitle F—National Treatment

SEC. 151. FOREIGN BANKS THAT ARE FINANCIAL HOLDING COMPANIES.

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) TERMINATION OF GRANDFATHERED RIGHTS.—

"(A) IN GENERAL.—If any foreign bank or foreign company files a declaration under section 6(b)(1)(D) or receives a determination under section 10(d)(1) of the Bank Holding Company Act of 1956, any authority conferred by this subsection on any foreign bank or company to engage in any activity which the Board has determined to be permissible for financial holding companies under section 6 of such Act shall terminate immediately.

"(B) RESTRICTIONS AND REQUIREMENTS AUTHORIZED.—If a foreign bank or company that engages, directly or through an affiliate pursuant to paragraph (1), in an activity which the Board has determined to be permissible for financial holding companies under section 6 of the Bank Holding Company Act of 1956 has not filed a declaration with the Board of its status as a financial holding company under such section or received a determination under section 10(d)(1) by the end of the 2-year period beginning on the date of enactment of the Financial Services Act of 1999, the Board, giving due regard to the principle of national treatment and equality of competitive opportunity, may impose such restrictions and requirements on the conduct of such activities by such foreign bank or company as are com-

parable to those imposed on a financial holding company organized under the laws of the United States, including a requirement to conduct such activities in compliance with any prudential safeguards established under section 5(h) of the Bank Holding Company Act of 1956.".

SEC. 152. FOREIGN BANKS AND FOREIGN FINANCIAL INSTITUTIONS THAT ARE WHOLESALE FINANCIAL INSTITUTIONS.

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

"(i) VOLUNTARY TERMINATION OF DEPOSIT INSURANCE.—The provisions on voluntary termination of insurance in this section shall apply to an insured branch of a foreign bank (including a Federal branch) in the same manner and to the same extent as they apply to an insured State bank or a national bank.".

SEC. 153. RECIPROCITY.

(a) NATIONAL TREATMENT REPORTS.—

(1) REPORT REQUIRED IN THE EVENT OF CERTAIN ACQUISITIONS.—

(A) IN GENERAL.—Whenever a person from a foreign country announces its intention to acquire or acquires a bank, a securities underwriter, broker, or dealer, an investment adviser, or insurance company that ranks within the top 50 firms in that line of business in the United States, the Secretary of Commerce shall, within the earlier of 6 months of such announcement or such acquisition and in consultation with other appropriate Federal and State agencies, prepare and submit to the Congress a report on whether a United States person would be able, de facto or de jure, to acquire an equivalent sized firm in the country in which such person from a foreign country is located.

(B) ANALYSIS AND RECOMMENDATIONS.—If a report submitted under subparagraph (A) states that the equivalent treatment referred to in such subparagraph, de facto and de jure, is not provided in the country which is the subject of the report, the Secretary of Commerce, in consultation with other appropriate Federal and State agencies, shall include in the report analysis and recommendations as to how that country's laws and regulations would need to be changed so that reciprocal treatment would exist.

(2) REPORT REQUIRED BEFORE FINANCIAL SERVICES NEGOTIATIONS COMMENCE.—The Secretary of Commerce shall, not less than 6 months before the commencement of the financial services negotiations of the World Trade Organization and in consultation with other appropriate Federal and State agencies, prepare and submit to the Congress a report containing—

(A) an assessment of the 30 largest financial services markets with regard to whether reciprocal access is available in such markets to United States financial services providers; and

(B) with respect to any such financial services markets in which reciprocal access is not available to United States financial services providers, an analysis and recommendations as to what legislative, regulatory, or enforcement changes would be required to ensure full reciprocity for such providers.

(3) PERSON OF A FOREIGN COUNTRY DEFINED.—For purposes of this subsection, the term "person of a foreign country" means a person, or a person which directly or indirectly owns or controls that person, that is a resident of that country, is organized under the laws of that country, or has its principal place of business in that country.

(b) PROVISIONS APPLICABLE TO SUBMISSIONS.—

(1) NOTICE.—Before preparing any report required under subsection (a), the Secretary of Commerce shall publish notice that a report is in preparation and seek comment from United States persons.

(2) PRIVILEGED SUBMISSIONS.—Upon the request of the submitting person, any comments or related communications received by the Secretary with regard to the report shall, for the purposes of section 552 of title 5, of the United States Code, be treated as commercial information obtained from a person that is privileged or confidential, regardless of the medium in which the information is obtained. This confidential information shall be the property of the Secretary and shall be privileged from disclosure to any other person. However, this privilege shall not be construed as preventing access to that confidential information by the Congress.

(3) PROHIBITION OF UNAUTHORIZED DISCLOSURES.—No person in possession of confidential information, provided under this section may disclose that information, in whole or in part, except for disclosure made in published statistical ma-

terial that does not disclose, either directly or when used in conjunction with publicly available information, the confidential information of any person.

Subtitle G—Federal Home Loan Bank System Modernization

SEC. 161. SHORT TITLE.

This subtitle may be cited as the "Federal Home Loan Bank System Modernization Act of 1999".

SEC. 162. DEFINITIONS.

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

(1) in paragraph (1), by striking "term 'Board' means" and inserting "terms 'Finance Board' and 'Board' mean";

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

"(3) STATE.—The term 'State', in addition to the States of the United States, includes the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands."; and

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

"(13) COMMUNITY FINANCIAL INSTITUTION.—

"(A) IN GENERAL.—The term 'community financial institution' means a member—

"(i) the deposits of which are insured under the Federal Deposit Insurance Act; and

"(ii) that has, as of the date of the transaction at issue, less than $500,000,000 in average total assets, based on an average of total assets over the 3 years preceding that date.

"(B) ADJUSTMENTS.—The $500,000,000 limit referred to in subparagraph (A)(ii) shall be adjusted annually by the Finance Board, based on the annual percentage increase, if any, in the Consumer Price Index for all urban consumers, as published by the Department of Labor.".

SEC. 163. SAVINGS ASSOCIATION MEMBERSHIP.

Section 5(f) of the Home Owners' Loan Act (12 U.S.C. 1464(f)) is amended to read as follows:

"(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—On and after January 1, 1999, a Federal savings association may become a member of the Federal Home Loan Bank System, and shall qualify for such membership in the manner provided by the Federal Home Loan Bank Act.".

SEC. 164. ADVANCES TO MEMBERS; COLLATERAL.

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

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

(2) by striking "(a) Each" and inserting the following:

"(a) IN GENERAL.—

"(1) ALL ADVANCES.—Each";

(3) by striking the 2d sentence and inserting the following:

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

"(A) providing funds to any member for residential housing finance; and

"(B) providing funds to any community financial institution for small business, agricultural, rural development, or low-income community development lending.";

(4) by striking "A Bank" and inserting the following:

"(3) COLLATERAL.—A Bank";

(5) in paragraph (3) (as so designated by paragraph (4) of this subsection)—

(A) in subparagraph (C) (as so redesignated by paragraph (1) of this subsection) by striking "Deposits" and inserting "Cash or deposits";

(B) in subparagraph (D) (as so redesignated by paragraph (1) of this subsection), by striking the 2d sentence; and

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

"(E) Secured loans for small business, agriculture, rural development, or low-income community development, or securities representing a whole in-

terest in such secured loans, in the case of any community financial institution.";

(6) in paragraph (5)—

(A) in the 2d sentence, by striking "and the Board";

(B) in the 3d sentence, by striking "Board" and inserting "Federal home loan bank"; and

(C) by striking "(5) Paragraphs (1) through (4)" and inserting the following:

"(4) ADDITIONAL BANK AUTHORITY.—Subparagraphs (A) through (E) of paragraph (3)"; and

(7) by adding at the end the following:

"(5) REVIEW OF CERTAIN COLLATERAL STANDARDS.—The Board may review the collateral standards applicable to each Federal home loan bank for the classes of collateral described in subparagraphs (D) and (E) of paragraph (3), and may, if necessary for safety and soundness purposes, require an increase in the collateral standards for any or all of those classes of collateral.

"(6) DEFINITIONS.—For purposes of this subsection, the terms 'small business', 'agriculture', 'rural development', and 'low-income community development' shall have the meanings given those terms by rule or regulation of the Finance Board.".

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

"SEC. 10. ADVANCES TO MEMBERS.".

(c) CONFORMING AMENDMENTS RELATING TO MEMBERS WHICH ARE NOT QUALIFIED THRIFT LENDERS—The 1st of the 2 subsections designated as subsection (e) of section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430(e)(1)) is amended—

(1) in the last sentence of paragraph (1), by inserting "or, in the case of any community financial institution, for the purposes described in subsection (a)(2)" before the period; and

(2) in paragraph (5)(C), by inserting "except that, in determining the actual thrift investment percentage of any community financial institution for purposes of this subsection, the total investment of such member in loans for small business, agriculture, rural development, or low-income community development, or securities representing a whole interest in such loans, shall be treated as a qualified thrift investment (as defined in such section 10(m))" before the period.

SEC. 165. ELIGIBILITY CRITERIA.

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

(1) in paragraph (2)(A), by inserting, "(other than a community financial institution)" after "institution"; and

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

"(3) LIMITED EXEMPTION FOR COMMUNITY FINANCIAL INSTITUTIONS.—A community financial institution that otherwise meets the requirements of paragraph (2) may become a member without regard to the percentage of its total assets that is represented by residential mortgage loans, as described in subparagraph (A) of paragraph (2).".

SEC. 166. MANAGEMENT OF BANKS.

(a) BOARD OF DIRECTORS.—Section 7(d) of the Federal Home Loan Bank Act (12 U.S.C. 1427(d)) is amended—

(1) by striking "(d) The term" and inserting the following:

"(d) TERMS OF OFFICE.—The term"; and

(2) by striking "shall be two years".

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

(c) REPEAL OF SECTIONS 22A AND 27.—The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by striking sections 22A (12 U.S.C. 1442a) and 27 (12 U.S.C. 1447).

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

(1) in subsection (a)—

(A) by striking ", but, except" and all that follows through "ten years";

(B) by striking "subject to the approval of the Board" the first place that term appears;

(C) by striking "and, by its Board of directors," and all that follows through "agent of such bank," and inserting "and, by the board of directors of the bank, to prescribe, amend, and repeal by-laws governing the manner

in which its affairs may be administered, consistent with applicable laws and regulations, as administered by the Finance Board. No officer, employee, attorney, or agent of a Federal home loan bank"; and

(D) by striking "Board of directors" where such term appears in the penultimate sentence and inserting "board of directors"; and

(2) in subsection (b), by striking "loans banks" and inserting "loan banks".

(e) POWERS AND DUTIES OF FEDERAL HOUSING FINANCE BOARD.—

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

"(5) To issue and serve a notice of charges upon a Federal home loan bank or upon any executive officer or director of a Federal home loan bank if, in the determination of the Finance Board, the bank, executive officer, or director is engaging or has engaged in, or the Finance Board has reasonable cause to believe that the bank, executive officer, or director is about to engage in, any conduct that violates any provision of this Act or any law, order, rule, or regulation or any condition imposed in writing by the Finance Board in connection with the granting of any application or other request by the bank, or any written agreement entered into by the bank with the agency, in accordance with the procedures provided in section 1371(c) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992. Such authority includes the same authority to take affirmative action to correct conditions resulting from violations or practices or to limit activities of a bank or any executive officer or director of a bank as appropriate Federal banking agencies have to take with respect to insured depository institutions under paragraphs (6) and (7) of section 8(b) of the Federal Deposit Insurance Act, and to have all other powers, rights, and duties to enforce this Act with respect to the Federal home loan banks and their executive officers and directors as the Office of Federal Housing Enterprise Oversight has to enforce the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the Federal National Mortgage Association Charter Act, or the Federal Home Loan Mortgage Corporation Act with respect to the Federal housing enterprises under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

"(6) To address any insufficiencies in capital levels resulting from the application of section 5(f) of the Home Owners' Loan Act.

"(7) To sue and be sued, by and through its own attorneys.".

(2) TECHNICAL AMENDMENT.—Section 111 of Public Law 93–495 (12 U.S.C. 250) is amended by striking "Federal Home Loan Bank Board," and inserting "Director of the Office of Thrift Supervision, the Federal Housing Finance Board,".

(f) ELIGIBILITY TO SECURE ADVANCES.—

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

(A) in the 2d sentence, by striking "with the approval of the Board"; and

(B) in the 3d sentence, by striking ", subject to the approval of the Board,".

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

(A) in subsection (c)—

(i) in the 1st sentence, by striking "Board" and inserting "Federal home loan bank"; and

(ii) by striking the 2d sentence;

(B) in subsection (d)—

(i) in the 1st sentence, by striking "and the approval of the Board"; and

(ii) by striking "Subject to the approval of the Board, any" and inserting "Any"; and

(C) in subsection (j)(1)—

(i) by striking "to subsidize the interest rate on advances" and inserting "to provide subsidies, including subsidized interest rates on advances";

(ii) by striking "Pursuant" and inserting the following:

"(A) ESTABLISHMENT.—Pursuant"; and

(iii) by adding at the end the following new subparagraph:

"(B) NONDELEGATION OF APPROVAL AUTHORITY.—Subject to such regulations as the Finance Board may prescribe, the board of directors of each Federal home loan bank may approve or disapprove requests from members

for Affordable Housing Program subsidies, and may not delegate such authority.".

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

(1) in the 3d sentence—

(A) by striking "net earnings" and inserting "previously retained earnings or current net earnings"; and

(B) by striking ", and then only with the approval of the Federal Housing Finance Board"; and

(2) by striking the 4th sentence.

(h) SECTION 18.—Section 18(b) of the Federal Home Loan Bank Act (12 U.S.C. 1438(b)) is amended by striking paragraph (4).

SEC. 167. RESOLUTION FUNDING CORPORATION.

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

"(C) PAYMENTS BY FEDERAL HOME LOAN BANKS.—

"(i) IN GENERAL.—To the extent that the amounts available pursuant to subparagraphs (A) and (B) are insufficient to cover the amount of interest payments, each Federal home loan bank shall pay to the Funding Corporation in each calendar year, 20.75 percent of the net earnings of that bank (after deducting expenses relating to section 10(j) and operating expenses).

"(ii) ANNUAL DETERMINATION.—The Board annually shall determine the extent to which the value of the aggregate amounts paid by the Federal home loan banks exceeds or falls short of the value of an annuity of $300,000,000 per year that commences on the issuance date and ends on the final scheduled maturity date of the obligations, and shall select appropriate present value factors for making such determinations.

"(iii) PAYMENT TERM ALTERATIONS.—The Board shall extend or shorten the term of the payment obligations of a Federal home loan bank under this subparagraph as necessary to ensure that the value of all payments made by the banks is equivalent to the value of an annuity referred to in clause (ii).

"(iv) TERM BEYOND MATURITY.—If the Board extends the term of payments beyond the final scheduled maturity date for the obligations, each Federal home loan bank shall continue to pay 20.75 percent of its net earnings (after deducting expenses relating to section 10(j) and operating expenses) to the Treasury of the United States until the value of all such payments by the Federal home loan banks is equivalent to the value of an annuity referred to in clause (ii). In the final year in which the Federal home loan banks are required to make any payment to the Treasury under this subparagraph, if the dollar amount represented by 20.75 percent of the net earnings of the Federal home loan banks exceeds the remaining obligation of the banks to the Treasury, the Finance Board shall reduce the percentage pro rata to a level sufficient to pay the remaining obligation.".

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

SEC. 168. CAPITAL STRUCTURE OF FEDERAL HOME LOAN BANKS.

Section 6 of the Federal Home Loan Bank Act (12 U.S.C. 1426) is amended to read as follows:

"SEC. 6. CAPITAL STRUCTURE OF FEDERAL HOME LOAN BANKS.

"(a) REGULATIONS.—

"(1) CAPITAL STANDARDS.—Not later than 1 year after the date of enactment of the Financial Services Act of 1999, the Finance Board shall issue regulations prescribing uniform capital standards applicable to each Federal home loan bank, which shall require each such bank to meet—

"(A) the leverage requirement specified in paragraph (2); and

"(B) the risk-based capital requirements, in accordance with paragraph (3).

"(2) LEVERAGE REQUIREMENT.—

"(A) IN GENERAL.—The leverage requirement shall require each Federal home loan bank to maintain a minimum amount of total capital based on the aggregate on-balance sheet assets of the bank and shall be 5 percent.

"(B) TREATMENT OF STOCK AND RETAINED EARNINGS.—In determining compliance with the minimum leverage ratio established under subparagraph (A), the paid-in value of the outstanding Class B stock shall be multiplied by 1.5, the paid-in value of the outstanding Class C stock and the amount of retained earnings shall be multiplied by 2.0, and such higher amounts shall be deemed to be capital for purposes of meeting the 5 percent minimum leverage ratio.

"(3) RISK-BASED CAPITAL STANDARDS.—

"(A) IN GENERAL.—Each Federal home loan bank shall maintain permanent capital in an amount that is sufficient, as determined in accordance with the regulations of the Finance Board, to meet—

"(i) the credit risk to which the Federal home loan bank is subject; and

"(ii) the market risk, including interest rate risk, to which the Federal home loan bank is subject, based on a stress test established by the Finance Board that rigorously tests for changes in market variables, including changes in interest rates, rate volatility, and changes in the shape of the yield curve.

"(B) CONSIDERATION OF OTHER RISK-BASED STANDARDS.—In establishing the risk-based standard under subparagraph (A)(ii), the Finance Board shall take due consideration of any risk-based capital test established pursuant to section 1361 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4611) for the enterprises (as defined in that Act), with such modifications as the Finance Board determines to be appropriate to reflect differences in operations between the Federal home loan banks and those enterprises.

"(4) OTHER REGULATORY REQUIREMENTS.—The regulations issued by the Finance Board under paragraph (1) shall—

"(A) permit each Federal home loan bank to issue, with such rights, terms, and preferences, not inconsistent with this Act and the regulations issued hereunder, as the board of directors of that bank may approve, any 1 or more of—

"(i) Class A stock, which shall be redeemable in cash and at par 6 months following submission by a member of a written notice of its intent to redeem such shares;

"(ii) Class B stock, which shall be redeemable in cash and at par 5 years following submission by a member of a written notice of its intent to redeem such shares; and

"(iii) Class C stock, which shall be nonredeemable;

"(B) provide that the stock of a Federal home loan bank may be issued to and held by only members of the bank, and that a bank may not issue any stock other than as provided in this section;

"(C) prescribe the manner in which stock of a Federal home loan bank may be sold, transferred, redeemed, or repurchased; and

"(D) provide the manner of disposition of outstanding stock held by, and the liquidation of any claims of the Federal home loan bank against, an institution that ceases to be a member of the bank, through merger or otherwise, or that provides notice of intention to withdraw from membership in the bank.

"(5) DEFINITIONS OF CAPITAL.—For purposes of determining compliance with the capital standards established under this subsection—

"(A) permanent capital of a Federal home loan bank shall include (as determined in accordance with generally accepted accounting principles)—

"(i) the amounts paid for the Class C stock and any other nonredeemable stock approved by the Finance Board;

"(ii) the amounts paid for the Class B stock, in an amount not to exceed 1 percent of the total assets of the bank; and

"(iii) the retained earnings of the bank; and

"(B) total capital of a Federal home loan bank shall include—

"(i) permanent capital;

"(ii) the amounts paid for the Class A stock, Class B stock (excluding any amount treated as permanent capital under subparagraph (5)(A)(ii)), or any other class of redeemable stock approved by the Finance Board;

"(iii) consistent with generally accepted accounting principles, and subject to the regulation of the Finance Board, a general allowance for losses, which may not include any reserves or allowances made or held against specific assets; and

"(iv) any other amounts from sources available to absorb losses incurred by the bank that the Finance Board determines by regulation to be appropriate to include in determining total capital.

"(6) TRANSITION PERIOD.—Notwithstanding any other provisions of this Act, the requirements relating to purchase and retention of capital stock of a Federal home loan bank by any member thereof in effect on the day before the date of enactment of the Federal Home Loan Bank System Modernization Act of 1999, shall continue in effect with respect to each Federal home loan bank until the regulations required by this subsection have taken effect and the capital structure plan required by subsection (b) has been approved by the Finance Board and implemented by such bank.

"(b) CAPITAL STRUCTURE PLAN.—

"(1) APPROVAL OF PLANS.—Not later than 270 days after the date of publication by the Finance Board of final regulations in accordance with subsection (a), the board of directors of each Federal home loan bank shall submit for Finance Board approval a plan establishing and implementing a capital structure for such bank that—

"(A) the board of directors determines is best suited for the condition and operation of the bank and the interests of the members of the bank;

"(B) meets the requirements of subsection (c); and

"(C) meets the minimum capital standards and requirements established under subsection (a) and other regulations prescribed by the Finance Board.

"(2) APPROVAL OF MODIFICATIONS.—The board of directors of a Federal home loan bank shall submit to the Finance Board for approval any modifications that the bank proposes to make to an approved capital structure plan.

"(c) CONTENTS OF PLAN.—The capital structure plan of each Federal home loan bank shall contain provisions addressing each of the following:

"(1) MINIMUM INVESTMENT.—

"(A) IN GENERAL.—Each capital structure plan of a Federal home loan bank shall require each member of the bank to maintain a minimum investment in the stock of the bank, the amount of which shall be determined in a manner to be prescribed by the board of directors of each bank and to be included as part of the plan.

"(B) INVESTMENT ALTERNATIVES.—

"(i) IN GENERAL.—In establishing the minimum investment required for each member under subparagraph (A), a Federal home loan bank may, in its discretion, include any 1 or more of the requirements referred to in clause (ii), or any other provisions approved by the Finance Board.

"(ii) AUTHORIZED REQUIREMENTS.—A requirement is referred to in this clause if it is a requirement for—

"(I) a stock purchase based on a percentage of the total assets of a member; or

"(II) a stock purchase based on a percentage of the outstanding advances from the bank to the member.

"(C) MINIMUM AMOUNT.—Each capital structure plan of a Federal home loan bank shall require that the minimum stock investment established for members shall be set at a level that is sufficient for the bank to meet the minimum capital requirements established by the Finance Board under subsection (a).

"(D) ADJUSTMENTS TO MINIMUM REQUIRED INVESTMENT.—The capital structure plan of each Federal home loan bank shall impose a continuing obligation on the board of directors of the bank to review and adjust the minimum investment required of each member of that bank, as necessary to ensure that the bank remains in compliance with applicable minimum capital levels established by the Finance Board, and shall require each member to comply promptly with any adjustments to the required minimum investment.

"(2) TRANSITION RULE.—

"(A) IN GENERAL.—The capital structure plan of each Federal home loan bank shall specify the date on which it shall take effect, and may provide for a transition period of not longer than 3 years to allow the bank to come into compliance with the capital requirements prescribed under subsection (a), and to allow any institution that was a member of the bank on the date

of enactment of the Financial Services Act of 1999, to come into compliance with the minimum investment required pursuant to the plan.

"(B) INTERIM PURCHASE REQUIREMENTS.—The capital structure plan of a Federal home loan bank may allow any member referred to in subparagraph (A) that would be required by the terms of the capital structure plan to increase its investment in the stock of the bank to do so in periodic installments during the transition period.

"(3) DISPOSITION OF SHARES.—The capital structure plan of a Federal home loan bank shall provide for the manner of disposition of any stock held by a member of that bank that terminates its membership or that provides notice of its intention to withdraw from membership in that bank.

"(4) CLASSES OF STOCK.—

"(A) IN GENERAL.—The capital structure plan of a Federal home loan bank shall afford each member of that bank the option of maintaining its required investment in the bank through the purchase of any combination of classes of stock authorized by the board of directors of the bank and approved by the Finance Board in accordance with its regulations.

"(B) RIGHTS REQUIREMENT.—A Federal home loan bank shall include in its capital structure plan provisions establishing terms, rights, and preferences, including minimum investment, dividends, voting, and liquidation preferences of each class of stock issued by the bank, consistent with Finance Board regulations and market requirements.

"(C) REDUCED MINIMUM INVESTMENT.—The capital structure plan of a Federal home loan bank may provide for a reduced minimum stock investment for any member of that bank that elects to purchase Class B, Class C, or any other class of nonredeemable stock, in a manner that is consistent with meeting the minimum capital requirements of the bank, as established by the Finance Board.

"(D) LIQUIDATION OF CLAIMS.—The capital structure plan of a Federal home loan bank shall provide for the liquidation in an orderly manner, as determined by the bank, of any claim of that bank against a member, including claims for any applicable prepayment fees or penalties resulting from prepayment of advances prior to stated maturity.

"(5) LIMITED TRANSFERABILITY OF STOCK.—The capital structure plan of a Federal home loan bank shall—

"(A) provide that—

"(i) any stock issued by that bank shall be available only to, held only by, and tradable only among members of that bank and between that bank and its members; and

"(ii) a bank has no obligation to repurchase its outstanding Class C stock but may do so, provided it is consistent with Finance Board regulations and is at a price that is mutually agreeable to the bank and the member; and

"(B) establish standards, criteria, and requirements for the issuance, purchase, transfer, retirement, and redemption of stock issued by that bank.

"(6) BANK REVIEW OF PLAN.—Before filing a capital structure plan with the Finance Board, each Federal home loan bank shall conduct a review of the plan by—

"(A) an independent certified public accountant, to ensure, to the extent possible, that implementation of the plan would not result in any write-down of the redeemable bank stock investment of its members; and

"(B) at least 1 major credit rating agency, to determine, to the extent possible, whether implementation of the plan would have any material effect on the credit ratings of the bank.

"(d) TERMINATION OF MEMBERSHIP.—

"(1) VOLUNTARY WITHDRAWAL.—Any member may withdraw from a Federal home loan bank by providing written notice to the bank of its intent to do so. The applicable stock redemption notice periods shall commence upon receipt of the notice by the bank. Upon the expiration of the applicable notice period for each class of redeemable stock, the member may surrender such stock to the bank, and shall be entitled to receive in cash the par value of the stock. During the applicable notice periods, the member shall be entitled to dividends and other membership rights commensurate with continuing stock ownership.

"(2) INVOLUNTARY WITHDRAWAL.—

"(A) IN GENERAL.—The board of directors of a Federal home loan bank may terminate the membership of any institution if, subject to Finance Board regulations, it determines that—

"(i) the member has failed to comply with a provision of this Act or any regulation prescribed under this Act; or

"(ii) the member has been determined to be insolvent, or otherwise subject to the appointment of a conservator, receiver, or other legal custodian, by a State or Federal authority with regulatory and supervisory responsibility for the member.

"(B) STOCK DISPOSITION.—An institution, the membership of which is terminated in accordance with subparagraph (A)—

"(i) shall surrender redeemable stock to the Federal home loan bank, and shall receive in cash the par value of the stock, upon the expiration of the applicable notice period under subsection (a)(4)(A);

"(ii) shall receive any dividends declared on its redeemable stock, during the applicable notice period under subsection (a)(4)(A); and

"(iii) shall not be entitled to any other rights or privileges accorded to members after the date of the termination.

"(C) COMMENCEMENT OF NOTICE PERIOD.—With respect to an institution, the membership of which is terminated in accordance with subparagraph (A), the applicable notice period under subsection (a)(4) for each class of redeemable stock shall commence on the earlier of—

"(i) the date of such termination; or

"(ii) the date on which the member has provided notice of its intent to redeem such stock.

"(3) LIQUIDATION OF INDEBTEDNESS.—Upon the termination of the membership of an institution for any reason, the outstanding indebtedness of the member to the bank shall be liquidated in an orderly manner, as determined by the bank and, upon the extinguishment of all such indebtedness, the bank shall return to the member all collateral pledged to secure the indebtedness.

"(e) REDEMPTION OF EXCESS STOCK.—

"(1) IN GENERAL.—A Federal home loan bank, in its sole discretion, may redeem or repurchase, as appropriate, any shares of Class A or Class B stock issued by the bank and held by a member that are in excess of the minimum stock investment required of that member.

"(2) EXCESS STOCK.—Shares of stock held by a member shall not be deemed to be 'excess stock' for purposes of this subsection by virtue of a member's submission of a notice of intent to withdraw from membership or termination of its membership in any other manner.

"(3) PRIORITY.—A Federal home loan bank may not redeem any excess Class B stock prior to the end of the 5-year notice period, unless the member has no Class A stock outstanding that could be redeemed as excess.

"(f) IMPAIRMENT OF CAPITAL.—If the Finance Board or the board of directors of a Federal home loan bank determines that the bank has incurred or is likely to incur losses that result in or are expected to result in charges against the capital of the bank, the bank shall not redeem or repurchase any stock of the bank without the prior approval of the Finance Board while such charges are continuing or are expected to continue. In no case may a bank redeem or repurchase any applicable capital stock if, following the redemption, the bank would fail to satisfy any minimum capital requirement.

"(g) REJOINING AFTER DIVESTITURE OF ALL SHARES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), and notwithstanding any other provision of this Act, an institution that divests all shares of stock in a Federal home loan bank may not, after such divestiture, acquire shares of any Federal home loan bank before the end of the 5-year period beginning on the date of the completion of such divestiture, unless the divestiture is a consequence of a transfer of membership on an uninterrupted basis between banks.

"(2) EXCEPTION FOR WITHDRAWALS FROM MEMBERSHIP BEFORE 1998.—Any institution that withdrew from membership in any Federal home loan bank before December 31, 1997, may acquire shares of a Federal home loan bank at any time after that date, subject to the approval of the Finance Board and the requirements of this Act.

"(h) TREATMENT OF RETAINED EARNINGS.—

"(1) IN GENERAL.—The holders of the Class C stock of a Federal home loan bank, and any other classes of nonredeemable stock approved by the Finance Board (to the extent provided in the terms thereof), shall own the retained earnings, surplus, undivided profits, and equity reserves, if any, of the bank.

"(2) NO NONREDEEMABLE CLASSES OF STOCK.—If a Federal home loan bank has no outstanding Class C or other such nonredeemable stock, then the holders of any other classes of stock of the bank then outstanding shall have ownership

in, and a private property right in, the retained earnings, surplus, undivided profits, and equity reserves, if any, of the bank.

"(3) EXCEPTION.—Except as specifically provided in this section or through the declaration of a dividend or a capital distribution by a Federal home loan bank, or in the event of liquidation of the bank, a member shall have no right to withdraw or otherwise receive distribution of any portion of the retained earnings of the bank.

"(4) LIMITATION.—A Federal home loan bank may not make any distribution of its retained earnings unless, following such distribution, the bank would continue to meet all applicable capital requirements.".

Subtitle H—ATM Fee Reform

SEC. 171. SHORT TITLE.

This subtitle may be cited as the "ATM Fee Reform Act of 1999".

SEC. 172. ELECTRONIC FUND TRANSFER FEE DISCLOSURES AT ANY HOST ATM.

Section 904(d) of the Electronic Fund Transfer Act (15 U.S.C. 1693b(d)) is amended by adding at the end the following new paragraph:

"(3) FEE DISCLOSURES AT AUTOMATED TELLER MACHINES.—

"(A) IN GENERAL.—The regulations prescribed under paragraph (1) shall require any automated teller machine operator who imposes a fee on any consumer for providing host transfer services to such consumer to provide notice in accordance with subparagraph (B) to the consumer (at the time the service is provided) of—

"(i) the fact that a fee is imposed by such operator for providing the service; and

"(ii) the amount of any such fee.

"(B) NOTICE REQUIREMENTS.—

"(i) ON THE MACHINE.—The notice required under clause (i) of subparagraph (A) with respect to any fee described in such subparagraph shall be posted in a prominent and conspicuous location on or at the automated teller machine at which the electronic fund transfer is initiated by the consumer; and

"(ii) ON THE SCREEN.—The notice required under clauses (i) and (ii) of subparagraph (A) with respect to any fee described in such subparagraph shall appear on the screen of the automated teller machine, or on a paper notice issued from such machine, after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

"(C) PROHIBITION ON FEES NOT PROPERLY DISCLOSED AND EXPLICITLY ASSUMED BY CONSUMER.—No fee may be imposed by any automated teller machine operator in connection with any electronic fund transfer initiated by a consumer for which a notice is required under subparagraph (A), unless—

"(i) the consumer receives such notice in accordance with subparagraph (B); and

"(ii) the consumer elects to continue in the manner necessary to effect the transaction after receiving such notice.

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

"(i) ELECTRONIC FUND TRANSFER.—The term 'electronic fund transfer' includes a transaction which involves a balance inquiry initiated by a consumer in the same manner as an electronic fund transfer, whether or not the consumer initiates a transfer of funds in the course of the transaction.

"(ii) AUTOMATED TELLER MACHINE OPERATOR.—The term 'automated teller machine operator' means any person who—

"(I) operates an automated teller machine at which consumers initiate electronic fund transfers; and

"(II) is not the financial institution which holds the account of such consumer from which the transfer is made.

"(iii) HOST TRANSFER SERVICES.—The term 'host transfer services' means any electronic fund transfer made by an automated teller machine operator in connection with a transaction initiated by a consumer at an automated teller machine operated by such operator.".

SEC. 173. DISCLOSURE OF POSSIBLE FEES TO CONSUMERS WHEN ATM CARD IS ISSUED.

Section 905(a) of the Electronic Fund Transfer Act (15 U.S.C. 1693c(a)) is amended—

(1) by striking "and" at the end of paragraph (8);

(2) by striking the period at the end of paragraph (9) and inserting "; and"; and

(3) by inserting after paragraph (9) the following new paragraph:

"(10) a notice to the consumer that a fee may be imposed by—

"(A) an automated teller machine operator (as defined in section 904(d)(3)(D)(ii)) if the consumer initiates a transfer from an automated teller machine which is not operated by the person issuing the card or other means of access; and

"(B) any national, regional, or local network utilized to effect the transaction.".

SEC. 174. FEASIBILITY STUDY.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the feasibility of requiring, in connection with any electronic fund transfer initiated by a consumer through the use of an automated teller machine—

(1) a notice to be provided to the consumer before the consumer is irrevocably committed to completing the transaction, which clearly states the amount of any fee which will be imposed upon the consummation of the transaction by—

(A) any automated teller machine operator (as defined in section 904(d)(2)(D)(ii) of the Electronic Fund Transfer Act) involved in the transaction;

(B) the financial institution holding the account of the consumer;

(C) any national, regional, or local network utilized to effect the transaction; and

(D) any other party involved in the transfer; and

(2) the consumer to elect to consummate the transaction after receiving the notice described in paragraph (1).

(b) FACTORS TO BE CONSIDERED.—In conducting the study required under subsection (a) with regard to the notice requirement described in such subsection, the Comptroller General shall consider the following factors:

(1) The availability of appropriate technology.

(2) Implementation and operating costs.

(3) The competitive impact any such notice requirement would have on various sizes and types of institutions, if implemented.

(4) The period of time which would be reasonable for implementing any such notice requirement.

(5) The extent to which consumers would benefit from any such notice requirement.

(6) Any other factor the Comptroller General determines to be appropriate in analyzing the feasibility of imposing any such notice requirement.

(c) REPORT TO THE CONGRESS.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress containing—

(1) the findings and conclusions of the Comptroller General in connection with the study required under subsection (a); and

(2) the recommendation of the Comptroller General with regard to the question of whether a notice requirement described in subsection (a) should be implemented and, if so, how such requirement should be implemented.

SEC. 175. NO LIABILITY IF POSTED NOTICES ARE DAMAGED.

Section 910 of the Electronic Fund Transfer Act (15 U.S.C 1693h) is amended by adding at the end the following new subsection:

"(d) EXCEPTION FOR DAMAGED NOTICES.—If the notice required to be posted pursuant to section 904(d)(3)(B)(i) by an automated teller machine operator has been posted by such operator in compliance with such section and the notice is subsequently removed, damaged, or altered by any person other than the operator of the automated teller machine, the operator shall have no liability under this section for failure to comply with section 904(d)(3)(B)(i).".

SEC. 176. EFFECTIVE DATE.

The amendments made by this subtitle shall take effect at the end of the 270-day period beginning on the date of the enactment of this Act.

Subtitle I—Direct Activities of Banks

SEC. 181. AUTHORITY OF NATIONAL BANKS TO UNDERWRITE CERTAIN MUNICIPAL BONDS.

The paragraph designated the Seventh of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24(7)) is amended by adding at the end the following new sentence: "In addition to the provisions in this paragraph for dealing in, underwriting or purchasing securities, the limitations and restrictions contained in this paragraph as to dealing in, underwriting, and purchasing investment securities for the national bank's own account shall not apply to obligations (including 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 instrumentality of 1 or more States, or any public agency or authority of any State or political subdivision of a State, if the national bank is well capitalized (as defined in section 38 of the Federal Deposit Insurance Act).".

Subtitle J—Deposit Insurance Funds

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

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

(1) SAFETY AND SOUNDNESS.—The safety and soundness of the funds and the adequacy of the reserve requirements applicable to the funds in light of—

(A) the size of the insured depository institutions which are resulting from mergers and consolidations since the effective date of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994; and

(B) the affiliation of insured depository institutions with other financial institutions pursuant to this Act and the amendments made by this Act.

(2) CONCENTRATION LEVELS.—The concentration levels of the funds, taking into account the number of members of each fund and the geographic distribution of such members, and the extent to which either fund is exposed to higher risks due to a regional concentration of members or an insufficient membership base relative to the size of member institutions.

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

(b) REPORT REQUIRED.—

(1) IN GENERAL.—Before the end of the 9-month period beginning on the date of the enactment of this Act, the Board of Directors of the Federal Deposit Insurance Corporation shall submit a report to the Congress on the study conducted pursuant to subsection (a).

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

(A) detailed findings of the Board of Directors with regard to the issues described in subsection (a);

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

(C) such recommendations for legislative and administrative action as the Board of Directors determines to be necessary or appropriate to preserve the safety and soundness of the deposit insurance funds, reduce the risks to such funds, provide for an efficient merger of such funds, and for other purposes.

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

(1) INSURED DEPOSITORY INSTITUTION.—The term "insured depository institution" has the same meaning as in section 3(c) of the Federal Deposit Insurance Act.

(2) BIF AND SAIF MEMBERS.—The terms "Bank Insurance Fund member" and "Savings Association Insurance Fund member" have the same meanings as in section 7(l) of the Federal Deposit Insurance Act.

SEC. 187. ELIMINATION OF SAIF AND DIF SPECIAL RESERVES.

(a) SAIF SPECIAL RESERVES.—Section 11(a)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6)) is amended by striking subparagraph (L).

(b) DIF SPECIAL RESERVES.—Section 2704 of the Deposit Insurance Funds Act of 1996 (12 U.S.C. 1821 note) is amended—

(1) by striking subsection (b); and

(2) in subsection (d)—

(A) by striking paragraph (4);

(B) in paragraph (6)(C)(i), by striking "(6) and (7)" and inserting "(5), (6), and (7)"; and

(C) in paragraph (6)(C), by striking clause (ii) and inserting the following: "(ii) by redesignating paragraph (8) as paragraph (5).".

Subtitle K—Miscellaneous Provisions

SEC. 191. TERMINATION OF "KNOW YOUR CUSTOMER" REGULATIONS.

(a) IN GENERAL.—None of the proposed regulations described in subsection (b) may be published in final form and, to the extent any such regulation has become effective before the date of the enactment of this Act, such regulation shall cease to be effective as of such date.

(b) PROPOSED REGULATIONS DESCRIBED.—The proposed regulations referred to in subsection (a) are as follows:

(1) The regulation proposed by the Comptroller of the Currency to amend part 21 of title 12 of the Code of Federal Regulations, as published in the Federal Register on December 7, 1998.

(2) The regulation proposed by the Director of the Office of Thrift Supervision to amend part 563 of title 12 of the Code of Federal Regulations, as published in the Federal Register on December 7, 1998.

(3) The regulation proposed by the Board of Governors of the Federal Reserve System to amend parts 208, 211, and 225 of title 12 of the Code of Federal Regulations, as published in the Federal Register on December 7, 1998.

(4) The regulation proposed by the Federal Deposit Insurance Corporation to amend part 326 of title 12 of the Code of Federal Regulations, as published in the Federal Register on December 7, 1998.

SEC. 192. STUDY AND REPORT ON FEDERAL ELECTRONIC FUND TRANSFERS.

(a) STUDY.—The Secretary of the Treasury shall conduct a feasibility study to determine—

(1) whether all electronic payments issued by Federal agencies could be routed through the Regional Finance Centers of the Department of the Treasury for verification and reconciliation;

(2) whether all electronic payments made by the Federal Government could be subjected to the same level of reconciliation as United States Treasury checks, including matching each payment issued with each corresponding deposit at financial institutions;

(3) whether the appropriate computer security controls are in place in order to ensure the integrity of electronic payments;

(4) the estimated costs of implementing, if so recommended, the processes and controls described in paragraphs (1), (2), and (3); and

(5) a possible timetable for implementing those processes if so recommended.

(b) REPORT TO CONGRESS.—Not later than October 1, 2000, the Secretary of the Treasury shall submit a report to Congress containing the results of the study required by subsection (a).

(c) DEFINITION.—For purposes of this section, the term "electronic payment" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tapes so as to order, instruct, or authorize a debit or credit to a financial account.

SEC. 193. STUDY AND REPORT ON ADAPTING EXISTING LEGISLATIVE REQUIREMENTS TO ONLINE BANKING AND LENDING.

(a) STUDY REQUIRED.—The Federal banking agencies shall conduct a study of banking regulations regarding the delivery of financial services, including those regulations that may assume that there will be person-to-person contact during the course of a financial services transaction, and report their recommendations on adapting those existing requirements to online banking and lending.

(b) REPORT REQUIRED.—Within 1 year of the date of the enactment of this Act, the Federal banking agencies shall submit a report to the Congress on the findings and conclusions of the agencies with respect to the study required under subsection (a), together with such recommendations for legislative or regulatory action as the agencies may determine to be appropriate.

(c) DEFINITION.—For purposes of this section, the term "Federal banking agencies" means each Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act).

TITLE II—FUNCTIONAL REGULATION

Subtitle A—Brokers and Dealers

SEC. 201. DEFINITION OF BROKER.

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) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a broker because the bank engages in any one or more of the following activities under the conditions described:

"(i) THIRD PARTY BROKERAGE ARRANGEMENTS.—The bank enters into a contractual or other written 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, to the extent practicable, 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 arrangement clearly indicate that the brokerage services 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 arrangement are in compliance with the Federal securities laws before distribution;

"(V) bank employees (other than associated persons of a broker or dealer who are qualified pursuant to the rules of a self-regulatory organization) perform only clerical or ministerial functions in connection with brokerage transactions including scheduling appointments with the associated persons of a broker or dealer, except that bank employees may forward customer funds or securities and may describe in general terms the types of investment vehicles available from the bank and the broker or dealer under the arrangement;

"(VI) bank employees do not receive incentive compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the rules of a self-regulatory organization, except that the bank employees may receive compensation for the referral of any customer if the compensation is a nominal one-time cash 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;

"(VIII) the bank does not carry a securities account of the customer except as permitted under clause (ii) or (viii) of this subparagraph; and

"(IX) the bank, 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 obliga-

tions of the bank, are not guaranteed by the bank, and are not insured by the Federal Deposit Insurance Corporation.

"(ii) TRUST ACTIVITIES.—The bank effects transactions in a trustee or fiduciary capacity in its trust department, or another department where the trust or fiduciary activity is regularly examined by bank examiners under the same standards and in the same way as such activities are examined in the trust department, and—

"(I) is chiefly compensated for such transactions, consistent with fiduciary principles and standards, on the basis of an administration or annual fee (payable on a monthly, quarterly, or other basis), a percentage of assets under management, or a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers, or any combination of such fees; and

"(II) does not solicit brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities.

"(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in—

"(I) commercial paper, bankers acceptances, or commercial bills;

"(II) exempted securities;

"(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

"(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

"(iv) CERTAIN STOCK PURCHASE PLANS.—

"(I) EMPLOYEE BENEFIT PLANS.—The bank effects transactions, as a registered transfer agent (including as a registrar of stocks), in the securities of an issuer as part of any pension, retirement, profit-sharing, bonus, thrift, savings, incentive, or other similar benefit plan for the employees of that issuer or its affiliates, if—

"(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan; and

"(bb) the bank's compensation for such plan or program consists chiefly of administration fees, or flat or capped per order processing fees, or both.

"(II) DIVIDEND REINVESTMENT PLANS.—The bank effects transactions, as a registered transfer agent (including as a registrar of stocks), in the securities of an issuer as part of that issuer's dividend reinvestment plan, if—

"(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan;

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

"(cc) the bank's compensation for such plan or program consists chiefly of administration fees, or flat or capped per order processing fees, or both.

"(III) ISSUER PLANS.—The bank effects transactions, as a registered transfer agent (including as a registrar of stocks), in the securities of an issuer as part of that issuer's plan for the purchase or sale of that issuer's shares, if—

"(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan or program;

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

"(cc) the bank's compensation for such plan or program consists chiefly of administration fees, or flat or capped per order processing fees, or both.

"(IV) PERMISSIBLE DELIVERY OF MATERIALS.—The exception to being considered a broker for a bank engaged in activities described in subclauses (I), (II), and (III) will not be affected by a bank's delivery of written or electronic plan materials to employees of the issuer, shareholders of the issuer, or members of affinity groups of the issuer, so long as such materials are—

"(aa) comparable in scope or nature to that permitted by the Commission as of the date of the enactment of the Financial Services Act of 1999; or

"(bb) otherwise permitted by the Commission.

"(v) SWEEP ACCOUNTS.—The bank effects transactions as part of a program for the investment or reinvestment of 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.

"(vi) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate (as defined in section 2 of the Bank Holding Company Act of 1956) of the bank other than—

"(I) a registered broker or dealer; or

"(II) an affiliate that is engaged in merchant banking, as described in section 6(c)(3)(H) of the Bank Holding Company Act of 1956.

"(vii) PRIVATE SECURITIES OFFERINGS.—The bank—

"(I) effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 or the rules and regulations issued thereunder;

"(II) at any time after one year after the date of enactment of the Financial Services Act of 1999, is not affiliated with a broker or dealer that has been registered for more than one year; and

"(III) effects transactions exclusively with qualified investors.

"(viii) SAFEKEEPING AND CUSTODY ACTIVITIES.—

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

"(aa) provides safekeeping or custody services with respect to securities, including the exercise of warrants and other rights on behalf of customers;

"(bb) facilitates the transfer of funds or securities, as a custodian or a clearing agency, in connection with the clearance and settlement of its customers' transactions in securities;

"(cc) effects securities lending or borrowing transactions with or on behalf of customers as part of services provided to customers pursuant to division (aa) or (bb) or invests cash collateral pledged in connection with such transactions; or

"(dd) holds securities pledged by a customer to another person or securities subject to purchase or resale agreements involving a customer, or facilitates the pledging or transfer of such securities by book entry or as otherwise provided under applicable law, if the bank maintains records separately identifying the securities and the customer.

"(II) EXCEPTION FOR CARRYING BROKER ACTIVITIES.—The exception to being considered a broker for a bank engaged in activities described in subclause (I) shall not apply if the bank, in connection with such activities, acts in the United States as a carrying broker (as such term, and different formulations thereof, are used in section 15(c)(3) of this title and the rules and regulations thereunder) for any broker or dealer, unless such carrying broker activities are engaged in with respect to government securities (as defined in paragraph (42) of this subsection).

"(ix) EXCEPTED FINANCIAL PRODUCTS.—The bank effects transactions in excepted financial products, as defined in paragraph (56)(A) of this subsection.

"(x) MUNICIPAL SECURITIES.—The bank effects transactions in municipal securities.

"(xi) DE MINIMIS EXCEPTION.—The bank effects, other than in transactions referred to in clauses (i) through (x), not more than 500 transactions in securities in any calendar year, and such transactions are

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

"(C) BROKER DEALER EXECUTION.—The exception to being considered a broker for a bank engaged in activities described in clauses (ii), (iv), and (viii) of subparagraph (B) shall not apply if the activities described in such provisions result in the trade in the United States of any security that is a publicly traded security in the United States, unless—

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

"(ii) the trade is a cross trade or other substantially similar trade of a security that—

"(I) is made by the bank or between the bank and an affiliated fiduciary; and

"(II) is not in contravention of fiduciary principles established under applicable Federal or State law; or

"(iii) the trade is conducted in some other manner permitted under rules, regulations, or orders as the Commission may prescribe or issue.

"(D) FIDUCIARY CAPACITY.—For purposes of subparagraph (B)(ii), the term 'fiduciary capacity' means—

"(i) in the capacity as trustee, executor, administrator, guardian, assignee, receiver, or custodian under a uniform gift to minor act, or as an investment adviser if the bank receives a fee for its investment advice;

"(ii) in any capacity in which the bank possesses investment discretion on behalf of another; or

"(iii) in any other similar capacity.

"(F) EXCEPTION 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 Act of 1999, subject to section 15(e) of this title; and

"(ii) is subject to such restrictions and requirements as the Commission considers appropriate.".

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 such person's own account through a broker or otherwise.

"(B) EXCEPTION FOR PERSON NOT ENGAGED IN THE BUSINESS OF DEALING.—The term 'dealer' does not include 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.

"(C) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a dealer because the bank engages in any of the following activities under the conditions described:

"(i) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank buys or sells—

"(I) commercial paper, bankers acceptances, or commercial bills;

"(II) exempted securities;

"(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes of the United States, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

"(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

"(ii) INVESTMENT, TRUSTEE, AND FIDUCIARY TRANSACTIONS.—The bank buys or sells securities for investment purposes—

"(I) for the bank; or

"(II) for accounts for which the bank acts as a trustee or fiduciary.

"(iii) ASSET-BACKED TRANSACTIONS.—The bank engages in the issuance or sale to qualified investors, through a grantor trust or other separate entity, of securities backed by or representing an interest in

notes, drafts, acceptances, loans, leases, receivables, other obligations (other than securities of which the bank is not the issuer), or pools of any such obligations predominantly originated by the bank, or an affiliate of any such bank other than a broker or dealer, or, in the case of mortgage obligations or consumer-related receivables, a syndicate of banks of which the bank is a member (other than as an insignificant member).

"(iv) EXCEPTED FINANCIAL PRODUCTS.—The bank buys or sells excepted financial products, as defined in paragraph (56)(A) of this subsection.

"(v) DERIVATIVE INSTRUMENTS.—The bank issues, buys, or sells any derivative instrument to which the bank is a party—

"(I) to or from a corporation, limited liability company, or partnership that owns and invests on a discretionary basis, not less than $100,000,000 in investments, or to or from a qualified investor, except that if the instrument provides for the delivery of one or more securities (other than a derivative instrument or government security), the transaction shall be effected with or through a registered broker or dealer; or

"(II) to or from other persons, except that if the derivative instrument provides for the delivery of one or more securities (other than a derivative instrument or government security), or is a security (other than a government security), the transaction shall be effected with or through a registered broker or dealer; or

"(III) to or from any person if the instrument is neither a security nor provides for the delivery of one or more securities (other than a derivative instrument).".

SEC. 203. REGISTRATION FOR SALES OF PRIVATE SECURITIES OFFERINGS.

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

"(j) REGISTRATION FOR SALES OF PRIVATE SECURITIES OFFERINGS.—A registered securities association shall create a limited qualification category for any associated person of a member who effects sales as part of a primary offering of securities 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 thereunder, and shall deem qualified in such limited qualification category, without testing, any bank employee who, in the six month period preceding the date of enactment of this Act, engaged in effecting such sales.".

SEC. 204. INFORMATION SHARING.

Section 18 of the Federal Deposit Insurance Act is amended by adding at the end the following new subsection:

"(t) RECORDKEEPING REQUIREMENTS.—

"(1) REQUIREMENTS.—Each appropriate Federal banking agency, after consultation with and consideration of the views of the Commission, shall establish recordkeeping requirements for banks relying on exceptions contained in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934. Such recordkeeping requirements shall be sufficient to demonstrate compliance with the terms of such exceptions and be designed to facilitate compliance with such exceptions. Each appropriate Federal banking agency shall make any such information available to the Commission upon request.

"(2) DEFINITIONS.—As used in this subsection the term 'Commission' means the Securities and Exchange Commission.".

SEC. 205. TREATMENT OF NEW HYBRID PRODUCTS.

Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following new subsection:

"(i) RULEMAKING TO EXTEND REQUIREMENTS TO NEW HYBRID PRODUCTS.—

"(1) LIMITATION.—The Commission shall not—

"(A) require a bank to register as a broker or dealer under this section because the bank engages in any transaction in, or buys or sells, a new hybrid product; or

"(B) bring an action against a bank for a failure to comply with a requirement described in subparagraph (A);

unless the Commission has imposed such requirement by rule or regulation issued in accordance with this section.

"(2) CRITERIA FOR RULEMAKING.—The Commission shall not impose a requirement under paragraph (1) of this subsection with respect to any new hybrid product unless the Commission determines that—

"(A) the new hybrid product is a security; and

"(B) imposing such requirement is necessary or appropriate in the public interest and for the protection of investors, consistent with the requirements of section 3(f).

"(3) NEW HYBRID PRODUCT.—For purposes of this subsection, the term 'new hybrid product' means a product that—

"(A) was not subjected to regulation by the Commission as a security prior to the date of enactment of this subsection; and

"(B) is not an excepted financial product, as such term is defined in section 3(a)(56)(A) of this title.

"(4) CONSULTATION.—In promulgating rules under this subsection, the Commission shall consult with and consider the views of the appropriate regulatory agencies concerning the proposed rule and the impact on the banking industry.".

SEC. 206. ADDITIONAL DEFINITIONS.

Section 3(a) of the Securities Exchange Act of 1934 is amended by adding at the end the following new paragraphs:

"(54) DERIVATIVE INSTRUMENT.—

"(A) DEFINITION.—The term 'derivative instrument' means any individually negotiated contract, agreement, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets, but does not include an excepted financial product, as defined in clauses (i) through (v) of paragraph (56)(A) of this subsection.

"(B) CLASSIFICATION LIMITED.—Classification of a particular contract as a derivative instrument pursuant to this paragraph shall not be construed as finding or implying that such instrument is or is not a security for any purpose under the securities laws, or is or is not an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.

"(55) QUALIFIED INVESTOR.—

"(A) DEFINITION.—For purposes of this title, the term 'qualified investor' means—

"(i) any investment company registered with the Commission under section 8 of the Investment Company Act of 1940;

"(ii) any issuer eligible for an exclusion from the definition of investment company pursuant to section 3(c)(7) of the Investment Company Act of 1940;

"(iii) any bank (as defined in paragraph (6) of this subsection), savings and loan association (as defined in section 3(b) of the Federal Deposit Insurance Act), broker, dealer, insurance company (as defined in section 2(a)(13) of the Securities Act of 1933), or business development company (as defined in section 2(a)(48) of the Investment Company Act of 1940);

"(iv) any small business investment company licensed by the United States Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958;

"(v) any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, other than an individual retirement account, if the investment decisions are made by a plan fiduciary, as defined in section 3(21) of that Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser;

"(vi) any trust whose purchases of securities are directed by a person described in clauses (i) through (v) of this subparagraph;

"(vii) any market intermediary exempt under section 3(c)(2) of the Investment Company Act of 1940;

"(viii) any associated person of a broker or dealer other than a natural person;

"(ix) any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978); or

"(x) the government of any foreign country.

"(B) ADDITIONAL QUALIFICATIONS DEFINED.—For purposes of paragraphs (4)(B)(vii), (5)(C)(iii), and (56)(A)(v) of this subsection, the term 'qualified investor' also means—

"(i) any corporation, company, or partnership that owns and invests on a discretionary basis, not less than $10,000,000 in investments;

"(ii) any natural person who owns and invests on a discretionary basis, not less than $10,000,000 in investments;

"(iii) any government or political subdivision, agency, or instrumentality of a government who owns and invests on a discretionary basis not less than $50,000,000 in investments; or

"(iv) any multinational or supranational entity or any agency or instrumentality thereof.

"(C) ADDITIONAL AUTHORITY.—The Commission may, by rule or order, define a 'qualified investor' as any other person, other than a natural person, taking into consideration such factors as the person's financial sophistication, net worth, and knowledge and experience in financial matters.

"(56) EXCEPTED FINANCIAL PRODUCTS.—

"(A) IN GENERAL.—For purposes of paragraphs (4) and (5) of this subsection, the term 'excepted financial product' means—

"(i) a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank;

"(ii) a banker's acceptance;

"(iii) a letter of credit issued or loan made by a bank;

"(iv) a debit account at a bank arising from a credit card or similar arrangement;

"(v) a participation in a loan which the bank or an affiliate of the bank (other than a broker or dealer) funds, participates in, or owns that is sold—

"(I) to qualified investors; or

"(II) to other persons that—

"(aa) have the opportunity to review and assess any material information, including information regarding the borrower's creditworthiness; and

"(bb) based on such factors as financial sophistication, net worth, and knowledge and experience in financial matters, have the capability to evaluate the information available, as determined under generally applicable banking standards or guidelines; or

"(vi) a derivative instrument that involves or relates to—

"(I) currencies, except options on currencies that trade on a national securities exchange;

"(II) interest rates, except interest rate derivative instruments that—

"(aa) are based on a security or a group or index of securities (other than government securities or a group or index of government securities);

"(bb) provide for the delivery of one or more securities (other than government securities); or

"(cc) trade on a national securities exchange; or

"(III) commodities, other rates, indices, or other assets, except derivative instruments that—

"(aa) are securities or that are based on a group or index of securities (other than government securities or a group or index of government securities);

"(bb) provide for the delivery of one or more securities (other than government securities); or

"(cc) trade on a national securities exchange.

"(B) CLASSIFICATION LIMITED.—Classification of a particular product as a excepted financial product pursuant to this subsection shall not be construed as finding or implying that such product is or is not a security for any purpose under the securities laws, or is or is not an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.".

SEC. 207. GOVERNMENT SECURITIES DEFINED.

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

(1) by striking "or" at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting "; or"; and

(3) by adding at the end the following new subparagraph:

"(E) for purposes of sections 15, 15C, and 17A as applied to a bank, a qualified Canadian government obligation as defined in section 5136 of the Revised Statutes of the United States.".

SEC. 208. EFFECTIVE DATE.

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

SEC. 209. RULE OF CONSTRUCTION.

Nothing in this Act shall supersede, affect, or otherwise limit the scope and applicability of the Commodity Exchange Act (7 U.S.C. 1 et seq.).

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 the following:

"(f) CUSTODY OF SECURITIES.—

"(1) Every registered";

(3) by redesignating the second, third, fourth, and fifth 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) The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person, promoter, organizer, or sponsor of, or principal underwriter for, a registered management company may serve as custodian of that registered management company.".

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

(1) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively; and

(2) by inserting after subsection (a) the following new subsection:

"(b) The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person of a principal underwriter for, or depositor of, a registered unit investment trust, may serve as trustee or custodian under subsection (a)(1).".

(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. LENDING TO AN AFFILIATED INVESTMENT COMPANY.

Section 17(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–17(a)) is amended—

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

(2) by striking the period at the end of paragraph (3) and inserting "; or"; and

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

"(4) to loan money or other property to such registered company, or to any company controlled by such registered company, in contravention of such rules, regulations, or orders as the Commission may prescribe or issue consistent with the protection of investors.".

SEC. 213. 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 or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, 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,";

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

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

"(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property 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,".

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

(1) by striking clause (v) and inserting the following new clause:

"(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

"(I) any investment company for which the investment adviser or principal underwriter serves as such;

"(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

"(III) any account over which the investment adviser has brokerage placement discretion,";

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

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

"(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

"(I) any investment company for which the investment adviser or principal underwriter serves as such;

"(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

"(III) any account for which the investment adviser has borrowing authority,".

(c) 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 (together with its affiliates and subsidiaries) or any one bank holding company (together with its affiliates and subsidiaries) (as such terms are defined in section 2 of the Bank Holding Company Act of 1956), except".

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

SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.

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 that is advised by, or sold through, a bank shall prominently disclose that an investment in the company is not insured by the Federal Deposit Insurance Corporation or any other government agency. The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the manner in which the disclosure under this paragraph shall be provided.

"(3) DEFINITIONS.—The terms 'insured depository institution' and 'appropriate Federal banking agency' have the same meanings given as in section 3 of the Federal Deposit Insurance Act.".

SEC. 215. 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) The term 'broker' has the same meaning as in section 3 of the Securities Exchange Act of 1934, except that such term does not include any person solely by reason of the fact that such person is an underwriter for one or more investment companies.".

SEC. 216. 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. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINITION OF INVESTMENT ADVISER FOR BANKS THAT ADVISE INVESTMENT COMPANIES.

(a) INVESTMENT ADVISER.—Section 202(a)(11)(A) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)(A)) is amended by striking "investment company" and inserting "investment company, except that the term 'investment adviser' includes any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company, but if, in the case of a bank, such services or actions 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:

"(26) 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 one 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 by the Commission 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. 218. 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 section 3 of the Securities Exchange Act of 1934.".

SEC. 219. 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 section 3 of the Securities Exchange Act of 1934, but does not include an insurance company or investment company.".

SEC. 220. 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 to which such agency may have access with respect to the investment advisory activities—

"(A) of any—

"(i) bank holding company;

"(ii) bank; or

"(iii) separately identifiable department or division of a bank,

that is registered under section 203 of this title; and

"(B) in the case of a bank holding company or bank that has a subsidiary or a separately identifiable department or division registered under that section, of such bank or bank holding company.

"(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 bank holding company, bank, or separately identifiable department or division of a bank, which is registered under section 203 of this title.

"(b) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to such bank holding company, bank, or department or division under any other 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. 221. 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)(12)(A)(iii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)(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".

SEC. 222. 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 an 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 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 or issue consistent with the protection of investors.

"(2) EXEMPTION.—Paragraph (1) shall not apply to any investment adviser to a registered investment company, or any affiliated person of that investment adviser, that holds shares of the investment company in a trustee or fiduciary capacity if that registered investment company consists solely of assets 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).".

SEC. 223. STATUTORY DISQUALIFICATION FOR BANK WRONGDOING.

Section 9(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(a)) is amended in paragraphs (1) and (2) by striking "securities dealer, transfer agent," and inserting "securities dealer, bank, transfer agent,".

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 1(b) of the International Banking Act of 1978)".

SEC. 225. CONFORMING AMENDMENT.

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

"(c) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.".

SEC. 226. EFFECTIVE DATE.

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

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

SEC. 231. SUPERVISION OF INVESTMENT BANK HOLDING COMPANIES BY THE SECURITIES AND EXCHANGE COMMISSION.

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

(1) by redesignating subsection (i) as subsection (l); and

(2) by inserting after subsection (h) the following new subsections:

"(i) INVESTMENT BANK HOLDING COMPANIES.—

"(1) ELECTIVE SUPERVISION OF AN INVESTMENT BANK HOLDING COMPANY NOT HAVING A BANK OR SAVINGS ASSOCIATION AFFILIATE.—

"(A) IN GENERAL.—An investment bank holding company that is not—

"(i) an affiliate of an insured bank (other than an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956), or a savings association;

"(ii) a foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978; or

"(iii) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act,

may elect to become supervised by filing with the Commission a notice of intention to become supervised, pursuant to subparagraph (B) of this paragraph. Any investment bank holding company filing such a notice shall be supervised in accordance with this section and comply with the rules promulgated by the Commission applicable to supervised investment bank holding companies.

"(B) NOTIFICATION OF STATUS AS A SUPERVISED INVESTMENT BANK HOLDING COMPANY.—An investment bank holding company that elects under subparagraph (A) to become supervised by the Commission shall file with the Commission a written notice of intention to become supervised by the Commission in such form and containing such information and documents concerning such investment bank holding company as the Commission, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of this section. Unless the Commission finds that such supervision is not necessary or appropriate in furtherance of the purposes of this section, such supervision shall become effective 45 days after the date of receipt of such written notice by the Commission or within such shorter time period as the Commission, by rule or order, may determine.

"(2) ELECTION NOT TO BE SUPERVISED BY THE COMMISSION AS AN INVESTMENT BANK HOLDING COMPANY.—

"(A) VOLUNTARY WITHDRAWAL.—A supervised investment bank holding company that is supervised pursuant to paragraph (1) may, upon such terms and conditions as the Commission deems necessary or appropriate, elect not to be supervised by the Commission by filing a written notice of withdrawal from Commission supervision. Such notice shall not become effective until one year after receipt by the Commission, or such shorter or longer period as the Commission deems necessary or appropriate to ensure effective supervision of the material risks to the supervised investment bank holding company and to the affiliated broker or dealer, or to prevent evasion of the purposes of this section.

"(B) DISCONTINUATION OF COMMISSION SUPERVISION.—If the Commission finds that any supervised investment bank holding company that is supervised pursuant to paragraph (1) is no longer in existence or has ceased to be an investment bank holding company, or if the Commission finds that continued supervision of such a supervised investment bank holding company is not consistent with the purposes of this section, the Commission may discontinue the supervision pursuant to a rule or order, if any, promulgated by the Commission under this section.

"(3) SUPERVISION OF INVESTMENT BANK HOLDING COMPANIES.—

"(A) RECORDKEEPING AND REPORTING.—

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

"(I) the company's or affiliate's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions and relationships between any broker or dealer affiliate of the supervised investment bank holding company; and

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

"(ii) FORM AND CONTENTS.—Such records and reports shall be prepared in such form and according to such specifications (including certification by an independent public accountant), as the Commission may require and shall be provided promptly at any time upon request by the Commission. Such records and reports may include—

"(I) a balance sheet and income statement;

"(II) an assessment of the consolidated capital of the supervised investment bank holding company;

"(III) an independent auditor's report attesting to the supervised investment bank holding company's compliance with its internal risk management and internal control objectives; and

"(IV) reports concerning the extent to which the company or affiliate has complied with the provisions of this title and any regulations prescribed and orders issued under this title.

"(B) USE OF EXISTING REPORTS.—

"(i) IN GENERAL.—The Commission shall, to the fullest extent possible, accept reports in fulfillment of the requirements under this paragraph that the supervised investment bank holding company or its affiliates have been required to provide to another appropriate regulatory agency or self-regulatory organization.

"(ii) AVAILABILITY.—A supervised investment bank holding company or an affiliate of such company shall provide to the Commission, at the request of the Commission, any report referred to in clause (i).

"(C) EXAMINATION AUTHORITY.—

"(i) FOCUS OF EXAMINATION AUTHORITY.—The Commission may make examinations of any supervised investment bank holding company and any affiliate of such company in order to—

"(I) inform the Commission regarding—

"(aa) the nature of the operations and financial condition of the supervised investment bank holding company and its affiliates;

"(bb) the financial and operational risks within the supervised investment bank holding company that may affect any broker or dealer controlled by such supervised investment bank holding company; and

"(cc) the systems of the supervised investment bank holding company and its affiliates for monitoring and controlling those risks; and

"(II) monitor compliance with the provisions of this subsection, provisions governing transactions and relationships between any broker or dealer affiliated with the supervised investment bank holding company and any of the company's other affiliates, and applicable provisions of subchapter II of chapter 53, title 31, United States Code (commonly referred to as the 'Bank Secrecy Act') and regulations thereunder.

"(ii) RESTRICTED FOCUS OF EXAMINATIONS.—The Commission shall limit the focus and scope of any examination of a supervised investment bank holding company to—

"(I) the company; and

"(II) any affiliate of the company that, because of its size, condition, or activities, the nature or size of the transactions between such affiliate and any affiliated broker or dealer, or the centralization of functions within the holding company system, could, in the discretion of the Commission, have a materially adverse effect on the operational or financial condition of the broker or dealer.

"(iii) DEFERENCE TO OTHER EXAMINATIONS.—For purposes of this subparagraph, the Commission shall, to the fullest extent possible, use the reports of examination of an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956 made by the appropriate regulatory agency, or of a licensed insurance company made by the appropriate State insurance regulator.

"(4) HOLDING COMPANY CAPITAL.—

"(A) AUTHORITY.—If the Commission finds that it is necessary to adequately supervise investment bank holding companies and their broker or dealer affiliates consistent with the purposes of this subsection, the Commission may adopt capital adequacy rules for supervised investment bank holding companies.

"(B) METHOD OF CALCULATION.—In developing rules under this paragraph:

"(i) DOUBLE LEVERAGE.—The Commission shall consider the use by the supervised investment bank holding company of debt and other liabilities to fund capital investments in affiliates.

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

"(iii) NO CAPITAL REQUIREMENT ON REGULATED ENTITIES.—The Commission shall not, by rule, regulation, guideline, order or otherwise, impose any capital adequacy provision on a nonbanking affiliate (other than a broker or dealer) that is in compliance with applicable capital requirements of another Federal regulatory authority or State insurance authority.

"(iv) APPROPRIATE EXCLUSIONS.—The Commission shall take full account of the applicable capital requirements of another Federal regulatory authority or State insurance regulator.

"(C) INTERNAL RISK MANAGEMENT MODELS.—The Commission may incorporate internal risk management models into its capital adequacy rules for supervised investment bank holding companies.

"(5) FUNCTIONAL REGULATION OF BANKING AND INSURANCE ACTIVITIES OF SUPERVISED INVESTMENT BANK HOLDING COMPANIES.—The Commission shall defer to—

"(A) the appropriate regulatory agency with regard to all interpretations of, and the enforcement of, applicable banking laws relating to the activities, conduct, ownership, and operations of banks, and institutions described in subparagraph (D), (F), and (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956; and

"(B) the appropriate State insurance regulators with regard to all interpretations of, and the enforcement of, applicable State insurance laws relating to the activities, conduct, and operations of insurance companies and insurance agents.

"(6) DEFINITIONS.—For purposes of this subsection and subsection (j):

"(A) The term 'investment bank holding company' means—

"(i) any person other than a natural person that owns or controls one or more brokers or dealers; and

"(ii) the associated persons of the investment bank holding company.

"(B) The term 'supervised investment bank holding company' means any investment bank holding company that is supervised by the Commission pursuant to this subsection.

"(C) The terms 'affiliate', 'bank', 'bank holding company', 'company', 'control', 'savings association', and 'wholesale financial institution' have the meanings given to those terms in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

"(D) The term 'insured bank' has the meaning given to that term in section 3 of the Federal Deposit Insurance Act.

"(E) The term 'foreign bank' has the meaning given to that term in section 1(b)(7) of the International Banking Act of 1978.

"(F) The terms 'person associated with an investment bank holding company' and 'associated person of an investment bank holding company' mean any person directly or indirectly controlling, controlled by, or under common control with, an investment bank holding company.

"(j) COMMISSION BACKUP AUTHORITY.—

"(1) AUTHORITY.—The Commission may make inspections of any wholesale financial holding company (as defined in section 10A(a)(1) of the Bank Holding Company Act of 1956) that—

"(A) controls a wholesale financial institution;

"(B) is not a foreign bank; and

"(C) does not control an insured bank (other than an institution permitted under subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956) or a savings association, and any affiliate of such company, for the purpose of monitoring and enforcing compliance by the wholesale financial holding company with the Federal securities laws.

"(2) LIMITATION.—The Commission shall limit the focus and scope of any inspection under paragraph (1) to those transactions, policies, procedures, or records that are reasonably necessary to monitor and enforce compliance by the wholesale financial holding company or any affiliate with the Federal securities laws.

"(3) DEFERENCE TO EXAMINATIONS.—To the fullest extent possible, the Commission shall use, for the purposes of this subsection, the reports of examinations—

"(A) made by the Board of Governors of the Federal Reserve System of any wholesale financial holding company that is supervised by the Board;

"(B) made of any licensed insurance company by or on behalf of any State regulatory agency responsible for the supervision of an insurance company; and

"(C) made by any Federal or State banking agency of any bank or institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956.

"(4) NOTICE.—To the fullest extent possible, the Commission shall notify the appropriate regulatory agency prior to conducting an inspection of a wholesale financial institution or institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956.

"(k) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under subsection (h) or (i) or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a broker or dealer, investment bank holding company, or any affiliate of an investment bank holding company. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraphs (A), (B), and (C) of subsection (i)(5) as confidential information for purposes of section 24(b)(2) of this title.".

(b) CONFORMING AMENDMENTS.—

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

"(H) When used with respect to an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956—

"(i) the Comptroller of the Currency, in the case of a national bank or a bank in the District of Columbia examined by the Comptroller of the Currency;

"(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System or any corporation chartered under section 25A of the Federal Reserve Act;

"(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act; or

"(iv) the Commission in the case of all other such institutions.".

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

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

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

Subtitle D—Disclosure of Customer Costs of Acquiring Financial Products

SEC. 241. IMPROVED AND CONSISTENT DISCLOSURE.

(a) REVISED REGULATIONS REQUIRED.—Within one year after the date of enactment of this Act, each Federal financial regulatory authority shall prescribe rules, or revisions to its rules, to improve the accuracy, simplicity, and completeness, and to make more consistent, the disclosure of information by persons subject to the jurisdiction of such regulatory authority concerning any commissions, fees, or other costs incurred by customers in the acquisition of financial products.

(b) CONSULTATION.—In prescribing rules and revisions under subsection (a), the Federal financial regulatory authorities shall consult with each other and with appropriate State financial regulatory authorities.

(c) CONSIDERATION OF EXISTING DISCLOSURES.—In prescribing rules and revisions under subsection (a), the Federal financial regulatory authorities shall consider the sufficiency and appropriateness of then existing laws and rules applicable to persons subject to their jurisdiction, and may prescribe exemptions from the rules and revisions required by subsection (a) to the extent appropriate in light of the objective of this section to increase the consistency of disclosure practices.

(d) ENFORCEMENT.—Any rule prescribed by a Federal financial regulatory authority pursuant to this section shall, for purposes of enforcement, be treated as a rule prescribed by such regulatory authority pursuant to the statute establishing such regulatory authority's jurisdiction over the persons to whom such rule applies.

(e) DEFINITION.—As used in this section, the term "Federal financial regulatory authority" means the Board of Governors of the Federal Reserve System, the Securities and Exchange Commission, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Commodity Futures Trading Commission, and any self-regulatory organization under the supervision of any of the foregoing.

TITLE III—INSURANCE

Subtitle A—State Regulation of Insurance

SEC. 301. STATE REGULATION OF THE BUSINESS OF INSURANCE.

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

SEC. 302. MANDATORY INSURANCE LICENSING REQUIREMENTS.

No person shall engage in the business of insurance in a State as principal or agent unless such person is licensed as required by the appropriate insurance regulator of such State in accordance with the relevant State insurance law, subject to section 104.

SEC. 303. FUNCTIONAL REGULATION OF INSURANCE.

The insurance activities of any person (including a national bank exercising its power to act as agent under the 11th undesignated paragraph of section 13 of the Federal Reserve Act) shall be functionally regulated by the States, subject to section 104.

SEC. 304. INSURANCE UNDERWRITING IN NATIONAL BANKS.

(a) IN GENERAL.—Except as provided in section 305, a national bank and the subsidiaries of a national bank may not provide insurance in a State as principal except that this prohibition shall not apply to authorized products.

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

(1) as of January 1, 1999, the Comptroller of the Currency had determined in writing that national banks may provide such product as principal, or national banks were in fact lawfully providing such product as principal;

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

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

(c) DEFINITION.—For purposes of this section, the term "insurance" means—

(1) any product regulated as insurance as of January 1, 1999, in accordance with the relevant State insurance law, in the State in which the product is provided;

(2) any product first offered after January 1, 1999, which—

(A) a State insurance regulator determines shall be regulated as insurance in the State in which the product is provided because the product insures, guarantees, or indemnifies against liability, loss of life, loss of health, or loss through damage to or destruction of property, including, but not limited to, surety bonds, life insurance, health insurance, title insurance, and property and casualty insurance (such as private passenger or commercial automobile, homeowners, mortgage, commercial multiperil, general liability, professional liability, workers' compensation, fire and allied lines, farm owners multiperil, aircraft, fidelity, surety, medical malpractice, ocean marine, inland marine, and boiler and machinery insurance); and

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

(i) a deposit product;

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

(iii) a trust or other fiduciary service;

(iv) a qualified financial contract (as defined in or determined pursuant to section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act); or

(v) a financial guaranty, except that this subparagraph (B) shall not apply to a product that includes an insurance component such that if the product is offered or proposed to be offered by the bank as principal—

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

(II) in the event that the product is not a letter of credit or other similar extension of credit, a qualified financial contract, or a financial guaranty, it would qualify for treatment for losses incurred with respect to such product under section 832(b)(5) of the Internal Revenue Code of 1986, if the bank were subject to tax as an insurance company under section 831 of that Code; or

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

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

(a) GENERAL PROHIBITION.—No national bank, and no subsidiary of a national bank, may engage in any activity involving the underwriting or sale of title insurance.

(b) NONDISCRIMINATION PARITY EXCEPTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law (including section 104 of this Act), in the case of any State in which banks organized under the laws of such State are authorized to sell title insurance as agency, a national bank and a subsidiary of a national bank may sell title insurance as agent in such State, but only in the same manner, to the same extent, and under the same restrictions as such State banks are authorized to sell title insurance as agent in such State.

(2) COORDINATION WITH "WILDCARD" PROVISION.—A State law which authorizes State banks to engage in any activities in such State in which a national bank may engage shall not be treated as a statute which authorizes State banks to sell title insurance as agent, for purposes of paragraph (1).

(c) GRANDFATHERING WITH CONSISTENT REGULATION.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3) and notwithstanding subsections (a) and (b), a national bank, and a subsidiary of a national bank, may conduct title insurance activities which such national bank or subsidiary was actively and lawfully conducting before the date of the enactment of this Act.

(2) INSURANCE AFFILIATE.—In the case of a national bank which has an affiliate which provides insurance as principal and is not a subsidiary of the bank, the national bank and any subsidiary of the national bank may not engage in the underwriting of title insurance pursuant to paragraph (1).

(3) INSURANCE SUBSIDIARY.—In the case of a national bank which has a subsidiary which provides insurance as principal and has no affiliate other than a

subsidiary which provides insurance as principal, the national bank may not directly engage in any activity involving the underwriting of title insurance.

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

SEC. 306. EXPEDITED AND EQUALIZED DISPUTE RESOLUTION FOR FEDERAL REGULATORS.

(a) FILING IN COURT OF APPEALS.—In the case of a regulatory conflict between a State insurance regulator and a Federal regulator as to whether any product is or is not insurance, as defined in section 304(c) of this Act, or whether a State statute, regulation, order, or interpretation regarding any insurance sales or solicitation activity is properly treated as preempted under Federal law, either regulator may seek expedited judicial review of such determination by the United States Court of Appeals for the circuit in which the State is located or in the United States Court of Appeals for the District of Columbia Circuit by filing a petition for review in such court.

(b) EXPEDITED REVIEW.—The United States Court of Appeals in which a petition for review is filed in accordance with subsection (a) shall complete all action on such petition, including rendering a judgment, before the end of the 60-day period beginning on the date on which such petition is filed, unless all parties to such proceeding agree to any extension of such period.

(c) SUPREME COURT REVIEW.—Any request for certiorari to the Supreme Court of the United States of any judgment of a United States Court of Appeals with respect to a petition for review under this section shall be filed with the Supreme Court of the United States as soon as practicable after such judgment is issued.

(d) STATUTE OF LIMITATION.—No petition may be filed under this section challenging an order, ruling, determination, or other action of a Federal regulator or State insurance regulator after the later of—

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

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

(e) STANDARD OF REVIEW.—The court shall decide a petition filed under this section based on its review on the merits of all questions presented under State and Federal law, including the nature of the product or activity and the history and purpose of its regulation under State and Federal law, without unequal deference.

(f) LIMITATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), subsection (e) shall not apply to any petition involving the consideration of any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in section 104(b)(2)(A) that was adopted, issued, enacted, or taken before January 1, 1999, but only to the extent that such petition presents an issue with regard to—

(A) impeding affiliations between persons licensed to sell insurance and insured depository institutions by requiring that all shareholders of a licensee be licensed persons even if such persons do not engage in any activities that would otherwise require licensure, or by imposing any similar licensure requirement;

(B) limiting the volume or portion of insurance sales made by an agent on the basis of whether such sales are made to customers of affiliates of the agent; or

(C) requiring any office from which insurance is sold, or any office of an entity affiliated or otherwise associated with such insurance sales office, must be located in such State.

(2) EXCEPTIONS TO THE LIMITATION.—

(A) IN GENERAL.—Paragraph (1) shall not apply with respect to any State statute, regulation, order, interpretation, or other action described in section 104(b)(2)(B).

(B) RESIDENT INSURANCE AGENT REQUIREMENTS.—Subparagraph (C) of paragraph (1) shall not apply with respect to any resident insurance agent requirement that applies equally to all sellers of insurance in the State.

SEC. 307. CONSUMER PROTECTION REGULATIONS.

(a) REGULATIONS REQUIRED.—

(1) IN GENERAL.—The Federal banking agencies shall prescribe and publish in final form, before the end of the 1-year period beginning on the date of the enactment of this Act, consumer protection regulations (which the agencies jointly determine to be appropriate) that—

(A) apply to retail sales practices, solicitations, advertising, or offers of any insurance product by any insured depository institution or wholesale financial institution or any person who is engaged in such activities at an office of the institution or on behalf of the institution; and

(B) are consistent with the requirements of this Act and provide such additional protections for consumers to whom such sales, solicitations, advertising, or offers are directed as the agency determines to be appropriate.

(2) APPLICABILITY TO SUBSIDIARIES.—The regulations prescribed pursuant to paragraph (1) shall extend such protections to any subsidiaries of an insured depository institution or wholesale financial institution, as deemed appropriate by the regulators referred to in paragraph (3), where such extension is necessary to ensure the consumer protections provided by this section.

(3) CONSULTATION AND JOINT REGULATIONS.—The Federal banking agencies shall consult with each other and prescribe joint regulations pursuant to paragraph (1), after consultation with the State insurance regulators, as appropriate.

(b) SALES PRACTICES.—The regulations prescribed pursuant to subsection (a) shall include anticoercion rules applicable to the sale of insurance products which prohibit an insured depository institution or wholesale financial institution from engaging in any practice that would lead a consumer to believe an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970, is conditional upon—

(1) the purchase of an insurance product from the institution or any of its affiliates or subsidiaries; or

(2) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

(c) DISCLOSURES AND ADVERTISING.—The regulations prescribed pursuant to subsection (a) shall include the following provisions relating to disclosures and advertising in connection with the initial purchase of an insurance product:

(1) DISCLOSURES.—

(A) IN GENERAL.—Requirements that the following disclosures be made orally and in writing before the completion of the initial sale and, in the case of clause (iv), at the time of application for an extension of credit:

(i) UNINSURED STATUS.—As appropriate, the product is not insured by the Federal Deposit Insurance Corporation, the United States Government, or the insured depository institution or wholesale financial institution.

(ii) INVESTMENT RISK.—In the case of a variable annuity or other insurance product which involves an investment risk, that there is an investment risk associated with the product, including possible loss of value.

(iv) COERCION.—The approval of an extension of credit may not be conditioned on—

(I) the purchase of an insurance product from the institution in which the application for credit is pending or any of its affiliates or subsidiaries; or

(II) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

(B) MAKING DISCLOSURE READILY UNDERSTANDABLE.—Regulations prescribed under subparagraph (A) shall encourage the use of disclosure that is conspicuous, simple, direct, and readily understandable, such as the following:

(i) "NOT FDIC-INSURED".

(ii) "NOT GUARANTEED BY THE BANK".

(iii) "MAY GO DOWN IN VALUE".

(iv) "NOT INSURED BY ANY GOVERNMENT AGENCY".

(C) ADJUSTMENTS FOR ALTERNATIVE METHODS OF PURCHASE.—In prescribing the requirements under subparagraphs (A) and (D), necessary adjustments shall be made for purchase in person, by telephone, or by electronic media to provide for the most appropriate and complete form of disclosure and acknowledgements.

(D) CONSUMER ACKNOWLEDGEMENT.—A requirement that an insured depository institution or wholesale financial institution shall require any person selling an insurance product at any office of, or on behalf of, the institution to obtain, at the time a consumer receives the disclosures required under this paragraph or at the time of the initial purchase by the consumer

of such product, an acknowledgement by such consumer of the receipt of the disclosure required under this subsection with respect to such product.

(2) PROHIBITION ON MISREPRESENTATIONS.—A prohibition on any practice, or any advertising, at any office of, or on behalf of, the insured depository institution or wholesale financial institution, or any subsidiary thereof as appropriate, which could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to—

(A) the uninsured nature of any insurance product sold, or offered for sale, by the institution or any subsidiary of the institution; or

(B) in the case of a variable annuity or other insurance product that involves an investment risk, the investment risk associated with any such product.

(d) SEPARATION OF BANKING AND NONBANKING ACTIVITIES.—

(1) REGULATIONS REQUIRED.—The regulations prescribed pursuant to subsection (a) shall include such provisions as the Federal banking agencies consider appropriate to ensure that the routine acceptance of deposits and the making of loans is kept, to the extent practicable, physically segregated from insurance product activity.

(2) REQUIREMENTS.—Regulations prescribed pursuant to paragraph (1) shall include the following requirements:

(A) SEPARATE SETTING.—A clear delineation of the setting in which, and the circumstances under which, transactions involving insurance products should be conducted in a location physically segregated from an area where retail deposits are routinely accepted or loans are made.

(B) REFERRALS.—Standards which permit any person accepting deposits from, or making loans to, the public in an area where such transactions are routinely conducted in an insured depository institution or wholesale financial institution to refer a customer who seeks to purchase any insurance product to a qualified person who sells such product, only if the person making the referral receives no more than a one-time nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

(C) QUALIFICATION AND LICENSING REQUIREMENTS.—Standards prohibiting any insured depository institution or wholesale financial institution from permitting any person to sell or offer for sale any insurance product in any part of any office of the institution, or on behalf of the institution, unless such person is appropriately qualified and licensed.

(e) DOMESTIC VIOLENCE DISCRIMINATION PROHIBITION.—

(1) IN GENERAL.—In the case of an applicant for, or an insured under, any insurance product described in paragraph (2), the status of the applicant or insured as a victim of domestic violence, or as a provider of services to victims of domestic violence, shall not be considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of insurance policies, or payment of insurance claims, except as required or expressly permitted under State law.

(2) SCOPE OF APPLICATION.—The prohibition contained in paragraph (1) shall apply to any insurance product which is sold or offered for sale, as principal, agent, or broker, by any insured depository institution or wholesale financial institution or any person who is engaged in such activities at an office of the institution or on behalf of the institution.

(3) SENSE OF THE CONGRESS.—It is the sense of the Congress that, by the end of the 30-month period beginning on the date of the enactment of this Act, the States should enact prohibitions against discrimination with respect to insurance products that are at least as strict as the prohibitions contained in paragraph (1).

(4) DOMESTIC VIOLENCE DEFINED.—For purposes of this subsection, the term "domestic violence" means the occurrence of 1 or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

(A) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault.

(B) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm.

(C) Subjecting another person to false imprisonment.

(D) Attempting to cause or cause damage to property so as to intimidate or attempt to control the behavior of another person.

(f) CONSUMER GRIEVANCE PROCESS.—The Federal banking agencies shall jointly establish a consumer complaint mechanism, for receiving and expeditiously addressing consumer complaints alleging a violation of regulations issued under the section, which shall—

(1) establish a group within each regulatory agency to receive such complaints;

(2) develop procedures for investigating such complaints;

(3) develop procedures for informing consumers of rights they may have in connection with such complaints; and

(4) develop procedures for addressing concerns raised by such complaints, as appropriate, including procedures for the recovery of losses to the extent appropriate.

(g) EFFECT ON OTHER AUTHORITY.—

(1) IN GENERAL.—No provision of this section shall be construed as granting, limiting, or otherwise affecting—

(A) any authority of the Securities and Exchange Commission, any self-regulatory organization, the Municipal Securities Rulemaking Board, or the Secretary of the Treasury under any Federal securities law; or

(B) except as provided in paragraph (2), any authority of any State insurance commissioner or other State authority under any State law.

(2) COORDINATION WITH STATE LAW.—

(A) IN GENERAL.—Except as provided in subparagraph (B), regulations prescribed by a Federal banking agency under this section shall not apply to retail sales, solicitations, advertising, or offers of any insurance product by any insured depository institution or wholesale financial institution or to any person who is engaged in such activities at an office of such institution or on behalf of the institution, in a State where the State has in effect statutes, regulations, orders, or interpretations, that are inconsistent with or contrary to the regulations prescribed by the Federal banking agencies.

(B) PREEMPTION.—If, with respect to any provision of the regulations prescribed under this section, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Board of Directors of the Federal Deposit Insurance Corporation determine jointly that the protection afforded by such provision for consumers is greater than the protection provided by a comparable provision of the statutes, regulations, orders, or interpretations referred to in subparagraph (A) of any State, such provision of the regulations prescribed under this section shall supersede the comparable provision of such State statute, regulation, order, or interpretation.

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

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

(2) INSURANCE PRODUCT.—The term "insurance product" includes an annuity contract the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.

(3) WHOLESALE FINANCIAL INSTITUTION.—The term "wholesale financial institution" means a wholesale financial institution subject to section 9B of the Federal Reserve Act.

SEC. 308. CERTAIN STATE AFFILIATION LAWS PREEMPTED FOR INSURANCE COMPANIES AND AFFILIATES.

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

(1) prevent or significantly interfere with the ability of any insurer, or any affiliate of an insurer (whether such affiliate is organized as a stock company, mutual holding company, or otherwise), to become a financial holding company or to acquire control of an insured depository institution;

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

(3) prevent, significantly interfere with, or have the authority to review, approve, or disapprove a plan of reorganization by which an insurer proposes to

reorganize from mutual form to become a stock insurer (whether as a direct or indirect subsidiary of a mutual holding company or otherwise) unless such State is the State of domicile of the insurer.

SEC. 309. INTERAGENCY CONSULTATION.

(a) PURPOSE.—It is the intention of Congress that the Board of Governors of the Federal Reserve System, as the umbrella supervisor for financial holding companies, and the State insurance regulators, as the functional regulators of companies engaged in insurance activities, coordinate efforts to supervise companies that control both a depository institution and a company engaged in insurance activities regulated under State law. In particular, Congress believes that the Board and the State insurance regulators should share, on a confidential basis, information relevant to the supervision of companies that control both a depository institution and a company engaged in insurance activities, including information regarding the financial health of the consolidated organization and information regarding transactions and relationships between insurance companies and affiliated depository institutions. The appropriate Federal banking agencies for depository institutions should also share, on a confidential basis, information with the relevant State insurance regulators regarding transactions and relationships between depository institutions and affiliated companies engaged in insurance activities. The purpose of this section is to encourage this coordination and confidential sharing of information, and to thereby improve both the efficiency and the quality of the supervision of financial holding companies and their affiliated depository institutions and companies engaged in insurance activities.

(b) EXAMINATION RESULTS AND OTHER INFORMATION.—

(1) INFORMATION OF THE BOARD.—Upon the request of the appropriate insurance regulator of any State, the Board may provide any information of the Board regarding the financial condition, risk management policies, and operations of any financial holding company that controls a company that is engaged in insurance activities and is regulated by such State insurance regulator, and regarding any transaction or relationship between such an insurance company and any affiliated depository institution. The Board may provide any other information to the appropriate State insurance regulator that the Board believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

(2) BANKING AGENCY INFORMATION.—Upon the request of the appropriate insurance regulator of any State, the appropriate Federal banking agency may provide any information of the agency regarding any transaction or relationship between a depository institution supervised by such Federal banking agency and any affiliated company that is engaged in insurance activities regulated by such State insurance regulator. The appropriate Federal banking agency may provide any other information to the appropriate State insurance regulator that the agency believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

(3) STATE INSURANCE REGULATOR INFORMATION.—Upon the request of the Board or the appropriate Federal banking agency, a State insurance regulator may provide any examination or other reports, records, or other information to which such insurance regulator may have access with respect to a company which—

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

(B) is an affiliate of an insured depository institution, wholesale financial institution, or financial holding company.

(c) CONSULTATION.—Before making any determination relating to the initial affiliation of, or the continuing affiliation of, an insured depository institution, wholesale financial institution, or financial holding company with a company engaged in insurance activities, the appropriate Federal banking agency shall consult with the appropriate State insurance regulator of such company and take the views of such insurance regulator into account in making such determination.

(d) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to an insured depository institution, wholesale financial institution, or bank holding company or any affiliate thereof under any provision of law.

(e) CONFIDENTIALITY AND PRIVILEGE.—

(1) CONFIDENTIALITY.—The appropriate Federal banking agency shall not provide any information or material that is entitled to confidential treatment under applicable Federal banking agency regulations, or other applicable law, to a State insurance regulator unless such regulator agrees to maintain the informa-

tion or material in confidence and to take all reasonable steps to oppose any effort to secure disclosure of the information or material by the regulator. The appropriate Federal banking agency shall treat as confidential any information or material obtained from a State insurance regulator that is entitled to confidential treatment under applicable State regulations, or other applicable law, and take all reasonable steps to oppose any effort to secure disclosure of the information or material by the Federal banking agency.

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

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

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

(2) BOARD; FINANCIAL HOLDING COMPANY; AND WHOLESALE FINANCIAL INSTITUTION.—The terms "Board", "financial holding company", and "wholesale financial institution" have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

SEC. 310. DEFINITION OF STATE.

For purposes of this subtitle, the term "State" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

Subtitle B—Redomestication of Mutual Insurers

SEC. 311. GENERAL APPLICATION.

This subtitle shall only apply to a mutual insurance company in a State which has not enacted a law which expressly establishes reasonable terms and conditions for a mutual insurance company domiciled in such State to reorganize into a mutual holding company.

SEC. 312. REDOMESTICATION OF MUTUAL INSURERS.

(a) REDOMESTICATION.—A mutual insurer organized under the laws of any State may transfer its domicile to a transferee domicile as a step in a reorganization in which, pursuant to the laws of the transferee domicile and consistent with the standards in subsection (f), the mutual insurer becomes a stock insurer that is a direct or indirect subsidiary of a mutual holding company.

(b) RESULTING DOMICILE.—Upon complying with the applicable law of the transferee domicile governing transfers of domicile and completion of a transfer pursuant to this section, the mutual insurer shall cease to be a domestic insurer in the transferor domicile and, as a continuation of its corporate existence, shall be a domestic insurer of the transferee domicile.

(c) LICENSES PRESERVED.—The certificate of authority, agents' appointments and licenses, rates, approvals and other items that a licensed State allows and that are in existence immediately prior to the date that a redomesticating insurer transfers its domicile pursuant to this subtitle shall continue in full force and effect upon transfer, if the insurer remains duly qualified to transact the business of insurance in such licensed State.

(d) EFFECTIVENESS OF OUTSTANDING POLICIES AND CONTRACTS.—

(1) IN GENERAL.—All outstanding insurance policies and annuities contracts of a redomesticating insurer shall remain in full force and effect and need not be endorsed as to the new domicile of the insurer, unless so ordered by the State insurance regulator of a licensed State, and then only in the case of outstanding policies and contracts whose owners reside in such licensed State.

(2) FORMS.—

(A) Applicable State law may require a redomesticating insurer to file new policy forms with the State insurance regulator of a licensed State on or before the effective date of the transfer.

(B) Notwithstanding subparagraph (A), a redomesticating insurer may use existing policy forms with appropriate endorsements to reflect the new domicile of the redomesticating insurer until the new policy forms are approved for use by the State insurance regulator of such licensed State.

(e) NOTICE.—A redomesticating insurer shall give notice of the proposed transfer to the State insurance regulator of each licensed State and shall file promptly any resulting amendments to corporate documents required to be filed by a foreign licensed mutual insurer with the insurance regulator of each such licensed State.

(f) PROCEDURAL REQUIREMENTS.—No mutual insurer may redomesticate to another State and reorganize into a mutual holding company pursuant to this section unless the State insurance regulator of the transferee domicile determines that the plan of reorganization of the insurer includes the following requirements:

(1) APPROVAL BY BOARD OF DIRECTORS AND POLICYHOLDERS.—The reorganization is approved by at least a majority of the board of directors of the mutual insurer and at least a majority of the policyholders who vote after notice, disclosure of the reorganization and the effects of the transaction on policyholder contractual rights, and reasonable opportunity to vote, in accordance with such notice, disclosure, and voting procedures as are approved by the State insurance regulator of the transferee domicile.

(2) CONTINUED VOTING CONTROL BY POLICYHOLDERS; REVIEW OF PUBLIC STOCK OFFERING.—After the consummation of a reorganization, the policyholders of the reorganized insurer shall have the same voting rights with respect to the mutual holding company as they had before the reorganization with respect to the mutual insurer. With respect to an initial public offering of stock, the offering shall be conducted in compliance with applicable securities laws and in a manner approved by the State insurance regulator of the transferee domicile.

(3) AWARD OF STOCK OR GRANT OF OPTIONS TO OFFICERS AND DIRECTORS.—For a period of 6 months after completion of an initial public offering, neither a stock holding company nor the converted insurer shall award any stock options or stock grants to persons who are elected officers or directors of the mutual holding company, the stock holding company, or the converted insurer, except with respect to any such awards or options to which a person is entitled as a policyholder and as approved by the State insurance regulator of the transferee domicile.

(4) CONTRACTUAL RIGHTS.—Upon reorganization into a mutual holding company, the contractual rights of the policyholders are preserved.

(5) FAIR AND EQUITABLE TREATMENT OF POLICYHOLDERS.—The reorganization is approved as fair and equitable to the policyholders by the insurance regulator of the transferee domicile.

SEC. 313. EFFECT ON STATE LAWS RESTRICTING REDOMESTICATION.

(a) IN GENERAL.—Unless otherwise permitted by this subtitle, State laws of any transferor domicile that conflict with the purposes and intent of this subtitle are preempted, including but not limited to—

(1) any law that has the purpose or effect of impeding the activities of, taking any action against, or applying any provision of law or regulation to, any insurer or an affiliate of such insurer because that insurer or any affiliate plans to redomesticate, or has redomesticated, pursuant to this subtitle;

(2) any law that has the purpose or effect of impeding the activities of, taking action against, or applying any provision of law or regulation to, any insured or any insurance licensee or other intermediary because such person has procured insurance from or placed insurance with any insurer or affiliate of such insurer that plans to redomesticate, or has redomesticated, pursuant to this subtitle, but only to the extent that such law would treat such insured licensee or other intermediary differently than if the person procured insurance from, or placed insurance with, an insured licensee or other intermediary which had not redomesticated;

(3) any law that has the purpose or effect of terminating, because of the redomestication of a mutual insurer pursuant to this subtitle, any certificate of authority, agent appointment or license, rate approval, or other approval, of any State insurance regulator or other State authority in existence immediately prior to the redomestication in any State other than the transferee domicile.

(b) DIFFERENTIAL TREATMENT PROHIBITED.—No State law, regulation, interpretation, or functional equivalent thereof, of a State other than a transferee domicile may treat a redomesticating or redomesticated insurer or any affiliate thereof any differently than an insurer operating in that State that is not a redomesticating or redomesticated insurer.

(c) LAWS PROHIBITING OPERATIONS.—If any licensed State fails to issue, delays the issuance of, or seeks to revoke an original or renewal certificate of authority of a redomesticated insurer immediately following redomestication, except on grounds and in a manner consistent with its past practices regarding the issuance of certificates of authority to foreign insurers that are not redomesticating, then the re-

domesticating insurer shall be exempt from any State law of the licensed State to the extent that such State law or the operation of such State law would make unlawful, or regulate, directly or indirectly, the operation of the redomesticated insurer, except that such licensed State may require the redomesticated insurer to—

(1) comply with the unfair claim settlement practices law of the licensed State;

(2) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on licensed insurers or policyholders under the laws of the licensed State;

(3) register with and designate the State insurance regulator as its agent solely for the purpose of receiving service of legal documents or process;

(4) submit to an examination by the State insurance regulator in any licensed state in which the redomesticated insurer is doing business to determine the insurer's financial condition, if—

(A) the State insurance regulator of the transferee domicile has not begun an examination of the redomesticated insurer and has not scheduled such an examination to begin before the end of the 1-year period beginning on the date of the redomestication; and

(B) any such examination is coordinated to avoid unjustified duplication and repetition;

(5) comply with a lawful order issued in—

(A) a delinquency proceeding commenced by the State insurance regulator of any licensed State if there has been a judicial finding of financial impairment under paragraph (7); or

(B) a voluntary dissolution proceeding;

(6) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the licensed State seeks an injunction regarding the conduct described in this paragraph, such injunction must be obtained from a court of competent jurisdiction as provided in section 314(a);

(7) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance regulator alleging that the redomesticating insurer is in hazardous financial condition or is financially impaired;

(8) participate in any insurance insolvency guaranty association on the same basis as any other insurer licensed in the licensed State; and

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

SEC. 314. OTHER PROVISIONS.

(a) JUDICIAL REVIEW.—The appropriate United States district court shall have exclusive jurisdiction over litigation arising under this section involving any redomesticating or redomesticated insurer.

(b) SEVERABILITY.—If any provision of this section, or the application thereof to any person or circumstances, is held invalid, the remainder of the section, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 315. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) COURT OF COMPETENT JURISDICTION.—The term "court of competent jurisdiction" means a court authorized pursuant to section 314(a) to adjudicate litigation arising under this subtitle.

(2) DOMICILE.—The term "domicile" means the State in which an insurer is incorporated, chartered, or organized.

(3) INSURANCE LICENSEE.—The term "insurance licensee" means any person holding a license under State law to act as insurance agent, subagent, broker, or consultant.

(4) INSTITUTION.—The term "institution" means a corporation, joint stock company, limited liability company, limited liability partnership, association, trust, partnership, or any similar entity.

(5) LICENSED STATE.—The term "licensed State" means any State, the District of Columbia, American Samoa, Guam, Puerto Rico, or the United States Virgin Islands in which the redomesticating insurer has a certificate of authority in effect immediately prior to the redomestication.

(6) MUTUAL INSURER.—The term "mutual insurer" means a mutual insurer organized under the laws of any State.

(7) PERSON.—The term "person" means an individual, institution, government or governmental agency, State or political subdivision of a State, public corporation, board, association, estate, trustee, or fiduciary, or other similar entity.

(8) POLICYHOLDER.—The term "policyholder" means the owner of a policy issued by a mutual insurer, except that, with respect to voting rights, the term means a member of a mutual insurer or mutual holding company granted the right to vote, as determined under applicable State law.

(9) REDOMESTICATED INSURER.—The term "redomesticated insurer" means a mutual insurer that has redomesticated pursuant to this subtitle.

(10) REDOMESTICATING INSURER.—The term "redomesticating insurer" means a mutual insurer that is redomesticating pursuant to this subtitle.

(11) REDOMESTICATION OR TRANSFER.—The terms "redomestication" and "transfer" mean the transfer of the domicile of a mutual insurer from one State to another State pursuant to this subtitle.

(12) STATE INSURANCE REGULATOR.—The term "State insurance regulator" means the principal insurance regulatory authority of a State, the District of Columbia, American Samoa, Guam, Puerto Rico, or the United States Virgin Islands.

(13) STATE LAW.—The term "State law" means the statutes of any State, the District of Columbia, American Samoa, Guam, Puerto Rico, or the United States Virgin Islands and any regulation, order, or requirement prescribed pursuant to any such statute.

(14) TRANSFEREE DOMICILE.—The term "transferee domicile" means the State to which a mutual insurer is redomesticating pursuant to this subtitle.

(15) TRANSFEROR DOMICILE.—The term "transferor domicile" means the State from which a mutual insurer is redomesticating pursuant to this subtitle.

SEC. 316. EFFECTIVE DATE.

This subtitle shall take effect on the date of the enactment of this Act.

Subtitle C—National Association of Registered Agents and Brokers

SEC. 321. STATE FLEXIBILITY IN MULTISTATE LICENSING REFORMS.

(a) IN GENERAL.—The provisions of this subtitle shall take effect unless, not later than 3 years after the date of enactment of this Act, at least a majority of the States—

(1) have enacted uniform laws and regulations governing the licensure of individuals and entities authorized to sell and solicit the purchase of insurance within the State; or

(2) have enacted reciprocity laws and regulations governing the licensure of nonresident individuals and entities authorized to sell and solicit insurance within those States.

(b) UNIFORMITY REQUIRED.—States shall be deemed to have established the uniformity necessary to satisfy subsection (a)(1) if the States—

(1) establish uniform criteria regarding the integrity, personal qualifications, education, training, and experience of licensed insurance producers, including the qualification and training of sales personnel in ascertaining the appropriateness of a particular insurance product for a prospective customer;

(2) establish uniform continuing education requirements for licensed insurance producers;

(3) establish uniform ethics course requirements for licensed insurance producers in conjunction with the continuing education requirements under paragraph (2);

(4) establish uniform criteria to ensure that an insurance product, including any annuity contract, sold to a consumer is suitable and appropriate for the consumer based on financial information disclosed by the consumer; and

(5) do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that counter-signature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.

(c) RECIPROCITY REQUIRED.—States shall be deemed to have established the reciprocity required to satisfy subsection (a)(2) if the following conditions are met:

(1) ADMINISTRATIVE LICENSING PROCEDURES.—At least a majority of the States permit a producer that has a resident license for selling or soliciting the purchase of insurance in its home State to receive a license to sell or solicit the purchase of insurance in such majority of States as a nonresident to the same extent that such producer is permitted to sell or solicit the purchase of insurance in its State, if the producer's home State also awards such licenses on such a reciprocal basis, without satisfying any additional requirements other than submitting—

(A) a request for licensure;

(B) the application for licensure that the producer submitted to its home State;

(C) proof that the producer is licensed and in good standing in its home State; and

(D) the payment of any requisite fee to the appropriate authority.

(2) CONTINUING EDUCATION REQUIREMENTS.—A majority of the States accept an insurance producer's satisfaction of its home State's continuing education requirements for licensed insurance producers to satisfy the States' own continuing education requirements if the producer's home State also recognizes the satisfaction of continuing education requirements on such a reciprocal basis.

(3) NO LIMITING NONRESIDENT REQUIREMENTS.—A majority of the States do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that countersignature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.

(4) RECIPROCAL RECIPROCITY.—Each of the States that satisfies paragraphs (1), (2), and (3) grants reciprocity to residents of all of the other States that satisfy such paragraphs.

(d) DETERMINATION.—

(1) NAIC DETERMINATION.—At the end of the 3-year period beginning on the date of the enactment of this Act, the National Association of Insurance Commissioners shall determine, in consultation with the insurance commissioners or chief insurance regulatory officials of the States, whether the uniformity or reciprocity required by subsections (b) and (c) has been achieved.

(2) JUDICIAL REVIEW.—The appropriate United States district court shall have exclusive jurisdiction over any challenge to the National Association of Insurance Commissioners' determination under this section and such court shall apply the standards set forth in section 706 of title 5, United States Code, when reviewing any such challenge.

(e) CONTINUED APPLICATION.—If, at any time, the uniformity or reciprocity required by subsections (b) and (c) no longer exists, the provisions of this subtitle shall take effect 2 years after the date on which such uniformity or reciprocity ceases to exist, unless the uniformity or reciprocity required by those provisions is satisfied before the expiration of that 2-year period.

(f) SAVINGS PROVISION.—No provision of this section shall be construed as requiring that any law, regulation, provision, or action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including countersignature laws, be altered or amended in order to satisfy the uniformity or reciprocity required by subsections (b) and (c), unless any such law, regulation, provision, or action is inconsistent with a specific requirement of any such subsection and then only to the extent of such inconsistency.

(g) UNIFORM LICENSING.—Nothing in this section shall be construed to require any State to adopt new or additional licensing requirements to achieve the uniformity necessary to satisfy subsection (a)(1).

SEC. 322. NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS.

(a) ESTABLISHMENT.—There is established the National Association of Registered Agents and Brokers (hereafter in this subtitle referred to as the "Association").

(b) STATUS.—The Association shall—

(1) be a nonprofit corporation;

(2) have succession until dissolved by an Act of Congress;

(3) not be an agent or instrumentality of the United States Government; and

(4) except as otherwise provided in this Act, be subject to, and have all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29y–1001 et seq.).

SEC. 323. PURPOSE.

The purpose of the Association shall be to provide a mechanism through which uniform licensing, appointment, continuing education, and other insurance producer sales qualification requirements and conditions can be adopted and applied on a multistate basis, while preserving the right of States to license, supervise, and discipline insurance producers and to prescribe and enforce laws and regulations with regard to insurance-related consumer protection and unfair trade practices.

SEC. 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT.

The Association shall be subject to the supervision and oversight of the National Association of Insurance Commissioners (hereafter in this subtitle referred to as the "NAIC").

SEC. 325. MEMBERSHIP.

(a) ELIGIBILITY.—

(1) IN GENERAL.—Any State-licensed insurance producer shall be eligible to become a member in the Association.

(2) INELIGIBILITY FOR SUSPENSION OR REVOCATION OF LICENSE.—Notwithstanding paragraph (1), a State-licensed insurance producer shall not be eligible to become a member if a State insurance regulator has suspended or revoked such producer's license in that State during the 3-year period preceding the date on which such producer applies for membership.

(3) RESUMPTION OF ELIGIBILITY.—Paragraph (2) shall cease to apply to any insurance producer if—

(A) the State insurance regulator renews the license of such producer in the State in which the license was suspended or revoked; or

(B) the suspension or revocation is subsequently overturned.

(b) AUTHORITY TO ESTABLISH MEMBERSHIP CRITERIA.—The Association shall have the authority to establish membership criteria that—

(1) bear a reasonable relationship to the purposes for which the Association was established; and

(2) do not unfairly limit the access of smaller agencies to the Association membership.

(c) ESTABLISHMENT OF CLASSES AND CATEGORIES.—

(1) CLASSES OF MEMBERSHIP.—The Association may establish separate classes of membership, with separate criteria, if the Association reasonably determines that performance of different duties requires different levels of education, training, or experience.

(2) CATEGORIES.—The Association may establish separate categories of membership for individuals and for other persons. The establishment of any such categories of membership shall be based either on the types of licensing categories that exist under State laws or on the aggregate amount of business handled by an insurance producer. No special categories of membership, and no distinct membership criteria, shall be established for members which are insured depository institutions or wholesale financial institutions or for their employees, agents, or affiliates.

(d) MEMBERSHIP CRITERIA.—

(1) IN GENERAL.—The Association may establish criteria for membership which shall include standards for integrity, personal qualifications, education, training, and experience.

(2) MINIMUM STANDARD.—In establishing criteria under paragraph (1), the Association shall consider the highest levels of insurance producer qualifications established under the licensing laws of the States.

(e) EFFECT OF MEMBERSHIP.—Membership in the Association shall entitle the member to licensure in each State for which the member pays the requisite fees, including licensing fees and, where applicable, bonding requirements, set by such State.

(f) ANNUAL RENEWAL.—Membership in the Association shall be renewed on an annual basis.

(g) CONTINUING EDUCATION.—The Association shall establish, as a condition of membership, continuing education requirements which shall be comparable to or greater than the continuing education requirements under the licensing laws of a majority of the States.

(h) SUSPENSION AND REVOCATION.—The Association may—

(1) inspect and examine the records and offices of the members of the Association to determine compliance with the criteria for membership established by the Association; and

(2) suspend or revoke the membership of an insurance producer if—

(A) the producer fails to meet the applicable membership criteria of the Association; or

(B) the producer has been subject to disciplinary action pursuant to a final adjudicatory proceeding under the jurisdiction of a State insurance regulator, and the Association concludes that retention of membership in the Association would not be in the public interest.

(i) OFFICE OF CONSUMER COMPLAINTS.—

(1) IN GENERAL.—The Association shall establish an office of consumer complaints that shall—

(A) receive and investigate complaints from both consumers and State insurance regulators related to members of the Association; and

(B) recommend to the Association any disciplinary actions that the office considers appropriate, to the extent that any such recommendation is not inconsistent with State law.

(2) RECORDS AND REFERRALS.—The office of consumer complaints of the Association shall—

(A) maintain records of all complaints received in accordance with paragraph (1) and make such records available to the NAIC and to each State insurance regulator for the State of residence of the consumer who filed the complaint; and

(B) refer, when appropriate, any such complaint to any appropriate State insurance regulator.

(3) TELEPHONE AND OTHER ACCESS.—The office of consumer complaints shall maintain a toll-free telephone number for the purpose of this subsection and, as practicable, other alternative means of communication with consumers, such as an Internet home page.

SEC. 326. BOARD OF DIRECTORS.

(a) ESTABLISHMENT.—There is established the board of directors of the Association (hereafter in this subtitle referred to as the "Board") for the purpose of governing and supervising the activities of the Association and the members of the Association.

(b) POWERS.—The Board shall have such powers and authority as may be specified in the bylaws of the Association.

(c) COMPOSITION.—

(1) MEMBERS.—The Board shall be composed of 7 members appointed by the NAIC.

(2) REQUIREMENT.—At least 4 of the members of the Board shall have significant experience with the regulation of commercial lines of insurance in at least 1 of the 20 States in which the greatest total dollar amount of commercial-lines insurance is placed in the United States.

(3) INITIAL BOARD MEMBERSHIP.—

(A) IN GENERAL.—If, by the end of the 2-year period beginning on the date of enactment of this Act, the NAIC has not appointed the initial 7 members of the Board of the Association, the initial Board shall consist of the 7 State insurance regulators of the 7 States with the greatest total dollar amount of commercial-lines insurance in place as of the end of such period.

(B) ALTERNATE COMPOSITION.—If any of the State insurance regulators described in subparagraph (A) declines to serve on the Board, the State insurance regulator with the next greatest total dollar amount of commercial-lines insurance in place, as determined by the NAIC as of the end of such period, shall serve as a member of the Board.

(C) INOPERABILITY.—If fewer than 7 State insurance regulators accept appointment to the Board, the Association shall be established without NAIC oversight pursuant to section 332.

(d) TERMS.—The term of each director shall, after the initial appointment of the members of the Board, be for 3 years, with ⅓ of the directors to be appointed each year.

(e) BOARD VACANCIES.—A vacancy on the Board shall be filled in the same manner as the original appointment of the initial Board for the remainder of the term of the vacating member.

(f) MEETINGS.—The Board shall meet at the call of the chairperson, or as otherwise provided by the bylaws of the Association.

SEC. 327. OFFICERS.

(a) IN GENERAL.—

(1) POSITIONS.—The officers of the Association shall consist of a chairperson and a vice chairperson of the Board, a president, secretary, and treasurer of the

Association, and such other officers and assistant officers as may be deemed necessary.

(2) MANNER OF SELECTION.—Each officer of the Board and the Association shall be elected or appointed at such time and in such manner and for such terms not exceeding 3 years as may be prescribed in the bylaws of the Association.

(b) CRITERIA FOR CHAIRPERSON.—Only individuals who are members of the NAIC shall be eligible to serve as the chairperson of the board of directors.

SEC. 328. BYLAWS, RULES, AND DISCIPLINARY ACTION.

(a) ADOPTION AND AMENDMENT OF BYLAWS.—

(1) COPY REQUIRED TO BE FILED WITH THE NAIC.—The board of directors of the Association shall file with the NAIC a copy of the proposed bylaws or any proposed amendment to the bylaws, accompanied by a concise general statement of the basis and purpose of such proposal.

(2) EFFECTIVE DATE.—Except as provided in paragraph (3), any proposed bylaw or proposed amendment shall take effect—

(A) 30 days after the date of the filing of a copy with the NAIC;

(B) upon such later date as the Association may designate; or

(C) upon such earlier date as the NAIC may determine.

(3) DISAPPROVAL BY THE NAIC.—Notwithstanding paragraph (2), a proposed bylaw or amendment shall not take effect if, after public notice and opportunity to participate in a public hearing—

(A) the NAIC disapproves such proposal as being contrary to the public interest or contrary to the purposes of this subtitle and provides notice to the Association setting forth the reasons for such disapproval; or

(B) the NAIC finds that such proposal involves a matter of such significant public interest that public comment should be obtained, in which case it may, after notifying the Association in writing of such finding, require that the procedures set forth in subsection (b) be followed with respect to such proposal, in the same manner as if such proposed bylaw change were a proposed rule change within the meaning of such subsection.

(b) ADOPTION AND AMENDMENT OF RULES.—

(1) FILING PROPOSED REGULATIONS WITH THE NAIC.—

(A) IN GENERAL.—The board of directors of the Association shall file with the NAIC a copy of any proposed rule or any proposed amendment to a rule of the Association which shall be accompanied by a concise general statement of the basis and purpose of such proposal.

(B) OTHER RULES AND AMENDMENTS INEFFECTIVE.—No proposed rule or amendment shall take effect unless approved by the NAIC or otherwise permitted in accordance with this paragraph.

(2) INITIAL CONSIDERATION BY THE NAIC.—Not later than 35 days after the date of publication of notice of filing of a proposal, or before the end of such longer period not to exceed 90 days as the NAIC may designate after such date, if the NAIC finds such longer period to be appropriate and sets forth its reasons for so finding, or as to which the Association consents, the NAIC shall—

(A) by order approve such proposed rule or amendment; or

(B) institute proceedings to determine whether such proposed rule or amendment should be modified or disapproved.

(3) NAIC PROCEEDINGS.—

(A) IN GENERAL.—Proceedings instituted by the NAIC with respect to a proposed rule or amendment pursuant to paragraph (2) shall—

(i) include notice of the grounds for disapproval under consideration;

(ii) provide opportunity for hearing; and

(iii) be concluded not later than 180 days after the date of the Association's filing of such proposed rule or amendment.

(B) DISPOSITION OF PROPOSAL.—At the conclusion of any proceeding under subparagraph (A), the NAIC shall, by order, approve or disapprove the proposed rule or amendment.

(C) EXTENSION OF TIME FOR CONSIDERATION.—The NAIC may extend the time for concluding any proceeding under subparagraph (A) for—

(i) not more than 60 days if the NAIC finds good cause for such extension and sets forth its reasons for so finding; or

(ii) for such longer period as to which the Association consents.

(4) STANDARDS FOR REVIEW.—

(A) GROUNDS FOR APPROVAL.—The NAIC shall approve a proposed rule or amendment if the NAIC finds that the rule or amendment is in the public interest and is consistent with the purposes of this Act.

(B) APPROVAL BEFORE END OF NOTICE PERIOD.—The NAIC shall not approve any proposed rule before the end of the 30-day period beginning on the date on which the Association files proposed rules or amendments in accordance with paragraph (1), unless the NAIC finds good cause for so doing and sets forth the reasons for so finding.

(5) ALTERNATE PROCEDURE.—

(A) IN GENERAL.—Notwithstanding any provision of this subsection other than subparagraph (B), a proposed rule or amendment relating to the administration or organization of the Association shall take effect—

(i) upon the date of filing with the NAIC, if such proposed rule or amendment is designated by the Association as relating solely to matters which the NAIC, consistent with the public interest and the purposes of this subsection, determines by rule do not require the procedures set forth in this paragraph; or

(ii) upon such date as the NAIC shall for good cause determine.

(B) ABROGATION BY THE NAIC.—

(i) IN GENERAL.—At any time within 60 days after the date of filing of any proposed rule or amendment under subparagraph (A)(i) or clause (ii) of this subparagraph, the NAIC may repeal such rule or amendment and require that the rule or amendment be refiled and reviewed in accordance with this paragraph, if the NAIC finds that such action is necessary or appropriate in the public interest, for the protection of insurance producers or policyholders, or otherwise in furtherance of the purposes of this subtitle.

(ii) EFFECT OF RECONSIDERATION BY THE NAIC.—Any action of the NAIC pursuant to clause (i) shall—

(I) not affect the validity or force of a rule change during the period such rule or amendment was in effect; and

(II) not be considered to be a final action.

(c) ACTION REQUIRED BY THE NAIC.—The NAIC may, in accordance with such rules as the NAIC determines to be necessary or appropriate to the public interest or to carry out the purposes of this subtitle, require the Association to adopt, amend, or repeal any bylaw, rule or amendment of the Association, whenever adopted.

(d) DISCIPLINARY ACTION BY THE ASSOCIATION.—

(1) SPECIFICATION OF CHARGES.—In any proceeding to determine whether membership shall be denied, suspended, revoked, or not renewed (hereafter in this section referred to as a "disciplinary action"), the Association shall bring specific charges, notify such member of such charges, give the member an opportunity to defend against the charges, and keep a record.

(2) SUPPORTING STATEMENT.—A determination to take disciplinary action shall be supported by a statement setting forth—

(A) any act or practice in which such member has been found to have been engaged;

(B) the specific provision of this subtitle, the rules or regulations under this subtitle, or the rules of the Association which any such act or practice is deemed to violate; and

(C) the sanction imposed and the reason for such sanction.

(e) NAIC REVIEW OF DISCIPLINARY ACTION.—

(1) NOTICE TO THE NAIC.—If the Association orders any disciplinary action, the Association shall promptly notify the NAIC of such action.

(2) REVIEW BY THE NAIC.—Any disciplinary action taken by the Association shall be subject to review by the NAIC—

(A) on the NAIC's own motion; or

(B) upon application by any person aggrieved by such action if such application is filed with the NAIC not more than 30 days after the later of—

(i) the date the notice was filed with the NAIC pursuant to paragraph (1); or

(ii) the date the notice of the disciplinary action was received by such aggrieved person.

(f) EFFECT OF REVIEW.—The filing of an application to the NAIC for review of a disciplinary action, or the institution of review by the NAIC on the NAIC's own motion, shall not operate as a stay of disciplinary action unless the NAIC otherwise orders.

(g) SCOPE OF REVIEW.—

(1) IN GENERAL.—In any proceeding to review such action, after notice and the opportunity for hearing, the NAIC shall—

(A) determine whether the action should be taken;

(B) affirm, modify, or rescind the disciplinary sanction; or

(C) remand to the Association for further proceedings.

(2) DISMISSAL OF REVIEW.—The NAIC may dismiss a proceeding to review disciplinary action if the NAIC finds that—

(A) the specific grounds on which the action is based exist in fact;

(B) the action is in accordance with applicable rules and regulations; and

(C) such rules and regulations are, and were, applied in a manner consistent with the purposes of this subtitle.

SEC. 329. ASSESSMENTS.

(a) INSURANCE PRODUCERS SUBJECT TO ASSESSMENT.—The Association may establish such application and membership fees as the Association finds necessary to cover the costs of its operations, including fees made reimbursable to the NAIC under subsection (b), except that, in setting such fees, the Association may not discriminate against smaller insurance producers.

(b) NAIC ASSESSMENTS.—The NAIC may assess the Association for any costs that the NAIC incurs under this subtitle.

SEC. 330. FUNCTIONS OF THE NAIC.

(a) ADMINISTRATIVE PROCEDURE.—Determinations of the NAIC, for purposes of making rules pursuant to section 328, shall be made after appropriate notice and opportunity for a hearing and for submission of views of interested persons.

(b) EXAMINATIONS AND REPORTS.—

(1) EXAMINATIONS.—The NAIC may make such examinations and inspections of the Association and require the Association to furnish to the NAIC such reports and records or copies thereof as the NAIC may consider necessary or appropriate in the public interest or to effectuate the purposes of this subtitle.

(2) REPORT BY ASSOCIATION.—As soon as practicable after the close of each fiscal year, the Association shall submit to the NAIC a written report regarding the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year. The NAIC shall transmit such report to the President and the Congress with such comment thereon as the NAIC determines to be appropriate.

SEC. 331. LIABILITY OF THE ASSOCIATION AND THE DIRECTORS, OFFICERS, AND EMPLOYEES OF THE ASSOCIATION.

(a) IN GENERAL.—The Association shall not be deemed to be an insurer or insurance producer within the meaning of any State law, rule, regulation, or order regulating or taxing insurers, insurance producers, or other entities engaged in the business of insurance, including provisions imposing premium taxes, regulating insurer solvency or financial condition, establishing guaranty funds and levying assessments, or requiring claims settlement practices.

(b) LIABILITY OF THE ASSOCIATION, ITS DIRECTORS, OFFICERS, AND EMPLOYEES.—Neither the Association nor any of its directors, officers, or employees shall have any liability to any person for any action taken or omitted in good faith under or in connection with any matter subject to this subtitle.

SEC. 332. ELIMINATION OF NAIC OVERSIGHT.

(a) IN GENERAL.—The Association shall be established without NAIC oversight and the provisions set forth in section 324, subsections (a), (b), (c), and (e) of section 328, and sections 329(b) and 330 of this subtitle shall cease to be effective if, at the end of the 2-year period beginning on the date on which the provisions of this subtitle take effect pursuant to section 321—

(1) at least a majority of the States representing at least 50 percent of the total United States commercial-lines insurance premiums have not satisfied the uniformity or reciprocity requirements of subsections (a), (b), and (c) of section 321; and

(2) the NAIC has not approved the Association's bylaws as required by section 328 or is unable to operate or supervise the Association, or the Association is not conducting its activities as required under this Act.

(b) BOARD APPOINTMENTS.—If the repeals required by subsection (a) are implemented, the following shall apply:

(1) GENERAL APPOINTMENT POWER.—The President, with the advice and consent of the Senate, shall appoint the members of the Association's Board established under section 326 from lists of candidates recommended to the President by the National Association of Insurance Commissioners.

(2) PROCEDURES FOR OBTAINING NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS APPOINTMENT RECOMMENDATIONS.—

(A) INITIAL DETERMINATION AND RECOMMENDATIONS.—After the date on which the provisions of subsection (a) take effect, the NAIC shall, not later than 60 days thereafter, provide a list of recommended candidates to the President. If the NAIC fails to provide a list by that date, or if any list that is provided does not include at least 14 recommended candidates or comply with the requirements of section 326(c), the President shall, with the advice and consent of the Senate, make the requisite appointments without considering the views of the NAIC.

(B) SUBSEQUENT APPOINTMENTS.—After the initial appointments, the NAIC shall provide a list of at least 6 recommended candidates for the Board to the President by January 15 of each subsequent year. If the NAIC fails to provide a list by that date, or if any list that is provided does not include at least 6 recommended candidates or comply with the requirements of section 326(c), the President, with the advice and consent of the Senate, shall make the requisite appointments without considering the views of the NAIC.

(C) PRESIDENTIAL OVERSIGHT.—

(i) REMOVAL.—If the President determines that the Association is not acting in the interests of the public, the President may remove the entire existing Board for the remainder of the term to which the members of the Board were appointed and appoint, with the advice and consent of the Senate, new members to fill the vacancies on the Board for the remainder of such terms.

(ii) SUSPENSION OF RULES OR ACTIONS.—The President, or a person designated by the President for such purpose, may suspend the effectiveness of any rule, or prohibit any action, of the Association which the President or the designee determines is contrary to the public interest.

(c) ANNUAL REPORT.—As soon as practicable after the close of each fiscal year, the Association shall submit to the President and to the Congress a written report relative to the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year.

SEC. 333. RELATIONSHIP TO STATE LAW.

(a) PREEMPTION OF STATE LAWS.—State laws, regulations, provisions, or other actions purporting to regulate insurance producers shall be preempted as provided in subsection (b).

(b) PROHIBITED ACTIONS.—No State shall—

(1) impede the activities of, take any action against, or apply any provision of law or regulation to, any insurance producer because that insurance producer or any affiliate plans to become, has applied to become, or is a member of the Association;

(2) impose any requirement upon a member of the Association that it pay different fees to be licensed or otherwise qualified to do business in that State, including bonding requirements, based on its residency;

(3) impose any licensing, appointment, integrity, personal or corporate qualifications, education, training, experience, residency, or continuing education requirement upon a member of the Association that is different from the criteria for membership in the Association or renewal of such membership, except that counter-signature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section; or

(4) implement the procedures of such State's system of licensing or renewing the licenses of insurance producers in a manner different from the authority of the Association under section 325.

(c) SAVINGS PROVISION.—Except as provided in subsections (a) and (b), no provision of this section shall be construed as altering or affecting the continuing effectiveness of any law, regulation, provision, or other action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including countersignature laws.

SEC. 334. COORDINATION WITH OTHER REGULATORS.

(a) COORDINATION WITH STATE INSURANCE REGULATORS.—The Association shall have the authority to—

(1) issue uniform insurance producer applications and renewal applications that may be used to apply for the issuance or removal of State licenses, while preserving the ability of each State to impose such conditions on the issuance or renewal of a license as are consistent with section 333;

(2) establish a central clearinghouse through which members of the Association may apply for the issuance or renewal of licenses in multiple States; and

(3) establish or utilize a national database for the collection of regulatory information concerning the activities of insurance producers.

(b) COORDINATION WITH THE NATIONAL ASSOCIATION OF SECURITIES DEALERS.—The Association shall coordinate with the National Association of Securities Dealers in order to ease any administrative burdens that fall on persons that are members of both associations, consistent with the purposes of this subtitle and the Federal securities laws.

SEC. 335. JUDICIAL REVIEW.

(a) JURISDICTION.—The appropriate United States district court shall have exclusive jurisdiction over litigation involving the Association, including disputes between the Association and its members that arise under this subtitle. Suits brought in State court involving the Association shall be deemed to have arisen under Federal law and therefore be subject to jurisdiction in the appropriate United States district court.

(b) EXHAUSTION OF REMEDIES.—An aggrieved person shall be required to exhaust all available administrative remedies before the Association and the NAIC before it may seek judicial review of an Association decision.

(c) STANDARDS OF REVIEW.—The standards set forth in section 553 of title 5, United States Code, shall be applied whenever a rule or bylaw of the Association is under judicial review, and the standards set forth in section 554 of title 5, United States Code, shall be applied whenever a disciplinary action of the Association is judicially reviewed.

SEC. 336. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) HOME STATE.—The term "home State" means the State in which the insurance producer maintains its principal place of residence and is licensed to act as an insurance producer.

(2) INSURANCE.—The term "insurance" means any product, other than title insurance, defined or regulated as insurance by the appropriate State insurance regulatory authority.

(3) INSURANCE PRODUCER.—The term "insurance producer" means any insurance agent or broker, surplus lines broker, insurance consultant, limited insurance representative, and any other person that solicits, negotiates, effects, procures, delivers, renews, continues or binds policies of insurance or offers advice, counsel, opinions or services related to insurance.

(4) STATE.—The term "State" includes any State, the District of Columbia, American Samoa, Guam, Puerto Rico, and the United States Virgin Islands.

(5) STATE LAW.—The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

Subtitle D—Rental Car Agency Insurance Activities

SEC. 341. STANDARD OF REGULATION FOR MOTOR VEHICLE RENTALS.

(a) PROTECTION AGAINST RETROACTIVE APPLICATION OF REGULATORY AND LEGAL ACTION.—Except as provided in subsection (b), during the 3-year period beginning on the date of the enactment of this Act, it shall be a presumption that no State law imposes any licensing, appointment, or education requirements on any person who solicits the purchase of or sells insurance connected with, and incidental to, the lease or rental of a motor vehicle.

(b) PREEMINENCE OF STATE INSURANCE LAW.—No provision of this section shall be construed as altering the validity, interpretation, construction, or effect of—

(1) any State statute;

(2) the prospective application of any court judgment interpreting or applying any State statute; or

(3) the prospective application of any final State regulation, order, bulletin, or other statutorily authorized interpretation or action,

which, by its specific terms, expressly regulates or exempts from regulation any person who solicits the purchase of or sells insurance connected with, and incidental to, the short-term lease or rental of a motor vehicle.

(c) SCOPE OF APPLICATION.—This section shall apply with respect to—

(1) the lease or rental of a motor vehicle for a total period of 90 consecutive days or less; and

(2) insurance which is provided in connection with, and incidentally to, such lease or rental for a period of consecutive days not exceeding the lease or rental period.

(d) MOTOR VEHICLE DEFINED.—For purposes of this section, the term "motor vehicle" has the meaning given to such term in section 13102 of title 49, United States Code.

Subtitle E—Confidentiality

SEC. 351. CONFIDENTIALITY OF HEALTH AND MEDICAL INFORMATION.

(a) IN GENERAL.—A company which underwrites or sells annuities contracts or contracts insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death (other than credit-related insurance) and any subsidiary or affiliate thereof shall maintain a practice of protecting the confidentiality of individually identifiable customer health and medical and genetic information and may disclose such information only—

(1) with the consent, or at the direction, of the customer;

(2) for insurance underwriting and reinsuring policies, account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), providing information to the customer's physician or other health care provider, participating in research projects, enabling the purchase, transfer, merger, or sale of any insurance-related business, or as otherwise required or specifically permitted by Federal or State law; or

(3) in connection with—

(A) the authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card or account number, or by other payment means;

(B) the transfer of receivables, accounts, or interest therein;

(C) the audit of the debit, credit, or other payment information;

(D) compliance with Federal, State, or local law;

(E) compliance with a properly authorized civil, criminal, or regulatory investigation by Federal, State, or local authorities as governed by the requirements of this section; or

(F) fraud protection, risk control, resolving customer disputes or inquiries, communicating with the person to whom the information relates, or reporting to consumer reporting agencies.

(b) STATE ACTIONS FOR VIOLATIONS.—In addition to such other remedies as are provided under State law, if the chief law enforcement officer of a State, State insurance regulator, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this title, the State may bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction.

(c) EFFECTIVE DATE; SUNSET.—

(1) EFFECTIVE DATE.—Except as provided in paragraph (2), subsection (a) shall take effect on February 1, 2000.

(2) SUNSET.—Subsection (a) shall not take effect if, or shall cease to be effective on and after the date on which, legislation is enacted that satisfies the requirements in section 264(c)(1) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 2033).

(d) CONSULTATION.—While subsection (a) is in effect, State insurance regulatory authorities, through the National Association of Insurance Commissioners, shall consult with the Secretary of Health and Human Services in connection with the administration of such subsection.

TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES

SEC. 401. PREVENTION OF CREATION OF NEW S&L HOLDING COMPANIES WITH COMMERCIAL AFFILIATES.

(a) AMENDMENT TO HOME OWNERS' LOAN ACT.—Section 10(c) of the Home Owners' Loan Act (12 U.S.C. 1467a(c)) is amended by adding at the end the following new paragraph:

"(9) PREVENTION OF NEW AFFILIATIONS BETWEEN S&L HOLDING COMPANIES AND COMMERCIAL FIRMS.—

"(A) IN GENERAL.—Notwithstanding paragraph (3), no company may directly or indirectly, including through any merger, consolidation, or other type of business combination, acquire control of a savings association after May 27, 1999, unless the company is engaged, directly or indirectly (including through a subsidiary other than a savings association), only in activities that are permitted—

"(i) under paragraphs (1)(C) or (2); or

"(ii) for financial holding companies under section 6(c) of the Bank Holding Company Act of 1956.

"(B) PREVENTION OF NEW COMMERCIAL AFFILIATIONS.—Notwithstanding paragraph (3), no savings and loan holding company may engage directly or indirectly (including through a subsidiary other than a savings association) in any activity other than as described in clauses (i) and (ii) of subparagraph (A).

"(C) PRESERVATION OF AUTHORITY OF EXISTING UNITARY S&L HOLDING COMPANIES.—Subparagraphs (A) and (B) shall not apply with respect to any company that was a savings and loan holding company on May 27, 1999, or that becomes a savings and loan holding company pursuant to an application pending before the Office of Thrift Supervision on or before that date, and that—

"(i) meets and continues to meet the requirements of paragraph (3); and

"(ii) continues to control not fewer than 1 savings association that it controlled on May 27, 1999, or that it acquired pursuant to an application pending before the Office of Thrift Supervision on or before that date, or the successor to such savings association.

"(D) CORPORATE REORGANIZATIONS PERMITTED.—This paragraph does not prevent a transaction—

"(i) that involves solely a company under common control with a savings and loan holding company from acquiring, directly or indirectly, control of the savings and loan holding company or any savings association that is already a subsidiary of the savings and loan holding company; or

"(ii) that involves solely a merger, consolidation, or other type of business combination as a result of which a company under common control with the savings and loan holding company acquires, directly or indirectly, control of the savings and loan holding company or any savings association that is already a subsidiary of the savings and loan holding company.

"(E) AUTHORITY TO PREVENT EVASIONS.—The Director may issue interpretations, regulations, or orders that the Director deems necessary to administer and carry out the purpose and prevent evasions of this paragraph, including a determination that, notwithstanding the form of a transaction, the transaction would in substance result in a company acquiring control of a savings association.

"(F) PRESERVATION OF AUTHORITY FOR FAMILY TRUSTS.—Subparagraphs (A) and (B) shall not apply with respect to any trust that becomes a savings and loan holding company with respect to a savings association, if—

"(i) not less than 85 percent of the beneficial ownership interests in the trust are continuously owned, directly or indirectly, by or for the benefit of members of the same family, or their spouses, who are lineal descendants of common ancestors who controlled, directly or indirectly, such savings association on May 27, 1999, or a subsequent date pursuant to an application pending before the Office of Thrift Supervision on or before May 27, 1999; and

"(ii) at the time at which such trust becomes a savings and loan holding company, such ancestors or lineal descendants, or spouses of such descendants, have directly or indirectly controlled the savings association continuously since May 27, 1999, or a subsequent date pursuant to an applications pending before the Office of Thrift Supervision on or before May 27, 1999.".

(b) CONFORMING AMENDMENT.—Section 10(o)(5) of the Home Owners' Loan Act (15 U.S.C. 1467a(o)(5)) is amended—

(1) in subparagraph (E), by striking ", except subparagraph (B)"; and

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

"(F) In the case of a mutual holding company which is a savings and loan holding company described in subsection (c)(3), engaging in the activities permitted under subsection (c)(9)(A)(ii).".

(c) GAO STUDY OF AFFILIATION OF SAVINGS ASSOCIATIONS WITH COMMERCIAL COMPANIES AND S&L HOLDING COMPANY REGULATION.—

(1) IN GENERAL.—The Comptroller General shall conduct a study of—

(A) the effect of permitting the affiliation of savings associations with commercial companies, including—

(i) competitive effects as between—

(I) commercial companies that are not permitted to affiliate with depository institutions and ones that have a savings association affiliate; and

(II) savings associations that do not have a commercial affiliate and ones who do; and

(ii) conflicts of interest; and

(B) the diligence and effectiveness of the Director of the Office of Thrift Supervision in examining and regulating savings and loan holding companies, generally, and savings and loan holding companies which are a commercial company or have a commercial affiliate, in particular.

(2) REPORT.—Before the end of the 1-year period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress containing the findings and conclusions of the Comptroller General with respect to the study required under paragraph (1), together with such recommendations for administrative and legislative action as the Comptroller General may determine to be appropriate.

SEC. 402. RETENTION OF "FEDERAL" IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.

Section 2 of the Act entitled "An Act to enable national banking associations to increase their capital stock and to change their names or locations", approved May 1, 1886 (12 U.S.C. 30), is amended by adding at the end the following new subsection:

"(d) RETENTION OF 'FEDERAL' IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.—

"(1) IN GENERAL.—Notwithstanding subsection (a) or any other provision of law, any depository institution the charter of which is converted from that of a Federal savings association to a national bank or a State bank after the date of the enactment of the Financial Services Act of 1999 may retain the term 'Federal' in the name of such institution if such depository institution remains an insured depository institution.

"(2) DEFINITIONS.—For purposes of this subsection, the terms 'depository institution', 'insured depository institution', 'national bank', and 'State bank' have the same meanings as in section 3 of the Federal Deposit Insurance Act.".

TITLE V—PRIVACY OF CONSUMER INFORMATION

Subtitle A—Disclosure of Nonpublic Personal Information

SEC. 501. OBLIGATIONS WITH RESPECT TO PERSONAL INFORMATION.

(a) GENERAL REQUIREMENTS.—Except as otherwise provided in this subtitle, a financial institution may not, directly or through any affiliate, divulge or make an unrelated use of any nonpublic personal information collected by the financial insti-

tution in connection with any transaction with a consumer in any financial product or any financial service, unless—

(1) such financial institution provides or has provided to the consumer a notice that complies with section 502 and the rules thereunder; and

(2) such financial institution maintains procedures to protect the confidentiality and security of nonpublic personal information.

(b) OPT-OUT REQUIRED FOR INFORMATION TRANSFERS.—The Commission shall by rule prohibit a financial institution from making available any nonpublic personal information to any affiliate of the institution, or to any other person that is not an affiliate of the institution, unless the consumer to whom the information pertains—

(1) is given the opportunity in accordance with such rule to object to the transfer of such information; and

(2) does not object, or withdraws the objection.

(c) ACCESS TO AND CORRECTION OF INFORMATION VENDED TO THIRD PARTIES.—

(1) RULE REQUIRED.—The Commission shall by rule require a financial institution that, for any consideration, makes available nonpublic personal information collected by the financial institution in connection with any transaction with a consumer in any financial product or any financial service to any person or entity other than an employee or agent of such institution, an affiliate of such institution, or an employee or agent of such affiliate, to afford that consumer—

(A) the opportunity to examine, upon request, the nonpublic personal information that was so made available; and

(B) the opportunity to dispute the accuracy of any of such information, and to present evidence thereon.

(2) EXCEPTION FOR PROPRIETARY INFORMATION.—The rule required by paragraph (1) shall not require a financial institution to afford a customer who requests access to the nonpublic personal information that was made available the opportunity to examine or dispute any data obtained by any analysis or evaluation performed using such information, or to examine or dispute the methodology of such analysis or evaluation.

(d) GENERAL EXCEPTIONS.—Subsections (a) and (b) shall not prohibit the divulging of nonpublic personal information, the making of an unrelated use of such information, or the making available of such information to affiliates or other persons by the financial institution—

(1) as necessary to effect or enforce the transaction or a related transaction;

(2) as necessary to protect the confidentiality or security of its records pertaining to the consumer, the financial service or financial product, or the transaction therein;

(3) as necessary to take precautions against liability;

(4) as necessary to respond to judicial process;

(5) to the extent permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1974, to provide information to law enforcement agencies (including a functional regulator or the Commission) or for an investigation on a matter related to public safety;

(6) to a consumer reporting agency in accordance with title VI of the Consumer Credit Protection Act; or

(7) in executing a sale or exchange whereby the financial institution transfers to another financial institution or other person the business unit or operation, or substantially all the assets of the business unit or operation, with which the customer's transactions were effected.

SEC. 502. NOTICE CONCERNING DIVULGING INFORMATION.

(a) RULE REQUIRED.—The Commission shall, after consultation with the Federal functional regulators and one or more representatives of State insurance regulators, prescribe rules in accordance with this section to prohibit unfair and deceptive acts and practices in connection with the divulging of nonpublic personal information or with making unrelated uses of such information. Such rules shall require any financial institution, through the use of a form that complies with the rules prescribed under subsection (b), to clearly and conspicuously disclose to the consumer—

(1) the categories of nonpublic personal information that are collected by the financial institution;

(2) the practices and policies of the financial institution with respect to divulging nonpublic personal information, or making unrelated uses of such information, including—

(A) the categories of persons to whom the information is or may be divulged or who may be permitted to make unrelated uses of such informa-

tion, other than the persons to whom the information must be provided to effect or enforce the transaction; and

(B) the practices and policies of the institution with respect to divulging or making unrelated uses of nonpublic personal information of persons who have ceased to be customers of the financial institution; and

(3) the policies that the institution maintains to protect the confidentiality and security of nonpublic personal information.

(b) DESIGN OF NOTICE REQUIREMENTS.—In prescribing the form of a notice for purposes of subsection (a), the Commission shall ensure that consumers are readily able to compare differences in the measures that the financial institution takes, and the policies that the institution has established, to protect the consumer's privacy as compared to the measures taken and the policies established by other financial institutions. Such form shall specifically identify any rights the institution affords consumers to grant or deny consent to (1) the divulging of nonpublic personal information for any purpose other than as required in order to effect or enforce the consumer's transaction, or (2) the making of an unrelated use of such information.

(c) ADDITIONAL CONTENTS OF RULES; EXEMPTIVE RULES.—The Commission shall, by rule after consultation with the functional regulators, and may by order—

(1) specify the divulgences and uses of information which, for purposes of this subtitle and the rules prescribed thereunder, may be treated as necessary to effect or enforce a consumer's transaction with respect to a variety of financial services and financial products;

(2) specify timing requirements with respect to notices to new and existing customers, which shall not require notices more frequently than annually unless there has been a change in the information required to be disclosed pursuant to subsection (a); and

(3) provide, consistent with the purposes of this subtitle, exemptions or temporary waivers to, or delayed effective dates for, any requirement of this subtitle or the rules prescribed thereunder.

(d) EXEMPTIVE RULES TO PERMIT EFFICIENT DATA STORAGE AND RETRIEVAL.—The exemptive rules prescribed by the Commission pursuant to subsection (c)(3) shall include such rules as may be necessary to permit financial institutions and their affiliates to establish and maintain efficient systems to collect and access nonpublic personal information in shared or networked data storage and retrieval facilities that are implemented in a manner consistent with the requirements of section 501.

(e) RULEMAKING DEADLINE.—The Commission shall initially prescribe the rules required by this section within one year after the date of enactment of this Act. Such rules, and any revisions of such rules, shall be prescribed in accordance with section 553 of title 5, United States Code.

SEC. 503. ENFORCEMENT.

(a) IN GENERAL.—This subtitle and the rules prescribed thereunder shall be enforced by the Federal Trade Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(b) ACTIONS BY THE COMMISSION.—The Federal Trade Commission shall prevent any person from violating this subtitle and the rules prescribed thereunder in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this subtitle, except that notwithstanding section 5(a)(2) of such Act (15 U.S.C. 45(a)(2)) the Commission shall, for purposes of this title, have jurisdiction with respect to banks, savings and loan institutions, and Federal credit unions. Any person who violates this subtitle or the rules prescribed thereunder shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this subtitle.

(c) TREATMENT OF RULES.—A rule issued by the Commission under this title shall be treated as a rule issued under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

SEC. 504. DEFINITIONS.

As used in this subtitle:

(1) COMMISSION.—The term "Commission" means the Federal Trade Commission.

(2) FEDERAL FUNCTIONAL REGULATOR.—The term "Federal functional regulator" means—

(A) the Board of Governors of the Federal Reserve System;

(B) the Office of the Comptroller of the Currency;

(C) the Board of Directors of the Federal Deposit Insurance Corporation;
(D) the Director of the Office of Thrift Supervision;
(E) the National Credit Union Administration Board;
(F) the Farm Credit Administration; and
(G) the Securities and Exchange Commission.

(3) FINANCIAL INSTITUTION.—The term "financial institution" means any institution the business of which is engaging in financial activities or activities that are incidental to financial activities, as determined under section 6(c) of the Bank Holding Company Act of 1956. Such term, when used in connection with a transaction for a consumer, means only the financial institution with which the consumer expects to conduct such transaction and does not include any affiliate, subsidiary, or contractually-related party of that financial institution, even if such affiliate, subsidiary, or party is also a financial institution and participates in the effecting or enforcement of such transaction.

(4) NONPUBLIC PERSONAL INFORMATION.—The term "nonpublic personal information" means personally identifiable information, other than publicly available directory information, pertaining to an individual's transactions with a financial institution.

(5) DIRECTORY INFORMATION.—The term "publicly available directory information" means subscriber list information required to be made available for publication pursuant to section 222(e) of the Communications Act of 1934 (47 U.S.C. 222(3)).

(6) UNRELATED USE.—The term "unrelated use", when used with respect to information collected by the financial institution in connection with any transaction with a consumer in any financial product or any financial service, means any use other than a use that is necessary to effect or enforce such transaction.

(7) DIVULGE; DIVULGENCE.—The terms "divulge" and "divulgence", when used with respect nonpublic personal information collected by the financial institution in connection with any transaction with a consumer in any financial product or any financial service, means to make such information available to any person or entity other than an employee or agent of such institution, an affiliate of such institution, or an employee or agent of such affiliate.

(8) AFFILIATE.—The term "affiliate" means any company that controls, is controlled by, or is under common control with another company.

(9) NECESSARY TO EFFECT OR ENFORCE.—The divulging or use of nonpublic personal information shall be treated—

(A) as necessary to effect a transaction with a consumer if the divulging or use is required, or is one of the usual and accepted methods, to carry out the transaction and record and maintain the customer's account in the ordinary course of providing the financial service or financial product, and includes—

(i) providing the consumer with a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product; and

(ii) the accrual or recognition of incentives or bonuses associated with the transaction that are provided by the financial institution or any other party; and

(B) as necessary to enforce a transaction with a consumer if the divulging or use is required, or is one of the lawful methods, to enforce the rights of the financial institution or of other persons engaged in carrying out the financial transaction, or providing the financial product or financial service.

The Commission shall, consistent with the purposes of this subtitle, prescribe by rule actions that shall, in a variety of financial services, and with respect to a variety of financial products, be treated as necessary to effect or enforce a financial transaction.

(10) FINANCIAL SERVICES; FINANCIAL PRODUCTS; TRANSACTION; RELATED TRANSACTION.—The Commission shall, consistent with the purposes of this subtitle, prescribe by rule definitions of the terms "financial services", "financial products", "transaction", "related transaction", and "unrelated third party" for purposes of this subtitle.

SEC. 505. EFFECTIVE DATE.

This subtitle shall take effect one year after the date on which the Commission prescribes in final form the rules required by section 502(a), except to the extent that a later date is specified in such rules.

Subtitle B—Fraudulent Access to Financial Information

SEC. 521. PRIVACY PROTECTION FOR CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS.

(a) PROHIBITION ON OBTAINING CUSTOMER INFORMATION BY FALSE PRETENSES.—It shall be a violation of this subtitle for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person—

(1) by making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution;

(2) by making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution; or

(3) by providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation.

(b) PROHIBITION ON SOLICITATION OF A PERSON TO OBTAIN CUSTOMER INFORMATION FROM FINANCIAL INSTITUTION UNDER FALSE PRETENSES.—It shall be a violation of this subtitle to request a person to obtain customer information of a financial institution, knowing that the person will obtain, or attempt to obtain, the information from the institution in any manner described in subsection (a).

(c) NONAPPLICABILITY TO LAW ENFORCEMENT AGENCIES.—No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain customer information of a financial institution in connection with the performance of the official duties of the agency.

(d) NONAPPLICABILITY TO FINANCIAL INSTITUTIONS IN CERTAIN CASES.—No provision of this section shall be construed so as to prevent any financial institution, or any officer, employee, or agent of a financial institution, from obtaining customer information of such financial institution in the course of—

(1) testing the security procedures or systems of such institution for maintaining the confidentiality of customer information;

(2) investigating allegations of misconduct or negligence on the part of any officer, employee, or agent of the financial institution; or

(3) recovering customer information of the financial institution which was obtained or received by another person in any manner described in subsection (a) or (b).

(e) NONAPPLICABILITY TO INSURANCE INSTITUTIONS FOR INVESTIGATION OF INSURANCE FRAUD.—No provision of this section shall be construed so as to prevent any insurance institution, or any officer, employee, or agency of an insurance institution, from obtaining information as part of an insurance investigation into criminal activity, fraud, material misrepresentation, or material nondisclosure that is authorized for such institution under State law, regulation, interpretation, or order.

(f) NONAPPLICABILITY TO CERTAIN TYPES OF CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS.—No provision of this section shall be construed so as to prevent any person from obtaining customer information of a financial institution that otherwise is available as a public record filed pursuant to the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934).

SEC. 522. ADMINISTRATIVE ENFORCEMENT.

(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—Compliance with this subtitle shall be enforced by the Federal Trade Commission in the same manner and with the same power and authority as the Commission has under the title VIII, the Fair Debt Collection Practices Act, to enforce compliance with such title.

(b) NOTICE OF ACTIONS.—The Federal Trade Commission shall—

(1) notify the Securities and Exchange Commission whenever the Federal Trade Commission initiates an investigation with respect to a financial institution subject to regulation by the Securities and Exchange Commission;

(2) notify the Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act) whenever the Commission initiates an investigation with respect to a financial institution subject to regulation by such Federal banking agency; and

(3) notify the appropriate State insurance regulator whenever the Commission initiates an investigation with respect to a financial institution subject to regulation by such regulator.

SEC. 523. CRIMINAL PENALTY.

(a) IN GENERAL.—Whoever knowingly and intentionally violates, or knowingly and intentionally attempts to violate, section 521 shall be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.

(b) ENHANCED PENALTY FOR AGGRAVATED CASES.—Whoever violates, or attempts to violate, section 521 while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both.

SEC. 524. RELATION TO STATE LAWS.

(a) IN GENERAL.—This subtitle shall not be construed as superseding, altering, or affecting the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that such statutes, regulations, orders, or interpretations are inconsistent with the provisions of this subtitle, and then only to the extent of the inconsistency.

(b) GREATER PROTECTION UNDER STATE LAW.—For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subtitle if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this subtitle as determined by the Commission, on its own motion or upon the petition of any interested party.

SEC. 525. AGENCY GUIDANCE.

In furtherance of the objectives of this subtitle, each Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act) and the Securities and Exchange Commission or self-regulatory organizations, as appropriate, shall review regulations and guidelines applicable to financial institutions under their respective jurisdictions and shall prescribe such revisions to such regulations and guidelines as may be necessary to ensure that such financial institutions have policies, procedures, and controls in place to prevent the unauthorized disclosure of customer financial information and to deter and detect activities proscribed under section 521.

SEC. 526. REPORTS.

(a) REPORT TO THE CONGRESS.—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Comptroller General, in consultation with the Federal Trade Commission, Federal banking agencies, the Securities and Exchange Commission, appropriate Federal law enforcement agencies, and appropriate State insurance regulators, shall submit to the Congress a report on the following:

(1) The efficacy and adequacy of the remedies provided in this subtitle in addressing attempts to obtain financial information by fraudulent means or by false pretenses.

(2) Any recommendations for additional legislative or regulatory action to address threats to the privacy of financial information created by attempts to obtain information by fraudulent means or false pretenses.

(b) ANNUAL REPORT BY ADMINISTERING AGENCIES.—The Federal Trade Commission and the Attorney General shall submit to Congress an annual report on number and disposition of all enforcement actions taken pursuant to this subtitle.

SEC. 527. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) CUSTOMER.—The term "customer" means, with respect to a financial institution, any person (or authorized representative of a person) to whom the financial institution provides a product or service, including that of acting as a fiduciary.

(2) CUSTOMER INFORMATION OF A FINANCIAL INSTITUTION.—The term "customer information of a financial institution" means any information maintained by or for a financial institution which is derived from the relationship between the financial institution and a customer of the financial institution and is identified with the customer.

(3) DOCUMENT.—The term "document" means any information in any form.

(4) FINANCIAL INSTITUTION.—

(A) IN GENERAL.—The term "financial institution" means any institution engaged in the business of providing financial services to customers who maintain a credit, deposit, trust, or other financial account or relationship with the institution.

(B) CERTAIN FINANCIAL INSTITUTIONS SPECIFICALLY INCLUDED.—The term "financial institution" includes any depository institution (as defined in section 19(b)(1)(A) of the Federal Reserve Act), any broker or dealer, any investment adviser or investment company, any insurance company, any loan or finance company, any credit card issuer or operator of a credit card system, and any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (as defined in section 603(p)).

(C) SECURITIES INSTITUTIONS.—For purposes of subparagraph (B)—

(i) the terms "broker" and "dealer" have the meanings provided in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(ii) the term "investment adviser" has the meaning provided in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)); and

(iii) the term "investment company" has the meaning provided in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3).

(D) FURTHER DEFINITION BY REGULATION.—The Federal Trade Commission, after consultation with Federal banking agencies and the Securities and Exchange Commission, may prescribe regulations clarifying or describing the types of institutions which shall be treated as financial institutions for purposes of this subtitle.

PURPOSE AND SUMMARY

The purpose of H.R. 10, the Financial Services Act of 1999 (the Act), as reported by the Committee on Commerce, is to establish a comprehensive framework to permit affiliations among securities firms, insurance companies, and commercial banks. The primary objective of allowing such affiliations is to enhance consumer choice in the financial services marketplace, eliminate anti-competitive regulatory disparities among financial services providers, and increase competition among providers of financial services. This legislation seeks to help participants in the financial services marketplace to realize the cost savings, efficiency, and other benefits resulting from increased competition. The Act is also designed to improve the international competitiveness of U.S. companies, which may have been constrained by the barriers to affiliation that exist pursuant to 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.")

The Act provides for a number of prudential safeguards designed to protect investors and their privacy, avoid risk to the Federal deposit insurance funds, protect the safety and soundness of insured depository institutions and the Federal payments system, prevent the expansion of the Federal subsidy provided to banks, and protect consumers.

TITLE I

Title I repeals the anti-affiliation provisions of the Glass-Steagall Act (section 20 and section 32 of the Banking Act of 1933). It also sets up a structure, based on the holding company framework successfully implemented in the Bank Holding Company Act of 1956, permitting affiliations among securities firms, insurance companies, and banks. This structure is designed to promote efficiency and competition and to protect investors and consumers.

The Committee found that a structure based on a financial services holding company was the most beneficial to the goals of efficiency, competition, and protection of investors and consumers.

Specifically, requiring that securities and insurance underwriting activities be conducted in separately capitalized affiliates in a holding company structure helps prevent taxpayer subsidized funds from migrating into banks to finance such affiliates' activities. The Committee does not wish to expand unnecessarily the reach of the Federal safety net. It has, therefore, opted for a structure based on affiliation in a financial services holding company rather than one based on granting powers to direct subsidiaries of insured depository institutions.

Title I preempts State laws that prevent affiliation among financial services providers. In addition, the title prevents the States from significantly interfering in the ability of national banks or wholesale financial institutions to engage in activities authorized under sections 6 and 10 of the Bank Holding Company Act, while preserving nondiscriminatory State law and establishing a number of safe harbors for critical State consumer protections governing banks' insurance sales activities.

Title I also expressly limits the authority of the Board of Governors of the Federal Reserve System (Federal Reserve Board), the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision over the affiliates of financial services holding companies. These limitations are designed to facilitate functional regulation of the operative components of a financial services holding company. Specifically, the preeminent authority of the Securities and Exchange Commission (SEC or the Commission) and the State insurance regulators over securities firms and the business of insurance, respectively, is preserved.

Title I grants to State insurance commissioners and the SEC the authority to prevent the Federal Reserve Board from compelling the insurance and securities subsidiaries of a financial holding company to provide funds to any undercapitalized insured depository institution. This provision makes clear that the source of strength doctrine does not extend to securities firms and insurance companies affiliated with banks.

Title I specifically limits the activities of national bank subsidiaries to those activities a national bank is authorized to engage in directly. Title I also specifically authorizes national bank subsidiaries to engage in financial activities as agents, including insurance sales. The Comptroller of the Currency (OCC or the Comptroller) has proposed interpretative changes to Part 5 of the National Bank Act that the Committee found: (1) exceed the Comptroller's statutory authority; and (2) are bad public policy. The Committee intends that this provision prevent future unauthorized actions by the Comptroller.

Title I sets up a structure for supervision of wholesale financial holding companies, and creates a new depository institution, a Wholesale Financial Institution (WFI), which wholesale financial holding companies may own. Because WFIs do not take retail deposits or have Federal deposit insurance, their holding companies do not require as extensive regulatory oversight as do financial holding companies that own insured banks. The Committee has set up a supervisory structure in which either the SEC or the Federal

Reserve Board is the holding company regulator for wholesale financial holding companies.

Title I includes a grandfather provision that permits financial holding companies to retain all non-financial activities and affiliates, for a period of 10 years from September 1997 (with the possibility of a 5 year extension), so long as the financial holding company derives at least 85 percent of its gross worldwide revenues from financial activities. These provisions are designed to provide financial holding companies that own insured banks with the flexibility to conform their commercial operations to the limits of the Act over a sufficiently long period to allow full recovery of the value of these commercial operations by the financial holding company. The title provides a similar grandfather provision applicable to WFIs, but because WFIs are uninsured institutions, the holding period for commercial affiliates is not limited. Title I also grants the Board a limited amount of flexibility to permit financial holding companies to engage, to a limited extent, in nonfinancial activities that are complementary to a financial activity, provided that the nonfinancial activities are conducted on a small scale relative to the permissible activities to which they are associated. Title I allows these entities to directly or indirectly acquire or control shares, assets, or ownership interests in commercial concerns without limit for the purpose of appreciation and ultimate resale by expressly including "merchant banking" in the definition of activities that are "financial in nature."

With further respect to activities that are included as "financial in nature," the term "providing financial, investment or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940)" is intended to include all activities that are necessary or incidental to the business or operation of an investment company or an investment adviser registered under the Investment Advisers Act of 1940, including the provision of personnel to an investment company or to a company that provides products or services to an investment company, as well as money management and investment management services and related activities for other clients. It is the Committee's intention that these activities be deemed financial in nature, regardless of whether they are conducted separately or in combination with other activities, and regardless of whether they are conducted in accordance with limitations imposed by the Federal Reserve Board prior to the enactment of this Act. The term, thus, includes, for example, such activities as acting as the sponsor, organizer, distributor, principal underwriter, sales agent, broker, dealer, placement agent, administrator, transfer agent, registrar, shareholder servicing agent, dividend disbursement agent, custodian, investment adviser or sub-investment adviser of an investment company, or controlling an investment company.

TITLE II

Subtitle A of title II of the Act amends the Federal securities laws in order to provide functional regulation of bank securities activities. The Act repeals the exemptions under the Federal securities laws that currently apply to banks, subjecting banks and their affiliates and subsidiaries to the same regulation as all other pro-

viders of securities products in order to provide investors with the same level of protections.

H.R. 10, as reported by the Committee on Banking and Financial Services, also eliminated the blanket exemptions for banks from the definition of "broker" and "dealer," but included sixteen new exceptions for activities in which banks could engage without being subject to broker-dealer regulation under the Federal securities laws. The breadth of the exceptions in the Banking Committee's bill would have had the effect of allowing banks to engage in extensive securities activities without being subject to the securities laws that apply to their broker-dealer competitors engaged in the same activity.

H.R. 10, as passed by the Full House in the 105th Congress, contained certain narrow exceptions that were intended to (1) address competitiveness concerns, (2) address market integrity issues, and (3) minimize the risks to investors, particularly individuals.

Accordingly, the Committee on Commerce restored H.R. 10 to the narrow approach passed last year by the Full House. This approach repeals the blanket exemptions from the definition of "broker" and "dealer" and provides a number of exceptions that permit banks to engage in certain securities activities that have traditionally been provided by banks, subject to certain limitations, without becoming subject to the Federal securities laws. These exceptions relate to third-party networking arrangements, trust activities, traditional banking transactions such as commercial paper and exempted securities, employee and shareholder benefit plans, sweep accounts, affiliate transactions, private placements, safekeeping and custody services, asset-backed securities, and derivatives.

Banks today also engage in a wide range of investment advisory activities that are comparable to, and competitive with, the services of other investment advisers. Banks that advise mutual funds, however, are not currently required to register as investment advisers under the Investment Advisers Act of 1940 and, therefore, are not subject to the same securities regulatory scheme that applies to other entities that advise mutual funds. The Committee believes that existing banking regulation does not adequately address the investor protection concerns that are raised by bank involvement in mutual fund activities. Subtitle B amends the Investment Advisers Act to subject banks that advise mutual funds to the same regulatory scheme as other advisers to mutual funds. Subtitle B also addresses specific conflicts of interest that may arise when banks advise mutual funds.

Subtitle B broadens the definition of "investment adviser" in the Investment Advisers Act to include banks that advise mutual funds. This amendment ensures that all mutual fund advisers are subject to the same rules. The current exclusion for banks under the Investment Advisers Act, like the exclusions for banks under the Securities Act of 1933 and the Securities Exchange Act of 1934 (the Exchange Act), is a holdover from a time when it was assumed that banks could not engage in securities-related activities. That assumption is no longer valid, and the Committee believes that corrective legislation is essential. Excluding banks from the definition of "investment adviser" hampers effective Commission oversight of bank-advised mutual funds because Commission examiners do not

have access to all of the books and records normally available when they examine a mutual fund whose adviser is registered with the Commission. Requiring banks that advise mutual funds to register under the Investment Advisers Act provides the Commission with the authority it needs to oversee the activities of these advisers, and provides investors in bank-advised mutual funds with the same protections enjoyed by other mutual fund investors.

Although the Investment Company Act and the Investment Advisers Act currently restrict transactions between mutual funds and their affiliates, the statutes do not address specifically all of the concerns that may exist when banks provide investment management and related services to funds. Because banks advising mutual funds may be subject to particular conflicts of interest because of the nature of their other activities, H.R. 10 provides the Commission with additional authority to address special conflicts of interest that may exist when a bank and the mutual fund it advises do business with each other. These conflicts may arise, for example, when a bank loans money to a fund it advises, acts as the fund's custodian, or holds the fund's shares in a fiduciary capacity. Another area of concern involves the potential investor confusion that may be created when a bank advises a mutual fund or sells fund shares on bank premises. Because the Federal government insures bank deposits, it is possible that some investors may mistakenly believe that a mutual fund advised by a bank or sold on bank premises also is insured. The bill addresses this concern by requiring banks to disclose, in this situation, that an investment in the fund is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other government agency. Because the Committee believes that the potential for investor confusion about whether a mutual fund investment is insured by the government exists only where those funds are sold through, or advised by a bank, H.R. 10 applies this disclosure obligation only to such funds, and not to funds that are not sold through or advised by a bank.

The bill grants the Commission authority to address concerns that arise when banks advise or sell mutual funds. This authority is not intended to subject bank advisers to more regulation than other fund advisers, but rather is intended to provide the Commission with the flexibility to effectively address problems particular to mutual funds that are advised by a bank or sold on bank premises.

Subtitle C creates a new investment bank holding company structure under the Exchange Act. This subtitle is designed to implement a new concept of SEC supervision of broker/dealer holding companies that voluntarily elect SEC supervision. In addition, the bill contemplates that an investment bank holding company could include one or more wholesale financial institutions.

Under this voluntary supervision, the SEC will have greater authority to oversee the entire entity, thus satisfying the expectations of foreign jurisdictions that the entity be subject to consolidated supervision. This provision is designed to improve the competitiveness of U.S. investment bank holding companies that do business in foreign jurisdictions that require consolidated holding company supervision for securities firms.

TITLE III

Title III pertains to the regulation of insurance. Subtitle A provides guidelines for the regulation of insurance activities of insured depository institutions, wholesale financial institutions, or affiliates thereof, and sets forth appropriate standards for judicial review of regulatory insurance disputes. These provisions were drafted after numerous hearings in which the Committee found that there were significant questions regarding which regulators had the responsibility to regulate the insurance activities of Federally chartered entities, and serious questions were raised about the applicability and enforcement of consumer protections in the underwriting and sale of insurance by various financial entities.

Subtitle A specifically provides for the functional regulation of insurance. The Committee's purpose in the first part of Subtitle A is to reaffirm the McCarran-Ferguson Act and require State licensing for insurance activities. The Committee further requires functional regulation of insurance, but subjects all the functional regulation requirements set forth in subtitle A to the "prevent or significantly interfere" preemption standard in section 104 of the Act, and specifically preserves Barnett Bank of Marion County, N.A. v. Nelson, 116 S.Ct. 1103 (1996), for adjudicating future insurance law preemption questions.

Subtitle A prohibits national banks and their subsidiaries from underwriting insurance, except for products that they are currently providing or authorized to provide. A definition of insurance versus banking products is created, based on State insurance codes and referencing sections from the Internal Revenue Code which determine whether a product is treated as insurance for tax purposes, with carve-outs for core banking products.

The Committee heard conflicting views from witnesses on the propriety of allowing banks to underwrite and sell title insurance. In particular, concerns were raised about conflicts of interest, consumer confusion, and unfair competition, in contrast to conflicting testimony about the need to increase competition, provide more availability for consumers, and the synergies created between a bank's mortgage or loan functions and title insurance activities. Not wanting to push banks out of business they are currently engaged in, the Committee in Subtitle A grandfathered title insurance activities currently being conducted by national banks. However, in States that have authorized their State banks to sell title insurance, the Committee desired not to disadvantage national banks competitively, and thus grants them parity powers to the same manner and extent authorized for State banks.

To address concerns that the insurance industry was placed at a competitive disadvantage versus national banks in terms of the regulatory tensions between Federal banking and State insurance regulators, Subtitle A includes an expedited and equalized dispute resolution procedure. Such inter-regulatory conflicts would be brought to and decided by a United States Circuit Court of Appeals within an expedited time frame, with the courts directed to look at the merits of the questions presented, under both State and Federal law, including the nature and history of a product and its reg-

ulation, without unequal deference. This provision helps create an even playing field, on the merits, for disputes between regulators.

Subtitle A also codifies a modified version of guidelines drafted by the Federal banking regulators to ensure a minimum level of consumer protection for bank insurance customers, including requirements for: anti-coercion rules (prohibiting banks from misleading consumers into believing that an extension of credit is conditional upon the purchase of insurance); easily understandable disclosures as to whether a product is FDIC insured; physical separation between insurance sales and the loan and teller activities of an IDI, WFI, or affiliate thereof; standards limiting compensation systems for insurance referrals by bank tellers or loan personnel; proper licensing and qualification of bank insurance personnel; prohibitions on insurance discrimination against victims of domestic violence; and establishment of a consumer grievance process to address consumer complaints.

In order to complete the repeal of anti-affiliation provisions begun in title I that prevent financial companies from integrating and fully competing with each other, subtitle A of title III preempts State laws that prohibit insurance companies from affiliating in a financial holding company or from buying or investing in a bank.

During the Committee's consideration of financial services reform, concerns were raised regarding the financial stability of mutual insurance companies following reform of the Glass-Steagall Act, particularly if the State of domicile of the mutual insurance company did not have a statute or regulation allowing such company to reorganize into a mutual holding company. The last provision in subtitle A of title III protects the reorganization of a mutual insurance company in a State which has an enabling statute, applying against States (other than the insurer's domicile) that may try to prevent or restrict such reorganization, either directly or indirectly through a formal review or approval requirement.

Subtitle B of title III allows for redomestication and reorganization of mutual insurance companies domiciled in States which do not have enabling reorganization laws or regulations for mutual holding companies. The Committee's purpose in this subtitle is to avoid preempting reasonable State laws which allow such reorganizations, and only apply Federal procedures to those States that are silent on the issue. To allow such a reorganization to be reasonably effected, the Committee has directed that all company licenses be preserved and all policies and forms remain in force during the transition, and that laws in such States (other than those of the transferee State domicile) which discriminate or otherwise impede the reorganization are preempted. To take advantage of these provisions, a redomesticating and reorganizing mutual insurer must present a plan to the State insurance regulator of the transferee State, and such regulator must affirmatively determine that the plan includes requirements for: a majority vote of policyholders and the board of directors after reasonable notice and disclosure; a transfer of equivalent voting and contractual rights in the new holding company parent; certain limits on initial public stock offerings; and awards of stock options to elected officers and directors. The insurance regulator of the transferee domicile must also deter-

mine that the reorganization is fair and equitable to the company's policyholders.

Subtitle C of title III creates a voluntary licensing clearinghouse for insurance agents and brokers. The Committee received lengthy hearing testimony that many States imposed brokerage licensing requirements that did not appear to serve a pro-competitive or consumer protection purpose, and which made the placement of insurance on a multistate basis prohibitively expensive. Questions were raised to the Committee, for example, as to what purpose is served by requiring multiple continuing education requirements in numerous States when the material learned may be largely duplicative.

Subtitle C first allows the States an opportunity to establish uniform or reciprocal licensing and continuing eligibility requirements independently without further Federal imposition. If such uniformity or reciprocity is not achieved within three years, then the National Association of Insurance Commissioners (NAIC) is directed to establish the National Association of Agents and Brokers (NARAB) under its supervision. The NARAB shall be a private, non-profit corporation, which shall establish national uniform licensing qualifications and continuing education requirements that would preempt State licensing standards for NARAB's members.

A broker whose license has been suspended or revoked by a State is ineligible for NARAB membership for three years, and NARAB members shall remit to the States the appropriate fees for license renewal. The NARAB shall establish an Office of Consumer Complaints to investigate consumer problems and recommend disciplinary actions for members, referring such complaints to State insurance regulators where appropriate. The NARAB's board shall be appointed by the NAIC, and the NARAB's bylaws and any rules are subject to disapproval by the NAIC. State laws which discriminate against NARAB's members based on residency are preempted, as are State laws requiring additional licensing requirements for NARAB members, except for State unfair trade practices, consumer protection laws, and counter-signature requirements. If the NAIC does not implement the NARAB, and the States do not meet the uniformity and reciprocity requirements, then the NARAB shall be created and supervised by the President, with its board members subject to the advice and consent of the Senate.

Subtitle D establishes protections for insurance sales and solicitations made in connection with a short term automobile rental or lease. It is impractical in many instances for car rental employees to obtain comprehensive insurance licenses. Some States have worked out limited licenses required for either the rental companies or their employees. Other States have chosen to not require an insurance license for bona fide short term car rental insurance sales. Subtitle D creates a presumption for three years from the date of enactment of this Act that a license is not required, but the presumption only acts where a State has not spoken on the issue, by statute, regulation, order, interpretation, or other action. The presumption also does not apply after a court judgment has been rendered establishing a licensing requirement. Essentially, this subtitle allows the auto rental companies and consumers a short breathing space to continue their activities without threat of further lawsuits caused by uncertain State licensing requirements.

But the subtitle maintains the precedence of State law and limits the presumption to only the minimum amount of time necessary for the State legislatures to resolve the issue.

Subtitle E establishes privacy protections for consumers' individually identifiable health, medical, and genetic records. The subtitle prohibits the disclosure of such information without the consumer's consent, except under certain limited exceptions such as in the regular course of business to effectuate or enforce the business transaction (such as for purposes of underwriting, reinsuring, account administration, preventing fraud, administering benefits, etc.). These privacy protections for medical health care records are enforced by the State regulators, reflecting continued affirmation of the McCarran-Ferguson Act. The legislation will be sunsetted when Congress enacts more comprehensive reforms governing protection of health insurance information, as contemplated by the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 2033).

TITLE IV

Title IV addresses concerns about the mixing of insured deposit-taking activities that are supported by the Federal safety net with commercial activities in the context of unitary savings and loan holding companies. The Committee had concerns with respect to this title, including the grandfather provisions, as reported by the Committee on Banking and Financial Services. In order to provide existing unitary thrift holding companies with the greatest flexibility possible, while limiting the potential for risk to the safety and soundness of the banking system, and the potential for competitive unfairness among financial services providers, the Committee on Commerce approved an amendment adopted by the Subcommittee on Finance and Hazardous Materials. Pursuant to that amendment, the grandfather provisions permit a unitary savings and loan holding company that was such a holding company or had filed an application to become such a holding company as of May 27, 1999, to maintain or enter into any non-bank affiliation and to engage in any activity, including holding any asset, that was permissible pursuant to the Home Owners' Loan Act (HOLA) as of the day before the date of enactment of the Act.

Because these expansive grandfather rights would permit a savings and loan holding company to engage in unlimited commercial, securities, and other activities without becoming subject to the limitations on these activities that would apply to bank holding companies and their subsidiaries pursuant to titles I, II, and III of the Act, the grandfather rights, as approved by the Committee on Commerce, are subject to prudential limitations. A savings and loan holding company's grandfather rights cannot be transferred, and cease to exist, if the savings and loan acquires control of a bank.

TITLE V

As a result of the explosion of information available via electronic services such as the Internet, as well as the expansion of financial institutions through affiliations and other means as they seek to provide more and better products to consumers, the privacy of data

about personal financial information has become an increasingly significant concern of consumers.

H.R. 10 would create new opportunities for affiliations among different types of financial institutions, in turn providing an environment that will benefit consumers by enhancing competition, expanding the array of financial products available to consumers, increasing the efficiency of institutions providing those products, and reducing costs to consumers as a result of this competition and efficiency.

At the same time, the use of personal customer information by these new multi-service institutions underscores the importance of providing consumers with the ability to prevent, if they choose, their personal financial information from being bartered to affiliated parties of a financial institution or unaffiliated third parties or otherwise used in ways that are unrelated to the purpose for which the consumer has provided that information. Title V provides a mechanism to protect the confidentiality of consumers' personal financial information and provide consumers with this power to choose how their personal financial information may be used by their financial institutions, without undermining the benefits that consumers stand to reap as a result of enhanced affiliations, competition, choice, and efficiency that H.R. 10 is designed to provide.

SUBTITLE A

Subtitle A addresses the disclosure of nonpublic personal information by providing new protections for the privacy of customers of financial institutions. The subtitle creates a new regulatory obligation for all financial institutions to do four things: (1) they must put into place procedures to protect the confidentiality and security of nonpublic personal information of their customers; (2) they must disclose to customers what those procedures are; (3) they must provide customers with the ability to "opt out" of having their financial institution share nonpublic personal information about the customer; and (4) they must provide customers, upon request, with access to the information that the financial institution shares with persons other than its employees, agents, affiliates, or its affiliates' employees or agents in order to correct any inaccuracies.

Disclosure of privacy policies

The subtitle requires the Federal Trade Commission (FTC) to promulgate rules to require that a financial institution disclose the procedures it has in place to protect the confidentiality and security of its customers' nonpublic personal information, as well as information regarding the types of entities to whom it divulges or with whom they make unrelated use of nonpublic personal information about customers other than in connection with effecting or enforcing the transaction (which includes recording and maintaining the customer's account).

These rules must prescribe the form of disclosure to permit consumers to readily compare differences in the privacy practices and policies among financial institutions.

In addition, the rules must specify the divulgences and uses of information which may be treated as necessary to effect or enforce a customer's transaction for a variety of financial services and

products. This directive is designed to result in rules that, consistent with the purposes of this subtitle, afford financial institutions broad flexibility to use customer information to provide customers with their services and products in an efficient and cost-effective manner.

The subtitle gives the FTC authority to provide for exemptions, temporary waivers, or delayed effective dates for any requirement of this subtitle or the rules the FTC prescribes thereunder. The Committee intends that the FTC to use this exemptive authority to minimize costs and logistical difficulties potentially incurred by entities in complying with the provisions of the subtitle.

Customer "opt-out" of information sharing

The "opt-out" provision requires the FTC to promulgate rules to permit customers to instruct a financial institution not to share personal nonpublic information about them or to make that information available to any party, either affiliated or unaffiliated. The purpose of the provision is to allow consumers an opportunity to "just say no" to having their personal nonpublic information shared with either affiliates or unrelated third parties. For example, the Committee envisions that when a consumer initiates a relationship with a financial institution, the FTC's rule will require that the consumer be given a form by which the consumer will be presented with an easy-to-understand question, such as: "From time to time this financial institution provides information about its customers to its affiliates or unrelated third parties for a variety of purposes, such as direct marketing. Do you give your consent to our use of information about you in this manner?"

It is equally important to describe what the opt-out provision does not require. Under the expanded opt out provision, an institution is only prohibited from making such information available if a customer has affirmatively instructed the institution not to do so. The institution is not required to obtain prior consent from its customers prior to making such information available to affiliated or unaffiliated parties.

Access to shared customer information

This provision requires the FTC to promulgate rules to require a financial institution to provide its customers with access to personal nonpublic information about the customer that it has shared with a person other than its employees, agents, or affiliates, or its affiliates' employees or agents in order to review such information and correct any inaccuracies. The section provides an exception from this access requirement so that a financial institution would not be required to afford a customer access to data obtained by any analysis or evaluation, or to examine or dispute the methodology of such analysis or evaluation.

Exceptions from disclosure, opt-out, and access provisions

The subtitle provides for a number of exceptions from the disclosure, opt-out, and access provisions. Pursuant to these exceptions, the institution may divulge or make unrelated use of the information to effect or enforce the transaction or a related transaction; to protect the confidentiality or security of its records; to take pre-

cautions against liability; to respond to judicial process, to the extent permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1974; to provide information to law enforcement agencies or for an investigation on a matter related to public safety; to provide information to a consumer reporting agency in accordance with the Consumer Credit Protection Act; or in executing a sale or exchange whereby the financial institution transfers the business unit or operation, or substantially all the assets of the business unit or operation with which the customer's transactions were effected.

The scope of these exceptions is designed to ensure that the disclosure, access, and opt-out rules promulgated by the FTC pursuant to the subtitle do not impede the ability of financial institutions, consistent with the purposes of this subtitle, to provide a multitude of services in an efficient manner to their customers. The Committee intends that the definitions of the terms used in the exception provisions, including the exemptive and rulemaking authority granted to the FTC regarding these terms, will be applied in a manner, consistent with the subtitle's goal of providing consumers with a reliable means to protect their personal financial information.

Enforcement

The subtitle designates the FTC to enforce the subtitle and the rules prescribed thereunder. The FTC is to use this enforcement authority in the same manner, with the same authority and using the same remedies, as are provided by the Federal Trade Commission Act, with respect to all financial institutions.

SUBTITLE B

Subtitle B addresses the practice of "pretexting," that is, the obtaining of personal confidential information from financial institutions under false pretenses. This subtitle provides additional protections against pretexting violations by increasing the penalties for fraudulent information gathering and providing specific direction to the FTC to prosecute such fraudulent activities.

The subtitle makes it unlawful for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person by (1) making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution; (2) making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution; or (3) providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation.

The subtitle also makes it unlawful to request a person to obtain customer information of a financial institution knowing that it was or will be obtained through any of the three methods described in this section.

The subtitle provides exceptions for law enforcement actions and for actions by a financial institution to (1) test its security systems;

(2) investigate allegations of misconduct or negligence on the part of its officers, employees, or agents; or (3) recover customer information of the financial institution obtained by means of pretexting by another person. Thus, for example, when a fraud prevention unit of a financial institution succeeds in retrieving information from an information broker that has been obtained through fraud or deceit, the financial institution is not in violation of this statute. This "safe harbor" extends to agents, officers, or employees retained by a financial institution to implement anti-fraud or self-testing programs.

The subtitle's prohibitions do not apply to instances in which an insurance institution or its officers, employees or agents, obtain information as part of an insurance investigation into criminal activity, fraud, material misrepresentation, or material nondisclosure that is authorized for such institution under State law, regulation, interpretation, or order. There is also an exception for information that is otherwise available as a public record filed pursuant to the Federal securities laws.

The Committee does not intend that any provision of subtitle B be construed as limiting, expanding, or in any way interfering with the sharing of information among affiliates or subsidiaries within a financial services institution as permitted under any other applicable law, including the new delegations established under subtitle A.

The subtitle designates the FTC as the enforcer of the subtitle. It also provides for criminal penalties for knowing and intentional violations of the subtitle. It preempts State authority only to the extent that the State's laws, regulations, orders, or interpretations are inconsistent with the Act.

The subtitle requires regulators to review their regulations and guidelines governing the protection of confidential consumer financial information and to revise such provisions as necessary to ensure appropriate confidentiality safeguards. The Committee expects the appropriate examining authorities to include compliance with such guidelines and the adequacy of such internal controls in their examinations of these institutions.

The subtitle also requires a report by the Comptroller General regarding the effectiveness of the Act in preventing the fraudulent obtaining of confidential consumer financial information. The Federal Trade Commission and the Attorney General also must submit to Congress an annual report on their enforcement actions pursuant to the legislation.

BACKGROUND AND NEED FOR LEGISLATION

The Glass-Steagall Act imposes barriers between commercial banking, commonly the taking of deposits and the making of commercial loans, and investment banking, the raising of capital for companies through the public offering of securities. The stated legislative purpose for the Glass-Steagall Act, passed in the wake of the stock market crash of 1929 and the ensuing Depression, was to prevent banks from engaging in activity deemed at the time to be too risky for banks, such as securities underwriting, and to prevent conflicts of interest between commercial and investment banking, which were thought to have led to speculative frenzy on the

stock market. The principal Federal statute governing securities activity, the Securities Exchange Act, was enacted in 1934. Because commercial banks effectively were barred from the securities industry by the Glass-Steagall Act, the Exchange Act excluded banks from the definitions of "broker" and "dealer", effectively excluding banks from broker-dealer regulation under the Federal securities laws.

In recent years, the financial services industry has undergone significant change, largely as a result of administrative actions by Federal banking regulators. Actions by the OCC and by the Federal Reserve Board have enabled banks to become increasingly engaged in securities and insurance activities. Notably, the erosion of these limitations has resulted from administrative, rather than Congressional action, by broad interpretations of the Glass-Steagall Act and the National Bank Act.

In November of 1996, the OCC announced interpretive changes to Part 5 of the National Bank Act, greatly expanding the standard for determining the scope of permissible activities for national banks. Pursuant to this interpretive action, national banks would be permitted, through their operating subsidiaries, to engage in activities that are statutorily prohibited to the bank itself. Based on these interpretive changes by the Comptroller, national banks to date have applied to the Comptroller for the authority to conduct real estate development in an operating subsidiary and to underwrite municipal revenue bonds in an operating subsidiary. As noted above, the Committee finds that the Comptroller's interpretive changes to Part 5 are ultra vires.

The OCC has further undertaken numerous "reinterpretations" of the National Bank Act to authorize increased national bank insurance activities. Of particular note is a decision by the OCC to reinterpret Federal banking laws to authorize national banks to sell insurance nationwide through small town branches. The OCC has also expanded the sphere of bank-eligible and incidental products into what many insurance underwriters have argued is their traditional authority.

The Federal Reserve Board also has taken action that has expanded the extent to which bank holding companies, through their affiliates, may engage in securities activities. Originally, in 1987, the Federal Reserve Board permitted a bank holding company affiliate to derive no more than 5 percent of its gross revenues from securities activities. This limitation was designed to comply with the language of section 20 of the Glass-Steagall Act prohibiting commercial bankers from being "engaged principally" in investment banking. In 1989, the Federal Reserve Board raised the so-called "section 20 caps" to 10 percent of the affiliate's gross revenues, and in 1996, raised the caps again to 25 percent. In August of 1997, the Federal Reserve Board rescinded many of the prudential restrictions, commonly referred to as firewalls, imposed in its original section 20 order and designed to prevent the risks of securities underwriting and dealing from being passed to an affiliated bank. The Federal Reserve Board consolidated the remaining restrictions as a series of eight operating standards.

The administrative actions of the OCC have led to numerous court battles to define permissible lines of activities among finan-

cial services providers, focusing primarily upon activities involving insurance sales and underwriting. The actions of banking regulators expanding the permissible securities activities of banks have also led to competitive imbalances among financial services providers, by providing for differing regulatory schemes among banks, securities firms, and insurance providers engaged in the same activities. The ability of banks to own securities firms and engage in securities and insurance activities, while securities and insurance firms are unable to own banks, has given banks competitive advantages that are unavailable to securities and insurance firms.

The Financial Services Act of 1999 addresses these developments by creating a new regulatory structure that permits affiliations among different financial services providers, provides for functional regulation of securities activities, and preserves State regulation of insurance activities, while preserving the ability of banks to engage in traditional banking activities.

Affiliations

Title I of the bill eliminates the barriers to affiliation among financial services providers that are contained in the Glass-Steagall Act of 1933 and the Bank Holding Company Act of 1956, and creates a new type of financial holding company that is permitted to control banks, securities firms, insurance companies, and other financial firms. As a result, for the first time, securities firms and insurance companies would be permitted to own or affiliate with a commercial bank, thus creating competitive equality among financial services providers. Financial holding companies would be subject to streamlined oversight by the Federal Reserve Board to ensure that activities of the holding company and its affiliates are consistent with the preservation of the safety and soundness of the U.S. banking system and monetary system and are not subject to unnecessary or duplicative Federal regulation.

Title I also includes provisions limiting the powers of operating subsidiaries of national banks to only those powers that are permissible for national banks to engage in, except that the title also authorizes national banks to own operating subsidiaries that are engaged in financial activities solely as agent, including insurance agency activities. These provisions are designed to limit the expansion of the Federal safety net that many argue would result if operating subsidiaries, which enjoy the subsidy created by the existence of Federal deposit insurance, access to the Federal payment system, and favorable access to the Federal Reserve Board discount window, were able to engage in securities and other activities that are prohibited to their parents, and to prevent the competitive disparities that would result from such an expansion of the Federal safety net. In hearings before the Subcommittee on Finance and Hazardous Materials, Federal Reserve Board Chairman Alan Greenspan raised concerns with respect to the competitive disparity that would be created by permitting national bank operating subsidiaries to engage in activities, such as securities underwriting activities, not permitted to the national bank itself:

> * * * one cannot eliminate the fact that equity investment in [bank] subsidiaries is funded by the sum of in-

sured deposits and other bank borrowings that directly benefit from the subsidy of the safety net.

Thus, inevitably, a bank subsidiary must have lower cost of capital than an independent entity and even a subsidiary of the bank's parent [(*e.g.*, a separately capitalized affiliate)]. Indeed, one would expect that a rational banking organization would, as much as possible, shift its nonbank activity from the bank holding company structure to the bank subsidiary structure. Such a shift from affiliates to bank subsidiaries would increase the subsidy and the competitive advantage of the entire banking organization relative to its nonbank competitors. (Testimony of Alan Greenspan, Chairman, Board of Governors of the Federal Reserve System, before the Committee on Banking and Financial Services, February 13, 1997. PRINTED, Serial No. 105–1, Committee on Banking and Financial Services).

Functional regulation

The Committee on Commerce strongly believes that functional regulation—regulation of the same functions, or activities, by the same expert regulator, regardless of the nature of the entity engaging in those activities—has become essential to a coherent financial regulatory scheme, as activities and affiliations expand and change within the financial marketplace. Title II amends the Federal securities laws to provide for functional regulation of securities activities.

Subtitle A of title II amends the Exchange Act to eliminate the blanket exemptions for banks from the definitions of "broker" and "dealer." These exceptions, which have been part of the Exchange Act since its inception, were included in the Exchange Act based on the assumption that the Glass-Steagall Act, which had become law just one year before the Exchange Act, had prohibited all but extremely limited specified bank securities activities. Specifically, at the time of its enactment, the Glass-Steagall Act included exceptions that permitted banks to underwrite and deal in obligations of the United States and many of its instrumentalities, as well as obligations of States and their subdivisions. Amendments to the Glass-Steagall Act made in 1935 permitted banks to provide limited securities brokerage services as an accommodation to their customers, by permitting banks to engage in stock purchases and sales in an "agency" capacity, at the request of customers.

Section 20 of the Glass-Steagall Act forbids affiliation of any Federal Reserve member bank with any business entity "principally engaged" in investment banking activities. For more than fifty years following the enactment of the Glass-Steagall Act, bank holding companies could not underwrite securities.

As noted above, however, the limitations on bank securities activities have eroded as a result of administrative actions by Federal banking regulators. The rationale for the exemptions in the Federal securities laws that apply to banks is, thus, no longer sound, given the extensive and increasing securities activities in which banks are engaging.

In addition, these exemptions have created a competitive disparity between competitors in the financial services marketplace by permitting banks to engage in securities activities without being subject to the same regulatory requirements that apply to broker-dealers engaging in the same activities. The Committee is also greatly concerned that these exemptions have permitted banks to engage in securities activities for investors who are not protected by the provisions of the Federal securities laws.

Blanket exemptions from securities regulation no longer work for banks actively participating in securities activities. The Committee believes that functional regulation is necessary to ensure that all entities engaged in securities activities and securities professionals are regulated by the same regulatory scheme, administered by the same functional regulator: the Securities and Exchange Commission, which has over 60 years of expertise focused specifically on these activities. The Committee recognizes, however, that certain limited existing bank securities activities may remain excepted from SEC regulation without significantly jeopardizing investor protection and market integrity, based on the limited nature of certain activities and the existing scheme of regulation of other activities.

The limited exceptions from the definitions of "broker" and "dealer" in H.R. 10 reflect the Committee's commitment to ensure that activities that require securities regulation are subject to the Federal securities laws, with minimal disruption of traditional banking activities. The Committee has crafted these exceptions to preserve the ability of banks to continue to engage in activities that are connected to traditional banking activities, while preventing activities that should be subject to securities regulation from being conducted by banks without functional regulation. The Committee also notes that in the National Securities Markets Improvement Act of 1996 (Public Law 104–290, October 11, 1996), it gave the SEC broad exemptive authority as new Section 36 of the Exchange Act and that authority can be used should banks require additional exemption in this area.

Insurance

Ever since the Great Depression and the enactment of Glass-Steagall barriers between banking and commerce, questions have been raised over the extent to which banks should be allowed to participate in traditionally non-banking activities such as insurance. Recent regulatory actions by the OCC have greatly increased the controversy over appropriate bank insurance powers.

The Committee's concern over the recent trend towards expansion of bank insurance powers is partly a recognition of the differing goals of traditional banking and insurance regulators. The primary goal of Federal banking regulators is to protect the liquidity and solvency of the banking system. In contrast, insurance regulators are primarily focused on market conduct of agents in terms of consumer protection and the long-term ability of underwriters to pay claims in order to protect insurance consumers and State insurance guarantee funds. These objectives are sometimes in conflict, particularly in relation to the transfer of funds between bank and insurance affiliates.

Banks are allowed to choose between a State or Federal charter and have some degree of regulatory arbitrage available in the competition between the different regulators. In contrast to the dual regulatory system provided for banks under Federal law, insurance is governed solely at the State level, by fifty separate State statutes. When the Supreme Court in 1944 tried to shift the power of insurance regulation from the States to the Federal government, Congress passed the McCarran-Ferguson Act, overturning the Supreme Court ruling and clarifying State supremacy in insurance regulation. The McCarran-Ferguson Act states that:

> No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, * * * unless such Act specifically relates to the business of insurance. 15 U.S.C. §1012(b).

The banking and insurance regulatory systems potentially clash when banks become involved in insurance activities. Despite the limits of the McCarran-Ferguson Act, the OCC over the last decade has slowly been encouraging national banks to expand into the field of insurance, beyond what has been permissible under State law. When the OCC and State insurance regulators clash over whether a product is a banking or insurance activity and how it should be regulated, courts, as a result of the Unites States Supreme Court *Chevron* ruling, defer to reasonable interpretations of law by Federal regulators—in this case, the OCC. In *Barnett Bank of Marion County, N.A.* v. *Nelson,* the Supreme Court upheld the OCC's Federal preemption of State insurance law, ruling that State regulation would only be applicable where it did not "prevent or significantly interfere" with the Federally authorized activities of a national bank.

Because the courts are required to give deference to Federal agencies over State regulators, this gives the OCC the upper hand in choosing which insurance powers it wants to give to its Federally chartered banks, and which State laws it wants to preempt or allow. For example, the OCC has repeatedly indicated they are considering whether to preempt Rhode Island law governing bank insurance sales, which sets forth licensing and disclosure requirements, as well as limits on the sale of insurance by loan officers. The OCC has also expanded the "town of 5,000" law, which permitted bank insurance sales within small towns, to allow insurance sales nationwide through banks which have a branch in a small town.

The Committee is particularly concerned about the potential preemption of State consumer protection law by the OCC in light of recent comments made by the Comptroller and by the Secretary of the Treasury. For example, in response to a question from Senator Bryan, Comptroller Hawke stated that the OCC looks at bank insurance activities from the perspective of the relative risk the activity poses to the overall banking company. The Committee on Commerce is concerned that this sole focus on bank solvency leaves out the most important perspective—protecting the consumer. Mr. Hawke further stated that any State consumer protection that infringes or burdens the ability of a bank to sell insurance may be

preempted. This statement highlights the need for Congressional action to clarify the appropriate extent of State consumer protection laws governing insurance sales by Federally chartered entities.

The Committee takes further note of two recent court cases which used very strong language in condemning the Comptroller's attempted preemption of State law and accordingly limiting the ability of the OCC to expand national banks' insurance powers. In *Blackfeet National Bank* v. *Nelson,* No. 96–3021, 1999 U.S. Appellate LEXIS 6069 (11th Cir. April 4, 1999) (concluding in its primary holding that the OCC's ruling that national banks are authorized to underwrite an annuity product was precluded by the applicable provisions of the National Bank Act), the United States Court of Appeals for the 11th Circuit overturned the Comptroller's actions allowing the underwriting of retirement CD's in a national bank, finding that "the Comptroller's interpretation of the Bank Act is an unreasonable expansion of the powers of national banks beyond those intended by Congress." Id.

In *Independent Insurance Agents of America* v. *Hawke,* No. 98–cv–0562 slip op. (D.D.C. March 29, 1999) (granting the Plaintiff's Motion for Summary Judgment and concluding that the OCC's ruling that national banks located outside of small towns were authorized to sell crop insurance products was precluded by the applicable provisions of the National Bank Act), the United States District Court for the District of Columbia struck down the Comptroller's attempted expansion of bank crop insurance sales outside of towns of 5,000, stating that the language was not ambiguous and the Comptroller's interpretation was unreasonable. The OCC has now filed a notice of appeal to overturn the District Court's ruling in *IIAA* v. *Hawke,* highlighting the need for Congressional action to clarify the scope of Federal preemption and protect reasonable and nondiscriminatory State law.

The Committee recognizes, however, that a majority of States now allow their State chartered banks some degree of permissible insurance activities. Many States have "wild card" statutes which allow their State chartered banks parity with any insurance powers authorized by the OCC for Federally chartered banks, in order to equalize competition and lessen the number of banks that switch charters to take advantage of the regulator offering them the most new powers and the least regulation. The Committee also received testimony from numerous witnesses pointing out that bank insurance activities could increase consumer choice and create greater synergies, particularly in under-served communities. Additional testimony was received on the advantages of uniform national insurance standards over 50+ different State standards, many of which are arguably anti-competitive or discriminatory in nature.

In considering the appropriate level of regulation and consumer protection that should be applied to banks, the Committee took particular note of the Illinois and New York State bills governing bank insurance activities. These agreements were jointly negotiated and widely supported by all of the involved industries and addresses many of the same issues involved in the current Glass-Steagall reform legislation. The thirteen safe harbors created by the bill were largely taken from these two laws.

The Committee also heard testimony on the importance of distinguishing between insurance and banking products for the purpose of determining bank underwriting eligibility and regulation. When the Glass-Steagall Act was first enacted, the lines between traditional bank and insurance products were readily discernable and easy to draw. Recently, these lines have become increasingly blurred, as many modern financial products are hybrids of banking, securities, and insurance services. For example, a variable annuity might include elements of actuarial expectations (insurance), traditional bank savings, and securities investments.

Currently, the courts are required to defer to the OCC's determination of whether an insurance related instrument is a bank product, or even "incidental" to a banking product. Past legislative proposals have tried to define insurance, based on either specific definitions or according to current State law. Other proposals have separately, or in conjunction with a definition, tried to create a dispute resolution system to equalize the deference given to the banking regulator over the insurance regulators.

To create a level playing field among the industries and avoid regulatory arbitrage, a consensus developed within the Committee that an iron clad definition of insurance needed to be created, based on the tax codes and with a broad grandfathering, and an expedited dispute resolution system needed to be established to quickly adjudicate conflicts between State and Federal law and regulations governing insurance, with all issues considered on their merits without unequal deference given to either regulator. Comprehensive guidelines were also needed to set forth the standards for preemption of State law, for appropriate safe harbors for critical consumer protections, and to establish an antidiscrimination rule to govern future State insurance sales regulations. In light of these new Federal clarifications of the appropriate interaction between State and Federal law relating to insurance, the Committee also received testimony on the need for an affirmation of McCarran-Ferguson, and a heightened emphasis of the continued need for State licensing of all insurance activities.

Thrift charter

H.R. 10 as reported by the Committee on Commerce eliminates the availability of new unitary thrift charters and limits the transferability of existing unitary thrift charters to financial entities.

Financial privacy

The evolution of electronic commerce has brought privacy issues, especially financial information privacy, into the public and media spotlight. An increasing amount of personal consumer data is being stored by financial institutions, including asset and investment accounts, payments or loans related to commercial transactions, and insurance-related information. Consumers have a reasonable expectation of confidentiality for their information.

Subtitle A addresses the issue of how and when a financial institution may disclose the nonpublic personal information of their customers. Under current law, there is no requirement that financial institutions take any particular measures to fully protect the secu-

rity and confidentiality of the personal, nonpublic information about their customers. H.R. 10 fills in this gap.

H.R. 10 provides a regulatory structure that will enable financial institutions to expand and affiliate in ways that will bring consumers the benefits of more services, greater efficiency, and increased convenience. Already, consumers today may enjoy an increasing array of benefits stemming from alliances that financial institutions establish with unrelated third parties to provide products such as affinity programs whereby consumers earn "mileage" or other incentive points based on their transactions with a financial institution, for example, through a credit card.

As financial institutions become increasingly diversified and complex, they must rely upon databases and customer service mechanisms that require the sharing of information both within the institution itself, among its affiliates, and among various service providers, in order to provide consumers with competitive products.

At the same time, consumers have become increasingly sensitive to the use of their personal information by financial institutions as a commodity to be sold to outside parties with which the consumer has no expectation or, necessarily, desire to do business, as well as the use of that personal information by the financial institution itself in ways that are unrelated to the transaction or product the consumer originally sought from the institution.

Subtitle A provides a balanced approach to protect consumer privacy without undermining the benefit of affiliation that is the fundamental purpose of H.R. 10.

The subtitle accomplishes this by imposing a new four-pronged requirement on all financial institutions to protect consumer privacy. First, the subtitle requires that financial institutions establish a policy to protect the security and confidentiality of their customers' nonpublic personal information. Second, the subtitle requires that financial institutions provide an understandable disclosure to consumers stating exactly what their privacy policies are, in a form that will enable consumers to compare one financial institution's privacy policy against another and choose where he or she prefers to do business. Third, the subtitle requires financial institutions to give their customers the right to say no to the institution's divulgence or unrelated use of their nonpublic personal information, either with the institution's affiliates or with unrelated parties. And fourth, the subtitle requires financial institutions to provide their customers with access to, and the ability to correct errors in, any nonpublic personal information that the institution has provided for consideration to a third party (i.e., not an employee, agent, or affiliate of the institution).

These requirements are designed to provide consumers with greater privacy protection through competition—as a result of the ability consumers will have to choose among the privacy policies disclosed by competing financial institutions, as well as regulatory restrictions, in the form of the requirement that consumers be able to opt out of information sharing and gain access to and correct personal nonpublic information about themselves.

The Committee has provided for certain exceptions from these requirements, as well as directives to the FTC to promulgate rules further defining the scope of the subtitle, in order to ensure that

the privacy protections afforded by the subtitle do not interfere with the ability of financial institutions to effect or enforce a customer's transaction, protect confidentiality or security, take precautions against liability, respond to judicial process or provide information to law enforcement agencies, provide information to a consumer reporting agency, or effectuate a sale or merger, especially as these institutions become increasingly diversified under the regime provided by H.R. 10.

Subtitle B addresses financial privacy concerns raised by the fraudulent practices of unscrupulous individuals to obtain personal consumer information by means of "pretexting."

Private detectives, information brokers, and lawyers, among others, have been exploiting the information explosion, using false identities or other deceptive pretexts to wrongly obtain information about targeted victims from financial institutions. These "pretexters" might use information gained from one source, such as a social security number or mother's maiden name, to gather information from a second source, such as an investment account, credit card limit, or savings balance. Financial institutions are being placed in the increasingly difficult position of trying to maintain the balance between providing simple and remote access by legitimate consumers to their financial accounts while still preventing the unauthorized access to confidential information by skillful pretexters.

The FTC currently has authority under the Federal Trade Commission Act to act against persons who use deceptive practices to obtain confidential consumer information. Additionally, the use of false or deceptive methods to procure confidential financial information will often give rise to wire fraud, punishable under Title 18, United States Code. However, prosecution of fraudulent information brokers under Title 18 has not been frequent, and under current law, the FTC cannot impose civil penalties against an entity until after a second violation has occurred. Furthermore, the availability of criminal penalties are limited. Subtitle B makes it clear that, with limited exceptions for financial institutions and law enforcement agents, using pretexting to fraudulently obtain confidential customer financial information is illegal, and immediately subject to criminal and administrative punishment.

In addition, subtitle B recognizes the importance of financial institutions implementing strong internal controls to prevent unauthorized disclosure of their customers' private financial information. The legislation requires financial regulatory agencies to review their confidentiality rules and guidelines and, if necessary, make adjustments in order to ensure that supervised financial institutions maintain appropriate privacy protections.

This subtitle is largely identical to a bill approved by the Committee on Commerce in the 105th Congress, H.R. 4321, the Financial Information Privacy Act of 1998, with one exception relating to the enforcement provisions. Subtitle B conforms the enforcement treatment to that provided in subtitle A of the privacy subtitle, where enforcement is carried out by the Federal Trade Commission, rather than by private lawsuits, actions brought by State Attorneys General, or other regulators.

HEARINGS

The Subcommittee on Finance and Hazardous Materials held two legislative hearings on H.R. 10, the Financial Services Reform Act of 1999, on April 28, 1999, and May 5, 1999. The hearing on April 28, 1999 focused on the operating subsidiary. The Subcommittee received testimony from The Honorable Alan Greenspan, Chairman, Board of Governors of the Federal Reserve System.

On May 5, 1999, the Subcommittee received testimony on H.R. 10 from the following witnesses: The Honorable Robert E. Rubin, Secretary, Department of the Treasury; The Honorable George Nichols, III, Chairman, Committee on Financial Services Modernization, Commissioner of Insurance, Kentucky Department of Insurance, representing The National Association of Insurance Commissioners; The Honorable Arthur Levitt, Chairman, Securities and Exchange Commission; Mr. Arnold Schultz, Board Chairman, The Grundy National Bank; Mr. Mark P. Sutton, President, Private Client Group, PaineWebber Inc.; Mr. Craig Zimpher, Vice President, Government Relations, Nationwide Insurance Corporation; Mr. Scott A. Sinder, Partner, Baker and Hostetler, LLP, representing the Independent Insurance Agents of America, the National Association of Life Underwriters, and the National Association of Professional Insurance Agents of America.

COMMITTEE CONSIDERATION

On May 27, 1999, the Subcommittee on Finance and Hazardous Materials met in open markup session to consider H.R. 10 and, by a roll call vote of 26 yeas to 1 nay, agreed to H.R. 10, as amended, and approved the bill for Full Committee consideration. On June 10, 1999, the Full Committee met in open markup session and ordered H.R. 10 favorably reported to the House, amended, by a voice vote, a quorum being present.

ROLL CALL VOTES

Clause 3(b) of rule XIII of the Rules of the House requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. The following are the recorded votes on the motion to report H.R. 10 and on amendments offered to the measure, including the names of those Members voting for and against.

COMMITTEE ON COMMERCE -- 106TH CONGRESS
ROLL CALL VOTE #7

BILL: H.R. 10, Financial Services Act of 1999

AMENDMENT: An Amendment by Mr. Rush, #2, to require companies that sell or underwrite insurance that are in violation of any Federal or State law or regulation prohibiting redlining to divest any ownership or affiliation with a bank or securities firm, with redlining defined to include providing insurance in a discriminatory manner due to either disparate treatment or impact.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 19 yeas to 30 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley		X		Mr. Dingell		X	
Mr. Tauzin		X		Mr. Waxman	X		
Mr. Oxley		X		Mr. Markey	X		
Mr. Bilirakis		X		Mr. Hall		X	
Mr. Barton		X		Mr. Boucher		X	
Mr. Upton		X		Mr. Towns	X		
Mr. Stearns		X		Mr. Pallone	X		
Mr. Gillmor		X		Mr. Brown	X		
Mr. Greenwood				Mr. Gordon		X	
Mr. Cox				Mr. Deutsch	X		
Mr. Deal		X		Mr. Rush	X		
Mr. Largent		X		Ms. Eshoo	X		
Mr. Burr		X		Mr. Klink	X		
Mr. Bilbray				Mr. Stupak	X		
Mr. Whitfield		X		Mr. Engel	X		
Mr. Ganske		X		Mr. Sawyer	X		
Mr. Norwood		X		Mr. Wynn			
Mr. Coburn		X		Mr. Green	X		
Mr. Lazio		X		Ms. McCarthy	X		
Mrs. Cubin		X		Mr. Strickland	X		
Mr. Rogan		X		Ms. DeGette	X		
Mr. Shimkus		X		Mr. Barrett	X		
Mrs. Wilson		X		Mr. Luther	X		
Mr. Shadegg		X		Ms. Capps	X		
Mr. Pickering		X					
Mr. Fossella		X					
Mr. Blunt		X					
Mr. Bryant		X					
Mr. Ehrlich		X					

06/10/1999

COMMITTEE ON COMMERCE -- 106TH CONGRESS
ROLL CALL VOTE #8

BILL: H.R. 10, Financial Services Act of 1999

AMENDMENT: An Amendment by Mr. Ganske, #3, to require insurance companies and agents to maintain a practice of protecting the confidentiality of individually identifiable customer health and medical (and genetic) information, with disclosure of such information only allowed with the consent of the consumer or under other specified exceptions. This amendment shall cease to be effective after legislation is enacted which satisfies the requirements of the Health Insurance Portability Act of 1996.

DISPOSITION: **AGREED TO**, as amended, by a roll call vote of 25 yeas to 23 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley	X			Mr. Dingell		X	
Mr. Tauzin	X			Mr. Waxman		X	
Mr. Oxley	X			Mr. Markey		X	
Mr. Bilirakis				Mr. Hall	X		
Mr. Barton	X			Mr. Boucher		X	
Mr. Upton	X			Mr. Towns		X	
Mr. Stearns	X			Mr. Pallone		X	
Mr. Gillmor	X			Mr. Brown		X	
Mr. Greenwood				Mr. Gordon		X	
Mr. Cox	X			Mr. Deutsch		X	
Mr. Deal	X			Mr. Rush		X	
Mr. Largent	X			Ms. Eshoo		X	
Mr. Burr	X			Mr. Klink		X	
Mr. Bilbray	X			Mr. Stupak		X	
Mr. Whitfield		X		Mr. Engel			
Mr. Ganske	X			Mr. Sawyer			
Mr. Norwood	X			Mr. Wynn		X	
Mr. Coburn				Mr. Green		X	
Mr. Lazio	X			Ms. McCarthy		X	
Mrs. Cubin	X			Mr. Strickland		X	
Mr. Rogan	X			Ms. DeGette		X	
Mr. Shimkus	X			Mr. Barrett		X	
Mrs. Wilson		X		Mr. Luther		X	
Mr. Shadegg	X			Ms. Capps		X	
Mr. Pickering	X						
Mr. Fossella	X						
Mr. Blunt	X						
Mr. Bryant	X						
Mr. Ehrlich	X						

06/10/1999

COMMITTEE ON COMMERCE -- 106TH CONGRESS
ROLL CALL VOTE #9

BILL: H.R. 10, Financial Services Act of 1999

AMENDMENT: An Amendment by Mr. Barrett, #4, to require the Secretary of Commerce to require insurance companies and banks selling insurance to collect personal information on their customers, including race, gender, ethnicity, income level, and residence for every insurance contract.

DISPOSITION: NOT AGREED TO, by a roll call vote of 17 yeas to 28 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley		X		Mr. Dingell		X	
Mr. Tauzin		X		Mr. Waxman			
Mr. Oxley		X		Mr. Markey	X		
Mr. Bilirakis		X		Mr. Hall		X	
Mr. Barton		X		Mr. Boucher			
Mr. Upton		X		Mr. Towns	X		
Mr. Stearns		X		Mr. Pallone	X		
Mr. Gillmor		X		Mr. Brown	X		
Mr. Greenwood		X		Mr. Gordon		X	
Mr. Cox				Mr. Deutsch	X		
Mr. Deal		X		Mr. Rush	X		
Mr. Largent		X		Ms. Eshoo	X		
Mr. Burr		X		Mr. Klink	X		
Mr. Bilbray		X		Mr. Stupak	X		
Mr. Whitfield		X		Mr. Engel			
Mr. Ganske		X		Mr. Sawyer	X		
Mr. Norwood		X		Mr. Wynn	X		
Mr. Coburn				Mr. Green	X		
Mr. Lazio		X		Ms. McCarthy	X		
Mrs. Cubin		X		Mr. Strickland	X		
Mr. Rogan				Ms. DeGette	X		
Mr. Shimkus		X		Mr. Barrett	X		
Mrs. Wilson		X		Mr. Luther			
Mr. Shadegg				Ms. Capps	X		
Mr. Pickering		X					
Mr. Fossella		X					
Mr. Blunt		X					
Mr. Bryant		X					
Mr. Ehrlich		X					

06/10/1999

COMMITTEE ON COMMERCE -- 106TH CONGRESS
ROLL CALL VOTE #10

BILL: H.R. 10, Financial Services Act of 1999

AMENDMENT: An Amendment by Mr. Barrett, #5, to require the Department of Commerce to develop and implement a program to review insurance access problems of inner cities and minorities, insurer practices, and data on race, ethnicity, income level, etc, of insurance purchasers.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 19 yeas to 23 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley		X		Mr. Dingell		X	
Mr. Tauzin		X		Mr. Waxman			
Mr. Oxley		X		Mr. Markey	X		
Mr. Bilirakis		X		Mr. Hall		X	
Mr. Barton		X		Mr. Boucher			
Mr. Upton		X		Mr. Towns	X		
Mr. Stearns		X		Mr. Pallone	X		
Mr. Gillmor		X		Mr. Brown	X		
Mr. Greenwood		X		Mr. Gordon	X		
Mr. Cox				Mr. Deutsch	X		
Mr. Deal		X		Mr. Rush	X		
Mr. Largent		X		Ms. Eshoo	X		
Mr. Burr		X		Mr. Klink	X		
Mr. Bilbray		X		Mr. Stupak	X		
Mr. Whitfield		X		Mr. Engel			
Mr. Ganske		X		Mr. Sawyer	X		
Mr. Norwood		X		Mr. Wynn	X		
Mr. Coburn				Mr. Green	X		
Mr. Lazio				Ms. McCarthy	X		
Mrs. Cubin		X		Mr. Strickland	X		
Mr. Rogan				Ms. DeGette	X		
Mr. Shimkus		X		Mr. Barrett	X		
Mrs. Wilson	X			Mr. Luther			
Mr. Shadegg				Ms. Capps	X		
Mr. Pickering		X					
Mr. Fossella		X					
Mr. Blunt							
Mr. Bryant							
Mr. Ehrlich		X					

06/10/1999

COMMITTEE ON COMMERCE -- 106TH CONGRESS
ROLL CALL VOTE #11

BILL: H.R. 10, Financial Services Act of 1999

AMENDMENT: An Amendment by Mr. Greenwood to the Towns Amendment, #6A, to direct the Federal Reserve Board and the Office of Thrift Supervision to study the effect of the integration of thrifts and commercial companies.

DISPOSITION: **AGREED TO** by a roll call vote of 34 yeas to 14 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley	X			Mr. Dingell			
Mr. Tauzin	X			Mr. Waxman	X		
Mr. Oxley	X			Mr. Markey		X	
Mr. Bilirakis	X			Mr. Hall	X		
Mr. Barton		X		Mr. Boucher		X	
Mr. Upton		X		Mr. Towns	X		
Mr. Stearns	X			Mr. Pallone	X		
Mr. Gillmor		X		Mr. Brown		X	
Mr. Greenwood	X			Mr. Gordon	X		
Mr. Cox	X			Mr. Deutsch	X		
Mr. Deal		X		Mr. Rush	X		
Mr. Largent		X		Ms. Eshoo	X		
Mr. Burr	X			Mr. Klink	X		
Mr. Bilbray	X			Mr. Stupak	X		
Mr. Whitfield	X			Mr. Engel			
Mr. Ganske		X		Mr. Sawyer	X		
Mr. Norwood		X		Mr. Wynn	X		
Mr. Coburn		X		Mr. Green	X		
Mr. Lazio				Ms. McCarthy	X		
Mrs. Cubin		X		Mr. Strickland			
Mr. Rogan	X			Ms. DeGette	X		
Mr. Shimkus		X		Mr. Barrett	X		
Mrs. Wilson	X			Mr. Luther			
Mr. Shadegg	X			Ms. Capps	X		
Mr. Pickering		X					
Mr. Fossella	X						
Mr. Blunt	X						
Mr. Bryant	X						
Mr. Ehrlich	X						

06/10/1999

COMMITTEE ON COMMERCE -- 106TH CONGRESS
ROLL CALL VOTE #12

BILL: H.R. 10, Financial Services Act of 1999

AMENDMENT: An Amendment by Mr. Towns, #6, to maintain the prohibition on new unitary savings and loan holding companies, but allow for the continued full transferability rights of existing unitary holding companies.

DISPOSITION: **NOT AGREED TO**, as amended, by a roll call vote of 23 yeas to 26 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley	X			Mr. Dingell			
Mr. Tauzin	X			Mr. Waxman		X	
Mr. Oxley	X			Mr. Markey		X	
Mr. Bilirakis		X		Mr. Hall		X	
Mr. Barton		X		Mr. Boucher		X	
Mr. Upton		X		Mr. Towns	X		
Mr. Stearns	X			Mr. Pallone	X		
Mr. Gillmor		X		Mr. Brown		X	
Mr. Greenwood	X			Mr. Gordon		X	
Mr. Cox	X			Mr. Deutsch		X	
Mr. Deal		X		Mr. Rush	X		
Mr. Largent		X		Ms. Eshoo	X		
Mr. Burr	X			Mr. Klink		X	
Mr. Bilbray	X			Mr. Stupak	X		
Mr. Whitfield		X		Mr. Engel			
Mr. Ganske		X		Mr. Sawyer	X		
Mr. Norwood		X		Mr. Wynn		X	
Mr. Coburn		X		Mr. Green	X		
Mr. Lazio				Ms. McCarthy	X		
Mrs. Cubin		X		Mr. Strickland	X		
Mr. Rogan	X			Ms. DeGette	X		
Mr. Shimkus		X		Mr. Barrett		X	
Mrs. Wilson	X			Mr. Luther			
Mr. Shadegg		X		Ms. Capps		X	
Mr. Pickering		X					
Mr. Fossella	X						
Mr. Blunt	X						
Mr. Bryant		X					
Mr. Ehrlich	X						

06/10/1999

COMMITTEE ON COMMERCE -- 106TH CONGRESS
ROLL CALL VOTE #13

BILL: H.R. 10, Financial Services Act of 1999

AMENDMENT: An Amendment by Mr. Markey to the Gillmor Substitute Amendment to the Markey Amendment, #7A(2), to change the general Gillmor Amendment opt-out provisions to require an express consumer consent before a financial institution can make available personal information to any unrelated party ("opt-in").

DISPOSITION: **NOT AGREED TO** by a roll call vote of 10 yeas to 24 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley		X		Mr. Dingell			
Mr. Tauzin		X		Mr. Waxman			
Mr. Oxley		X		Mr. Markey	X		
Mr. Bilirakis		X		Mr. Hall		X	
Mr. Barton				Mr. Boucher	X		
Mr. Upton		X		Mr. Towns		X	
Mr. Stearns		X		Mr. Pallone			
Mr. Gillmor		X		Mr. Brown	X		
Mr. Greenwood		X		Mr. Gordon		X	
Mr. Cox				Mr. Deutsch	X		
Mr. Deal		X		Mr. Rush		X	
Mr. Largent		X		Ms. Eshoo			
Mr. Burr				Mr. Klink			
Mr. Bilbray		X		Mr. Stupak			
Mr. Whitfield		X		Mr. Engel			
Mr. Ganske		X		Mr. Sawyer	X		
Mr. Norwood		X		Mr. Wynn	X		
Mr. Coburn		X		Mr. Green			
Mr. Lazio				Ms. McCarthy	X		
Mrs. Cubin				Mr. Strickland	X		
Mr. Rogan				Ms. DeGette			
Mr. Shimkus		X		Mr. Barrett	X		
Mrs. Wilson		X		Mr. Luther			
Mr. Shadegg				Ms. Capps	X		
Mr. Pickering							
Mr. Fossella							
Mr. Blunt		X					
Mr. Bryant		X					
Mr. Ehrlich		X					

06/10/1999

COMMITTEE ON COMMERCE -- 106TH CONGRESS
VOICE VOTES
06/10/1999

BILL: H.R. 10, Financial Services Act of 1999

AMENDMENT: An En Bloc Amendment by Mr. Bliley, #1, to make technical corrections and include provisions to: (a) study the extent to which adequate services are being provided as intended by the Community Reinvestment Act of 1977; (b) study Federal electronic fund transfers; (c) add a source of strength rule ensuring that State insurance regulators and the Securities and Exchange Commission (SEC) can prevent a Federal banking regulator from raiding an insurance or securities firm for funds; (d) protect State law governing certain health care insurers in North Carolina; (e) ensure fair treatment of wholesale financial institutions; and (f) clarify parallel regulation for domestic offices and branches of foreign banks.

DISPOSITION: AGREED TO by a voice vote.

AMENDMENT: An Amendment by Mr. Stearns to the Ganske Amendment, #3A, to clarify that genetic information is included in the information which must be protected by insurance companies' and agents' opt-in privacy policies.

DISPOSITION: AGREED TO by a voice vote.

AMENDMENT: An Amendment by Mr. Markey, #7, to strike out Title V and insert a new Title V dealing with Privacy of Consumer Information which (1) provides for disclosure of privacy policies of financial firms; (2) provides for an opt-out provision for consumers preventing sharing customer information within the affiliates of a financial firm; (3) provides for an opt-in provision whereby consumers must consent to information sharing with third parties; and (4) provides for enforcement by actions filed by State Attorney Generals and private rights of action.

DISPOSITION: AGREED TO, as amended, by a voice vote.

AMENDMENT: A Substitute Amendment by Mr. Gillmor to the Markey Amendment, #7A, to: (a) require all financial institutions to have in place a policy to protect the confidentiality and security of nonpublic personal information; (b) require all financial institutions to provide notice to customers of these policies, according to rules promulgated by the Federal Trade Commission, in a manner that permits consumers to compare the privacy policies of different institutions; (c) require financial institutions to give customers the opportunity to direct that their personal information collected in connection with a transaction not be made available to unrelated third parties for consideration ("opt-out"), subject to certain exceptions; (d) allow consumers the ability to access and dispute the accuracy of records made available to unrelated parties; (e) define the scope of the disclosure and opt-out provisions so they are not triggered for purposes of effectuating transactions, maintaining customer accounts, and enforcing transactions; (f) direct the Federal Trade Commission to promulgate further definitions regarding these provisions; and (g) designate the Federal Trade Commission as the administrator and enforcer of these provisions.

DISPOSITION: AGREED TO, as amended, by a voice vote.

AMENDMENT: An Amendment by Mr. Markey to the Gillmor Substitute Amendment to the Markey Amendment, #7A(1), to expand the general Gillmor Amendment opt-out provisions to apply to any information divulged to any party, including affiliates and agents of a financial institution.

DISPOSITION: AGREED TO by a voice vote.

MOTION: Motion by Mr. Bliley to order H.R. 10 reported to the House, amended.

DISPOSITION: AGREED TO by a voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held legislative hearings and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM OVERSIGHT FINDINGS

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 10, the Financial Services Act of 1999, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE, CONGRESSIONAL BUDGET OFFICE ESTIMATE, AND UNFUNDED MANDATES STATEMENT

The Congressional Budget Office estimate required pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, and the estimate of Federal mandates required pursuant to section 423 of the Unfunded Mandates Reform Act were requested from the Congressional Budget Office but not prepared as of the date of filing of this report. The Congressional Budget Office estimate and accompanying materials will be contained in a supplemental report.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title; purposes

Section 1 designates the Act as the "Financial Services Act of 1999" and sets forth the purposes of the Act.

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

SUBTITLE A—AFFILIATIONS

Section 101. Glass-Steagall Act reformed

Section 101 of the Financial Services Act of 1999 (the Act) repeals section 20 and section 32 of the Banking Act of 1933, the anti-affiliation provisions of 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, floatation, underwriting, public sale or distribution" of securities (12 U.S.C. 377). The effect of repealing section 20 is to permit affiliations between securities firms and banks regardless of the type or volume of securities activities conducted by the securities firm.

Section 32 currently prohibits any officer, director, or employee of a company "primarily engaged in the issue, floatation, 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 Federal Reserve Board (12 U.S.C. 78). Repealing section 32 will permit banks and securities firms to have common officers, directors, and employees.

These changes are intended to facilitate a two-way competitive street between securities firms, insurance companies, and banks. Under current law, banking regulators have effectively allowed banks into the securities business and the business of insurance sales. Securities firms and insurance companies are statutorily barred from owning insured depository institutions. Repeal of these sections is necessary to facilitate a two-way street.

Section 102. Activity restrictions applicable to bank holding companies which are not financial holding companies

Section 102 amends section 4(c)(8) of the Bank Holding Company Act of 1956, as amended, (HCA) to permit all bank holding companies to engage in those activities that the Federal Reserve Board has determined, by regulation or order in effect as of the day before enactment of the Act, to be so closely related to banking as to be a proper incident thereto. Bank holding companies that qualify as financial holding companies also may engage in those activities authorized under Section 6 of the HCA, as added by section 103 of the Act. Section 102 also makes technical and conforming amendments to section 105 of the Bank Holding Company Act Amendments of 1970 and section 4(f) of the Bank Service Company Act.

Section 103. Financial holding companies

Section 103 adds a new Section 6 to the Bank Holding Company Act and creates a structure for affiliations, entitled "Financial Holding Companies." This section establishes the new framework

for affiliations between and among securities firms, insurance companies, banks, and other financial entities. The framework adopted in section 6 is based on the well established holding company framework embodied in the Bank Holding Company Act.

a. Eligibility requirements

This subsection establishes the ongoing eligibility requirements to become a financial holding company (FHC). First, all of a holding company's subsidiary depository institutions must be well capitalized. Second, all of a holding company's subsidiary depository institutions must be well managed. Third, all of the subsidiary depository institutions must have achieved at least a "satisfactory record of meeting community credit needs," under the Community Reinvestment Act of 1977 (CRA), at the most recent exam of each institution. Fourth, the company must have filed with the Federal Reserve Board a declaration that it has met the first three requirements and that it elected to become an FHC. An exception from the third test is provided for an FHC's newly acquired depository institutions to allow the FHC the later of two years or the completion of an institution's first subsequent CRA exam to bring the institution back towards a satisfactory CRA rating.

b. Financial in nature and complementary activities

This subsection permits financial holding companies and wholesale financial companies to engage in, and affiliate with any company engaged in, activities that the Federal Reserve Board has determined by regulation or order are "financial in nature" or that are incidental to activities that are financial in nature (even if the incidental activity is not itself financial in nature). Incidental activities are those that are similar, related, or comparable to, or that are necessary, useful, or convenient to the conduct of a financial activity. Financial holding companies and wholesale financial companies are also allowed to engage in, and affiliate with any company engaged in, activities that the Federal Reserve Board determines are complementary to one or more financial activities, so long as such complementary activities remain small in relation to the complemented financial activities. Companies that are not a bank holding company when they elect to become a financial holding company are permitted to retain nonfinancial activities and affiliations in which they were engaged or with which they were affiliated as of September 30, 1997, so long as the resulting FHC (and its affiliates) remains predominantly engaged in financial activities, subject to certain restrictions further described below in subsection (h), "Grandfather of commercial activities."

The "financial in nature" test established by section 103 is significantly more flexible than the "closely related to banking" standard in current law and permits authorization of financial activities that banks and their financial affiliates are not currently permitted to conduct. In defining these activities, the Federal Reserve Board is required to take into account factors such as the purposes of the Act and the changes reasonably expected in the financial services marketplace, including technological advances.

These expanded financial and nonfinancial affiliations are permissible for holding companies that meet the criteria set forth for

financial holding companies. This is a new test that is independent of the restrictions contained in the Bank Holding Company Act. Existing bank holding companies that wish to limit their activities to those that currently are permissible under Section 4 of the Bank Holding Company Act may do so without meeting the requirements for being a financial holding company.

c. Specific activities that are financial in nature

This subsection specifically provides that certain activities are financial in nature, including: lending, investing, or safeguarding money; providing insurance as an underwriter, agent, or broker; providing financial or investment advice; issuing or selling instruments representing pools of assets permissible for a bank to hold directly; underwriting or dealing in securities; engaging in activities that the Federal Reserve Board previously has determined by order or regulation to be closely related to banking; financial, investment or economic advisory services; and engaging in activities conducted in the United States that the Federal Reserve Board has found by regulation to be both permissible for a bank holding company and usual in connection with the transaction of banking or other financial operations abroad. The reference in the section to providing insurance, specifically regarding "insuring, guaranteeing, or indemnifying against * * * illness," is meant to include all companies commonly thought of as providing health insurance benefits in consideration of the payment of premiums or subscriber contributions, regardless of the insurer's form of organization, the type of insurance benefits provided, or the nature of the State authority under which they are licensed or regulated.

The Act also provides that it is financial in nature to acquire or control a company or entity that is not engaged in activities which are financial in nature, so long as the ownership is not held by a depository institution or its subsidiaries but instead by an insurance underwriter, or a registered broker or dealer engaging in securities underwriting as part of a bona fide underwriting or investment banking activity (including for the purpose of appreciation and subsequent resale), or their non-depository institution affiliates. In the case of ownership by a securities underwriter, the shares or assets or ownership may only be held for a period of time that would permit the sale thereof on a reasonable basis consistent with the nature of the underwriting or investment activity, and the holding company and its affiliates may only participate actively in the day-to-day management of the company or entity as necessary to facilitate such ownership for resale. In the case of ownership by an insurance underwriter, the shares or assets or ownership must represent an investment made in the ordinary course of business in accordance with State law, and the holding company and its affiliates may not participate in the day-to-day management except as necessary to facilitate the objectives of the investment and of State law. Under these provisions, the depository subsidiaries of a financial holding company may not directly or indirectly engage in merchant banking or insurance company investment activities, and may not engage in covered transactions (as defined in Section 23A of the Federal Reserve Act) with any affiliate company whose

shares are held under the merchant banking or insurance company investment authority.

d. Authority to engage in financial activities

The Federal Reserve Board, by regulation or order, is directed to define the permissible scope of several activities, including arranging financial transactions for the account of third parties, transferring financial assets, and lending or investing financial assets other than money or securities.

e. Notification and approval

Section 6(c) provides that a financial holding company may engage, directly or indirectly, in any financial (or incidental) activity authorized under Section 6 (other than the acquisition of a savings association or company with assets over $40,000,000,000) without the prior approval of the Federal Reserve Board. This change is intended to facilitate the entrepreneurial culture of investment banks which take risk without need for prior government approval of their activities. In order to inform the Federal Reserve Board of the company's activities, the financial holding company must provide the Federal Reserve Board with written notice within 30 days of commencing an activity or acquiring shares of a company engaged in a financial activity (or an activity incidental to a financial activity).

In the case of a merger or affiliation with an entity in the United States that has consolidated assets in excess of $40 billion, the financial holding company (or company that is electing to become a financial holding company or wholesale financial holding company (WFHC) while retaining affiliation with the entity) must provide the Federal Reserve Board with notice of the merger or affiliation not later than 60 days prior to the transaction (or 60 days prior to becoming an FHC or WFHC). The Federal Reserve Board may issue a notice disapproving such transaction (or in the case of a company electing to become an FHC or WFHC, disapproving the retention of such entity) during the 60 day period, or may extend the period of review by up to an additional 60 days. Various factors are set forth for the Federal Reserve Board to consider in reviewing the transaction, including whether the entity is in compliance with the eligibility requirements for FHCs with depository institutions under this section, whether the proposed merger or affiliation would create an undue aggregation of resources or pose a risk to the deposit insurance system or State insurance guaranty funds, whether the merger or affiliation would be in the interests of the depositors or policyholders involved or produce benefits to the public, and whether a subsequent default of some part of the FHC or WFHC after the merger or affiliation could have serious adverse effects on economic conditions or financial stability. Upon receipt of a notice of such a transaction, the Federal Reserve Board shall immediately give notice to, and solicit the views of, any appropriate Federal banking agencies, functional regulators, the Secretary of the Treasury, the Attorney General, and the Federal Trade Commission, which shall return their recommendations to the Federal Reserve Board within 30 days of the Federal Reserve Board's no-

tice, or such shorter time as indicated by the Federal Reserve Board as appropriate.

f. Noncompliance

Section 6(d) (as established by this section) sets out the procedures to be followed if a financial holding company or its subsidiaries fail to continue to meet the capital, management and CRA requirements set out in section 6(b) for such companies and subsidiaries. If the Federal Reserve Board finds that a financial holding company is not in compliance with these requirements as set forth in section 6(b), the Federal Reserve Board must provide notice to the company. The company must, within 45 days of receipt of such notice (or such additional period as the Federal Reserve Board may permit), execute an agreement with the Federal Reserve Board to comply with the requirements for financial holding companies. Until the company complies with the requirements of section 6(b), the Federal Reserve Board may impose such limitations on the company or an affiliate as the Federal Reserve Board deems appropriate. If a financial holding company has not restored its subsidiary depository institutions to compliance with the capital, managerial, or CRA requirements of section 6(b) within specified time periods, the Federal Reserve Board may require the company either to divest control of any subsidiary depository institution or cease engaging in any activity under section 6. The Federal Reserve Board may take similar action if the company fails to execute and implement an agreement with the Federal Reserve Board, or abide by any limitations imposed by the Federal Reserve Board under section 6(d).

g. Safeguards and internal controls

Section 6(e) requires a financial holding company to have appropriate internal controls to assure that its procedures for identifying and managing financial and operational risks within the company and its subsidiaries adequately protect the company's subsidiary insured depository institutions from such risks and that it has reasonable policies and procedures to preserve the separate corporate identity and limited liability of the company and its subsidiaries for the protection of the subsidiary insured depository institutions.

h. Grandfather of commercial activities

Section 6(f) permits an entity (other than a bank holding company or a foreign bank) that becomes a financial holding company to retain for a limited period of time those nonfinancial investments and activities that the company held or engaged in as of September 30, 1997. To qualify for these grandfather rights, the company must derive at least 85 percent of its consolidated annual gross revenues from financial (and incidental) activities on an ongoing basis. Thus, an eligible company that becomes a financial holding company after the date of enactment of the Act may continue to engage in commercial activities under section 6(f) provided that such activities do not comprise more than 15 percent of the FHC's annual gross revenues.

Strict limits are placed on the expansion of these grandfathered nonfinancial activities. Any company engaged in grandfathered ac-

tivities under section 6(f) is prohibited from acquiring the nonfinancial (or non-incidental thereto) assets of any third party. An insured depository institution or wholesale financial institution subsidiary of a financial holding company that engages in nonfinancial activities or owns any company engaged in nonfinancial activities pursuant to section 6(f) may not engage in cross marketing activities with such nonfinancial affiliates, or in covered transactions (as defined in section 23A of the Federal Reserve Act) with any affiliate engaged in nonfinancial activities. All depository institution subsidiaries of an FHC are also prohibited from engaging in cross marketing activities with any affiliate held pursuant to the merchant banking or insurance company investment authority in section 6(c)(3)(H) and (I). Any commercial activities conducted, and any shares of a company engaged in commercial activities retained, by a financial holding company must be terminated or divested within 10 years of the date of enactment. The Federal Reserve Board may, upon application, extend this period for up to an additional 5 years if the Federal Reserve Board determines that such extension would not be detrimental to the public interest.

i. Developing activities

Section 6(g) allows all financial holding companies to engage in a limited amount of financial activities in circumstances where the Federal Reserve Board has not previously considered whether the activity in question is financial in nature. This section has been specifically included by the Committee to allow financial holding companies to respond quickly and efficiently to developments in the financial services industry. In particular, a financial holding company may engage in an activity that the Federal Reserve Board has not yet determined to be a financial activity (or incidental to a financial activity) if the holding company reasonably believes that the activity is financial in nature or incidental to financial activities. The company's determination must take into consideration the factors set forth in section 6(c), as well as actions taken by the Federal Reserve Board under section 6(c), including whether the Federal Reserve Board previously has determined that the activity is not financial in nature (or incidental to financial activities). Activities conducted pursuant to section 6(g) also are subject to certain revenue, asset, and capital investment limitations. A financial holding company must provide the Federal Reserve Board with written notice within 10 business days of acquiring shares or commencing an activity under section 6(g).

j. "Too big to fail" considerations

Section 103 amends section 3 of the HCA to require that the Federal Reserve Board, in acting on bank acquisitions involving a financial holding company or wholesale financial holding company, consider whether the failure of the company (or any of its affiliates) could have serious adverse effects on economic conditions or financial stability.

k. Report on new activities

Section 103 also directs the Federal Reserve Board to report to the Congress summarizing the new activities which have been de-

termined to be financial in nature, as well as any grandfathered activities being conducted by financial holding companies. These reports, which must be submitted 5 years and 10 years after the date of enactment, must discuss any actions taken by the Federal Reserve Board to effectively allow or disapprove activities which are incidental to or complementary to activities which are financial in nature, as well as a discussion of any risks posed by commercial activities of FHCs to the safety and soundness of affiliate depository institutions, the effect of mergers and acquisitions of this section on market concentration in the financial services industry, and the impact of this Act on capital availability under the Community Reinvestment Act.

Section 104. Operation of State Law

Section 104 is intended to establish the parameters of appropriate State regulation of the activities and affiliations of an insured depository institution or wholesale financial institution.

Section 104(a)(1) establishes the general rule that States may not prevent or restrict an insured depository institution or wholesale financial institution from affiliating with another entity except as provided for in paragraph (2). This subsection is not intended to preempt State functional regulation of activities, but rather State anti-affiliation laws that prevent or restrict a merger (including an acquisition or change in control) of a person that shares common ownership or control with an insured depository institution or wholesale financial institution.

Subsection 104(a)(2) establishes an exception to the rule in subsection (a)(1) to allow continued participation by State insurance regulators mergers involving persons engaged in the business of insurance. Section 104(a)(2)(A) is intended to allow all State insurance regulators where a person is engaging in the business of insurance to collect information as authorized under State law, so long as the State first makes a reasonable effort to obtain the information from the person's State of domicile, and the collection of such information does not impede or delay the merger. Section 104(a)(2)(B) is intended to protect the ability of an insurance regulator in the State of domicile of the person to approve or disapprove a merger, or take other action as appropriate and authorized by such State law, subject to certain restrictions. First, the State action must be completed within 60 days of receiving notice and the necessary information required under State law. The States must actually receive the required information before the 60 day clock begins to toll, and this time limit may not be extended without the mutual agreement of the involved parties. Second, any State action taken against a merger must not discriminate against the persons involved based on a current or prospective affiliation with an insured depository institution or its affiliates. The discrimination does not have to be overt. Third, a State's actions must be based on a State standard requirement relating to solvency or managerial fitness, allowing State regulators to determine whether the financial condition of an acquiring party might jeopardize the financial stability of the person, or whether the management or business plan is otherwise likely to prejudice the interests of the person's policyholders. Section 104(a)(2)(C) enables the insurance regulator

of the person's State of domicile to ensure compliance with the State's capital requirements, by requiring a restoration of capital to the person as authorized under State law. Section 104(a)(2)(D) allows a State to take any authorized action with respect to the receivership or conservatorship of an insurance company. Section 104(a)(2)(E) allows a State to restrict any change in ownership of a recently demutualized insurance company or insurance holding company, for a period not to exceed 5 years, or less, as authorized under State law. Section 104(a)(2)(F) is intended by the Committee to protect the laws of the State of North Carolina in governing a certain specific type of health insurance institution that may reorganize pursuant to a State approved plan. The Committee does not intend this subparagraph to create any inference regarding the appropriate standards of preemption or protection for State actions in other States or for other types of organizations.

Subsection 104(a)(3) is intended to preserve State actions based on antitrust and as well as general corporate State authorization, such as State laws relating to the governance of corporations or laws similar to antitrust laws, so long as the State authorization is generally applicable and nondiscriminatory.

Subsection 104(b)(1) clarifies the general rule that States may not prevent or significantly interfere with the activities of an insured depository institution or wholesale financial institution (or their affiliates) that are authorized or permitted under this Act—activities that are financial in nature, such as set forth in section 103. The "prevent or significantly interfere" standard maintains the test established in the decision of the United States Supreme Court in *Barnett Bank of Marion County N.A.* v. *Nelson,* 15 U.S. 25 (1996).

Subsection 104(b)(2), in conjunction with Title III, establishes a comprehensive structure for determining the appropriate applicability or preemption of State law regulating the insurance sales or solicitation or cross-marketing activities of an insured depository institution or wholesale financial institution or their affiliates. Section 104(b)(2)(A) affirms the "prevent or significantly interfere" standard set forth in *Barnett,* which shall continue to be used for all Federal preemption determinations of State statutes, regulations, orders, interpretations, or other actions governing insurance sales, solicitation, or cross-marketing activities.

Subsection 104(b)(2)(B) creates 13 safe harbors for State laws. This section protects State requirements which are substantially the same as, but not more restrictive than, the 13 safe harbors. These harbors are intended to allow States some flexibility in regulating insurance sales and solicitation and cross-marketing activities, including particularly those of insured depository institutions and wholesale financial institutions, without fear of preemption. These safe harbors reflect significant public policy concerns when fairly applied and have, therefore, been protected from the nondiscrimination provisions and other Federal preemption. They apply to State statutes, regulations, orders, interpretations, and other actions or restrictions that are currently in place as well as those that may be applied in the future. State actions which are more restrictive than the safe harbors are not necessarily preempted, but are potentially subject to the nondiscrimination provi-

sions and other protections and preemptions in this Act. The safe harbors were derived from the laws governing bank insurance activities in the States of Illinois and New York.

Specifically, the thirteen safe harbors protect State restrictions that:

(1) prohibit the rejection of an insurance policy required in connection with a loan or other extension of credit because it was sold, or underwritten, by a person who is not associated or affiliated with an insured depository institution (IDI), wholesale financial institution (WFI) or their affiliates;

(2) prohibit a requirement for a debtor, insurer, or insurance agent or broker to pay a separate charge on insurance required in connection with a loan or other extension of credit or banking product—in other words, if an IDI or WFI or affiliate does not impose a requirement on the insurance supplied directly (or indirectly by an affiliate) in connection with a banking product, States can prohibit a further requirement from being imposed because the insurance is being provided by a third party;

(3) prohibit the use of advertising or other promotional material which could cause a reasonable person to mistakenly believe that a State or the Federal Government is responsible for the insurance activities or credit of an entity, or that they guarantee a return or would act as a source of payment on an insurance product;

(4) prohibit the payment of commissions or other consideration for services as an insurance agent except to agents with proper State licenses for the activity being performed (except that referrals to a licensed agent without specific discussion of insurance policy terms and conditions does not constitute "services as an insurance agent");

(5) prohibit consideration being provided to a person without a State insurance license for a referral of a potential insurance customer based on whether the referral consummates in an insurance transaction;

(6) prohibit the release of insurance information to any third party, for the purpose of selling insurance without the express written consent of the customer;

(7) prohibit any use of health information other than for its activities as State licensed agent or broker without the express written consent of the customer;

(8) prohibit the provision of any services by an IDI, WFI, or their affiliates on the condition that a consumer (or prospective consumer) obtain insurance from such entity or any particular person, so long as the activities restricted are the same as would result in a violation of section 106 of the Bank Holding Company Act Amendments of 1970 (as interpreted by the Federal Reserve Board), and insofar as the State does not restrict a person from informing a customer that insurance from some source is required in connection with a loan or credit approval or that such insurance is available from such person or their affiliate. Furthermore, the Committee does not intend the carve-out for activities which do not violate the Bank Holding Company Act to apply to State restrictions which prohibit in

a nondiscriminatory manner the offering of an inducement to the sale of an insurance product if such inducement is not specified in the insurance product and where such inducement constitutes an unfair trade practice under the law of such State;

(9) require a written disclosure to a consumer (or prospective consumer), when an application for an extension of credit is pending where insurance is required in connection with the transaction, that the choice of insurance provider will not affect the credit decision or terms in any way, except that reasonable (and nondiscriminatory) requirements may be established regarding the creditworthiness of the insurer and the scope of the coverage;

(10) require a disclosure to a customer prior to the sale of an insurance policy, which should be in writing, where practicable, prior to any insurance sale, that the policy—(i) is not a deposit; (ii) is not insured by the Federal Deposit Insurance Corporation (FDIC); (iii) is not guaranteed by the IDI, WFI, or as appropriate their affiliates or other person on the premises soliciting insurance; and (iv) where appropriate, involves investment risk, including potential loss of principal;

(11) require separate documents for completing credit and insurance transactions (except that the Committee does not intend this particular safe harbor to extend to requiring separate documents for credit insurance or flood insurance which are currently provided by some institutions on the same documentation as the credit transaction);

(12) prohibit inclusion of the expense of insurance premiums in the credit transaction without the express written consent of the customer (except that the Committee does not intend this particular safe harbor to extend to requiring separation of premium expenses for credit insurance or flood insurance, which are currently provided by some institutions on the same documentation as the credit transaction); and

(13) require maintenance of separate and distinct insurance books and records, including consumer complaint files, and including requiring such books and records be made available to State insurance regulators for inspection.

Subsection 104(b)(2)(C) reiterates the underlying principles of subsection 104(b)(2)(A), affirming that the Barnett standard and case law continues to be applicable to insurance sales, solicitations, and cross-marketing activities that are not protected by the safe harbors set forth in subsection 104(b)(2)(B).

Subsection 104(b)(3) establishes the standards for applicability or potential preemption of State authority governing a person's insurance activities other than sales, solicitations, or cross-marketing. This paragraph is intended to apply to underwriting insurance as principal and activities related to underwriting insurance as principal, including reinsurance and activities such as claims processing, investment management of insurance premiums, and various administrative functions related to the underlying insurance underwriting or underwriting transaction. This section establishes a safe harbor for State regulation of insurance underwriting and related activities, so long as the State authority relates to the busi-

ness of insurance, does not apply to insured depository institutions or wholesale financial institutions, does not relate to insurance sales activities (including solicitations and cross-marketing), and is not discriminatory (as provided in subsection 104(c)). State authority may apply to the activities of an insured depository institution or wholesale financial institution to the extent that such institution provides savings bank life insurance as principal. This provision is intended to preserve the ability of the States to functionally regulate credit insurance, regardless of the provider. State authority may also apply to an insured depository institution or wholesale financial institution, which is engaged in the business of insurance on behalf, directly, or indirectly, of a company providing insurance as principal, but only to the extent of the insurance related functions, only if such functions would normally be regulated by the insurance regulator of the State as part of the business of insurance, only if there is no conflict with an express Federal law, and only if the State regulator tries to obtain any required information from the appropriate banking functional regulator before going to the institution. This provision is intended to prevent persons providing insurance as principal or reinsurer, or providing insurance services indirectly on behalf of such persons, from shielding their activities from the authority of State insurance regulators by transferring them to an insured depository institution or wholesale financial institution.

Subsection 104(b)(4) creates an additional safe harbor for State authority that does not relate to insurance solicitations, sales, cross-marketing, other insurance activities, or securities investigations, enforcement, registration, or licensure. To the extent that this Act permits or authorizes activities other than those addressed by subsections 104(b)(2), 104(b)(3), or 104(d)—in other words any financial activity other than insurance or securities activities, then subsection 104(b)(4) would act as a potential safe harbor to preserve such State authority. The safe harbor only applies if the State authority does not distinguish on its face in an adverse manner between an insured depository institution or wholesale financial institution (or their affiliates) and other persons engaged in the same activity, does not have a substantially more adverse impact, as interpreted or applied, on such institution or affiliate as compared to other persons, does not effectively prevent the institution or its affiliates from engaging in activities authorized or permitted by this Act, and does not conflict with the intent of this Act regarding authorized or permitted affiliations.

Subsection 104(c) is an expansion of the nondiscrimination test for non-insurance/securities activities regulation in subsection 104(b)(4), except applied as modified to govern the potential preemption of State insurance authority. It does not apply to the 13 safe harbors for State authority established in subsection 104(b)(2)(B), and it does not apply to State authority that was issued, adopted, enacted, or taken before January 1, 1999, that relates to insurance sales, solicitation, or cross-marketing activities. With the exceptions above, to the extent that Federal law authorizes or permits an insured depository institution or wholesale financial institution or their affiliates to engage in an insurance activity, State authority governing such activity is subject to preemp-

tion if it (A) distinguishes on its face in a more adverse manner between an insured depository institution or wholesale financial institution (or their affiliates) and other persons engaged in the same activity; (B) has a substantially more adverse impact, as interpreted or applied, on an IDI or WFI or their affiliates as compared, based on their status, to other persons providing the same product or service or engaged in the same activities that are not IDIs, WFIs, or their affiliates; (C) effectively prevents an IDI or WFI or their affiliates from engaging in activities authorized or permitted by this Act; or (D) conflicts with the intent of this Act generally to permitted affiliations among financial services firms. The modification in subsection104(c)(1)(B) from the nondiscrimination test in subsection 104(b)(4), requiring that the substantially more adverse impact be based on the institutions' status, is intended to save neutral State authority that might have a greater impact on institutions for a reason completely unrelated to their special status. For example, a State insurance privacy law that was applied to insurance information collection would not be struck down as having a substantially more adverse impact on a national bank, even if national banks tend to collect more or less of such information on average. In contrast, a State insurance law which discriminated against affiliates of domestic branches of foreign companies which hold insured deposits would be subject to preemption, if it has a substantially more adverse impact on the affiliates because of the special insured status of its foreign parent. Similarly, if a Federal statute in the future required national banks with over $10 billion in deposits to collect personal information from their customers, then that attribute would be a "status" of national banks, and a State insurance privacy law which had a substantially more adverse impact on persons who collected such information would thus be subject to preemption for discrimination against a class of depository institutions based on their status.

Subsection 104(d) establishes a safe harbor from the preemption standards in section 104 for State securities investigations and enforcement, consistent with section 18(c) of the Securities Act of 1933, with respect to unlawful conduct related to a securities transaction, and for the registration of securities and licensure/registration of brokers, dealers, or investment advisors, consistent with section 203A of the Investment Advisors Act of 1940.

Subsection 104(e) defines insured depository institutions to include foreign banks that maintain a branch, agency, or commercial lending company in the United States, to provide for parallel treatment of these entities with domestic banks for the purposes of section 104.

Section 105. Mutual bank holding companies authorized

Section 105 provides that mutual bank holding companies will be regulated similarly to other bank holding companies. This section is intended by the Committee to allow mutual insurance companies to participate in a financial holding company structure without losing their mutual status.

Section 105(a). Public meetings for large bank acquisitions

Section 105A provides that the relevant Federal banking agency shall conduct one or more public meetings on an acquisition or merger proposal under section 3 of the HCA, the Bank Merger Act (12 U.S.C. 1828(c)), the National Bank Consolidation and Merger Act (12 U.S.C. 215 et seq.), or section 10 of the Home Owners Loan Act (12 U.S.C. 1463), if the proposal involves an acquisition of (or other merger with) one or more insured depository institutions each with assets of $1 billion or more and the agency, in its sole discretion, believes a public meeting is necessary and the transaction would have a substantial public impact on the relevant area.

Section 106. Prohibition on deposit production offices

Section 106 applies the provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act regarding deposit production offices and out-of-State lending to any interstate branch established or acquired under this Act. In addition, this section expands the definition of interstate branch for purposes of the deposit production provisions to include all branches of a bank owned by an out-of-State bank holding company.

Section 107. Clarification of branch closure requirements

Section 107 applies the provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act regarding branch closures by an interstate bank to any branch of a bank that is controlled by an out-of-State bank holding company.

Section 108. Amendments relating to limited purpose banks

Limited purpose banks are banks that do not accept demand deposits and make commercial loans, but that are insured by the Federal Deposit Insurance Corporation. Prior to 1987, companies that controlled a limited purpose bank were not subject to the HCA. The Competitive Equality Banking Act of 1987 grandfathered those companies that controlled a limited purpose bank in existence at the time. In order to retain their exemption from the HCA, grandfathered companies and the limited purpose banks they control are required to comply with certain restrictions.

Specifically, a limited purpose bank currently is not allowed to engage in any activity in which it was not engaged in as of March 5, 1987. Section 108 permits well capitalized and well managed limited purpose banks to engage in any banking activity, but maintains the restriction whereby limited purpose banks are permitted to either accept demand deposits or make commercial loans, but not both. Limited purpose banks that accept demand deposits would continue to be restricted in their ability to engage in making traditional commercial loans, but the section would permit them to issue corporate credit cards (e.g., cards used by business employees for travel and entertainment expenses). This section also amends current law to permit limited purpose banks to cross market affiliate products and to acquire assets that are derived from, or incidental to, activities in which a limited purpose credit card bank (described in subsection 2(c)(2)(FF) of the HCA) may engage.

Current law requires divestiture of a limited purpose bank that violates the established activities restrictions. Section 108 amends

current law to permit limited purpose banks to avoid divestiture by correcting violations within six months upon receiving notice from the Federal Reserve Board.

Section 109. GAO study

Section 109 requires that the Comptroller General study the projected and actual impact of the enactment of the Act on financial institutions (including community banks, brokers, dealers, and insurance companies) that have total assets of $100 million or less, insurance agents, and consumers. The Comptroller General must separately report his or her findings and recommendations to the Congress 6 months, 1 year, and 2 years after the date of enactment of the Act.

Section 110. Study of responsiveness to community needs for financial services

Section 110 requires that the Secretary of the Treasury, in consultation with the Federal banking agencies and the Securities and Exchange Commission, conduct a study of the extent to which adequate services are being provided as intended by the Community Reinvestment Act of 1977, including services in low- and moderate-income neighborhoods and for persons of modest means, as a result of the enactment of the Act. The Secretary of the Treasury is required to submit a report to Congress and include any recommendations for administrative and legislative action with respect to institutions covered under the Community Reinvestment Act of 1977. The Committee notes that nothing in this section confers any new administrative or rulemaking authority under the Community Reinvestment Act of 1977 on any regulator. This study is identical to the study that was included in H.R. 10 as passed by the House of Representatives during the 105th Congress.

SUBTITLE B—STREAMLINING SUPERVISION OF FINANCIAL HOLDING COMPANIES

This subtitle establishes a new system of supervision for financial holding companies and their affiliates. The Committee determined that because securities firms and insurance companies will be important components of these holding companies, a new regulatory structure for them would be appropriate, consistent with the Committee's interest in securities and exchanges and regulation of the business of insurance.

Section 111. Streamlining financial holding company supervision

This section clarifies and limits the role of the Federal Reserve Board in overseeing holding companies. The Committee determined that these changes are necessary to implement the two-way street and avoid duplicative regulation of securities firms and insurance companies. Section 111 replaces current section 5(e) of the HCA and specifies the reporting and examination requirements applicable to bank holding companies under the HCA. These changes were made because the Committee determined that the authorization of new financial services holding companies including securities firms and insurance companies necessitated clear codification of the principles of functional regulation.

Section 111 provides that the Federal Reserve Board may examine the non-bank subsidiaries of financial services holding companies only under specified and limited circumstances. The Committee determined that although it was appropriate for the Federal Reserve Board to have supervisory authority over holding companies, the authority over affiliates should rest first and foremost with the appropriate functional regulators. Section 111 requires the Federal Reserve Board, to the fullest extent possible, to focus its examinations on the holding company and affiliates that may pose a material risk to a depository institution affiliate. The Federal Reserve Board must use reports of examinations made by the Securities and Exchange Commission (SEC), State insurance regulators and any other authorities that the Federal Reserve Board finds comprehensively supervise an affiliate. The Federal Reserve Board may examine a bank holding company and its subsidiaries to inform the Federal Reserve Board of: (1) the nature of the operations and financial condition of the holding company and its subsidiaries; (2) the financial and operational risks within the holding company system that may pose a threat to the safety and soundness of any subsidiary depository institution; and (3) the company's systems for monitoring and controlling such risks.

The Federal Reserve Board may examine a functionally regulated non-depository subsidiary only if the Federal Reserve Board has reasonable cause to believe that the subsidiary (1) is engaged in activities that pose a material risk to an affiliated depository institution, or (2) is not in compliance with the provisions of the Bank Holding Company Act, as amended by this legislation, or with the provisions governing transactions with affiliated depository institutions. The Federal Reserve Board cannot determine compliance through an examination of the bank holding company or its subsidiary depository institutions.

The Federal Reserve Board is required, to the fullest extent possible, to use the reports provided by the bank holding company or subsidiary to other Federal or State regulatory agencies or appropriate self-regulatory organizations, information that is otherwise publicly reported and audited financial statements. If the Federal Reserve Board seeks a report from a functionally regulated non-depository subsidiary (i.e., a registered securities broker or dealer, a registered investment adviser with regard to investment advisory activities, an insurance company, an insurance agency with respect to its insurance agency activities, or an entity regulated by the Commodity Futures Trading Commission with respect to commodities activities) of a bank holding company that is not required by the subsidiary's functional regulator or appropriate self-regulatory organization, the Federal Reserve Board must first ask the subsidiary's functional regulator or appropriate self-regulatory organization to obtain the report.

Section 111 also provides that the Federal Reserve Board may not impose any capital adequacy rules, guidelines or other actions on a non-depository subsidiary of a bank holding company that is in compliance with the applicable capital requirements of another Federal regulatory authority or State insurance authority. The Federal Reserve Board also may not impose capital adequacy rules on a non-depository subsidiary that is a registered investment ad-

viser or licensed insurance agent with respect to such subsidiary's functionally regulated activities or activities incidental thereto. The Committee determined that the Securities and Exchange Commission and the State insurance regulators are better situated to regulate these entities.

This section also requires the Federal Reserve Board to defer to the SEC regarding the interpretation and enforcement of applicable Federal securities laws relating to the activities of registered brokers, dealers, investment advisers and investment companies. In addition, this section requires the Federal Reserve Board to defer to the relevant State insurance authorities regarding the interpretation and enforcement of applicable State insurance laws relating to the activities of insurance companies and agents.

The standards established in section 111 for the supervision of holding companies are consistent with standards adopted internationally and by some major trading partners of the United States.

Section 112. Administration of application requirement for financial holding companies

This section amends section 5(a) of the Bank Holding Company Act to provide that a declaration filed under section 6 by a company seeking to be a financial holding company satisfies the bank holding company registration requirement, but does not satisfy any requirement to file an application to acquire a bank under section 3. The divestiture provisions of section 5(e) are amended to allow a bank holding company to make a choice between divesting a nonbanking subsidiary and divesting an insured depository institution.

Section 113. Authority of state insurance regulators and the Securities and Exchange Commission

This section amends the Bank Holding Company Act to limit the Federal Reserve Board's ability to require that an insurance company, a registered broker or dealer, or a registered investment company provide funds to an affiliated bank if the State insurance authority or the SEC determines in writing that such action would have a materially adverse effect on the financial condition of the insurance company or the broker or dealer. The Committee determined that this provision was necessary to avoid conflicts between the source of strength doctrine and other Federal or State laws designed to protect the financial integrity of securities and insurance affiliates of banks. The section allows the Federal Reserve Board to require the bank holding company to divest the bank within 180 days of receiving such notice from the State insurance authority or SEC.

The section provides an identical limitation for other banking regulators under the Federal Deposit Insurance Act.

Section 114. Prudential safeguards

Section 114 authorizes the Federal Reserve Board to impose restrictions on relationships or transactions between a depository institution subsidiary of a bank holding company and any of its affiliates (other than a subsidiary of the depository institution). Such restrictions may be imposed to avoid significant risk to the safety and

soundness of depository institutions or to the Federal deposit insurance funds. Restrictions also may be imposed for the purpose of enhancing the financial stability of bank holding companies, avoiding conflicts of interest, enhancing the privacy of customers, and promoting the application of national treatment and equality of competitive opportunity between domestic and foreign bank holding companies. The Federal Reserve Board is required to regularly review the continuing need for any restrictions that may be imposed. Limitations are imposed by section 116 on the Federal Reserve Board's authority to establish prudential safeguards under section 114 on certain functionally regulated affiliates. The Committee determined that these limitations were appropriate to avoid duplicative regulation.

Section 115. Examination of investment companies

Section 115 provides that the Federal banking agencies may not examine or inspect a registered investment company that is not a bank holding company or savings and loan holding company. The SEC is granted sole authority to inspect such registered investment companies and must provide to the Federal banking agencies, upon request, the results of any examination or other information with respect to a registered investment company.

This section does not prohibit the Federal Deposit Insurance Corporation from examining an affiliate of an insured depository institution pursuant to section 10(b)(4) of the Federal Deposit Insurance Act (FDIA) if the FDIC believes the examination is necessary to determine the condition of an insured depository institution.

Section 116. Limitation on rulemaking, prudential, supervisory and enforcement authority of the board

Section 116 adds a new section 10A to the Bank Holding Company Act that provides that the Federal Reserve Board may not take any action under the HCA or section 8 of FDIA against a regulated subsidiary of a bank holding company unless such action is necessary to prevent or redress an unsafe or unsound practice or breach of fiduciary duty by such subsidiary that poses a material risk to the financial safety, soundness or stability of an affiliated depository institution or to the domestic or international payment systems. This section is intended to protect regulated subsidiaries of financial holding companies from additional or duplicative regulation by the Federal Reserve Board and to preserve the functional regulation of the day-to-day operations of regulated subsidiaries, which is more appropriately left to the functional regulators. The Federal Reserve Board may not take such an action against a regulated subsidiary if it is reasonably possible for the Federal Reserve Board to protect effectively against the risk by taking action against a depository institution or against depository institutions generally. This section is also not intended to limit or preempt the functional regulation of an insured depository or wholesale financial institution's insurance or securities activities.

The Committee intends the term "material risk" to mean a risk of serious harm to the financial safety, soundness or stability of the particular depository institution or to the payment system.

Section 10A does not affect the Federal Reserve Board's ability to take action under the HCA or section 8 of FDIA to enforce compliance by a regulated subsidiary with any Federal law that the Federal Reserve Board has specific jurisdiction to enforce against the subsidiary. For purposes of this section, a regulated subsidiary means a company that (1) is not a bank holding company, and (2) is a registered securities broker or dealer, a registered investment advisor (to the extent of such company's investment advisory and incidental activities), an insurance company or insurance agency subject to State supervision (to the extent of the company's insurance and incidental activities), or an entity regulated by the Commodity Futures Trading Commission (to the extent of its commodities and incidental activities).

Section 117. Equivalent regulation and supervision

The Committee believes that, in order to ensure the functional regulation of activities conducted by all affiliates of banks, the same limitations that restrict the ability of the Federal Reserve Board to take action with respect to a functionally regulated nondepository subsidiary of a holding company also should limit the ability of the other Federal banking agencies to take action with respect to a functionally regulated subsidiary of an insured depository institution. Section 117 applies the same so-called "Fed-lite" provisions contained in section 113 and section 116 of the Act to the other Federal banking agencies. Thus, section 117 limits the ability of such agencies to obtain reports from, examine, impose capital requirements on, or take enforcement action against a functionally regulated subsidiary of an insured depository institution, and requires such agencies to defer to the SEC regarding the interpretation and enforcement of the Federal securities laws relating to registered brokers, dealers, investment advisers and investment companies, and to the State insurance authorities regarding the interpretation and enforcement of State insurance laws relating to insurance companies and agents. This section, however, would specifically preserve the ability of the Federal Deposit Insurance Corporation to examine any affiliate of an insured depository institution pursuant to section 10(b)(4) of the Federal Deposit Insurance Act if the FDIC believes the examination is necessary to determine the condition of an insured depository institution.

Section 118. Prohibition on FDIC assistance to affiliates and subsidiaries

Section 118 amends section 11(a)(4)(B) of the Federal Deposit Insurance Act to clarify that the FDIC insurance funds may not be used to benefit any shareholder (including a bank holding company) or any nondepository affiliate or subsidiary of an insured depository institution.

Section 119. Repeal of savings bank provisions in the Bank Holding Company Act of 1956

This section repeals section 3(f) of the Bank Holding Company Act.

Section 120. Technical amendment

This section makes a technical amendment to the definition of "well capitalized" in section 2(o)(1)(A) of the Bank Holding Company Act.

SUBTITLE C—SUBSIDIARIES OF NATIONAL BANKS

Section 121. Permissible activities for subsidiaries of national banks

Section 121 reinstates the provisions of Subtitle C that were contained in the version of H.R. 10 passed by the House of Representatives in May 1998. Accordingly, Subtitle C would not permit national banks to engage indirectly through a subsidiary in potentially volatile principal activities, such as securities underwriting and dealing, insurance underwriting, merchant banking, and real estate investment and development, that Congress has not authorized national banks to conduct directly. The Committee notes that in considering H.R. 10 in 1998, the House of Representative specifically defeated, by a vote of 306 to 115, an amendment that would have permitted subsidiaries of national banks to engage in volatile principal activities that Congress has not authorized national banks to conduct directly.

a. Limitation to activities permissible for national banks

Section 121 imposes a general prohibition on a subsidiary of a national bank engaging in any activity, or owning any shares of a company engaged in any activity, that a national bank is not permitted to engage in directly or that is conducted under terms or conditions other than those that would govern the conduct of the activity by a national bank. Section 121 allows a national bank to own a subsidiary engaged in activities that are not permissible for a national bank, but only if a national bank is specifically authorized by the express terms of a Federal statute to own or control the subsidiary. For example, a national bank may control a subsidiary established under section 25A of the Federal Reserve Act or a subsidiary engaged in financial agency activities as specifically authorized by section 121. Section 121 also amends section 21 of the Glass-Steagall Act, which applies to all banks, to clarify that a subsidiary of a bank may not engage in securities underwriting or dealing. A bank, however, is permitted to retain control of a subsidiary engaged in such activities as of September 15, 1997.

b. Authorization to own subsidiary engaged in financial agency activities

Section 121 also specifically authorizes a national bank to own a subsidiary that engages as agent, and not as principal, in agency activities that the Federal Reserve Board has determined to be financial in nature (or incidental to such activities) under section 6(c) of the Bank Holding Company Act, if the national bank and all of its depository institution affiliates are well capitalized and well managed and have achieved a "satisfactory" or better rating under the CRA at the institution's most recent examination. In addition, prior to establishing any subsidiary under this authority, the national bank must receive the approval of the Comptroller of the Currency. Because an agency subsidiary may engage in activi-

ties not permissible for a national bank, such subsidiaries are treated as nonbank affiliates of the bank for purposes of applying the anti-tying restrictions of the Bank Holding Company Act Amendments of 1970 and the restrictions of section 23B of the Federal Reserve Act. Under this authority, a national bank could control a subsidiary engaged in general insurance agency activities.

Section 122. Misrepresentation regarding depository institution liability for obligations of affiliates

Section 122 makes it a criminal offense for any institution-affiliated party of an insured depository institution or of a subsidiary or affiliate of an insured depository institution to represent fraudulently that an insured depository institution is liable for any obligation of its subsidiary or affiliate.

Section 123. Repeal of stock loan limit in Federal Reserve Act

Section 123 repeals the restriction in section 11(m) of the Federal Reserve Act on loans by Federal Reserve member banks secured by stock or bond collateral. Limitations on loans to one borrower imposed pursuant to other statutory authorizations are not affected.

SUBTITLE D—INVESTMENT BANK HOLDING COMPANIES; WHOLESALE FINANCIAL INSTITUTIONS

Subtitle D creates a new type of depository institution—a wholesale financial institution (WFI)—that can accept wholesale deposits which are not insured by the Federal Deposit Insurance Corporation. The Committee determined that this new institution, which would not take Federally insured deposits, should have holding company supervision diminished from that required of financial holding companies that hold insured depository institutions. The subtitle also establishes a special supervisory regime for companies that do not own a depository institution other than a WFI or specified, limited-purpose institutions. To qualify for this supervisory regime, the company must be a bank holding company (and not a foreign bank), not own any depository institution other than a WFI or a credit card bank, trust company or Edge Act company. The company also must be predominantly engaged in financial activities, which means that at least 85 percent of the company's annual consolidated gross revenues must be derived from activities that are financial in nature (or activities incidental thereto) under section 6(c) of the HCA (excluding revenues derived from subsidiary depository institutions).

CHAPTER 1—WHOLESALE FINANCIAL HOLDING COMPANIES

Section 131. Wholesale financial holding companies established

a. Definition of wholesale financial holding companies

Section 131 creates a new section 10 of the HCA governing the nonbanking activities and supervision of wholesale financial holding companies. An investment bank holding company is a bank holding company that controls one or more WFIs and does not control any other type of bank (other than a credit card bank, a limited purpose trust company, or Edge or Agreement Corporation) or a savings association.

Section 131 also provides an exception for WFIs that opt for SEC supervision under section 17(i) of the Exchange Act.

b. Supervision of wholesale financial holding companies

Section 131 establishes the provisions governing the reporting, examination and capital requirements for wholesale financial holding companies. The Federal Reserve Board may require such a company and any subsidiary to submit reports to inform the Federal Reserve Board of the company's or subsidiary's activities, financial condition, policies, risk-management systems, and transactions with affiliated depository institutions. The Federal Reserve Board also may require reports to keep it informed regarding the compliance of a company or its subsidiaries with the HCA and related regulations and orders. The Federal Reserve Board is required to accept, to the fullest extent possible, reports submitted to other Federal or State supervisors or appropriate self-regulatory organizations. The Federal Reserve Board may grant exemptions from these reporting requirements to any company or class of companies. In determining whether to grant such an exemption, the Federal Reserve Board must consider, among other factors, the primary business of the company, the nature and extent of the regulation of the company's activities, and whether the requested information is available from other domestic or foreign regulatory agencies.

The Federal Reserve Board is permitted to examine a wholesale financial holding company or any subsidiary to monitor compliance with the HCA and the laws governing transactions and relationships with affiliated depository institutions, or to inform the Federal Reserve Board of the company's or subsidiary's operations or financial condition, the risks within the holding company system that may affect an affiliated depository institution and the systems for controlling such risks. The Federal Reserve Board must, to the fullest extent possible, limit the focus and scope of any examination to the holding company itself and any subsidiary that for specified reasons could have a materially adverse effect on a depository institution affiliate of the company. In addition, the Federal Reserve Board must, to the fullest extent possible, use reports of examinations made by other Federal banking agencies, the SEC, and State insurance regulators.

The Federal Reserve Board is authorized to adopt capital adequacy rules or guidelines for wholesale financial holding companies. Any such capital requirements must be based on appropriate risk-weighting considerations and must focus on the use by holding companies of so-called "double leverage," that is debt and other liabilities incurred by a company to fund investments in subsidiaries. The Federal Reserve Board may not impose any capital adequacy requirement on a nondepository subsidiary that is in compliance with applicable capital requirements of another Federal regulatory authority or State insurance authority. The Federal Reserve Board also may not impose capital adequacy rules on a non-depository subsidiary that is registered as an investment adviser with the SEC with respect to such subsidiary's investment advisory or incidental activities. Furthermore, the Federal Reserve Board must take full account of the capital requirements imposed on a non-

depository subsidiary by such a Federal or State authority and industry norms for capitalization of unregulated subsidiaries.

c. Grandfathered nonfinancial investments and activities

Companies that become wholesale financial holding companies may continue to engage in any activity, or control shares of a company engaged in any activity, that the company was engaged in or held on the date of enactment of the Act. These grandfathered investments and activities may not be expanded through a merger, consolidation or any other type of business combination. A wholesale financial company that engages in any activity or holds shares pursuant to the grandfather rights conferred under section 131 may not take advantage of the similar grandfather rights provided in section 6(f) of the HCA, which permit eligible financial holding companies to retain a limited amount of nonfinancial activities.

Section 131 permits a wholesale financial holding company to engage in, or own the shares of a company lawfully engaged in, commodity investment and trading activities if the holding company was predominantly engaged in financial activities in the United States as of January 1, 1997, and was engaged in such commodity investment and trading activities in the United States on that date. The aggregate consolidated assets of a wholesale financial holding company held under this authority may not exceed 5 percent of the company's total consolidated assets, or such greater percentage as the Federal Reserve Board may permit.

Section 2(a)(1)(A) of the Commodity Exchange Act confers upon the Commodity Futures Trading Commission (CFTC) exclusive jurisdiction with respect to accounts, agreements, and transactions involving contracts of sale of a commodity for future delivery. Nothing contained in section 131 of H.R. 10 is intended to supersede or limit the jurisdiction at any time conferred on the CFTC, or to restrict the CFTC from carrying out its duties and responsibilities under the Commodity Exchange Act or any other law.

Under section 131, the subsidiary WFIs of a wholesale financial holding company may not engage in cross marketing activities with any nonfinancial company whose shares are held under the grandfather provision or the commodities provision.

d. Foreign banks

Foreign banks are not eligible for supervision as wholesale financial holding companies under Section 10 of the HCA. A foreign bank that directly or indirectly holds no insured deposits in the Unites States (other than through certain limited-purpose institutions), however, may request a determination from the Federal Reserve Board that it be treated as a wholesale financial holding company (other than for purposes of the activity provision of section 10(c) of the HCA).

To be eligible for treatment as a wholesale financial holding company, a foreign bank must not hold any deposits insured by the FDIC (other than through certain limited-purpose institutions). In addition, the foreign bank must meet risk-based capital standards comparable to those required for a WFI. The Act provides that a foreign bank that is treated as a wholesale financial holding company shall be considered a WFI for certain specified purposes. In

addition, if a foreign bank is treated as a wholesale financial holding company, then sections 23A and 23B of the Federal Reserve Act apply to any transactions between the bank's branches, agencies and commercial lending affiliates and any U.S. securities affiliate or company controlled pursuant to section 6(c) or (g) of the HCA. The U.S. branches of any foreign bank treated as a wholesale financial holding company also would be subject to the Community Reinvestment Act of 1977.

The Act does not limit in any way the Federal Reserve Board's authority under the International Banking Act of 1987 with respect to the regulation, supervision, or examination of foreign banks.

e. Enforcement authority over uninsured State banks

Section 131(b) provides that the provisions of the banking laws authorizing the Federal Reserve Board to take enforcement actions, including section 3(u), subsections (j) and (k) of section 7, and subsections (b) through (n), (s), (u), and (v) of section 8 of the FDIA, apply to an uninsured State bank in the same manner that they apply to insured State member banks.

Section 132. Authorization to release reports

Section 132 authorizes the Federal Reserve Board to release reports of examination or other confidential supervisory information concerning any entity that the Federal Reserve Board has authority to examine to any Federal or State supervisory or regulatory authorities, the officers, directors or receivers of the entity, or any other person deemed proper by the Federal Reserve Board. Section 132 also amends the Right to Financial Privacy Act to treat the Commodity Futures Trading Commission in a manner consistent with the other financial supervisory agencies.

Section 133. Conforming amendments

Section 133 defines the terms "wholesale financial institution", "Commission", "depository institution", and "insured bank" for purposes of the HCA and amends the definition of the term "bank" in the HCA to include WFIs. Section 3(e) is amended to permit a bank holding company to control a WFI even though the deposits of such institutions are not insured by the FDIC. The Federal Reserve Board also is designated as the appropriate Federal banking agency for all WFIs under the FDIA.

CHAPTER 2—WHOLESALE FINANCIAL INSTITUTIONS

Section 136. Wholesale financial institutions

Section 136 authorizes the establishment of WFIs. A WFI may be either a national bank or a State member bank. A national bank is required to apply to the Comptroller for permission to operate as a WFI. The approval of the Federal Reserve Board is required for a State bank to operate as a WFI. Section 136 also authorizes State banking authorities to grant a charter to a WFI notwithstanding any State law requiring that a State bank obtain deposit insurance.

Section 161(b) amends the Federal Reserve Act by adding a new section 9B that requires all WFIs to become members of the Federal Reserve System. All WFIs are subject to the provisions of Sec-

tion 9B and to the other provisions of the Federal Reserve Act to the same extent and in the same manner as if the WFI were a State member insured bank or a national bank, except that a WFI may only terminate membership on the terms and conditions set by the Federal Reserve Board and with prior written approval of the Federal Reserve Board.

Section 9B also contains special capital requirements applicable to wholesale financial institutions. The Federal Reserve Board is authorized to adopt capital requirements for all WFIs, taking into account their uninsured status and providing 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.

Section 9B also makes WFIs subject to the prompt corrective action provisions contained in section 38 of the FDIA, the enforcement provisions contained in the FDIA, the Bank Merger Act, and the International Lending Supervision Act. The Federal Reserve Board is granted exclusive authority to establish the appropriate capital levels for all WFIs under section 38 of the FDIA. WFIs may branch to the extent permitted by the Federal Reserve Board (in the case of State-chartered WFIs) or the Comptroller (in the case of national WFIs). State chartered WFIs are treated as State member insured banks for purposes of the provisions of section 27 of the FDIA governing the activities of interstate branches and are granted all the rights, powers, privileges and immunities of national banks. All WFIs are subject to the Community Reinvestment Act of 1977.

A WFI may not receive initial deposits of $100,000 dollars 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 and are subject to regulations prescribed by the Federal Reserve Board. In addition, deposits of a WFI may not be insured by the FDIC.

The Federal Reserve Board is authorized to adopt for WFIs (1) limitations on transactions with affiliates to prevent the transfer of risk to the deposit insurance funds or an affiliate from gaining access to, or the benefits of, credit from a Federal reserve bank; (2) special clearing balances; and (3) any additional requirements that the Federal Reserve Board determines necessary or appropriate to achieve designated purposes. Transactions between an insured bank and an affiliated WFI are not eligible for the sister bank exemption from section 23A of the Federal Reserve Act. The Federal Reserve Board also may grant a WFI exemptions from any requirement applicable to member banks.

All WFIs must remain well capitalized and well managed. If a WFI is not well capitalized or well managed, any company that controls the WFI must execute an agreement with the Federal Reserve Board to restore the WFI to well capitalized and well managed status and the Federal Reserve Board may impose limits on the activities of the company (or any of its affiliates) until such status is restored. The Federal Reserve Board may order a company to divest its subsidiary depository institutions if the company does not execute an acceptable agreement with the Federal Reserve Board, comply with any limitations imposed during the cure period,

or restore the WFI to well capitalized or well managed status within specified time periods.

In order to permit existing insured banks to become WFIs, section 136(c) adds a new section 8A to the FDIA. 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, the Federal Reserve Board, or the Comptroller of the Currency (as appropriate), and 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. A depository institution that voluntarily terminates its deposit insurance under section 8A must either become a WFI or terminate all deposit-taking activities. Transition arrangements are established that permit previously insured deposits (less withdrawals) of a bank that terminates its insured status under section 8A to remain insured for up to 2 years.

Section 136 also makes several amendments to the Bankruptcy Code to allow for the resolution of a WFI or a corporation established under section 25A of the Federal Reserve Act under the Federal bankruptcy laws.

SUBTITLE E—PRESERVATION OF FTC AUTHORITY

Section 141. Amendment to the Bank Holding Company Act of 1956

Section 141 amends section 11(b) of the HCA to require that the Federal Reserve Board notify the Federal Trade Commission of any approval of a transaction under section 3 of that act if the transaction also involved an acquisition subject to section 4 or section 6 of the HCA.

Section 142. Interagency data sharing

Section 142 requires that the Federal banking agencies share data on the antitrust implications of a banking acquisition with the Justice Department and the Federal Trade Commission where permissible under law.

Section 143. Clarification of status of subsidiaries and affiliates

Section 143 clarifies that any affiliate of a bank or savings association that is not itself a bank or a savings association shall not be considered a bank for purposes of the Federal Trade Commission Act or any other law enforced by the Federal Trade Commission. Section 143 also makes conforming amendments to the Hart-Scott-Rodino Act. Currently, transactions involving banks or bank holding companies that require Federal Reserve Board approval under section 3 or section 4 of the HCA are exempt from the filing requirements of the Hart-Scott-Rodino Act. Section 143 provides that these exemptions are not available for any portion of a transaction that is subject to section 6 of the HCA and does not require Federal Reserve Board approval under section 3 or section 4 of the HCA.

Section 144. Annual GAO report

Section 144 requires that the Comptroller General submit a report to Congress each year for the first 5 years after the date of enactment of the Act on market concentration in the financial services industry and its impact on consumers.

SUBTITLE F—NATIONAL TREATMENT

Section 151. Foreign banks that are financial bank holding companies

Section 151 amends section 8(c) of the International Banking Act of 1978 (IBA) to provide that, if a foreign bank or foreign company becomes a financial holding company or is treated as a wholesale financial holding company under section 10(d)(1) of the HCA, the foreign bank or foreign company shall forfeit its grandfather rights under the IBA with respect to all financial activities. The IBA provided such grandfather rights because of the activity restrictions contained in current law. With the repeal of these restrictions, foreign banks with grandfathered financial affiliates would be permitted to retain these affiliates under Section 6 of the HCA, subject to the same terms and conditions that govern the ownership of such companies by domestic banking organizations. 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 grandfathering rights, the foreign bank is granted two years in which to have an application approved under section 6 or to receive a determination under section 10(d)(1). Failing such approval within this time period, the Federal Reserve Board may impose restrictions and requirements comparable to those on a financial holding company, including a requirement that the activities be conducted in compliance with any prudential safeguards established under section 5(h) of the HCA.

Section 152. Foreign banks and foreign financial institutions that are wholesale financial institutions

Section 152 amends section 8A of the FDIA (as added by this Act) to allow an insured branch of a foreign bank to voluntarily terminate its deposit insurance in the same manner and to the same extent as insured State and national banks. This section is intended to allow foreign banks to convert their insured branches to WFIs.

Section 153. Reciprocity

Section 153 requires that the Secretary of Commerce, in consultation with the appropriate Federal and State agencies and after seeking public comment, submit a report to the Congress whenever a foreign person seeks to acquire one of the top 50 banks, securities brokers or dealers, investment advisers, or insurance companies in the United States. The report must be submitted within 6 months of the announcement or consummation of the transaction and must discuss whether a U.S. person would be able to acquire an equivalent sized firm in the relevant foreign country and, if not, how such country's laws would have to be altered to provide reciprocal treatment for U.S. entities.

Section 153 also requires that the Secretary of Commerce, in consultation with the appropriate Federal and State agencies and after seeking public comment, submit a report to the Congress not less than 6 months before the commencement of the financial services negotiations of the World Trade Organization. The report must discus whether the 30 largest foreign financial services markets provide reciprocal access to U.S. entities and, if not, those changes necessary to ensure full reciprocity for U.S. financial service providers.

SUBTITLE G—FEDERAL HOME LOAN BANK MODERNIZATION

Section 161. Short title

Section 161 designates this subtitle as the "Federal Home Loan Bank System Modernization Act of 1999".

Section 162. Definitions

Section 162 provides technical changes to definitions within the Federal Home Loan Bank Act. It also creates a new class of "community financial institutions" with assets less than $500 million.

Section 163. Savings association membership

This section eliminates mandatory membership for Federal savings associations and Federal savings banks, which under current law may not withdraw from the Federal Home Loan Bank (FHLBanks) System. This allows any mandatory member to withdraw from membership on the same terms and conditions as any voluntary member may do under current law. The right of Federal savings associations and savings banks to leave the System is not limited by the inclusion elsewhere in the bill of a transition provision that preserves the current capital structure of the FHLBanks (which includes a bar on withdrawals by such institutions) until the new capital structure can be implemented. It is intended that the amendments made by section 163 are the sole provision governing the ability of mandatory members to withdraw from the System.

Section 164. Advances to members; collateral

Current law allows the FHLBanks to make long-term advances to their members only for providing funds for residential housing finance. To give "community financial institutions" (CFIs) greater access to the FHLBanks System, section 164 authorizes CFIs (banks with less than $500 million in assets) to obtain long-term advances for providing funds for small business, agricultural, rural development, or low-income community development leading. Section 164 also allows a CFI to secure its advances with new categories of collateral, i.e., secured loans made for the purpose of small business, agriculture, rural development, or low-income community development, or securities representing interests in such loans. Separately, section 164 repeals a cap (30 percent of a member's capital) on the amount of advances that may be secured by "other real estate related collateral," but requires that the FHLBank accepting such collateral must be able to ascertain the value of the collateral and to perfect a security interest in the col-

lateral. As they do with currently authorized types of collateral, the FHLBanks are expected to establish appropriate discounts for all of these new categories of collateral.

Section 164 authorizes the Finance Board to review the collateral standards of any FHLBank relating to the new categories of collateral for CFIs and for the expanded category of "other real estate related collateral." The Finance Board may order a FHLBank to make its standards for those types of collateral more stringent, if necessary for reasons of safety and soundness. The addition of this provision is intended to ensure that the new collateral provisions are implemented prudently, and does not limit the authority of the Finance Board to review or revise any other collateral standards or practices of the FHLBanks. The Finance Board, as the safety and soundness regulator for the FHLBanks, has the authority under current law to address such matters. The Committee notes the financial disclosure for fiscal year 1998 for the Federal Home Loan Banks is late. Improvement is needed in this area. Providing investors with appropriate disclosure in a timely fashion (*e.g.,* consistent with SEC requirements for public companies) should be a goal of the Federal Home Loan Bank System and the Finance Board.

Section 165. Eligibility criteria

Section 165 waives the ten percent residential mortgage asset test for FDIC-insured institutions with less $500 million in assets. All institutions are currently required to have ten percent of their total assets in residential mortgage loans in order to become members of the system.

Section 166. Management of banks

Section 166 transfer from the Finance Board to the individual FHLBanks authority over a number of operational areas, including director and employee compensation, terms and conditions for advances, interest rates on advances, dividends, and forms for advance applications. The section also clarifies other powers and duties of the Finance Board with regard to enforcement.

Section 167. Resolution Funding Corporation

Section 167 changes the current annual $300 million funding formula for the Resolution Funding Corporation obligations of the FHLBanks to a percentage of annual net earnings. The Committee does not intend a REFCorp fix that will result in a significant payment increase for the FHLBanks. The Committee will continue to review whether 20.75 percent is the most appropriate figure.

Section 168. Capital structure of Federal Home Loan Banks

Section 168 replaces the existing redeemable stock structure of the FHLBank System with a capital structure that requires each FHLBank to meet a leverage limit and a risk-based permanent capital requirement. The bill authorizes the FHLBanks to issue three classes of stock: one class could be redeemed on 6-months notice (Class A), one class could be redeemed on 5-years notice (Class B), and one class would be non-redeemable (Class C). After the Finance Board adopts new capital regulations, each FHLBank must

submit a capital structure plan establishing the manner in which it is to be capitalized.

The bill includes a leverage capital requirement, under which each FHLBank must maintain at a minimum total capital in an amount equal to 5 percent of the total on-balance sheet assets of the FHLBank. Total capital includes all of a FHLBank's permanent capital as well as all of its Class A stock, all Class B stock (other than the limited amounts that count as permanent capital), certain general loss reserves, and other items determined by the Finance Board as capable of absorbing losses. The permanent capital of a FHLBank includes only its Class C stock, retained earnings, and limited amounts of Class B stock (not to exceed 1 percent of the assets of the FHLBank).

To encourage the FHLBanks to build their permanent capital, the bill includes a weighting provision, under which the capital items with the most permanence (Class C stock and retained earnings) count more toward the leverage requirement than do capital items with less permanence (Class B and Class A). Accordingly, the Class C stock and retained earnings are weighted at two times the paid-in face value, while the Class B stock is weighted at one and one-half times the paid-in face value. Class A stock is counted at paid-in face value for leverage purposes. The rationale for the weighting provision is that the permanent and longer-term stock is better able to absorb losses than is the short-term redeemable stock, and it is the intent to include incentives, both for the FHLBanks and their members, to build permanent capital at each FHLBank. As a further incentive, each FHLBank is authorized to establish preferences—such as greater dividends, additional voting rights, liquidation preferences, or reduced minimum investments—for holders of its permanent and longer-term stock that are not available to the Class A stock.

To ensure that the amount of a FHLBank's capital is commensurate with the risks (both on- and off-balance sheet) that it undertakes, the bill requires the Finance Board to establish a risk-based capital requirement that can be met only with permanent capital, *i.e.,* Class C stock, retained earnings, and limited amounts of Class B stock. Requiring permanent capital is intended to provide a degree of market discipline on the risks undertaken by the FHLBanks.

The risk-based capital requirement must take into account both the credit risk and the market risk (which includes interest rate risk) to which the FHLBanks are exposed. The risk-based requirement will operate in conjunction with the leverage requirement, and a FHLBank must at all times be in compliance with both requirements. If a FHLBank takes greater risks in its operations, the risk-based capital requirement may well cause it to maintain a greater amount of capital than would be required under the leverage limit alone. The assessment of market risks is to be determined by use of a stress test to be developed by the Finance Board. The stress test must take into account how certain market variables, such as changes in interest rates, rate volatility, and changes in the shape of the yield curve, would affect the FHLBanks. The Finance Board must give due consideration to any risk-based capital test established by the Office of Federal Housing Enterprise Over-

sight (OFHEO) for Fannie Mae and Freddie Mac, and may incorporate any provisions of the OFHEO risk-based capital regulations it deems appropriate for the operations of the FHLBanks.

Because the new capital structure plans will not take effect until two years or more after enactment, the bill includes a transition provision that effectively preserves the current capital structure of the FHLBanks until the new capital structure is implemented. During the transition period a FHLBank may continue to admit new members and may permit existing members (including Federal savings associations and Federal savings banks) to withdraw. For institutions that previously had withdrawn from membership, the bill shortens the 10-year "lock-out" period to 5 years, but also would allow any former member that had withdrawn prior to December 31, 1997 to reapply for membership at any time.

It is expected that the Finance Board, to the extent possible, will manage the transition to the new capital structure in a manner that will minimize or avoid any adverse effect on the Affordable Housing Program (AHP). The Federal Home Loan Banks' AHP is one of the nation's most effective targeted housing programs. Over the last decade, the 12 Federal Home Loan Banks have contributed more than $800 million of their net earnings to the AHP. Those funds have helped subsidize approximately 200,000 units of affordable housing for very-low-, low-, and moderate-income families throughout the country. The AHP's continued success depends critically upon a profitable and well-capitalized Federal Home Loan Bank System.

The bill authorizes the board of directors at each FHLBank, subject to Finance Board approval, to determine the details of the capital structure plan for the FHLBank, which may vary from one FHLBank to another. In all cases, each member must maintain a minimum investment in the stock of the FHLBank, and each FHLBank must at all times maintain sufficient capital to remain in compliance with both the leverage and risk-based capital requirements. The bill provides the FHLBanks up to three years to fully implement their capital structure plans. As an inducement for the members to purchase Class C stock, the bill provides that the holders of the outstanding Class C stock of the FHLBank shall own the retained earnings, surplus, undivided profits, and equity reserves of the FHLBank. If a FHLBank has no permanent stock outstanding, then the members owning the other classes of stock would own the retained earnings of the FHLBank.

SUBTITLE H—ATM FEE REFORM

Section 171. Short title

Section 171 designates subtitle H as the "ATM Fee Reform Act of 1999".

Section 172. Electronic fund transfer fee disclosures at any host ATM

Section 172 amends the Electronic Funds Transfer Act (EFTA) by requiring certain disclosures regarding automated teller machine (ATM) surcharge fees. The disclosures are required only with respect to surcharges imposed by ATM operators on noncustomers,

not fees that the consumer's own bank may charge. ATM operators assessing surcharges are required to (1) post a sign on the ATM machine stating that a fee will be charged; and (2) post a notice on the screen (or on a paper notice issued by the machine) that a fee will be charged and the amount of such fee after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction. No surcharge fee may be charged unless the required disclosures are made and the consumer elects to proceed with the transactions after receiving the notice.

Section 173. Disclosure of possible fees to consumers when ATM card is issued

Section 173 amends the EFTA to require that, when ATM cards are issued, the consumer receive a notice that surcharges may be imposed by other parties when transactions are initiated at ATMs not operated by the card issuer.

Section 174. Feasibility study

Section 174 requires that the Comptroller General study the feasibility, costs, benefits to consumers, and competitive impact of requiring that ATM operators disclose not only any surcharge imposed by the machine in use, but also any fees imposed by the consumer's own bank, any network used to effect the transaction, and any other party involved in the transaction. The Comptroller General must report its findings to the Congress within 6 months of the date of enactment of the Act.

Section 175. No liability if posted notices are damaged

Section 175 provides that an ATM operator will not be liable for failing to comply with the signage requirement imposed by section 172 if a properly posted sign is subsequently removed, damaged, or altered by any person other than the operator of the ATM.

Section 176. Effective date

Section 176 provides that the amendments made by subtitle H shall take effect 270 days after the date of enactment of the Act.

SUBTITLE I—DIRECT ACTIVITIES OF BANKS

Section 181. Authority of national banks to underwrite certain municipal bonds

Section 181 amends section 24(Seventh) of the National Bank Act to permit any well capitalized national bank to underwrite and deal in obligations issued by or on behalf of any State or political subdivision or any agency or authority of any State or political subdivision, including municipal revenue bonds, limited obligation bonds and other obligations that meet the requirements of section 142(b)(1) of the Internal Revenue Code.

SUBTITLE J—DEPOSIT INSURANCE FUNDS

Section 186. Study of safety and soundness of funds

Section 186 directs the FDIC to study the following issues concerning the deposit insurance funds: (1) the safety and soundness

of the funds in light of recent mergers involving insured depository institutions and the expanded types of affiliations permitted by the Act; (2) the geographic concentration of the funds; and (3) the planned merger of the Bank Insurance Fund and the Savings Association Insurance Fund. The FDIC must report its findings to the Congress within nine months of enactment.

Section 187. Elimination of SAIF and DIF special reserves

Section 187 eliminates the requirement that the FDIC establish a "special reserve" for the Savings Association Insurance Fund.

SUBTITLE L—MISCELLANEOUS PROVISIONS

Section 191. Termination of "Know Your Customer" regulations

Section 191 prohibits the Federal banking agencies from publishing in final form the "Know Your Customer" regulations that were jointly proposed by the agencies on December 7, 1998. Section 191 also provides that, to the extent such regulations may have become effective before the date of enactment of the Act, the regulations shall cease to be effective.

Section 192. Study and report on Federal electronic fund transfers

Section 192 requires the Secretary of the Treasury to conduct a feasibility study to determine: (1) whether all electronic payments issued by Federal agencies could be routed through the Department of the Treasury; (2) whether all electronic payments made by the Federal Government could be subjected to the same level of reconciliation as United States Treasury checks; (3) whether appropriate computer security controls are in place to ensure the integrity of electronic payments; (4) the estimated costs of implementing processes and controls studied in items (1) through (3); and (5) a timetable for implementing these processes. The Secretary of the Treasury is required to provide to Congress a report on the results of this study no later than October 1, 2000.

Section 193. Study and report on adapting existing legislative requirements to online banking and lending

Section 195 requires that the Federal banking agencies conduct a study on how existing banking regulations concerning the delivery of financial services should be adapted to online banking and lending. The Federal banking agencies must report their findings and recommendations to the Congress within one year of the date of enactment of the Act.

TITLE II—FUNCTIONAL REGULATION

SUBTITLE A—BROKERS AND DEALERS

Subtitle A amends the definitions of "broker" and "dealer" in the Securities Exchange Act of 1934 (Exchange Act), to eliminate the existing broad exemptions for banks. These exemptions, which have been part of the Exchange Act since its inception, were based on the assumption that the Glass-Steagall Act, which became law one year before the Exchange Act, had prohibited most bank securities activities. In recent years, however, these exemptions became historic anomalies. Banks, with the approval of their regulators,

have been providing an increasing array of securities products to the public outside the scope of the Federal securities laws. There has been growing concern that these bank securities activities occur without the protections provided by the Federal securities laws. In addition, these exemptions have permitted banks to compete directly with registered broker-dealers, which, unlike banks, are subject to full regulatory oversight by the Commission and the securities self-regulatory organizations.

Subtitle A recognizes that a complete exclusion from securities regulation is no longer appropriate for banks that engage actively in a greater universe of securities activity. In place of the broad exemptions, subtitle A provides circumscribed exceptions from the definitions for specific securities activities. This is consistent with "functional regulation" the Commission will regulate securities activities generally, except in circumstances where bank regulators will have oversight responsibilities for limited securities services of banks that have traditionally been provided in connection with other banking services.

Subtitle A also contains a process for handling new hybrid products sold by banks that might have securities elements, as well as, a record keeping requirement for banks and an information-sharing provision to allow banking regulators and the Commission to determine whether banks are complying with the terms of the exceptions.

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. §78c(a)(4). As a result, banks that directly conduct brokerage activities are not required to register as broker-dealers or to satisfy most other requirements applicable to Commission-registered brokers under the Exchange Act.

Section 201 amends the Exchange Act's definition of "broker", deleting the absolute exemption for banks, subject to certain enumerated exceptions. As a general matter, a bank will be considered a "broker" under the Exchange Act if it is engaged in the business of effecting transactions in securities for the account of others.

Section 201 goes on to specify eleven exceptions for banks that engage in securities activities. If a bank limits its brokerage activities to the activities described in these exceptions, then the bank will not be subject to broker-dealer registration under the Exchange Act. These exceptions recognize that it may not be necessary, under certain conditions, to require a bank to register as a broker-dealer. In particular, registration may not be required because the conditions imposed on the excepted activities are tailored to protect investors and to ensure competitive fairness among different types of financial services providers. Banks continue, however, to be subject to other provisions of the Exchange Act (that are not based on broker-dealer status) including germane anti-fraud provisions under section 10 in connection with their securities activities.

a. Third party brokerage arrangements

Currently, banks sell securities to bank customers in one of three ways: (1) by contracting with registered broker-dealers; (2) by reg-

istering broker-dealer subsidiaries or affiliates; or (3) by selling securities directly through bank employees who are neither registered as broker-dealers nor licensed as registered representatives of a broker-dealer. Banks may sell securities directly to customers because, under existing law, banks are specifically excluded from broker-dealer registration under the Federal securities laws.

Section 201 provides an exception for so-called "networking" arrangements between a bank and a registered broker-dealer. This exception follows a long line of Commission no-action letters. See *e.g.,* Chubb Securities Corp., SEC No-Action Letter, 1993 SEC No-Act. LEXIS 1204 (Nov. 24, 1993). Under this exception, a bank will not be considered a "broker" if it offers brokerage services pursuant to a contract or other written arrangement with an affiliated or unaffiliated broker-dealer. The exception is, however, limited by a variety of conditions designed to promote investor protection. The networking exception provides a bank with a flexible mechanism by which it can provide securities services to its customers, use its personnel, and obtain commission fee income from the broker-dealer, without full broker-dealer registration.

In general, the conditions contained in the networking exception foster a degree of separation from the bank and restrict the securities activities of unregistered bank personnel to reduce sales practice concerns. For example, under the exception, the broker-dealer "networking" activities must be conducted at a location that is clearly identified and, to the extent practicable, physically separate from the routine deposit-taking activities of the bank.

As part of networking arrangements, banks frequently designate employees who become licensed registered representatives under the supervision of a broker-dealer for the purpose of conducting brokerage transactions. These employees, known as "dual employees," are associated persons of a broker-dealer and receive incentive compensation (*i.e.,* compensation that depends on the successful outcome of the transaction) from the broker-dealer. Such employees are subject to regulation and disciplinary actions by the securities self-regulatory organizations and the Commission in connection with their brokerage activities.

Under this exception, bank employees who are not dual employees may only perform clerical or ministerial functions. Permissible clerical or ministerial functions include scheduling appointments with an associated person of a broker-dealer. In addition to their clerical or ministerial functions, bank employees (who routinely handle customer funds and securities as part of their banking function) also may forward customer funds or securities to the registered broker-dealer. Bank employees who are not registered representatives may not make general or specific investment recommendations regarding securities, qualify a customer as eligible to purchase securities, or accept orders for securities. Bank employees may, however, describe in general terms the types of investments available from the bank. Finally, bank employees who are not registered representatives may not receive incentive compensation in connection with securities transactions. Bank employees may receive a one-time nominal referral fee of a fixed dollar amount that does not depend on whether the referral results in a transaction.

As a general matter, under the networking exception, the registered broker-dealer and its registered personnel will be conducting all significant securities activities for the customer, including establishing the account, making suitability determinations, taking orders, executing the orders, sending confirmations, clearing and settling the trade, sending the account statements, and carrying the account on an on-going basis.

In order to ensure that an investor has SIPC protection for the securities that he or she purchases—protection that applies to a broker-dealer but not a bank—the broker-dealer that is part of a networking arrangement must carry the investor's account. Section 201 also contains provisions governing advertising and promotional materials and disclosure requirements.

b. Trust activities

Section 201 provides an exception for bank trust activities, recognizing the traditional role banks have played in executing securities transactions in connection with their trust accounts. In general, bank trust and fiduciary activities in the securities area have arisen as an accommodation to bank customers, and have not been promoted through public solicitation of bank brokerage services.

Under the exception, a bank will not be considered a "broker" if it conducts brokerage transactions in a trustee or fiduciary capacity, subject to certain conditions. Specifically, the bank may not solicit brokerage business, except in connection with advertising its other trust services. The term "advertising" is not intended to permit general public solicitation, but to permit a bank to indicate briefly—in a more general announcement of all the services provided in its trust department—that securities execution services in connection with trust and fiduciary services are also provided.

Under the exception, a bank acting as trustee or fiduciary is also subject to limitations on the type of compensation it may receive. For example, a bank must be chiefly compensated for its trust and fiduciary activities on the basis of an administration or annual fee, a percentage of assets under management, or a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for its trustee or fiduciary customers. Charging such fees, or any combination of such fees, must also be consistent with "fiduciary principles and standards." The Commission is expected to interpret this exception, and, in particular, the references to "chiefly" and "fiduciary principles and standards" contained in this exception, so as to limit a bank's ability to receive incentive compensation or similar compensation that could foster a "salesman's stake" in promoting a securities transaction. The Committee does not intend for a bank to conduct a full-scale securities brokerage operation in the trust department exempt from SEC regulation and the imposition of appropriate investor protections under the Federal securities laws.

To obtain this exception, a bank's trust or fiduciary activities also must be regularly examined by bank examiners for compliance with trust principles. The Committee understands that examinations of bank trust departments today are rigorous in nature. If, as in small banks, the trust or fiduciary activities occur outside of the trust department, these activities must be examined in the same

way, and with the same rigor, as if they occurred in a bank trust department. Because these activities will be conducted by banks acting in a strict trustee or fiduciary capacity, subject to Federal and State trust law, and rigorously and regularly examined by bank examiners, bank trust customers will be afforded some basic protections. This mitigates concerns that would otherwise exist because of the lack of Federal securities law protections for these customers. Absent this protection, the exemption may be inappropriate.

The term "fiduciary capacity" is defined to include banks that act in the capacity of trustee, executor, guardian, assignee, receiver, or custodian under a uniform gift to minor act, as an investment adviser if the bank receives a fee for its investment advice, or in any capacity in which the bank possesses investment discretion on behalf of another. This definition also permits the Commission to interpret the term fiduciary activity to include a bank that acts in a "similar capacity" to the enumerated trust and fiduciary activities. The Committee expects that "similar" will be read to mean "strictly comparable" without any diminution of fiduciary obligation. Any bank claiming to act in a "similar capacity" must be subject to a trust or fiduciary agreement with its customers, subject to Federal and State trust and fiduciary requirements, and strictly regulated and examined for bank trust purposes, as contemplated by the exception. Additionally, the Committee believes that churning customer accounts and recommending investments without regard to the suitability of the investment for the customer is not consistent with fiduciary obligations.

c. Permissible securities transactions

An exception for "permissible securities transactions" recognizes transactions in specific types of securities and instruments that banks commonly engage in today. In some cases, to ease compliance for banks unfamiliar with the Federal securities laws, these exceptions restate exceptions found elsewhere in the Exchange Act.

A bank will not be considered a "broker" if it conducts brokerage transactions in commercial paper, bankers acceptances, or commercial bills. This exception mirrors the current exceptions already contained in section 15(a) of the Exchange Act, and is to be construed in the same manner as the Exchange Act exceptions.

Similarly, a bank will not be considered a "broker" if it conducts brokerage transactions in "exempted securities" under the Exchange Act. Banks acting as government securities brokers are already subject to section 15C of the Exchange Act in connection with their government securities business. For purposes of this exception, municipal securities are not treated as "exempted securities," but are covered by a separate exception.

In addition, a bank will not be considered a "broker" if it effects transactions in qualified Canadian government obligations under the regulatory framework applicable to U.S. government securities (section 15C of the Exchange Act), securities of the North American Development Bank, or Brady Bonds.

d. Certain stock purchase plans: Employee benefit, dividend reinvestment, and issuer plans

Another group of related exceptions contained in section 201 would permit banks, as they currently do today, to act as agents for issuers that want to sell securities directly to employees and shareholders. Currently, banks that engage in such activities do so in their capacity as transfer agents, regulated under section 17A of the Exchange Act. The exceptions for: (1) employee benefit plans; (2) dividend reinvestment plans; and (3) issuer plans, are conditioned on a bank's acting in the capacity of a regulated transfer agent.

Moreover, currently issuers commonly pay banks to establish these programs—so that banks do not receive incentive-based fees from employees or shareholders participating in the plans. Accordingly, the exceptions provided for these stock purchase plans contain fee restrictions designed to limit "success" or incentive-fees from the employees or shareholders. For example, under these three exceptions, a bank must be chiefly compensated for its stock purchase plan responsibilities on the basis of administration fees, or flat or capped per order processing fees (or both). These limitations are intended to guard against a bank's ability to charge incentive compensation or similar compensation that could foster a "salesman's stake" in promoting securities transactions. These fee limitations act as investor protections in an environment where the bank essentially is acting as an agent for the issuer—rather than as agent for the investor.

Specifically, under the employee benefit plan exception, a bank will not be considered a "broker" if it conducts brokerage transactions for employee benefit plans and: (i) does not solicit investors; or (ii) provide investment advice. As noted above, the bank's compensation must be limited chiefly to administration fees or flat or capped per order processing fees (or both). As a general matter, the limitation to charges representing per order processing fees should not be read to permit payments analogous to commissions. Such payments should generally reflect the cost incurred by the bank in connection with executing securities transactions.

In addition, a bank will not be considered a "broker" if it conducts brokerage transactions for an issuer's shareholders in a dividend reinvestment or issuer stock purchase plan, and the bank: (1) does not solicit investors; (2) does not net shareholders' buy and sell orders; and (3) is compensated chiefly by an administration fee or a flat or capped per order handling fee (or both). Again, as noted above, these limitations on charging commissions to investors serve to promote investor protection in an environment where the bank is serving as an agent for the issuer—and typically is paid by the issuer for establishing the issuer stock purchase programs.

Bank transfer agents that operate under these three exceptions may act passively to deliver written or electronic plan materials to employees or shareholders of the issuer or members of affinity groups of the issuer. Such materials, however, must not go beyond those permitted by the Commission when this legislation is enacted.

e. Sweep accounts

Section 201 contains a limited exception for banks that "sweep" depositors' funds on an overnight basis into a no-load money market account. The exception has the effect of permitting banks to continue investing depositors' funds from depository accounts into no-load money market accounts.

f. Affiliate transactions

A bank will not be considered a "broker" if it conducts brokerage transactions for the account of any affiliate of the bank, as defined in section 2 of the Bank Holding Company Act, other than an affiliate that is a broker-dealer or an affiliate that is engaged in merchant banking as defined in the Bank Holding Company Act.

g. Private securities offerings

Private placement of securities is a traditional broker-dealer activity, requiring broker-dealer regulation. Because private placements are an "agency" activity, they pose little risk to the bank; this agency function does not, however, mitigate risk to investors. Sales of private placements to qualified investors are not necessarily free of misleading and deceptive sales conduct. Notably, sales practice cases like the Prudential Securities, Inc. debacle involved private placements. *In the Matter of Prudential Securities Inc.,* Exchange Act Release No. 33082 (Oct. 21, 1993), 55 SEC Docket 720 (Nov. 9, 1993). *See also, SEC* v. *Prudential Securities Inc.,* Litigation Release No. 13840 (Oct. 21, 1993), 55 SEC Docket 830 (Nov. 9, 1993). Moreover, because private placements qualify for an exemption from the Securities Act of 1933, they are subject to fewer disclosure requirements under the Federal securities laws often making purchasers more dependent on the representations of persons selling these securities.

Today, large banks that engage in private placement activities typically do so through so-called "Section 20" affiliates. However, small banks may conduct private placements directly in the bank, using unregistered employees. The bill recognizes these realities by requiring the private placement activities of large banks with broker-dealer affiliates to continue to be conducted through the affiliate, while permitting smaller banks to continue to service the needs of their local communities. Section 201 thus contains a limited exception that would permit smaller banks to continue to privately place securities with qualified investors, if they do not have an affiliated or subsidiary broker-dealer. The Committee believes that this exception would enable small banks, without broker-dealer subsidiaries or affiliates, to continue to assist local businesses with their capital formation needs.

Section 201, therefore, creates an exception for private securities offerings. Briefly, a bank that has not been affiliated with a broker-dealer for more than one year will not be considered a "broker" if it privately places securities exclusively to qualified investors. Under section 201, the term "qualified investor" is defined to include mutual funds; hedge funds; banks; thrifts; business development companies; small business investment companies licensed under the Small Business Investment Act; certain employee benefit plans; trusts managed by any of the preceding investors; market

intermediaries exempted under the Investment Company Act; associated persons of a broker-dealer (other than natural persons); foreign banks; foreign governments; corporations, companies, partnerships, or natural persons that own and invest on a discretionary basis not less than $10,000,000 in investments; governments or political subdivisions, agencies, or instrumentalities of governments that own and invest on a discretionary basis not less than $50,000,000 in investments; and multinational or supranational entities, agencies, or instrumentalities thereof. The Commission may expand the list of qualified investors, provided it considers such factors as the person's financial sophistication, net worth, and knowledge and experience in financial matters.

As described more fully below, to assist bank employees to become trained and qualified for sales of private placements within a broker-dealer, section 203 of Title II directs registered securities associations (*i.e.,* the NASD) to create a limited qualification test for private placement securities activities, and to grandfather certain bank employees who have participated in sales of privately placed securities in the six months before the bill's enactment.

h. Safekeeping and custody services

Bank safekeeping and custody services may involve effecting securities transactions for bank customers. Section 201 contains a limited exception from broker-dealer registration for banks that provide safekeeping and custody services to their customers as part of their customary banking activities.

Many of the activities permitted under the safekeeping and custody exception are incidental to activities that banks perform today—such as selling securities dividends on custody securities or satisfying a guarantee or investing cash that serves as collateral on a securities loan. Others technically may not even involve "effecting transactions in securities" the Exchange Act—for example, purchasing securities to cover shortfalls in an account or liquidating collateral for the bank's own account. Banks today that engage in such activities have done so with the comfort of the existing blanket bank exemption from broker-dealer regulation. The safekeeping and custody services exception essentially permits banks to continue to engage in the limited and incidental activities they engage in today in conjunction with their clearing and depository activities. However, for the exception to apply, banks that perform functions customarily performed by clearing agencies or transfer agents in connection with securities must register as clearing agencies or transfer agents as is already required under the Exchange Act.

Section 201 provides that a bank will not be considered a "broker" if it engages in the customary banking activities of: (i) providing safekeeping and custody services to its customers with respect to securities, including the exercise of warrants and other rights on behalf of bank customers; (ii) facilitating the transfer of funds or securities, as a custodian or clearing agent, in connection with the clearance and settlement of its customers' transactions in securities; and (iii) facilitating lending or financing transactions or investing cash in connection with its safekeeping, custody, and securities transfer services. Additionally, a bank may hold securities pledged by a customer to another person or securities subject to re-

purchase agreements involving a customer, or facilitate the pledging or transfer of such securities by book entry or as otherwise provided under applicable law, provided that the bank maintains records separately identifying the securities and the customer. This exception is not intended to allow banks to engage in broader securities activities.

The exception also will not apply to a bank that acts as a clearing broker in connection with securities transactions, except if the bank is acting in the U.S. as a clearing broker with respect to government securities.

i. Excepted financial products

Under previous versions of H.R. 10, banks would have been excepted from the definition of "broker" (and "dealer") in connection with transactions in products defined as "traditional banking products." Generally speaking, the purpose of this provision is to provide for exceptions from the registration requirements of the Federal securities laws for banks engaging in activities relating to the specified products. The Committee has amended this provision to rename it "excepted financial products." Notably, many of the products contained in the definition of "excepted financial products" involve products and instruments that have not traditionally been characterized as securities—such as bank deposit accounts, letters of credit, credit card debit accounts, certain loan participation and certain derivative instruments.

Under section 201, a bank may continue to engage in brokerage transactions in products defined as "excepted financial products" in section 3(a)(56)(A) of the Exchange Act. "Excepted financial products" include deposit accounts, letters of credit and loans made by a bank, credit card debit accounts, and loan participation that are sold to qualified investors or other investors who have the financial sophistication and opportunity to review any material information. In addition, certain "plain vanilla" derivative instruments are included as "excepted financial products." These include derivatives involving currencies (except options on currencies traded on a national securities exchange). In addition, banks may also sell derivatives involving or relating to interest rates, commodities, other rates, indices or other assets, except when such instruments: (i) are based on a security, including a group or index of securities (other than government securities or a group or index of government securities); (ii) provide for the delivery of one or more securities (other than government securities); or (iii) trade on a national securities exchange.

The classification of a product as an excepted financial product does not imply that such product is or is not a security, or an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.

j. Municipal securities

Section 201 contains an exception for a bank that acts as a broker in municipal securities. Today, the regulatory scheme for bank municipal securities excepts banks that act in a brokerage capacity; this exception preserves that exception.

k. De minimis transactions

To accommodate limited securities brokerage of small banks, a bank will be excepted from the definition of a "broker" if it effects less than 500 securities transactions in any calendar year (in addition to other excepted bank activities). Because this exception may not be used to evade the Federal securities laws, bank employees who also are employees of a broker-dealer may not claim the exception for any transactions that they effect.

l. Limitations on the exceptions

Section 201 provides for an additional limitation promoting best execution in connection with new bank exceptions for trust and fiduciary activities, stock purchase plans, and safekeeping and custody services. The section makes clear that these exceptions do not apply if the bank effects securities transactions that result in the trade in the U.S. of any security that is a publicly traded security in the U.S. unless: (i) the bank directs the trade to a registered broker or dealer; (ii) the trade is a cross-trade or substantially similar trade; or (iii) the trade is conducted in some other way permitted by the Commission.

Section 202. Definition of dealer

Section 3(a)(5) of the Exchange Act currently excludes banks from the definition of "dealer." 15 U.S.C. §78c(a)(5). As a general matter, a bank will be deemed a "dealer" if it is engaged in the business of buying and selling securities for its own account, through a broker or otherwise. Section 202 amends section 3(a)(5) to include banks within the general definition of dealer, but creates five specific exceptions for certain activities. 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 Commission interpretive positions regarding dealers.

a. Permissible securities transactions

An exception for "permissible securities transactions"—similar to the one found in the "broker" definition—recognizes transactions in specific types of securities and instruments that banks commonly engage in today. In some cases, to ease compliance for banks unfamiliar with the Federal securities laws, these exceptions restate several exceptions found elsewhere in the Exchange Act.

A bank will be excepted from the definition of "dealer" if it buys or sells commercial paper, bankers acceptances, commercial bills, or "exempted securities" under the Exchange Act. In addition, this exception extends to a bank if it buys or sells qualified Canadian government obligations under the regulatory framework applicable to U.S. government securities (section 15C of the Exchange Act), securities of the North American Development Bank, or Brady Bonds.

b. Investment, trustee, and fiduciary transactions

Section 202 excepts a bank from the definition of "dealer" when it buys and sells securities for investment purposes for the bank or for accounts for which the bank acts as trustee or fiduciary. This

mirrors existing law distinguishing between investors and dealers, and is limited to the portfolio trading of the bank and accounts for which it makes investment decisions.

c. Asset-backed transactions

Banks engage increasingly today in asset-backed securities transactions, designed to move assets off their balance sheets by selling them as securities to investors. Section 202 contains a limited exception for bank asset-backed securities transactions that is designed to foster investor protection while preserving the ability of banks to continue to provide services relating to asset-backed securities where the bank has a significant stake in the assets being securitized.

Under section 202, a bank will be excepted from the definition of "dealer" if it engages in the issuance or sale to qualified investors, through a grantor trust or other separate entity, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations (other than securities of which the bank is not the issuer) or pools of any obligations predominantly originated by the bank, or an affiliate of the bank (other than a broker or dealer). Asset-backed transactions involving mortgage obligations or consumer-related receivables must be originated by a syndicate of banks of which the bank is a member. Additionally, the bank must be more than an insignificant member of the syndicate. The Committee expects this provision shall be interpreted so that a bank will leave not less than ten percent of the assets in the syndicate or pool of obligations. This has the effect of generally limiting availability of this underwriting exception to asset-backed securities predominantly originated by banks, or involving syndications where the bank is not an insignificant member. For the exception to apply, the asset-backed securities must be placed in a grantor trust or other separate entity, so that applicable Securities Act registration requirements apply. In addition, the separation requirement also fosters the market practice of requiring rating agency scrutiny of the assets and appropriate collateralization. Because the underwriting of asset-backed securities raises the same issues of subsidy as does underwriting in an operating subsidiary (which this legislation prohibits), this exemption is intended to limit banks to the universe of asset-backed underwriting in which banks can engage.

d. Transactions in excepted financial products

An exception similar to the broker exception for transactions in "excepted financial products" is also contained in section 202. As noted above, many of the products contained in the definition of "excepted financial products" involve products and instruments that have not traditionally been characterized as securities—such as bank deposit accounts, letters of credit, credit card debit accounts, certain loan participation and certain derivative instruments.

Under section 202, a bank may buy or sell products defined as "excepted financial products" in section 3(a)(56)(A) of the Exchange Act without being subject to registration as a securities dealer. "Excepted financial products" include deposit accounts, letters of credit

and loans made by a bank, credit card debit accounts, or loan participation that are sold to qualified investors or other investors who have the financial sophistication and opportunity to review any material information. In addition, certain plain vanilla derivative instruments are included as "excepted financial products." These include derivatives involving currencies (except options on currencies traded on a national securities exchange). In addition, banks may also buy and sell derivatives involving or relating to interest rates, commodities, other rates, indices or other assets, except when such instruments: (i) are based on a security, including a group or index of securities (other than government securities or a group or index of government securities); (ii) provide for the delivery of one or more securities (other than government securities); or (iii) trade on a national securities exchange.

e. Derivative instruments

In addition to the plain vanilla derivative instruments that banks may deal in pursuant to the exception for excepted financial products, section 202 contains a separate exception for derivatives products that could include securities-related derivative products (i.e., where the derivatives involved could be a security, or involve the delivery of securities). In general, the derivatives exception permits banks to book all derivatives products in the bank, but, if they involve a security or delivery of a security (other than government securities), they would be required to be conducted only with qualified investors and/or effected through a registered broker-dealer.

Under section 202, a bank will be exempted from the definition of "dealer" if it engages in certain derivative transactions:

> If the derivative is neither a security nor provides for settlement by the delivery of securities, the bank would not be deemed a "dealer" and would be permitted to engage in the transaction directly with any person. Banks also would be permitted to act as counterparty in transactions involving derivatives that are, or that require the delivery of, U.S. government securities without being deemed a "dealer."
>
> Second, if the bank acts as counterparty in any derivatives transaction with a qualified investor (or a corporation, limited liability company, or partnership having at least $100 million in investments) and the transaction is settled in cash, the bank would not be deemed a "dealer" or be required to effect the transaction through a registered broker-dealer affiliate. Transactions settled by delivering securities, however, could be booked in the bank but would have to be sold through a registered broker-dealer.
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> Third, if the derivative is a security or the bank settles the transaction by delivering securities, and the transaction is effected with a person who is not a qualified investor (or a corporation, limited liability company, or partnership having at least $100 million in investments), the bank would be deemed a "dealer" unless it effected the transaction through a broker-dealer affiliate.

This provision will permit banks to continue to act as counterparties in derivative transactions, while applying securities law protections where the derivative product involves delivery of a

security, or is a security and is sold to persons that are not qualified investors or companies and similar entities having at least $100 million in investments.

The term "derivative instruments" is broadly defined in section 206 to include any individually negotiated contract, agreement, warrant, note, or option that is partially or wholly based on the value of, any interest in, or any quantitative measure, or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets. Equity and credit swaps are not treated separately under the exception for derivative instruments. Their treatment will depend on whether the swaps may be deemed a security or require settlement by delivering one or more securities. Whether a swap or other derivative product is a security for Exchange Act purposes depends on whether it is an option on a security or satisfies established legal tests for determining whether a financial product is a security.

"Qualified investors" include mutual funds, hedge funds, banks, thrifts, business development companies, small business investment companies licensed under the Small Business Investment Act, certain employee benefit plans, trusts managed by any of the preceding investors, market intermediaries exempted under the Investment Company Act, associated persons of a broker-dealer (other than natural persons), and foreign banks. The Commission may expand the list of qualified investors, provided it considers such factors as the person's financial sophistication, net worth, and knowledge and experience in financial matters. The Commission should not add natural persons to the list of qualified investors.

Section 203. Registration for sales of private securities offerings

Section 203 amends section 15A of the Exchange Act, which sets out the requirements to be a registered securities association, by adding new subsection (j). This new subsection directs a registered securities association to create a limited qualification category, without a testing requirement, for associated persons of members who effect private placement sales. The registered securities association is directed to "deem qualified" for such limited qualification category, without testing, those associated persons who have been bank employees engaged in private placement sales in the six months before this bill is enacted.

Section 204. Information sharing

Section 204 also amends section 18 of the Federal Deposit Insurance Act by adding new subsection (t). This new subsection requires each appropriate Federal banking agency, after consultation with and consideration of the Commission's views, to establish recordkeeping requirements for banks that are relying on the exceptions from the definitions of "broker" and "dealer" in sections 3(a)(4) and 3(a)(5) of the Exchange Act made in sections 201 and 202 of Title II.

These recordkeeping requirements must result in records that are sufficient to demonstrate compliance with the terms of the exceptions. The records kept must be made available by the appropriate Federal banking agency upon the Commission's request.

Section 205. Treatment of new hybrid products

The new products provision contained in section 205 provides an express procedure for handling new hybrid products sold by banks that have securities elements. This process would require the Commission to act by rulemaking prior to seeking to regulate any bank sales of any such new product. This rulemaking process is designed to give notice to the banking industry in an area that could involve complex new products with many elements.

Briefly, the process contemplated by section 205 would work as follows. Prior to seeking to register a bank as a broker or dealer with respect to sales of any new hybrid product, or bringing an enforcement action for failure to register, the Commission would have to engage in a rulemaking.

In its rulemaking, the Commission would need to find that the new product is a security. In addition, the Commission would have to determine that the bank product is a "new hybrid product." The bill provides certain guideposts to help the Commission in its analysis.

For example, the definition of "new hybrid product" carves out products that are already viewed as a security as of the date of enactment of the bill. As a result, these traditional securities products do not require rulemaking before bank compliance with broker-dealer registration requirements, even if these securities products are called by a different name. Traditional securities could include, for example, products that were regularly subject to securities registration statements or which have been viewed as a security in the context of a Commission enforcement action prior to the date of enactment.

A new hybrid product is not one of the products listed in the definition of "Excepted Financial Products", contained in section 3(a)(56)(A) of the Exchange Act. These products, which the Committee views as products that existed in those categories as of the date of enactment of the bill, typically are not securities and are already exempt from broker-dealer registration requirements. Of course, merely labeling a security as a product on the list of excepted financial products will not suffice to exclude it from being either a security or a new hybrid product.

Using these guideposts, the Commission should make its traditional analysis of whether the new bank product is a "security" under the Federal securities laws, and whether it is a new hybrid product under this section.

In addition, during the rulemaking process, the Commission must also find that imposing a registration requirement on a bank to sell the new hybrid product is necessary or appropriate in the public interest and for the protection of investors. When considering whether such an action is in the public interest, the Commission must also consider whether the action will promote efficiency, competition and capital formation, as set forth in section 3(f) of the Exchange Act. Finally, during the rulemaking process, the Commission is required to consult with and consider the views of the appropriate Federal bank regulatory agencies concerning the proposed rule and the effect of those rules on the banking industry.

Section 206. Additional definitions

Section 206 amends subsection 3(a) of the Exchange Act to add paragraphs (54), (55) and (56) defining, respectively, "derivative instrument," "qualified investor," and "excepted financial products."

New paragraph (54) defines "derivative instrument" as any individually negotiated contract, agreement, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure, or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets, but does not include an excepted financial product listed in subpart (i)–(v) of section 3(a)(56)(A).

Nothing in paragraph (54) is intended to imply that any "derivative instrument" is or is not a security, or an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.

New paragraph (55) defines "qualified investor." The definition includes: (1) registered investment companies; (2) issuers eligible for any exclusion from the definition of investment company pursuant to section 3(c)(7) of the Investment Company Act; (3) banks, savings and loan associations, brokers, dealers, insurance companies and business development companies (as defined in section 2(a)(48) of the Investment Company Act); (4) small business investment companies licensed by the Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; (5) State sponsored employee benefit plans, and certain other employee benefit plans within the meaning of the Employee Retirement Income Securities Act of 1974, other than individual retirement accounts; (6) certain trusts; (7) market intermediaries exempted under section 3(c)(2) of the Investment Company Act of 1940; (8) associated persons of a broker or dealer that are not natural persons; (9) foreign banks (as defined in section 1(b)(7) of the International Banking Act of 1978), and (10) foreign governments.

For purposes of sectioning 3(a)(4)(B)(vii) (private placements), 3(a)(5)(C)(iii) (asset-backed transactions) and 3(a)(56)(A)(v) (loan participation) of the Exchange Act, the term "qualified investor" also includes: (1) any corporation, company or partnership that owns and invests on a discretionary basis not less than $10,000,000 in investments; (2) any natural person who owns and invests on a discretionary basis not less than $10,000,000 in investments; (3) any government or political subdivision, agency, or instrumentality of a government who owns and invests on a discretionary basis not less than $50,000,000 in investments; and (4) any multinational or supranational entity or any agency or instrumentality thereof.

New paragraph (56) defines "excepted financial product" as: (1) a deposit account, savings account certificate of deposit, or other deposit instrument issued by a bank; (2) a banker's acceptance; (3) a letter of credit issued by a bank; (4) a debit account at a bank arising from a credit card or similar arrangement; (5) a participation in a loan which the bank or an affiliate of the bank (other than a broker or dealer) funds, participates in, or owns that (i) is sold to qualified investors; or (ii) is sold by an employee of a bank who is not also a broker-dealer employee and sales are limited to persons who have the opportunity to review and assess material infor-

mation, including information about the borrower's creditworthiness, and who, based on such factors as financial sophistication, net worth, and knowledge and experience in financial matters, have the capability to evaluate the information available; or (6) any derivative instrument, whether or not individually negotiated, involving or relating to currencies, except options on foreign currencies that trade on a national securities exchange.

Two categories of excepted financial products deserve additional consideration: loans and loan participation. It is important to point out that the exception for loans made by a bank is only available for loans that are not securities under the Exchange Act. What constitutes a loan that is not a security is determined by reference to the Supreme Court's decision in *Reves* v. *Ernst & Young,* 494 U.S. 56 (1990), which sets out a "family resemblance test," for notes to determine whether they are securities.

In Reves, a list of notes previously deemed not to be securities is recognized. These include: (1) the note delivered in consumer financing; (2) the note secured by a mortgage on a home; (3) the short-term note secured by a lien on a small business or some of its assets; (4) the note evidencing a character loan to a bank customer; (5) short-term notes secured by an assignment of accounts receivable; (6) a note which simply formalizes as an open-account debt incurred in the ordinary course of business; and (7) notes evidencing loans by commercial banks for current operations.

For other instruments, Reves presumes that every note is a security and then applies the "family resemblance" test to determine whether the presumption is correct. The presumption is rebutted if a note bears a strong resemblance to any instrument on a list of notes that have previously been deemed not to be securities, or, if upon applying the test, it is determined that the note should be added to the list. Reves identifies four factors to consider in determining whether a note should be added to the list. These four factors are: (1) the motivations that would prompt a reasonable buyer and seller to enter into the transaction; (2) the plan of distribution of the instrument; (3) the reasonable expectations of the investing public; and (4) whether some factor, such as the existence of another regulatory scheme, significantly reduces the risk of the instrument, thereby rendering application of the securities laws unnecessary.

Accordingly, the loans included in the definition of "excepted financial products" do not include instruments that would be deemed to be securities under the Reves family resemblance test. In general, the Reves test does not include instruments that are purchased, delivered, or sold in connection with consumer or commercial financing transactions. In contrast, notes that have characteristics typically associated with an investment purpose would be deemed securities under the Federal securities laws, and therefore outside the scope of the term excepted financial product.

With respect to loan participation, a similar analysis should be used to create the conditions for sales of loan participation by banks. Moreover, it is important to note that the requirement that purchasers of loan participation from banks have an opportunity to review and assess any material information, including information regarding the borrower's creditworthiness, comes directly from

Banco Espanol de Credito v. *Security Pacific National Bank,* 973 F.2d 51 (2d Cir. 1992), *cert. denied,* 509 U.S. 903 (1993). In that case, the United States Court of Appeals for the Second Circuit determined that the loan participation sold by Security Pacific were not securities. *Id.* Under the *Banco Espanol* facts, purchasers signed an agreement that "acknowledge[d] that it [had] independently and without reliance upon [the bank] and based upon such documents and information as the participant[s] deemed appropriate, made its own credit analysis." *Id.* at 53. The Court specifically noted that the plan of distribution "limit[ed] eligible buyers to those with the capacity to acquire information about the debtor." *Id.* at 55. Both the District Court and the Court of Appeals determined the offering was a "limited solicitation to sophisticated financial or commercial institutions." *Id.*

Subsequent cases have distinguished the *Banco Espanol* case when offerings were not restricted to sophisticated investors who have the capacity to acquire information about the debtor. In *Pollack* v. *Laidlaw Holdings, Inc.,* 27 F.3d 808 (2d Cir.), *cert. denied,* 513 U.S. 963 (1994), the United States Court of Appeals for the Second Circuit determined that the sale of mortgage interests to less sophisticated investors was a sale of securities. In this case the Second Circuit uses the phrase "opportunity to evaluate the value of the [instrument]" interchangeably with the phrase "capacity to acquire information about the debtor." *Id.* at 813–814.

In general, many of the products contained in the definition of "excepted financial products" involve products and instruments that have not traditionally been characterized as securities—such as bank deposit accounts, letters of credit, and credit card debit accounts. In any event, paragraph (56) specifies that classification of a product as an "excepted financial product" is not intended to imply that any such product is or is not a security, or an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.

Finally, it is important to note that the Committee intends that the definition of the term "excepted financial products" cover those products as they were commonly understood as of the date of enactment of the bill. Merely denominating a new instrument as one of the "excepted financial products" does not necessarily except this new product from broker-dealer registration requirements. If the new instrument is not an excepted financial product as they were commonly understood when the bill was enacted, and if the new instrument is a security, other than a traditional security, the new instrument would be subject to the new hybrid product rulemaking process. If the new bank instrument is a traditional security, like a stock, bond, or collateralized mortgage obligation, the bank would be subject to the broker-dealer registration requirements without the Commission following the new hybrid product process.

Section 207. Government securities defined

Section 207 amends paragraph (42) of subsection 3(a) of the Exchange Act to add new subparagraph (E). This new subparagraph includes in the definition of "government securities," for purposes of sections 15, 15C, and 17A of the Exchange Act as applied to banks, qualified Canadian government obligations as defined in

section 5136 of the Revised Statutes. As a result, banks engaging in activities in Canadian government obligations must comply with the government securities requirements with respect to these securities.

Section 208. Effective date

Section 208 establishes the effective date of this subtitle as 270 days from the date of enactment.

Section 209. Rule of construction

Section 209 provides that nothing in the Financial Services Act of 1999 will supersede, effect, or otherwise limit the scope and applicability of the Commodity Exchange Act.

SUBTITLE B—BANK INVESTMENT COMPANY ACTIVITIES

Subtitle B of the bill addresses many of the concerns raised by the increased involvement of banks in investment company activities. Banks are now significant participants in the mutual fund industry. Because this was not the case when the Investment Company Act and the Investment Advisers Act were enacted, these statutes currently do not address many of the concerns that may be raised when banks provide investment management and related services to investment companies. The bill addresses these concerns by, among other things, broadening the definition of "investment adviser" in the Investment Advisers Act to include banks that advise investment companies, and including specific provisions to address the conflicts of interest that may arise when banks provide investment management and related services to funds. In addition, the bill addresses potential customer confusion that can occur when investors purchase shares of an investment company when it is implied that the investment is guaranteed by a bank or insured by the government. Finally, the bill addresses the circumstances under which bank-maintained common trust funds are exempt from the securities laws.

Section 211. Custody of investment company assets by affiliated bank

The Investment Company Act does not currently limit the ability of a bank to serve as custodian of the assets of an affiliated management investment company or unit investment trust. Although the Investment Company Act gives the Commission general rulemaking authority regarding investment company custodial arrangements, sections 211(a) and (b) of the bill clarifies and confirms that this rulemaking authority extends to custodial arrangements involving affiliated banks.

Section 211(a) of the bill amends section 17(f) of the Investment Company Act (15 U.S.C. §80a–17(f)) to expressly authorize the Commission to adopt rules and issue orders prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person, promoter, organizer, sponsor, or principal underwriter of such a company, may serve as the investment company's custodian.

Section 26(a)(1) of the Investment Company Act (15 U.S.C. §80a–26(a)(1)) requires a unit investment trust to designate as trustee or

custodian a bank meeting certain qualifications. Section 211(b) of the bill amends section 26(a) to expressly authorize the Commission to adopt rules and issue orders prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person of a principal underwriter or depositor of a unit investment trust, may serve as trustee or custodian of the trust.

Section 36(a) of the Investment Company Act authorizes the Commission to bring an action in Federal court against an officer, director, investment adviser, depositor, or principal underwriter of an investment company that engages in personal misconduct that constitutes a breach of fiduciary duty owed to the investment company. Section 211(c) of the bill extends section 36(a) to cover misconduct by an investment company custodian.

Section 212. Lending to an affiliated investment company

Section 17(a) of the Investment Company Act makes it unlawful for an affiliated person of a registered investment company, or an affiliated person of that person, among other things, to borrow money or other property from the company, except as otherwise permitted under the Act. The Investment Company Act, however, does not clearly restrict a person's ability to make a loan to an affiliated investment company. Loans to an investment company from an affiliate carry the potential for overreaching. The affiliate could, for example, charge the company an above-market interest rate. To address the potential for overreaching, section 212 of the bill amends section 17(a) to also make it clearly unlawful for any affiliated person of an investment company, or any affiliated person of that person, to loan money or other property to the company in contravention of any rules or orders that the Commission may prescribe or issue.

Section 213. Independent directors

The Investment Company Act deems certain persons with a material relationship to an investment company or to a company's investment adviser or principal underwriter to be "interested persons" of those entities. The Act limits the number of interested persons who may serve on the board of an investment company and uses the interested person concept to minimize conflicts of interests. For example, the Act requires a fund's investment advisory contract to be approved annually by a majority of directors who are not interested persons of the fund or the fund's adviser.

Section 2(A)(19)(A)(v) of the Investment Company Act (15 U.S.C. §80a–2(A)(19)(A)(v)) currently defines "interested person" of an investment company to include any registered broker or dealer or any affiliated person of the broker or dealer. Section 213(a) of the bill amends this definition to include any person, or any affiliated person of a person that, during the six-month period preceding the determination of whether the person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, distributed shares for, or lent money or property to the investment company or a related investment company or account. Section 213(b) of the bill makes similar changes to section 2(a)(19)(B)(v) of the Investment Company Act, the definition of "in-

terested person" of an investment adviser or principal underwriter of an investment company.

Section 10(c) of the Investment Company Act (15 U.S.C. §80a–10(c)) currently prohibits a registered investment company from having a majority of its board of directors comprised of individuals who are officers, directors, or employees of any one bank. Section 213(c) of the bill amends section 10(c) to extend this prohibition to any one bank, together with its affiliates and subsidiaries, or any one bank holding company, together with its affiliates and subsidiaries. This provision would strengthen the independence of a fund's board of directors.

To accommodate those funds that will have to change the composition of their boards as a result of sections 213(a), (b), and (c), section 213(d) provides that the amendments made by section 213 shall not take effect until one year after the enactment of Subtitle B.

Section 214. Additional SEC disclosure authority

Section 214 of the bill is intended to address potential customer confusion that can occur when investors purchase shares of an investment company when it is implied that the investment is guaranteed by a bank or insured by the government. Section 214 amends section 35(a) of the Investment Company Act to prohibit any person issuing or selling the securities of a registered investment company from representing or implying that the company or securities are insured by the Federal Deposit Insurance Corporation or are guaranteed by or otherwise an obligation of any insured depository institution.

Section 214 further amends section 35(a) by requiring any person issuing or selling the securities of a registered investment company that is advised by or sold through a bank to disclose prominently that an investment in the company is not insured by the FDIC or any other government agency. Section 214 authorizes the Commission to adopt rules and issue orders prescribing the manner in which such disclosure must be provided. Even if the Commission has not adopted rules under this section, however, bank advised investment companies still are required to disclose that investments in their companies are not insured by the FDIC or any other government agency.

Section 215. Definition of broker under the Investment Company Act of 1940

Section 215 of the bill replaces the definition of "broker" in section 2(a)(6) of the Investment Company Act with a reference to the definition of "broker" in the Exchange Act. The amended definition continues to exclude any person that would be deemed a broker solely because the person is an underwriter for one or more investment companies.

Section 216. Definition of dealer under the Investment Company Act of 1940

Section 216 of the bill similarly replaces the definition of "dealer" in section 2(a)(11) of the Investment Company Act with a reference to the definition of "dealer" in the Exchange Act. The amended def-

inition continues to exclude insurance companies and investment companies.

Section 217. 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 (15 U.S.C. §80b–202(a)(11)) currently excludes banks and bank holding companies from the definition of "investment adviser." Section 217(a) of the bill amends section 202(a)(11) to include within the definition of "investment adviser" any bank or bank holding company that serves as investment adviser to a registered investment company. This amendment is intended to make banks and bank holding companies that advise investment companies subject to the same regulatory scheme as other investment company advisers. It also is intended to help the Commission more effectively protect the interests of shareholders in bank-advised investment companies.

Section 217 protects shareholders of bank-advised investment companies by giving the Commission greater access to records and information necessary to ensure that bank advisers comply with the Federal securities laws. Currently, when Commission examiners examine an investment company that is advised by a bank that is not a registered investment adviser, the Commission staff does not have the authority to require the bank to produce trading records related to advisory customers other than registered investment companies. This limitation makes it difficult to uncover certain practices that may violate the Federal securities laws. For example, a bank that advises an investment company could allocate more profitable trades to bank trust accounts and less profitable trades to the investment company. Bank advisory personnel also could engage in frontrunning the securities transactions of the investment company by trading the same securities for their personal accounts. If all banks that advise investment companies were subject to the Advisers Act, the staff would have greater access to books and records that might reveal these practices.

A bank may establish a "separately identifiable department or division" (SID) to act as investment adviser to a registered investment company, in which case only the SID, and not the bank, would be deemed an investment adviser under the Investment Advisers Act. Section 217(b) of the bill amends section 202(a) of the Investment Advisers Act to add a definition of a "separately identifiable department or division" of a bank.

Section 218. Definition of broker under the Investment Advisers Act of 1940

Section 218 of the bill replaces the definition of "broker" in section 202(a)(3) of the Investment Advisers Act (15 U.S.C. §80b–2(a)(3)) with a reference to the definition of "broker" in the Exchange Act.

Section 219. Definition of dealer under the Investment Advisers Act of 1940

Section 219 of the bill similarly replaces the definition of "dealer" in section 202(a)(7) of the Investment Advisers Act (15 U.S.C §80b–

2(a)(7)) with a reference to the definition of "dealer" in the Exchange Act. The amended definition continues to exclude insurance companies and investment companies.

Section 220. Interagency consultation

Section 220 of the bill adds a new section 210A to the Investment Advisers Act that requires the appropriate Federal banking agency to share with the Commission, and the Commission to share with the banking agency, upon request, the results of any examination, reports, records, or other information regarding the investment advisory activities of any bank holding company, bank, or SID that is registered as an investment adviser under the Investment Advisers Act. If a bank holding company or bank has a subsidiary or a SID registered as an investment adviser under the Investment Advisers Act, the section requires that the banking agency share with the Commission, upon request, the results of any examination, reports, records, or other information regarding the bank holding company or bank. Section 220 also clarifies that it does not in any way limit the authority of the banking agency to regulate the bank holding company, bank, or SID.

Section 220 is intended to assist the Commission and the Federal banking agencies in obtaining information from one another that may be necessary or helpful in carrying out their statutory responsibilities. The section also is intended to provide the Commission with access to information regarding a bank holding company or bank that, although not itself registered as an investment adviser under the Investment Advisers Act, has a subsidiary or SID that is registered as an investment adviser under the Investment Advisers Act.

Section 221. Treatment of bank common trust funds

The Federal securities laws currently exempt interests in common trust funds from the registration requirements of the Securities Act and exclude common trust funds from the definition of investment company under the Investment Company Act. In addition, because interests in common trust funds are exempted securities under the Exchange Act, persons effecting transactions in these interests need not register as broker-dealers. All three statutes limit the exception to a common trust fund or similar fund maintained by a bank exclusively for the collective investment or reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian.

Section 221 of the bill largely codifies a long-standing Commission position that the exception from the securities laws available to a bank common trust fund applies only when the underlying trust relationship is created for bona fide fiduciary purposes, and when the fund is operated for the administrative convenience of the bank in a manner incidental to the bank's traditional trust department activities and not as a vehicle for general investment by the public.

Section 221 amends the common trust fund exception in section 3(c)(3) of the Investment Company Act (15 U.S.C. §80a–3(c)(3)) so that it applies only to a common trust fund that meets three conditions. First, the common trust fund must be employed solely as an

administrative convenience for the management of accounts created and maintained for fiduciary purposes. Second, interests in the fund may not be advertised or offered for sale to the public, except in connection with generic advertising of the bank's overall fiduciary services. Third, the common trust fund may not charge fees and expenses in contravention of fiduciary principles established under applicable Federal or State law. Section 221 also amends the exemptions provided to common trust funds by section 3(a)(2) of the Securities Act (15 U.S.C. §77c(a)(2)) and section 3(a)(12)(A)(iii) of the Exchange Act (15 U.S.C. §78c(a)(12)(A)(iii)) to reference the conditions set forth in section 3(c)(3) of the Investment Company Act.

Section 222. Investment advisers prohibited from having controlling interest in registered investment company

Section 222 of the bill amends section 15 of the Investment Company Act to add a new subsection (g) that is intended to address certain conflicts that may arise when an investment adviser to an investment company, or an affiliated person of the adviser, has voting control over the investment company through shares held in a trustee or fiduciary capacity. Section 2(a)(9) of the Investment Company Act creates a presumption of "control" when a person owns more than 25 percent of a company's voting securities. To ensure that the adviser does not use its fiduciary authority to further its own interests (such as by voting to perpetuate itself as adviser to the investment company), section 222 requires the fiduciary to follow certain procedures when voting investment company shares.

If the adviser has a controlling interest in the investment company through shares held in a trustee or fiduciary capacity on behalf of an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (ERISA), section 222 requires that the adviser transfer the power to vote the shares of the investment company to another fiduciary of the plan that is not an affiliated person of the investment adviser, or an affiliated person of such a person. Transferring the power to vote to another plan fiduciary (such as the plan administrator or plan sponsor) that will exercise voting authority in accordance with ERISA requirements is neither an improper delegation of voting authority nor an improper exercise of voting responsibilities by the investment adviser in violation of ERISA.

If the adviser has a controlling interest in the investment company through shares held in a trustee or fiduciary capacity for persons other than employee benefit plans subject to ERISA, section 222 provides the adviser with several options for voting the shares. First, the adviser may transfer the power to vote the shares of the company to: (i) the beneficial owners of the shares; (ii) another fiduciary who is not an affiliated person of the adviser, or an affiliated person of such person; or (iii) any person authorized to receive statements and information with respect to the trust who is not an affiliated person of the adviser or an affiliated person of such person. Second, the adviser may vote the shares held by it in the same proportion as shares held by all other shareholders of the investment company. Finally, the adviser may vote the shares in accord-

ance with such rules or orders as the Commission may prescribe or issue.

Under well-established principles of fiduciary law, a fiduciary has an obligation to vote shares held by it in a fiduciary capacity in the best interests of the shareholders, without regard to the fiduciary's own interests. Transferring the power to vote the shares to another person, therefore, might be deemed to be an improper delegation or abdication of the fiduciary's responsibilities. Similar concerns might be presented by proportionate voting of shares held in a fiduciary capacity. For this reason, section 222 includes a safe harbor that provides that an investment adviser to a registered investment company that has voting control over the investment company through shares held in a fiduciary capacity (for persons other than employee benefit plans subject to ERISA) will not be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law solely because it voted shares, or transferred the power to vote shares, in accordance with the standards set forth in new section 15(g) of the Investment Company Act.

Section 222 further provides that the voting procedures described above shall not apply when the investment company consists solely of assets held in a trustee or fiduciary capacity. Fiduciary customers have adequate protection under applicable State and Federal fiduciary law. The voting procedures prescribed by section 222 are, therefore, meant only to protect those investors that are not fiduciary customers of the investment adviser, and these protections are not necessary when the investment company consists solely of assets held in a trustee or fiduciary capacity.

Section 223. Statutory disqualification for bank wrongdoing

The Investment Company Act generally statutorily disqualifies from acting in certain capacities with respect to a mutual fund certain types of entities (such as brokers, dealers, advisers, and transfer agents) and their employees that have been convicted of a felony or have been subject to a civil injunction. Although this disqualification applies to affiliated persons or employees of banks, it currently does not apply to banks themselves.

Section 223 of the bill amends section 9(a) of the Investment Company Act in paragraphs (1) and (2) by adding "bank" to a list of entities that may be statutorily disqualified for wrongdoing from acting in certain capacities with respect to a mutual fund. This amendment is intended to provide investors in bank-advised funds the same protections provided to investors in other funds.

Section 224. Conforming change in definition

Section 224 of the bill amends the definition of "bank" in section 2(a)(5) of the Investment Company Act by deleting the reference to "a banking institution organized under the laws of the United States," and substituting a reference to "a depository institution," as defined in the Federal Deposit Insurance Act, or "a branch or agency of a foreign bank," as those terms are defined in the International Banking Act of 1978. The Exchange Act continues to define banks by reference to organization under the laws of the United States.

Section 225. Conforming amendment

Section 225 of the bill amends section 202 of the Investment Advisers Act to add a new subsection (c) that requires that when the Commission, as part of a rulemaking, considers whether an action is necessary or appropriate in the public interest, it consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. This provision is intended to incorporate into the Investment Advisers Act a standard for Commission rulemaking similar to those that were added to the Securities Act, the Exchange Act, and the Investment Company Act as part of the National Securities Markets Improvement Act of 1996.

Section 226. Effective date

Subtitle B shall become effective 90 days after the date of enactment of this act.

SUBTITLE C—SECURITIES AND EXCHANGE COMMISSION SUPERVISION OF INVESTMENT BANK HOLDING COMPANIES

Subtitle C creates a new investment bank holding company structure under the Federal securities laws. This subtitle is designed to implement a new voluntary concept of Commission supervision of investment bank holding companies. Under this voluntary supervision structure, the Commission will have greater authority to oversee the entire entity, thus satisfying the expectations of foreign jurisdictions and some counterparties that the entity be subject to consolidated supervision. This option should be useful, or perhaps even necessary, for investment bank holding companies that do business in foreign jurisdictions that require consolidated holding company supervision. In addition, the bill contemplates that an investment bank holding company could include one or more wholesale financial institutions (WFIs).

Section 231. Supervision of investment bank holding companies by the securities and exchange commission

Generally, section 231(a) of the bill amends section 17 of the Exchange Act by adding new subsections (i), (j) and (k).

New subsection 17(i) creates the investment bank holding company, which is defined as: (i) any person, other than a natural person, that owns or controls one or more brokers or dealers; and (ii) any associated person of an investment bank holding company. Subsection 17(i) prescribes a scheme of voluntary Commission oversight for investment bank holding companies that have no affiliated insured banks or savings associations but desire consolidated holding company oversight

a. Elective supervision of investment bank holding companies that do not have affiliated banks or savings associations

Paragraph (1) of new subsection 17(i) permits any investment bank holding company that does not have an affiliated insured bank or savings association, but may include a WFI, to elect Commission supervision. This supervision may be useful or necessary to engage in financial activities globally, and, therefore, may be a

desirable option for those investment bank holding companies that operate on a global basis or with global parties.

b. Withdrawals

Paragraph (2) of new subsection 17(i) permits a supervised investment bank holding company to voluntarily withdraw from Commission supervision. The Commission may impose any necessary terms and conditions on the withdrawal deemed necessary or appropriate. In addition, the Commission may discontinue supervision over any supervised investment bank holding company under certain circumstances. For example, if the Commission finds that the investment bank holding company no longer exists or is no longer an investment bank holding company, or that supervision is not consistent with the purposes of section 17(i), the Commission may discontinue its supervision.

c. Scheme of regulation

If an investment bank holding company elects to be supervised by the Commission, the investment bank holding company and its affiliates are subject to Commission recordkeeping and reporting requirements, and to Commission examinations as set forth in paragraph (3).

d. Recordkeeping and reporting

Paragraph (3) of new subsection 17(i) contains the recordkeeping, reporting, and examination requirements applicable to investment bank holding companies supervised by the Commission. The Commission, in its new role as a holding company supervisor, may adopt rules necessary to provide information about each supervised investment bank holding company's or its affiliates' activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions and relationships between affiliated brokers or dealers. The Commission also may adopt rules necessary to permit it to ascertain the extent to which an investment bank holding company and its affiliates are complying with the Exchange Act.

The Commission may require supervised investment bank holding companies to keep records containing the information necessary to inform the Commission as described above, and to make and provide reports to the Commission. Reports may include financial statements, capital assessments, reports by independent auditors regarding compliance with risk management and internal control objectives, and reports regarding such company's or affiliate's compliance with the Exchange Act and regulations.

To minimize duplicative and burdensome regulatory requirements, the Commission is expressly directed to use, to the fullest extent possible, reports that a supervised investment bank holding company or its affiliates have provided to another appropriate regulatory agency or SRO. Supervised investment bank holding companies and their affiliates must provide reports prepared for other regulators to the Commission, when requested.

e. Examinations

The Commission may examine any supervised investment bank holding company and any affiliate to gather information about the operations and financial condition of the investment bank holding company and its affiliates, the risks within the investment bank holding company that may affect any affiliated broker-dealer and the systems for monitoring such risks. Examinations also may be conducted to monitor compliance with new subsection 17(i), applicable restrictions on transactions and relationships between any broker or dealer affiliate of the investment bank holding company and any of the company's other affiliates, and the Bank Secrecy Act. Examinations must be restricted to the investment bank holding company and any affiliate that could have a material adverse effect on the condition of any affiliated broker or dealer. The Commission must use, to the fullest extent possible, the examination reports made by other "functional regulators" such as the relevant bank regulator (for an affiliated credit card bank, Edge Act corporation, WFI, or State-chartered trust company) or the State insurance regulator (in the case of an affiliated insurance company).

f. Capital adequacy

In addition, the Commission can adopt capital adequacy rules for investment bank holding companies. The Commission may only adopt capital adequacy rules in this context after making a public interest finding that includes considering whether such rules will promote efficiency, competition and capital formation as required by section 3(f) of the Exchange Act. The Committee expects that the Commission would use this authority only in the most exceptional of circumstances.

g. Functional regulation of banking and insurance activities

Paragraph (5) of new subsection 17(i) requires that the Commission, in exercising its holding company supervisory authority, defer to the appropriate regulatory agency with regard to interpretations and enforcement of banking laws, and to the appropriate State insurance regulators with regard to interpretations and enforcement of applicable State insurance laws.

h. Definitions

Paragraph (6) of new subsection 17(i) defines the terms "investment bank holding company" and "supervised investment bank holding company." The terms "affiliate," "bank," "bank holding company," "company," "control," and "savings association" are defined by reference to the Bank Holding Company Act. The term "insured bank" is defined by reference to the Federal Deposit Insurance Act, and the term "foreign bank" is defined by reference to the International Banking Act of 1978.

i. Securities and Exchange Commission backup authority

New subsection 17(j) gives the Commission backup authority to inspect any wholesale financial holding company, that is not a foreign bank and that controls a wholesale financial institution but does not control an insured bank or a savings association, and any of its affiliates, to monitor and enforce compliance with the Federal

securities laws. The Commission must limit its inspections to the transactions, policies, procedures and records reasonably necessary to monitor and enforce compliance by the wholesale financial holding company and any affiliate with the Federal securities laws. To the fullest extent possible, the Commission must use examination reports made by banking and insurance regulators. The Commission also must, to the fullest extent possible, notify the appropriate regulatory agency prior to conducting an inspection of a wholesale financial institution, Edge Act corporation, State-chartered trust company, or credit card bank pursuant to the authority granted in this subsection.

j. Exclusion from Freedom of Information Act

New subsection 17(k) provides authority for the Commission to limit disclosure, pursuant to the Freedom of Information Act, of information required to be reported to it under subsections (h) or (i), or information supplied to it by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a broker or dealer, investment bank holding company, or any affiliate of an investment bank holding company. This subsection expressly does not authorize the Commission to withhold information from Congress or from another Federal department or agency.

k. Conforming amendments

Section 231(b) of the bill contains a conforming amendment to the definition of "appropriate regulatory agency" in section 3(a)(34) of the Exchange Act. In addition, the Right to Financial Privacy Act is amended to facilitate information-sharing between financial regulators.

SUBTITLE D—DISCLOSURE OF CUSTOMER COSTS OF ACQUIRING FINANCIAL PRODUCTS

Section 241. Improved and consistent disclosure

Section 241 requires Federal financial regulators to proscribe or revise rules within one year of enactment to improve the accuracy and understandability of disclosure of fees changed by entities under their respective jurisdiction to customers of financial firms acquiring financial products.

TITLE III—INSURANCE

SUBTITLE A—STATE REGULATION OF INSURANCE

Section 301. State regulation of the business of insurance

Section 301 reaffirms that the McCarran-Ferguson Act remains the law of the United States. The Committee intends this provision to reaffirm that the business of insurance shall continue to be regulated by the States, regardless of the entity conducting the insurance activities.

Section 302. Mandatory insurance licensing requirements

Section 302 provides that no person shall engage in the business of insurance in a State as principal or agent unless such person is

licensed by the appropriate insurance regulator of such State. The Committee does not intend to impose a new licensing requirement where none exists under applicable State law, such as for certain surplus or reinsurance surplus lines or Internet portals in some States. The mandatory licensing requirement is subject to the general antidiscrimination provisions and preemption standards of section 104.

Section 303. Functional regulation of insurance

Section 303 provides that the insurance activities of any person or entity shall be functionally regulated. In particular, the Committee specifically intends that the insurance activities of Federally chartered banks be functionally regulated by the States to the extent of such activities, including the activities of a national bank pursuant to the "place of 5,000" provisions (allowing national bank insurance sales in small towns), subject to the general antidiscrimination provisions and preemption standards of section 104.

Section 304. Insurance underwriting in national banks

Section 304 prohibits national banks and their subsidiaries from underwriting insurance, except for authorized products. Authorized products are anything (1) that as of January 1, 1999, the Office of the Comptroller of the Currency (OCC) determined in writing that national banks may underwrite, or that national banks were in fact lawfully underwriting, (2) where no court has overturned the OCC's determination, and (3) not including title insurance or annuities. Insurance products are defined as anything regulated by the relevant State as insurance as of January 1, 1999, including annuities. Products developed in the future are classified as insurance if so regulated by the State, so long as the product insures against liability or loss. However, future products that are core banking products, such as deposits, loans, letters of credits, trusts, derivatives, and guarantees are protected for banks, unless they are treated as insurance under the Internal Revenue Service tax code, in which case such products are insurance (except where the product is a bank extension of credit, derivative, or financial guaranty).

Section 305. Title insurance activities of national banks and their affiliates

Section 305 establishes the general rule that national banks and subsidiaries of national banks may not engage in any activity involving the underwriting or sale of title insurance. As in section 104, the Committee intends this prohibition to apply to foreign banks that maintain a branch, agency, or commercial lending company in the United States, wholesale financial institutions, and other depository institutions which are not State chartered, including wholesale financial institutions, to avoid the preemption of State law governing title insurance activities.

Section 305(b) establishes a "parity" exception to the general prohibition for title insurance sales and solicitation activities. Under the parity exception, national banks may sell title insurance products in any State in which State-chartered banks are authorized to do so, but such sales must be undertaken "in the same manner, to the same extent, and under the same restrictions" that apply to

such State-chartered banks. Thus, if State chartered banks in a State must comply with licensing, "title plant" data base requirements, financial responsibility, and (where relevant) practice of law requirements, national banks also must do so. Section 306(b)(2) clarifies that, if the authority for State-chartered banks to sell title insurance in any State is based on a State "wild-card" provision that authorizes State banks to exercise any power that national banks may exercise—based on, for example, a "small towns" or "incidental to banking" provision—that "authority" does not entitle national banks located in that State to take advantage of the parity powers authorized under Section 305(b).

Section 305(c)(1) grandfathers the title insurance activities of a national bank and its subsidiaries. In other words, a national bank (or a national bank subsidiary) that, as of the date of enactment of this Act, is actively and lawfully engaged in title insurance sales, solicitation, or underwriting, can continue to engage in such activities. However, section 305(c)(2) requires that a national bank (or subsidiary) with an affiliate providing insurance as principal must push out any title insurance underwriting activities into an affiliate. Section 305(c)(3) requires that a national bank which does not have an affiliate providing insurance as principal, but which has a subsidiary which underwrites insurance, must push out any title insurance underwriting activities into the subsidiary. In other words, while the title insurance activities of a national bank and its subsidiaries are grandfathered, any title insurance underwriting activities must be pushed out, first to an insurance affiliate, or if no insurance affiliate exists, to any subsidiary providing insurance as principal.

Section 306. Expedited and equalized dispute resolution for financial regulators

Section 306 establishes expedited and equalized dispute resolution mechanisms to guide the courts in deciding conflicts between the application of State insurance law and Federal law. Specifically, the section ensures speedy resolution of regulatory conflicts between State insurance regulators and Federal agencies as to whether a product is or is not insurance, or whether or not a State provision regulating an insurance activity is or is not preempted by Federal law. Either the State or a Federal agency may file a petition for review in the United States Court of Appeals to resolve a regulatory dispute, with a judgment required to be rendered and all action completed by the Court of Appeals within 60 days unless an extension is agreed to by all parties. Any petition for *certiorari* to the Supreme Court must be filed as soon as practicable after a Court of Appeals judgment is issued.

Section 306(d) provides a statute of limitations for filing a petition of review. In general, a State or Federal regulator may not challenge an order, ruling, determination, or other action of the other party applying to a product classification or preemption question governed by this section unless a petition is filed within 12 months from the first public notice of the action's final form, or 6 months after the action takes effect, whichever is later.

Section 306(e) provides that to the extent a petition filed under this section pertains to the classification of a product as insurance

(pursuant to section 304) or a preemption of a State provision governing an insurance sales or solicitation activity, the courts are directed to resolve the conflict based on the merits of all questions presented under State and Federal law, including the nature of the product or activity and the history and purpose of its regulation under State and Federal law, without unequal deference. The phrase "without unequal deference" means that the court is not required to grant either party deference to resolve a particular question, but to the extent deference may be granted, neither the State regulator nor the Federal regulator is to be given any more deference than the other in resolving conflicts between (including interpretations of) State and Federal statutes, regulations, orders, interpretations, or other actions.

Section 306(f)(1) establishes three exceptions to the "without unequal deference" standard of review. These exceptions apply only to State provisions governing insurance sales, solicitations, and cross-marketing activities that were adopted or implemented before January 1, 1999. In other words, for resolving conflicts between Federal law and State provisions, to the extent that the State provisions were adopted or implemented before January 1, 1999, and fall within one of the three listed categories, the Federal regulators will continue to receive deference as accorded under the doctrine established by *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984). The three types of State statutes, regulations, orders, interpretations, or other actions that do not receive the protection of equalized deference are:

(1) actions that impede affiliations between depository institutions and insurance agents, by requiring that all shareholders be licensed even though they do not engage in any activities that would separately require licensure, or by imposing any similar licensure requirement;

(2) actions that limit the volume or portion of insurance sales made by an agent on the basis of whether such sales are made to customers of affiliates of the agent; or

(3) actions that require insurance sales to be made from an office located in the State in which the sales are made.

Such conflicts may still be subject to the expedited dispute resolution provisions of this section. While these three types of State laws were singled out because of their current litigation status or past controversy in discussing discriminatory law, the Committee in no way intends to create any inference regarding this special treatment. Instead, the courts are to apply whatever standard of review is appropriate under current law.

Section 307. Consumer protection regulations

Section 307 directs the Federal banking regulators to issue final consumer protection regulations within one year, which shall govern the sale of insurance by any insured depository institution, or wholesale financial institution, or subsidiary or affiliate thereof, or any person at or on behalf of such entities. The regulators shall provide additional consumer protections as they deem appropriate. The regulators shall also (after consulting with State insurance regulators) jointly prescribe regulations where appropriate, including extending such regulations to bank operating subsidiaries

where necessary to ensure consumer protection. Such regulations shall include:

Anticoercion rules, prohibiting a bank from leading a consumer to believe that an extension of a loan is conditional upon the purchase of insurance from the bank or its affiliates.

Oral and written disclosures stating that the applicable insurance product is not FDIC insured; in the case of a variable annuity, that the product may involve an investment risk and may lose value; and that extension of credit may not be based on the purchase of insurance. Such disclosures shall be simple and easily understandable, such as "NOT FDIC-INSURED," "NOT GUARANTEED BY THE BANK," "MAY GO DOWN IN VALUE," or "NOT INSURED BY ANY GOVERNMENT AGENCY." Regulations may be modified according to whether the purchase is in person or by electronic media as appropriate. An acknowledgment must be obtained from the consumer that the disclosure has been conveyed, either at the time of the disclosure or at the initial purchase of the product.

Provisions that ensure the routine acceptance of deposits and the making of loans are kept, to the extent practicable, physically separated from insurance product activity. The Committee envisions that the qualifier "to the extent practicable" be used to facilitate situations such as small bank settings or kiosks where a separate space requirement might be unduly burdensome.

Standards limiting compensation for referrals by bank tellers and loan personnel. Such compensation may not exceed a one-time nominal fixed fee for each referral, which can not be contingent upon a successful transaction.

Standards requiring proper qualification and licensure under State law of those who solicit and sell insurance on behalf of or on the premises of a bank.

Prohibitions on discrimination against victims of domestic violence, preventing such status from being considered as a criterion in any insurance activity conducted by or at a bank, or by a bank representative. Such discrimination may only be allowed in accordance with State law—the Committee anticipates that some States may require affirmative discrimination on behalf of domestic violence victims. The legislation describes the sense of Congress that the States should adopt, within the next few years, regulations prohibiting insurance discrimination against domestic violence which are at least as strict as those under this subsection. The Committee further anticipates that the Federal banking regulators will coordinate their anti-domestic violence regulations with the States and the model laws being adopted by the National Association of Insurance Commissioners (NAIC).

Establishment of a consumer grievance process to receive and investigate consumer complaints, inform consumers of their rights and address their concerns, and recover losses to the extent appropriate. The Committee anticipates that the consumer grievance process will be coordinated and implemented in cooperation with the appropriate State insurance regulators.

The regulations established pursuant to this section shall apply in a State that has inconsistent or contrary regulations, if the Federal banking regulators jointly determine that the Federal standard gives consumers greater protection.

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

Section 308 preempts State laws that prevent or restrict insurance companies or insurance affiliates from becoming a financial holding company or acquiring control of a bank. The section further preempts State laws that limit the amount of an insurer's assets that can be invested in a bank, except that the insurer's State of domicile can limit such insurer's investments to 5 percent (or any higher threshold) of the insurer's admitted assets. If an insurance company is reorganizing from a mutual form into a stock company (including into a mutual holding company), then States other than the insurer's domicile may not prevent or restrict or require approval or formal review of such reorganization.

Section 309. Interagency consultation

Section 309 directs the Federal Reserve Board and the State insurance regulators to coordinate efforts to supervise companies that control both depository institutions and persons engaged in the business of insurance. In particular, this section directs the Federal Reserve Board and State regulators to share, on a confidential basis, supervisory information including financial health and affiliate/business unit transactions. Other Federal banking regulators are directed similarly to share such information, on a confidential basis where appropriate.

Section 309(c) requires any appropriate banking agency to consult with the appropriate State insurance regulator before making any determination relating to an affiliation between a depository institution or financial holding company and a company engaged in insurance activities. The Committee intends that the appropriate banking agency shall include every banking agency that is adjudicating, approving, disapproving, or otherwise altering some aspect of an affiliation with a person engaged in insurance activities. The Committee further intends that the appropriate insurance regulator shall include at minimum the insurance regulator of the State of domicile of a person engaged in insurance activities, and the State where the primary insurance activities take place.

Section 309(e) provides that information which is treated as confidential under Federal or State law must retain its confidentiality. A banking regulator is not required to provide confidential information to a State insurance regulator unless such State regulator agrees to keep the information in confidence and take all reasonable efforts to oppose disclosure of such information. Conversely, Federal banking regulators are directed to treat as confidential any information received from a State regulator which is entitled to confidential treatment under State law, and to make similar reasonable efforts to oppose disclosure of the information.

Section 310. Definition of State

This section sets forth the definition of the term "State", consistent with the intention of this Act.

SUBTITLE B—REDOMESTICATION OF MUTUAL INSURERS

Section 311. General application

Section 311 limits application of the provisions of the Subtitle to those States which have not enacted, or promulgated through regulation, reasonable terms and conditions for allowing mutual insurance companies to reorganize into a mutual holding company.

Section 312. Redomestication of mutual insurers

Section 312 allows mutual insurance companies to redomesticate to another State and reorganize into a mutual holding company or stock company. All licenses of the insurer are preserved, and all outstanding policies, contracts, and forms remain in full force. A redomesticating company must provide notice to the State insurance regulators of each State for which the company is licensed.

A mutual insurance company may only redomesticate under this Section if the State insurance regulator of the new (transferee) domicile affirmatively determines that the company's reorganization plan includes the following requirements:

The reorganization must be approved by a majority of the company's board of directors and voting policyholders, after notice and disclosure of the reorganization and its effects on policyholder contractual rights. The notice and disclosure, as well as a determination of ensuring a reasonable opportunity for policyholders to vote, shall be determined by the State insurance regulator of the transferee domicile.

The policyholders must have equivalent voting rights in the new mutual holding company as compared to the original mutual insurer. Any initial public offering of stock shall be in accordance with applicable securities laws and under the supervision of the State insurance regulator of the transferee domicile.

The new mutual holding company, for six months after the completion of an initial public offering, may not award any stock options or grants to its elected officers or directors or those of any of its reorganized stock insurance companies. An exception is created for awards or options entitled to policyholders, where such awards or options are approved by the State insurance regulators of the transferee domicile.

The reorganization preserves the contractual rights of the policyholders.

The reorganization is approved as fair and equitable to the policyholders by the insurance regulators of transferee domicile.

Section 313. Effect on State laws restricting redomestication

Section 313 preempts certain State laws (other than those of the transferee State domicile) which impede the redomestication or discriminate against the redomesticating company or its affiliates or policyholders. State laws are not preempted pertaining to unfair

claim settlement practices, nondiscriminatory premiums and taxes, registration for service of legal documents and process, financial examination of the redomestication company if the insurance regulator of the new domicile has not scheduled such an examination to begin within a year of the redomestication, delinquency proceedings and voluntary dissolution proceedings, deceptive or false or fraudulent acts or practices, filing of petitions regarding financial impairment or hazardous condition of the redomesticating company, participation in insurance insolvency guaranty associations or other State insurance guaranty funds, or nondiscriminatory licensing requirements.

Section 314. Other provisions

Section 314 grants the United States District Courts exclusive jurisdiction over litigation arising under this Subtitle. It further allows any provision of the subtitle that is held invalid to be severed independently.

Section 315. Definitions

Section 315 provides definitions for the purposes of this subtitle only.

Section 316. Effective date

Section 316 makes the subtitle effective upon enactment.

SUBTITLE C—NATIONAL ASSOCIATION OF AGENTS AND BROKERS

Section 321. State flexibility in multistate licensing reforms

Section 321 provides that the National Association of Agents and Brokers (NARAB) shall only become effective if, within 3 years, a majority of the States have not enacted uniform or reciprocal laws for licensing of persons engaged in insurance activities.

Uniformity must include:

Criteria for licensed producers regarding integrity, personal qualifications, training, and experience, including any suitability training requirements.

Continuing education requirements.

Ethics course requirements.

Suitability requirements, including for annuity contracts (that are regulated at least in part as insurance by the States).

No other additional licensing requirement that limits a producers activities based on residence or location of operations. States may continue, however, to impose countersignature requirements.

In the alternative, to meet the reciprocity requirement, a majority of States must:

Permit each other's resident licensed producers to conduct insurance activities to the same extent as allowed for resident producers, by imposing no administrative licensing procedures other than submitting—

—A request for licensure.

—A copy of the home State license application.

—Proof of licensure and good standing in the resident State.

—Payment of appropriate fees.

Accept the completion by the non-resident producer of the producer's home State's continuing education requirements.

Impose no limitations which discriminate against non-residents (except for countersignature laws).

The National Association of Insurance Commissioners shall determine if either the uniformity or reciprocity standard has been met within three years of enactment. Exclusive jurisdiction over any challenge of such determination shall be given to the appropriate United States District Court. If a majority of the States fail to maintain either uniform or reciprocal standards, then NARAB shall be created within two years (from a determination or ruling regarding such failure), unless within such time a majority of the States re-achieve the uniformity or reciprocity standards. State insurance laws and regulations shall not be required to be altered to meet the requirements of this section except to the extent that they are inconsistent with a specific requirement of the section.

Section 322. National Association of Registered Agents and Brokers

Section 322 provides that if the States do not enact uniform or reciprocal regulations in accordance with section 321, then NARAB is created as a non-profit private corporation under D.C. law.

Section 323. Purpose

Section 323 establishes that the purpose of NARAB is to provide for uniform licensing, appointment, and continuing education requirements for insurance agents. States shall continue unaffected in their capacity to license, supervise, enforce agency regulations regarding consumer protections and unfair trade practices, and impose countersignature laws.

Section 324. Relationship to the Federal Government

Section 324 directs that NARAB shall be overseen by the NAIC, and shall not be considered a Federal agency.

Section 325. Membership

Section 325 provides that membership in NARAB is voluntary and does not affect the rights of a producer under each individual State license. Any State-licensed insurance producer is eligible to join NARAB. A producer whose license has been suspended or revoked by a State within the previous three years is ineligible for NARAB membership, unless such suspension or revocation is overturned or such license renewed by the appropriate State. NARAB can establish other membership criteria or classes, which shall be based upon the highest levels insurance producer qualification set by the States on standards such as integrity, personal qualification, education, training, and experience. NARAB members shall continue to pay the appropriate fees required by each State in which they are licensed, and shall renew their membership annually. NARAB may inspect members records, and revoke a membership where appropriate. NARAB shall establish an Office of Consumer Complaints, which shall have a toll-free phone number (and Internet website) to receive and investigate consumer complaints and recommend disciplinary actions. The Office shall maintain records

of such complaints, which shall be made available to the NAIC and individual State insurance regulators, and shall refer complaints where appropriate to such regulators.

Section 326. Board of directors

Section 326 provides that the NARAB Board shall consist of 7 members appointed by the NAIC, at least 4 of which must have significant experience with the regulation of commercial insurance lines in the 20 States with the most commercial lines business. Terms shall be for 3 years each, with a third to be replaced each year. If within the required two year period for NARAB's creation (two years from the provisions of section 322 taking effect), the NAIC has still not appointed the initial board of directors for NARAB, then the initial directors shall be the State insurance regulators of the seven States with the greatest amount of commercial lines insurance. If a State insurance regulator declines to serve under this appointment procedure, then the State insurance regulator from the State with the next greatest amount of commercial lines insurance shall be appointed to serve. If fewer than seven State insurance regulators accept appointment under this procedure, then NARAB will be created without NAIC oversight pursuant to section 332.

Section 327. Officers

Section 327 provides that NARAB's officers shall be elected or appointed for not more than 3 years. Only NAIC members may Chair the board of directors (unless NARAB is established pursuant to section 332).

Section 328. Bylaws, rules, and disciplinary action

Section 328 directs NARAB to adopt bylaws and file them with the NAIC. Proposed bylaws shall take effect 30 days after filing with the NAIC, unless the NAIC disapproves them (after a public hearing with notice and opportunity to participate) as being contrary to the public interest or requiring a public hearing. Any proposed rules shall be filed with the NAIC, which shall either approve the rules as being in the public interest, or institute review proceedings including an opportunity for a hearing. The NAIC may allow any rule relating solely to the administration or organization of NARAB to take effect without a public hearing immediately upon filing. The NAIC may require NARAB to adopt or repeal additional bylaws or rules as it determines appropriate to the public interest. In a disciplinary action of one of its members, NARAB must provide notice to the member of the specific charges, and provide a recorded opportunity for a defense. If a disciplinary action is ordered, NARAB must notify the NAIC, which may review and modify or overturn such action.

Section 329. Assessments

Section 329 allows NARAB to impose application and membership fees to cover its costs, including reimbursement to the NAIC for its expenses. NARAB may not discriminate against smaller insurance producers in setting such fees. The Committee anticipates

that the NAIC shall determine whether a fee discriminates in such a manner.

Section 330. Functions of the NAIC

Section 330 allows the NAIC, after notice and hearing, to examine and inspect NARAB's records, and require NARAB to furnish it with any reports. NARAB shall report to the NAIC annually on its activities. The NAIC shall have the responsibility of overseeing NARAB.

Section 331. Liability of the association and the directors, officers, and employees of the association

Section 331 clarifies that NARAB is not an insurer or insurance producer. NARAB and its directors, officers, and employees shall not be liable for any action taken or omitted in good faith in connection with matters subject to this title.

Section 332. Elimination of NAIC oversight

Section 332 provides that, if at the end of two years after NARAB is required to be established, (1) a majority of the States representing at least 50 percent of the total commercial-lines insurance premiums in the United States have not established uniform or reciprocal licensing regulations, or (2) the NAIC has not approved NARAB's bylaws or is unable to operate or supervise NARAB (or if NARAB is not conducting its activities under this Act), then NARAB shall be created and supervised by the President, and shall exist without NAIC oversight. The President shall appoint NARAB's board, with the advice and consent of the Senate, from lists of candidates submitted by the NAIC. If the President determines that NARAB's board is not acting in the public interest, the President may replace the entire board with new members (subject to the advice and consent of the Senate). The President may also suspend the effectiveness of any rule or action by NARAB which the President determines is contrary to the public interest. NARAB shall report annually to the President and Congress on its activities.

Section 333. Relationship to State law

Section 333 preempts State laws regulating insurance licensing that discriminate against NARAB members based on non-residency. The section also preempts State laws and regulations which impose additional licensing requirements on non-resident NARAB members beyond those set forth in Section 325, except that State unfair trade practices and consumer protection laws are protected from preemption, including counter-signature requirements.

Section 334. Coordination with other regulators

Section 334 directs NARAB to coordinate its multistate licensing with the various States, while preserving the ability of each State to impose appropriate conditions on licensing issuance and renewal. NARAB shall also coordinate with the States a central clearinghouse for license issuance and renewal, and for the collection of regulatory information on insurance producer activities.

NARAB shall further coordinate with the NASD to facilitate joint membership.

Section 335. Judicial review

Section 335 provides that any dispute involving NARAB shall be brought in the appropriate U.S. District Court under Federal law, after all administrative remedies through NARAB and the NAIC have been exhausted.

Section 336. Definitions

Section 336 provides definitions for the purposes of the subtitle only.

SUBTITLE D—RENTAL CAR AGENCY INSURANCE ACTIVITIES

Section 341. Standard of regulation for motor vehicles Rentals

This section creates a legal presumption that the sale or solicitation of automobile rental insurance is not an activity that triggers a State insurance licensing law. Subsection (a) establishes the presumption that no State law imposes a license or other similar requirement on car rental insurance for three years from the date of enactment of this Act. Subsection (b) provides that the presumption only applies where a State has not expressly addressed the issue of car rental insurance. Where a State has expressly regulated (or exempted from regulation) such activities, whether by statute, regulation, order, or other action, including by the prospective application of a court judgment, such State action cancels the presumption. Subsection (c) sets forth the scope of the presumption, applying it to a short term (90 days or less) lease or rental of a motor vehicle. The presumption is intended by the Committee to protect auto rental companies from lawsuits claiming damages for activities which took place before a State or court had expressly required some form of licensure. The Committee limited the presumption to three years in order to force all interested parties to resolve the question of appropriate licensure in the State legislatures without predetermining the issue permanently.

SUBTITLE E—CONFIDENTIALITY

Section 351. Confidentiality of health and medical information

Section 351 requires companies that provide insurance as agent or principal, and affiliates and subsidiaries of such companies, shall protect the confidentiality of individually identifiable customer health and medical and genetic information. Such information may only be disclosed with the consent of the customer, or as a part of the business of insurance (for purposes of underwriting, reinsuring, account administration, preventing fraud, administering benefits, etc.), or in connection with effectuating and enforcing the transaction, transferring accounts, auditing payment information, compliance with Federal, State, or local law, compliance with governmental investigations, or conducting fraud control, resolving customer inquiries, or reporting to consumer reporting agencies. Enforcement of this section shall be through injunctive actions by State regulators, in addition to other remedies that State law provides. This section shall become effective on February

1, 2000, but shall cease to be effective if legislation is enacted that satisfies the requirements of section 264(c)(1) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 2033). The Committee intends to provide consumers with stronger protections of their medical records so that their individually identifiable medical information is not compromised.

TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES

Section 401. Prevention of creation of new S&L holding companies with commercial affiliates

Section 401 prohibits any company from acquiring control of a thrift after May 27, 1999, unless that company is engaged in activities that are permissible under the Home Owners Loan Act (HOLA) or under the Bank Holding Company Act. Savings and Loan (S&L) holding companies are also prohibited from entering into any new commercial affiliations that are not otherwise permissible under these Acts. Existing S&L holding companies may transfer their charters to firms that are principally engaged in activities that are financial in nature.

Section 401 preserves, or "grandfathers" the ability of existing S&L holding companies, or that which had filed an application to become a such a holding company as of May 27, 1999, to engage in any activity that was permissible under HOLA as of the date of enactment provided it meets the requirements of paragraph (3) of HOLA and continues to control at least one savings association.

Section 401 preserves the ability of companies to reorganize without triggering a violation of the commercial affiliation restrictions as intended by this Act. Additionally, the authority of family trusts to convert to an S&L holding company and not be subject to the commercial affiliation restrictions is preserved provided it meets certain requirements pertaining to the beneficial ownership and control of the savings association.

Section 401(c) requires the GAO to conduct a study on the competitive effects of commercial affiliations with thrifts compared to non affiliated competing thrifts and commercial companies. A report is to be submitted to Congress within 1 year containing the findings together with any recommendations that may be appropriate.

Section 402. Retention of "Federal" in name of converted Federal savings association

Section 402 permits Federal savings associations that convert to national or State bank charters to keep the word "Federal" in their names.

TITLE V—PRIVACY OF CONSUMER INFORMATION

SUBTITLE A—DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION

Subtitle A provides new protections for the privacy of customers of financial institutions. This Subtitle creates a new regulatory obligation for all financial institutions to do four things: (1) they must put into place procedures to protect the confidentiality and security of nonpublic personal information collected in connection with any transaction of their customers; (2) they must disclose to customers

what those procedures are, as well as disclose information regarding the types of entities with which they divulge or make unrelated use of nonpublic personal information collected in connection with any transaction about customers other than in connection with effecting or enforcing the transaction (which includes recording and maintaining the customer's account); (3) they must provide customers with the ability to instruct the financial institution not to sell their nonpublic personal information to third parties for marketing purposes; and (4) they must allow consumers access to and an opportunity to dispute any nonpublic personal information collected in connection with any transaction that is sold to unaffiliated third parties

The Federal Trade Commission (the "Commission" or the "FTC") is directed to promulgate rules to effectuate the provisions of this Subtitle, including to prescribe the content and form of the disclosure to customers, as well as to specify the scope of the disclosure by defining what constitutes "unrelated use" of customer information.

Section 501. Obligations with Respect to Personal Information.

Section 501 prohibits a financial institution from divulging or making unrelated use of any nonpublic personal information that the institution collects in connection with a transaction with a consumer in any financial product or service unless the institution (1) provides a notice to the consumer that complies with the requirements of section 502 and (2) maintains procedures to protect the confidentiality and security of customers' nonpublic personal information.

The FTC is directed to promulgate rules to prohibit a financial institution from making available any nonpublic personal information to any affiliate or unaffiliated person of the institution, unless the customer to whom that information pertains is given an opportunity to object to the transfer of such information and does not object (a so-called "opt out" provision). The Committee underscores that this opt-out requirement does not require an institution to obtain prior consent from its customers prior to making such information available to affiliated or unaffiliated parties, as would be the case under the "opt-in" model that has been followed in Europe. Instead, the provision requires that the institution may use customer information in that manner so long as the customer has not provided the institution with instructions not to do so, pursuant to the rules to be promulgated by the FTC. The opt-out provision is intended to be coterminous with the disclosure requirement.

The FTC is also directed to promulgate rules to require that a financial institution provide customers with the opportunity to examine and dispute the accuracy of information that the institution collects in connection with a financial transaction with a consumer, which the financial institution makes available for consideration to any person other than an employee, agent, affiliate, or employee or agent of an affiliate, of the institution. The section provides an exception from this access requirement so that a financial institution would not be required to afford a customer access to data obtained by any analysis or evaluation, or to examine or dispute the methodology of such analysis or evaluation.

Section 501(d) provides for a number of exceptions from the disclosure, opt-out, and access provisions. Pursuant to these exceptions, the institution may divulge, make available nonpublic personal information to affiliates or other persons, or make unrelated use of such information to effect or enforce the transaction or a related transaction, to protect the confidentiality or security of its records, to take precautions against liability, to respond to judicial process, to the extent permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1974, to provide information to law enforcement agencies (including the Internal Revenue Service) or for an investigation on a matter related to public safety, to provide information to a consumer reporting agency in accordance with the Consumer Credit Protection Act, or in executing a sale or exchange whereby the financial institution transfers the business unit or operation, or substantially all the assets of the business unit or operation with which the customer's transactions were effected.

The scope of these exceptions is designed to ensure that the disclosure, access, and opt-out rules promulgated by the FTC pursuant to the subtitle do not impede the ordinary business activities of financial institutions or their ability to provide a multitude of services in an efficient manner to their customers. The Committee intends that the definitions of the terms used in the exception provisions, including the exemptive and rulemaking authority granted to the FTC regarding these terms, will be used in a manner consistent with the subtitle's goal of providing consumers with a reliable means to protect their personal financial information.

Section 502. Notice concerning divulging information

Section 502 directs the FTC, in consultation with the functional regulators of each financial institution, to prescribe rules to prohibit unfair and deceptive acts and practices in connection with the divulging of nonpublic personal information or making unrelated uses of such information as set forth in section 501. The Commission's rules shall require the disclosure of (1) the categories of nonpublic personal information that are collected by the financial institution, (2) the practices and policies of the financial institution with respect to divulging or making unrelated use of such information (including the categories of persons to whom the information is divulged or who may make unrelated uses of the information and the practices and policies of the institutions with respect to the divulging or making unrelated uses of information of former customers), and (3) the policies that the institution maintains to protect the confidentiality and security of nonpublic personal information.

Section 502(b) stipulates that the FTC must, in prescribing these rules, prescribe the form of the notice in a manner that permits consumers to readily compare differences in the privacy practices and policies among financial institutions. The notice must, consistent with the requirements set forth in section 501(b), specifically identify any rights the institution affords its customers to deny or grant consent to the institution to divulge or make unrelated use of the customer's nonpublic personal information, except as appropriate to effect or enforce the consumer's transaction.

Section 502(c)(1) requires that the FTC's rules specify the divulgences and uses of information which may be treated as necessary to effect or enforce a customer's transaction and indicate timing requirements as to the provision of notices to old and new customers. This directive is designed to result in rules that, consistent with the purposes of this section, afford financial institutions flexibility to use customer information to provide customers with services and products in an efficient and cost-effective manner.

Section 502(c)(2) directs the FTC to specify timing requirements for providing disclosures to new and existing customers. Such notices are not to be provided more often than on an annual basis unless there has been a change in the information required in such disclosure, with the FTC able to set forth what types of changes are significant enough to merit a new or additional disclosure.

Section 502(c)(3) gives the FTC authority to provide for exemptions, temporary waivers or delayed effective dates for any requirement of this subtitle or the rules that the FTC prescribes thereunder. The Committee intends that the FTC use this exemptive authority to minimize costs and logistical difficulties potentially incurred by entities in complying with the provisions of the subtitle, in light of companies' current data classification practices, hardware limits, data base coordination issues, and other technological hurdles.

Section 502(e) requires the FTC to initially prescribe the required rules within one year after the enactment of the Act (subject to revisions and final adoption after that period, if necessary).

Section 503. Enforcement

Section 503 designates the FTC to enforce the subtitle and the rules prescribed thereunder with respect to all financial institutions. The section directs the FTC to prevent violations of the subtitle and the rules prescribed thereunder in the same manner, with the same authority, and using the same remedies, as are provided by the Federal Trade Commission Act. The rules prescribed by the FTC under the subtitle are to be treated as rules issued under the FTC Act.

Section 504. Definitions

Section 504 defines certain terms used in the subtitle. Included among the defined terms are: "financial institution"; "nonpublic personal information", defined to mean personally identifiable information, other than publicly available directory information, pertaining to an individual's transactions with the financial institution; "directory information," defined to mean subscriber list information required to be made available for publication pursuant to section 222(e) of the Communications Act of 1934; "unrelated use," defined to mean any use other than a use necessary to effect or enforce a transaction; "divulge," defined to mean making available to persons other than employees, agents, affiliates, or employees or agents of affiliates of a financial institution, nonpublic personal information collected by the financial institution in connection with a financial transaction with a consumer; "affiliate"; and "necessary to effect or enforce," defined to mean a divulging or use that is re-

quired, or is one of the usual and accepted methods, to carry out the transaction or record or maintain the account in the ordinary course of providing the financial service or product, including providing customer confirmations, statements, records, and status reports, the accrual or recognition of incentives or bonuses associated with the transaction that are provided by any party, as well as a divulging or use that is permissible or required to enforce the rights of the financial institution or others in carrying out the transaction or providing the service.

Of particular significance is the definition of "necessary to effect or enforce," which the Committee has defined in recognition of the fact that certain businesses must share information about their customers with both affiliated and unaffiliated parties in order to provide the services that the customers have come to that institution to receive. For example, an investment company must provide information about its shareholders to a variety of affiliated and unaffiliated parties, including investment advisers, transfer agents, administrators, distributors, and others, in order to execute shareholders' investment transactions, maintain their accounts, and provide them with information about their accounts. Similarly, if a prospective purchaser of an annuity divulges nonpublic information to a marketer, and the marketer in turn provides such information to an unaffiliated issuer of annuities, such divulging or use should be considered necessary to effect a transaction with the customer whether or not the prospective annuity purchaser actually acquires the annuity. None of these activities should trigger the disclosure, opt-out, or access provisions of the title.

Other types of financial providers also must share information with affiliated and unaffiliated entities in order to carry out their ordinary business. Accordingly, the section directs the FTC to prescribe by rule actions that will be deemed necessary to effect or enforce a financial transaction, for purposes of a variety of different financial services and products.

The Committee expects that the FTC, in prescribing rules to further define the term "necessary to effect or enforce," will permit financial institutions to conduct their business efficiently and effectively, taking into account current and future developments in technology, without unnecessarily triggering the disclosure, opt-out, and access provisions of the subtitle, but to ensure that those provisions will be triggered in the case of an institution divulging or making unrelated uses of customer information outside of their customary business processes.

Section 506. Effective date

Section 506 sets the effective date of the subtitle as the later of one year after the date on which the FTC prescribes in final form the rules required by section 502 or any later date specified in those rules.

SUBTITLE B—FRAUDULENT ACCESS TO FINANCIAL INFORMATION

Subtitle B addresses the subject of "pretexting," that is, the obtaining of personal confidential information from financial institutions under false pretenses. This subtitle provides protection against pretexting violations by increasing the penalties for fraudu-

lent information gathering and enhancing the ability of the FTC to prosecute such fraudulent activities.

Section 521. Privacy protection for customer information of financial institutions

This section makes it unlawful for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person by (1) making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution; (2) making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution; or (3) providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation.

This section also makes it unlawful to request a person to obtain customer information of a financial institution knowing that it was obtained through any of the three methods described in this section.

The prohibitions specified in this section do not apply to any action by a law enforcement agency to obtain customer information of a financial institution in the performance of its official duties. For purposes of this section, the term "law enforcement agency" is intended to include Federal, State and local agencies, and specifically encompasses those agencies responsible for enforcing child-support obligations.

This section's prohibitions do not apply to instances in which a financial institution or its officers, employees, or agents, obtain customer information of such financial institution in the course of (1) testing the security procedures or systems of such institution for maintaining the confidentiality of customer information; (2) investigating allegations of misconduct or negligence on the part of any officer, employee, or agent of the financial institution; or (3) recovering customer information of the financial institution which was obtained or received by another person in any manner described in this section. Thus, for example, when a fraud prevention unit of a financial institution succeeds in retrieving information from an information broker that has been obtained through fraud or deceit, the financial institution is not in violation of this statute. This "safe harbor" extends to any officer, employee, or agent retained by a financial institution to implement anti-fraud or self-testing programs.

This section's prohibitions do not apply to instances in which an insurance institution or its officers, employees or agents, obtain information as part of an insurance investigation into criminal activity, fraud, material misrepresentation, or material nondisclosure that is authorized for such institution under State law, regulation, interpretation, or order. This section also does not apply to the obtaining of customer information of a financial institution that is otherwise available as a public record filed pursuant to the Federal securities laws.

The Committee does not intend that any provision of subtitle B be construed as limiting, expanding, or otherwise interfering with the sharing of information among affiliates or subsidiaries within a financial services institution as permitted under any other applicable law, including the new obligations established under subtitle A.

Section 522. Administrative enforcement

Section 522 designates the FTC as the enforcer of the subtitle, in the same manner and with the same power and with authority under the Fair Debt Collection Practices Act. The FTC is required to provide notice to the functional regulator of any institution against whom the FTC initiates an action under the subtitle, upon initiation of such action.

Section 523. Criminal penalty

This section provides that persons who knowingly and intentionally attempt to violate the subtitle are subject to criminal penalties for commission of a felony of up to 5 years imprisonment plus fines of up to $250,000 for individuals and $500,000 for corporations, with aggravated cases (significant multiple offenses or a violation of multiple laws) resulting in doubled penalties.

Section 524. Relation to State laws

Section 524 preempts State authority only to the extent that the State's laws, regulations, orders, or interpretations are inconsistent with the Act. If State authority provides greater protection to any person, as determined by the FTC, then that State authority remains controlling law.

Section 525. Agency guidance

This section requires each Federal banking agency and the SEC or self-regulatory organizations to review their regulations and guidelines governing the protection of confidential consumer financial information and to revise such provisions as necessary to ensure appropriate confidentiality safeguards. Those safeguards will include those policies, procedures, and controls as would reasonably be expected to prevent and detect, insofar as practicable, activities proscribed by the legislation. The Committee expects the appropriate examining authorities to include compliance with such guidelines and the adequacy of such internal controls in their examinations of these institutions.

Section 526. Reports

Section 526 requires that, within 18 months of enactment, the Comptroller General will consult with the FTC, SEC, appropriate Federal banking and law enforcement agencies, and relevant State insurance regulators, and report to Congress on the effectiveness and adequacy of the Act in preventing the fraudulent attempts to obtain confidential consumer financial information, as well as any recommendations for additional legislative or regulatory action that is appropriate. The regulatory bodies charged with enforcing the bill must submit to Congress an annual report on their enforcement actions pursuant to the legislation.

Section 527. Definitions

This section defines several terms. The term "customer" is defined as any person to whom a financial institution provides a product or service, including that of acting as a fiduciary. It also defines the term "customer information of a financial institution" as any information maintained by or for a financial institution which is derived from the relationship between the financial institution and its customer and is identified with the customer, and the term "document" as information in any form.

Finally, the term "financial institution" is defined as any institution engaged in the business of providing financial services to customers who maintain a credit, deposit, trust, or other financial account or relationship with the institution, including but not limited to depository institutions (as defined in section 19(b)(1)(A) of the Federal Reserve Act); brokers and dealers (as defined in section 3 of the Securities Exchange Act of 1934); investment advisers (as defined in section 202(a)(11) of the Investment Advisers Act of 1940); investment companies (as defined in section 3 of the Investment Company Act of 1940); insurance companies; loan or finance companies; credit card issuers; operators of credit card systems; and consumer reporting agencies. In addition, the FTC, after consultation with Federal banking agencies and the SEC, may prescribe regulations further defining the types of institutions that are treated as "financial institutions" for purposes of this subtitle.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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 Re-

serve 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. 21. (a) After the expiration of one year after the date of enactment of this Act it shall be unlawful—

(1) For any person, firm, corporation, association, business trust, or other similar organization, engaged in the business of issuing, underwriting, selling, or distributing, at wholesale or retail, or through syndicate participation, stocks, bonds, debentures, notes, or other securities, to engage at the same time*, or to be a subsidiary of any person, firm, corporation, association, business trust, or similar organization engaged (unless such subsidiary (A) was lawfully engaged in such securities activities as of September 15, 1997, or (B) is a nondepository subsidiary of (i) a foreign bank and is not also a subsidiary of a domestic depository institution, or (ii) an unincorporated private bank that is in operation as of the date of the enactment of the Financial Services Act of 1999 and is not insured under the Federal Deposit Insurance Act)* to any extent whatever in the business of receiving deposits subject to check or to repayment upon presentation of a passbook, certificate of deposit, or other evidence of debt, or upon request of the depositor: *Provided*, That the provisions of this paragraph shall not prohibit national banks or State banks or trust companies (whether or not members of the Federal Reserve System) or other financial institutions or private bankers *or any subsidiary of such bank, company, or institution* from dealing in, underwriting, purchasing, and selling investment securities, or issuing securities, to the extent permitted to national banking associations by the provisions of section 5136 of the Revised Statutes, as amended (U.S.C. title 12, sec. 24; Supp. VII, title 12, sec. 24): *Provided further*, That nothing in this paragraph shall be construed as affecting in any way such right as any bank, banking association, savings bank, trust company, or other banking institution, may otherwise possess to sell, without recourse or agreement to repurchase, obligations evidencing loans on real estate; or

* * * * * * *

[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 poli-

cies of such member bank or the advice it gives its customers regarding investments.]

* * * * * * *

BANK HOLDING COMPANY ACT OF 1956

* * * * * * *

DEFINITIONS

SEC. 2. (a) * * *

* * * * * * *

(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.

* * * * * * *

(n) INCORPORATED DEFINITIONS.—For purposes of this Act, the terms "insured depository institution", "appropriate Federal banking agency", "default", "in danger of default", *"insured bank",* 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) CAPITAL TERMS.—

(A) INSURED DEPOSITORY INSTITUTIONS.—With respect to insured depository institutions, the terms "well capitalized", "adequately capitalized", and "undercapitalized" have the same meanings as in section [38(b)] *38* of the Federal Deposit Insurance Act.

* * * * * * *

(p) INSURANCE COMPANY.—For purposes of sections 5, 6, and 10, the term "insurance company" includes any person engaged in the business of insurance to the extent of such activities.

(q) WHOLESALE FINANCIAL INSTITUTION.—The term "wholesale financial institution" means a wholesale financial institution subject to section 9B of the Federal Reserve Act.

(r) COMMISSION.—The term "Commission" means the Securities and Exchange Commission.

(s) DEPOSITORY INSTITUTION.—The term "depository institution"—

(1) has the meaning given to such term in section 3 of the Federal Deposit Insurance Act; and

(2) includes a wholesale financial institution.

ACQUISITION OF BANK SHARES OR ASSETS

SEC. 3. (a) * * *

* * * * * * *

(c) FACTORS FOR CONSIDERATION BY BOARD.—

(1) * * *

(2) BANKING AND COMMUNITY [FACTORS.—In every case] *FACTORS.—*

(A) IN GENERAL.—In every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

(B) PUBLIC MEETINGS.—In each case involving 1 or more insured depository institutions each of which has total assets of $1,000,000,000 or more, the Board shall, as necessary and on a timely basis, conduct public meetings in 1 or more areas where the Board believes, in the sole discretion of the Board, there will be a substantial public impact.

* * * * * * *

(6) "TOO BIG TO FAIL" FACTOR.—In considering an acquisition, merger, or consolidation under this section involving a financial holding company, a wholesale financial holding company, or a company that would be any such holding company upon the consummation of the transaction, the Board shall consider whether, and the extent to which, any subsequent failure or default of the financial holding company or wholesale financial holding company, or any affiliate of any such company, after the consummation of the transaction could have serious adverse effects on economic conditions or financial stability.

* * * * * * *

(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.*

[(f) SAVINGS BANK SUBSIDIARIES OF BANK 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 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 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 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 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 registered under this Act.

[(4) SUBSECTION SHALL CEASE TO APPLY UNDER CERTAIN CIRCUMSTANCES.—If any company which is not a savings bank or a savings bank holding company acquires control of a qualified savings bank, such savings bank shall cease to engage in any activity authorized under paragraph (1) or (3) before the end of the 2-year period beginning on the date such company acquires control, unless such activity is otherwise authorized pursuant to 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, 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 is a savings bank holding company.]

(f) [Repealed].

(g) MUTUAL BANK HOLDING COMPANY.—

(1) * * *

[(2) REGULATION.—A corporation organized as a holding company under this subsection shall be regulated on the same terms and be subject to the same limitations as any other holding company which controls a savings bank.]

(2) REGULATIONS.—A bank holding company organized as a mutual holding company shall be regulated on terms, and shall be subject to limitations, comparable to those applicable to any other bank holding company.

INTERESTS IN NONBANKING ORGANIZATIONS

SEC. 4. (a) * * *

* * * * * * *

(c) The prohibitions in this section shall not apply to (i) any company that was on January 4, 1977, both a bank 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, apply to—

(1) * * *

* * * * * * *

[(8) shares of any company the activities of which the Board after due notice (and opportunity for hearing in the case of an acquisition of a savings association) 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 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 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, 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, 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 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 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 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 or any of its subsidiaries on May 1, 1982, or were approved to be conducted by the bank 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 or any of its subsidiaries, and (ii) group insurance that protects the employees of the bank holding company or any of its subsidiaries; (F) any insurance agency activity engaged in by a bank holding company, or any of its subsidiaries, which bank holding company has total assets of $50,000,000 or less: *Provided, however,* That such a bank 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 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. 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;]

(8) shares of any company the activities of which had been determined by the Board by regulation or order under this paragraph as of the day before the date of the enactment of the Financial Services Act of 1999, to be so closely related to banking as to be a proper incident thereto (subject to such terms and conditions contained in such regulation or order, unless modified by the Board);

* * * * * * *

(f) CERTAIN COMPANIES NOT TREATED AS BANK HOLDING COMPANIES.—

(1) * * *

(2) LOSS OF EXEMPTION.—Paragraph (1) shall cease to apply to any company described in such paragraph if—

(A) such company directly or indirectly—

(i) * * *

(ii) acquires control of more than 5 percent of the shares or assets of an additional bank or a savings association other than—

(I) * * *

* * * * * * *

(IX) shares of a savings association held by any insurance company, as defined in section 2(a)(17) of the Investment Company Act of 1940, except as provided in paragraph (11); [and]

(X) shares issued in a qualified stock insuance under section 10(q) of the Home Owners' Loan Act; *and*

(XI) assets that are derived from, or are incidental to, activities in which institutions described in section 2(c)(2)(F) are permitted to engage,

except that the aggregate amount of shares held under this clause (other than under subclauses (I), (II), (III), (IV), (V), and (VIII)) may not exceed 15 percent of all out-

standing shares or of the voting power of a savings association; or

[(B) any bank subsidiary of such company fails to comply with the restrictions contained in paragraph (3)(B).]

(B) any bank subsidiary of such company engages in any activity in which the bank was not lawfully engaged as of March 5, 1987, unless the bank is well managed and well capitalized;

(C) any bank subsidiary of such company both—

(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties; and

(ii) engages in the business of making commercial loans (and, for purposes of this clause, loans made in the ordinary course of a credit card operation shall not be treated as commercial loans); or

(D) after the date of the enactment of the Competitive Equality Amendments of 1987, any bank subsidiary of such company permits any overdraft (including any intraday overdraft), or incurs any such overdraft in such bank's account at a Federal reserve bank, on behalf of an affiliate, other than an overdraft described in paragraph (3).

[(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 by combining banking services with financial services not permissible for bank 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 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 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 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 to offer or market such products or services, but has prohibited bank holding companies and their affiliates from principally engaging in the offering or marketing of such products or services; or

[(III) 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; or

[(iii) after the date of the enactment of the Competitive Equality Amendments of 1987, permit any overdraft (including an intraday overdraft), or incur any such overdraft in such bank"s account at a Federal Reserve bank, on behalf of an affiliate, other than an overdraft described in subparagraph (C).

[(C) PERMISSIBLE OVERDRAFTS DESCRIBED.—For purposes of subparagraph (B)(iii), an overdraft is described in this subparagraph if—

[(i) such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the bank and the affiliate; or

[(ii) such overdraft—

[(I) is permitted or incurred on behalf of an affiliate which is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York; and

[(II) is fully secured, as required by the Board, by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book entry system.

[(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 due to the loss of such exemption.]

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

(A) such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the bank and the affiliate; or

(B) such overdraft—

(i) is permitted or incurred on behalf of an affiliate which is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York; and

(ii) is fully secured, as required by the Board, by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book entry system.

(4) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—If any company described in paragraph (1) fails to qualify for the exemption provided under such paragraph by operation of paragraph (2), such exemption shall cease to apply to such company and such company shall divest control of each bank it controls before the end of the 180-day period beginning on the date that the company receives notice from the Board that the company has failed to continue to qualify for such exemption, unless before the end of such 180-day period, the company has—

(A) corrected the condition or ceased the activity that caused the company to fail to continue to qualify for the exemption; and

(B) implemented procedures that are reasonably adapted to avoid the reoccurrence of such condition or activity.

* * * * * * *

(j) NOTICE PROCEDURES FOR NONBANKING ACTIVITIES.—

(1) GENERAL NOTICE PROCEDURE.—

(A) NOTICE REQUIREMENT.—Except as provided in paragraph (3), no bank 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) *or in any complementary activity under section 6(c)(1)(B)* 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.

* * * * * * *

(3) NO NOTICE REQUIRED FOR CERTAIN TRANSACTIONS.—No notice under paragraph (1) of this subsection or under subsection (c)(8) or (a)(2)(B) is required for a proposal by a bank holding company to engage in any activity*, other than any complementary activity under section 6(c)(1)(B),* or acquire the shares or assets of any company, other than an insured depository institution *or a company engaged in any complementary activity under section 6(c)(1)(B)*, if the proposal qualifies under paragraph (4).

* * * * * * *

ADMINISTRATION

SEC. 5. (a) Within one hundred and eighty days after the date of enactment of this Act, or within one hundred and eighty days after becoming a bank holding company, whichever is later, each

bank 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 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 shall register and file the requisite information. *A declaration filed in accordance with section 6(b)(1)(D) shall satisfy the requirements of this subsection with regard to the registration of a bank holding company but not any requirement to file an application to acquire a bank pursuant to section 3.*

* * * * * * *

[(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) REPORTS.—

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

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

(ii) compliance by the company or subsidiary with applicable provisions of 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 bank holding company or any subsidiary of such company has provided or been required to provide to other Federal and State supervisors or to appropriate self-regulatory organizations.

(ii) AVAILABILITY.—A bank 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).

(iii) REQUIRED USE OF PUBLICLY REPORTED INFORMATION.—The Board shall, to the fullest extent possible, accept in fulfillment of any reporting or recordkeeping requirements under this Act information that is otherwise required to be reported publicly and externally audited financial statements.

(iv) REPORTS FILED WITH OTHER AGENCIES.—In the event the Board requires a report from a functionally regulated nondepository institution subsidiary of a bank holding company of a kind that is not required by another Federal or State regulator or appropriate self-regulatory organization, the Board shall request that the appropriate regulator or self-regulatory organization obtain such report. If the report is not made available to the Board, and the report is necessary to assess a material risk to the bank holding company or any of its subsidiary depository institutions or compliance with this Act, the Board may require such subsidiary to provide such a report to the Board.

(C) DEFINITION.—For purposes of this subsection, the term "functionally regulated nondepository institution" means—

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

(ii) an investment adviser registered under the Investment Advisers Act of 1940, or with any State, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;

(iii) an insurance company subject to supervision by a State insurance commission, agency, or similar authority; and

(iv) an entity subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities.

(2) EXAMINATIONS.—

(A) EXAMINATION AUTHORITY.—

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

(ii) FUNCTIONALLY REGULATED NONDEPOSITORY INSTITUTION SUBSIDIARIES.—Notwithstanding clause (i), the Board may make examinations of a functionally regulated nondepository institution subsidiary of a bank holding company only if—

(I) the Board has reasonable cause to believe that such subsidiary is engaged in activities that pose a material risk to an affiliated depository institution, or

(II) based on reports and other available information, the Board has reasonable cause to believe that a subsidiary is not in compliance with this Act or with provisions relating to transactions with an affiliated depository institution and the Board cannot make such determination through examination of the affiliated depository institution or bank holding company.

(B) LIMITATIONS ON EXAMINATION AUTHORITY FOR BANK HOLDING COMPANIES AND SUBSIDIARIES.—Subject to sub-

paragraph (A)(ii), the Board may make examinations under subparagraph (A)(i) of each bank holding company and each subsidiary of such holding company in order to—

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

(ii) inform the Board of—

(I) the financial and operational risks within the holding company system that may pose a threat to the safety and soundness of any subsidiary depository institution of such holding company; and

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

(iii) monitor compliance with the provisions of this Act and those governing transactions and relationships between any subsidiary depository institution and its affiliates.

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

(i) the bank holding company; and

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

(I) the size, condition, or activities of the subsidiary; or

(II) the nature or size of transactions between such subsidiary and any depository institution which is also a subsidiary of such holding company,

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

(D) DEFERENCE TO BANK EXAMINATIONS.—The Board shall, to the fullest extent possible, use, for the purposes of this paragraph, the reports of examinations of depository institutions made by the appropriate Federal and State depository institution supervisory authority.

(E) DEFERENCE TO OTHER EXAMINATIONS.—The Board shall, to the fullest extent possible, address the circumstances which might otherwise permit or require an examination by the Board by forgoing an examination and instead reviewing the reports of examination made of—

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

(ii) any investment adviser registered by or on behalf of either the Securities and Exchange Commission or any State, whichever is required by law;

(iii) any licensed insurance company by or on behalf of any state regulatory authority responsible for the supervision of insurance companies; and

(iv) any other subsidiary that the Board finds to be comprehensively supervised by a Federal or State authority.

(3) CAPITAL.—

(A) IN GENERAL.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, guidelines, standards, or requirements on any subsidiary of a financial holding company that is not a depository institution and—

(i) is in compliance with applicable capital requirements of another Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority;

(ii) is registered as an investment adviser under the Investment Advisers Act of 1940, or with any State, whichever is required by law; or

(iii) is licensed as an insurance agent with the appropriate State insurance authority.

(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to—

(i) activities of a registered investment adviser other than investment advisory activities or activities incidental to investment advisory activities; or

(ii) activities of a licensed insurance agent other than insurance agency activities or activities incidental to insurance agency activities.

(C) LIMITATIONS ON INDIRECT ACTION.—In developing, establishing, or assessing holding company capital or capital adequacy rules, guidelines, standards, or requirements for purposes of this paragraph, the Board shall not take into account the activities, operations, or investments of an affiliated investment company registered under the Investment Company Act of 1940, unless the investment company is—

(i) a bank holding company; or

(ii) controlled by a bank holding company by reason of ownership by the bank holding company (including through all of its affiliates) of 25 percent or more of the shares of the investment company, and the shares owned by the bank holding company have a market value equal to more than $1,000,000.

(4) FUNCTIONAL REGULATION OF SECURITIES AND INSURANCE ACTIVITIES.—The Board shall defer to—

(A) the Securities and Exchange Commission with regard to all interpretations of, and the enforcement of, applicable Federal securities laws (and rules, regulations, orders, and other directives issued thereunder) relating to the activities, conduct, and operations of registered brokers, dealers, investment advisers, and investment companies;

(B) the relevant State securities authorities with regard to all interpretations of, and the enforcement of, applicable State securities laws (and rules, regulations, orders, and other directives issued thereunder) relating to the activities, conduct, and operations of brokers, dealers, and investment advisers required to be registered under State law; and

(C) the relevant State insurance authorities with regard to all interpretations of, and the enforcement of, applicable State insurance laws (and rules, regulations, orders, and other directives issued thereunder) relating to the activities, conduct, and operations of insurance companies and insurance agents.

* * * * * * *

(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 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 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] *Financial Institutions Supervisory Act of 1966, at the election of the bank holding company—*

(A) order the bank 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. Such distribution] *shareholders of the bank holding company; or*

(B) order the bank holding company, after due notice and opportunity for hearing, and after consultation with the primary supervisor for the bank, which shall be the Comptroller of the Currency in the case of a national bank, and the Federal Deposit Insurance Corporation and the appropriate State supervisor in the case of an insured nonmember bank, to terminate (within 120 days or such longer period as the Board may direct) the ownership or control of any such bank by such company.

The distribution referred to in subparagraph (A) shall be pro rata with respect to all of the shareholders of the distributing bank holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.

* * * * * * *

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

(1) IN GENERAL.—Notwithstanding any other provision of law, any regulation, order, or other action of the Board which requires a bank holding company to provide funds or other assets to a subsidiary insured depository institution shall not be effective nor enforceable if—

(A) such funds or assets are to be provided by—

(i) a bank holding company that is an insurance company, a broker or dealer registered under the Secu-

rities Exchange Act of 1934, or an investment company registered under the Investment Company of 1940; or

(ii) an affiliate of the depository institution which is an insurance company or a broker or dealer registered under such Act; and

(B) the State insurance authority for the insurance company or the Securities and Exchange Commission for the registered broker, dealer, or investment company, as the case may be, determines in writing sent to the holding company and the Board that the holding company shall not provide such funds or assets because such action would have a material adverse effect on the financial condition of the insurance company or the broker, dealer, or investment company, as the case may be.

(2) NOTICE TO STATE INSURANCE AUTHORITY OR SEC REQUIRED.—If the Board requires a bank holding company, or an affiliate of a bank holding company, which is an insurance company or a broker, dealer, or investment company described in paragraph (1)(A) to provide funds or assets to an insured depository institution subsidiary of the holding company pursuant to any regulation, order, or other action of the Board referred to in paragraph (1), the Board shall promptly notify the State insurance authority for the insurance company or the Securities and Exchange Commission, as the case may be, of such requirement.

(3) DIVESTITURE IN LIEU OF OTHER ACTION.—If the Board receives a notice described in paragraph (1)(B) from a State insurance authority or the Securities and Exchange Commission with regard to a bank holding company or affiliate referred to in that paragraph, the Board may order the bank holding company to divest the insured depository institution not later than 180 days after receiving the notice, or such longer period as the Board determines consistent with the safe and sound operation of the insured depository institution.

(4) CONDITIONS BEFORE DIVESTITURE.—During the period beginning on the date an order to divest is issued by the Board under paragraph (3) to a bank holding company and ending on the date the divestiture is completed, the Board may impose any conditions or restrictions on the holding company's ownership or operation of the insured depository institution, including restricting or prohibiting transactions between the insured depository institution and any affiliate of the institution, as are appropriate under the circumstances.

(h) PRUDENTIAL SAFEGUARDS.—

(1) IN GENERAL.—The Board may, by regulation or order, impose restrictions or requirements on relationships or transactions between a depository institution subsidiary of a bank holding company and any affiliate of such depository institution (other than a subsidiary of such institution) which the Board finds is consistent with the public interest, the purposes of this Act, the Financial Services Act of 1999, the Federal Reserve Act, and other Federal law applicable to depository institution subsidiaries of bank holding companies and the standards in paragraph (2).

(2) STANDARDS.—The Board may exercise authority under paragraph (1) if the Board finds that such action will have any of the following effects:

(A) Avoid any significant risk to the safety and soundness of depository institutions or any Federal deposit insurance fund.

(B) Enhance the financial stability of bank holding companies.

(C) Avoid conflicts of interest or other abuses.

(D) Enhance the privacy of customers of depository institutions.

(E) Promote the application of national treatment and equality of competitive opportunity between nonbank affiliates owned or controlled by domestic bank holding companies and nonbank affiliates owned or controlled by foreign banks operating in the United States.

(3) REVIEW.—The Board shall regularly—

(A) review all restrictions or requirements established pursuant to paragraph (1) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including any purpose described in paragraph (2); and

(B) modify or eliminate any restriction or requirement the Board finds is no longer required for such purposes.

SEC. 6. FINANCIAL HOLDING COMPANIES.

(a) FINANCIAL HOLDING COMPANY DEFINED.—For purposes of this section, the term "financial holding company" means a bank holding company which meets the requirements of subsection (b).

(b) ELIGIBILITY REQUIREMENTS FOR FINANCIAL HOLDING COMPANIES.—

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

(A) All of the subsidiary depository institutions of the bank holding company are well capitalized.

(B) All of the subsidiary depository institutions of the bank holding company are well managed.

(C) All of the subsidiary depository institutions of the bank holding company have achieved a rating, under the Community Reinvestment Act of 1977, of "satisfactory record of meeting community credit needs", or better, at the most recent examination of each such institution;

(D) The company has filed with the Board a declaration that the company elects to be a financial holding company and certifying that the company meets the requirements of subparagraphs (A), (B), and (C).

(2) FOREIGN BANKS AND COMPANIES.—For purposes of paragraph (1), the Board shall establish and apply comparable capital and other operating standards to 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 foreign bank, giving due regard to

the principle of national treatment and equality of competitive opportunity.

(3) LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSITORY INSTITUTIONS.—

(A) IN GENERAL.—If the requirements of subparagraph (B) are met, any depository institution acquired by a bank holding company during the 24-month period preceding the submission of a declaration under paragraph (1)(D) and any depository institution acquired after the submission of such declaration may be excluded for purposes of paragraph (1)(C) until the later of—

(i) the end of the 24-month period beginning on the date the acquisition of the depository institution by such company is consummated; or

(ii) the date of completion of the first examination of such depository institution under the Community Reinvestment Act of 1977 which is conducted after the date of the acquisition of the depository institution.

(B) REQUIREMENTS.—The requirements of this subparagraph are met with respect to any bank holding company referred to in subparagraph (A) if—

(i) the bank holding company has submitted an affirmative plan to the appropriate Federal banking agency to take such action as may be necessary in order for such institution to achieve a rating of "satisfactory record of meeting community credit needs", or better, at the next examination of the institution; and

(ii) the plan has been approved by such agency.

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

(1) FINANCIAL ACTIVITIES.—Notwithstanding section 4(a), a financial holding company and a wholesale financial holding company may engage in any activity, and acquire and retain the shares of any company engaged in any activity, that the Board has determined (by regulation or order) to be—

(A) financial in nature or incidental to such financial activities; or

(B) complementary to activities that have been determined to be financial in nature under this subsection to the extent that the amount of such complementary activities remains small in relation to the authorized activities to which they are complementary.

(2) FACTORS TO BE CONSIDERED.—In determining whether an activity is financial in nature or incidental to financial activities, the Board shall take into account—

(A) the purposes of this Act and the Financial Services Act of 1999;

(B) changes or reasonably expected changes in the marketplace in which bank holding companies compete;

(C) changes or reasonably expected changes in the technology for delivering financial services; and

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

(i) compete effectively with any company seeking to provide financial services in the United States;

(ii) use any available or emerging technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions, in providing financial services; and

(iii) offer customers any available or emerging technological means for using financial services.

(3) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—The following activities shall be considered to be financial in nature:

(A) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.

(B) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing.

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

(D) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.

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

(F) Engaging in any activity that the Board has determined, by order or regulation that is in effect on the date of enactment of the Financial Services Act of 1999, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in such order or regulation, as modified by the Board).

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

(i) a bank holding company may engage in outside the United States; and

(ii) the Board has determined, under regulations issued pursuant to section 4(c)(13) of this Act (as in effect on the day before the date of enactment of the Financial Services Act of 1999) to be usual in connection with the transaction of banking or other financial operations abroad.

(H) Directly or indirectly acquiring or controlling, 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 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 any activity not authorized pursuant to this section if—

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

(ii) such shares, assets, or ownership interests are acquired and held by an affiliate of the financial holding company that is a registered broker or dealer that is engaged in securities underwriting activities, or an affiliate of such broker or dealer, as part of a bona fide underwriting or investment banking activity, including investment activities engaged in for the purpose of appreciation and ultimate resale or disposition of the investment;

(iii) such shares, assets, or ownership interests are held only for such a period of time as will permit the sale or disposition thereof on a reasonable basis consistent with the nature of the activities described in clause (ii); and

(iv) during the period such shares, assets, or ownership interests are held, the financial holding company does not actively participate in the day-to-day management or operation of such company or entity, except insofar as necessary to achieve the objectives of clause (ii).

(I) Directly or indirectly acquiring or controlling, 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 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 any activity not authorized pursuant to this section if—

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

(ii) such shares, assets, or ownership interests are acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance) or providing and issuing annuities;

(iii) such shares, assets, or ownership interests represent an investment made in the ordinary course of business of such insurance company in accordance with relevant State law governing such investments; and

(iv) during the period such shares, assets, or ownership interests are held, the financial holding company does not directly or indirectly participate in the day-to-day management or operation of the company or entity except insofar as necessary to achieve the objectives of clauses (ii) and (iii).

(4) AUTHORIZATION OF NEW FINANCIAL ACTIVITIES.—The Board shall, by regulation or order, define, consistent with the purposes of this Act, the following activities as, and the extent

to which such activities are, financial in nature or incidental to activities which are financial in nature:

(A) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.

(B) Providing any device or other instrumentality for transferring money or other financial assets.

(C) Arranging, effecting, or facilitating financial transactions for the account of third parties.

(5) POST-CONSUMMATION NOTIFICATION.—

(A) IN GENERAL.—A financial holding company and a wholesale financial holding company that acquires any company, or commences any activity, pursuant to this subsection shall provide written notice to the Board describing the activity commenced or conducted by the company acquired no later than 30 calendar days after commencing the activity or consummating the acquisition.

(B) APPROVAL NOT REQUIRED FOR CERTAIN FINANCIAL ACTIVITIES.—Except as provided in section 4(j) with regard to the acquisition of a savings association or in paragraph (6) of this subsection, a financial holding company and a wholesale financial holding company may commence any activity, or acquire any company, pursuant to paragraph (3) or any regulation prescribed or order issued under paragraph (4), without prior approval of the Board.

(6) NOTICE REQUIRED FOR LARGE COMBINATIONS.—

(A) IN GENERAL.—No financial holding company or wholesale financial holding company shall directly or indirectly acquire, and no company that becomes a financial holding company or a wholesale financial holding company shall directly or indirectly acquire control of, any company in the United States, including through merger, consolidation, or other type of business combination, that—

(i) is engaged in activities permitted under this subsection or subsection (g); and

(ii) has consolidated total assets in excess of $40,000,000,000,

unless such holding company has provided notice to the Board, not later than 60 days prior to such proposed acquisition or prior to becoming a financial holding company or wholesale financial holding company, and during that time period, or such longer time period not exceeding an additional 60 days, as established by the Board, the Board has not issued a notice disapproving the proposed acquisition or retention.

(B) FACTORS FOR CONSIDERATION.—In reviewing any prior notice filed under this paragraph, the Board shall take into consideration—

(i) whether the company is in compliance with all applicable criteria set forth in subsection (b) and the provisions of subsection (d);

(ii) whether the proposed combination represents an undue aggregation of resources;

(iii) whether the proposed combination poses a risk to the deposit insurance system;

(iv) whether the proposed combination poses a risk to State insurance guaranty funds;

(v) whether the proposed combination can reasonably be expected to be in the best interests of depositors or policyholders of the respective entities;

(vi) whether the proposed transaction can reasonably be expected to further the purposes of this Act and produce benefits to the public; and

(vii) whether, and the extent to which, any subsequent failure or default of the financial holding company or wholesale financial holding company, or any affiliate of any such company, after the proposed combination could have serious adverse effects on economic conditions or financial stability.

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

(D) SOLICITATION OF VIEWS OF OTHER SUPERVISORY AGENCIES.—

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

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

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

(III) the Secretary of the Treasury, the Attorney General, and the Federal Trade Commission.

(ii) TIMING.—The views and recommendations of any agency provided notice under this paragraph shall be submitted to the Board not later than 30 calendar days after the date on which notice to the agency was given, unless the Board determines that another shorter time period is appropriate.

(d) PROVISIONS APPLICABLE TO FINANCIAL HOLDING COMPANIES THAT FAIL TO MEET REQUIREMENTS.—

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

(2) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—Within 45 days of receipt by a financial holding company of a notice given under paragraph (1) (or such additional period as the Board may permit), the company shall execute an agreement acceptable to the Board to comply with the requirements applicable to a financial holding company.

(3) BOARD MAY IMPOSE LIMITATIONS.—Until the conditions described in a notice to a financial holding company under

paragraph (1) are corrected, the Board may impose such limitations on the conduct or activities of the company or any affiliate of the company as the Board determines to be appropriate under the circumstances.

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

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

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

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

(D) in the case of a notice of failure to comply with subparagraph (B) or (C) of subsection (b)(1), restore compliance with any such subparagraph by the date the next examination of the depository institution subsidiary is completed or by the end of such other period as the Board determines to be appropriate,

the Board may require such company, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the Board's discretion, to divest control of any depository institution subsidiary or, at the election of the financial holding company, instead to cease to engage in any activity conducted by such company or its subsidiaries pursuant to this section.

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

(e) SAFEGUARDS FOR BANK SUBSIDIARIES.—A financial holding company shall assure that—

(1) the procedures of the holding company for identifying and managing financial and operational risks within the company, and the subsidiaries of such company, adequately protect the subsidiaries of such company which are insured depository institutions or wholesale financial institutions from such risks;

(2) the holding company has reasonable policies and procedures to preserve the separate corporate identity and limited liability of such company and the subsidiaries of such company, for the protection of the company's subsidiary insured depository institutions or wholesale financial institutions; and

(3) the holding company complies with this section.

(f) AUTHORITY TO RETAIN LIMITED NONFINANCIAL ACTIVITIES AND AFFILIATIONS.—

(1) IN GENERAL.—Notwithstanding section 4(a), a company that is not a bank holding company or a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978) and becomes a financial holding company after the date of the enactment of the Financial Services Act of 1999 may continue to engage in any activity and retain direct or indirect

ownership or control of shares of a company engaged in any activity if—

(A) the holding company lawfully was engaged in the activity or held the shares of such company on September 30, 1997;

(B) the holding company is predominantly engaged in financial activities as defined in paragraph (2); and

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

(2) PREDOMINANTLY FINANCIAL.—For purposes of this subsection, a company is predominantly engaged in financial activities if the annual gross revenues derived by the holding company and all subsidiaries of the holding company (excluding revenues derived from subsidiary depository institutions), on a consolidated basis, from engaging in activities that are financial in nature or are incidental to activities that are financial in nature under subsection (c) represent at least 85 percent of the consolidated annual gross revenues of the company.

(3) NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.—A financial holding company that engages in activities or holds shares pursuant to this subsection, or a subsidiary of such financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company which is engaged in any activity which the Board has not determined to be financial in nature or incidental to activities that are financial in nature under subsection (c).

(4) CONTINUING REVENUE LIMITATION ON GRANDFATHERED COMMERCIAL ACTIVITIES.—Notwithstanding any other provision of this subsection, a financial holding company may continue to engage in activities or hold shares in companies pursuant to this subsection only to the extent that the aggregate annual gross revenues derived from all such activities and all such companies does not exceed 15 percent of the consolidated annual gross revenues of the financial holding company (excluding revenues derived from subsidiary depository institutions).

(5) CROSS MARKETING RESTRICTIONS APPLICABLE TO COMMERCIAL ACTIVITIES.—An insured depository institution or wholesale financial institution controlled by a financial holding company shall not—

(A) offer or market, directly or through any arrangement, any product or service of a company whose activities are conducted or whose shares are owned or controlled by the financial holding company pursuant to this subsection or subparagraph (H) or (I) of subsection (c)(3); or

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

(6) TRANSACTIONS WITH NONFINANCIAL AFFILIATES.—An insured depository institution or wholesale financial institution controlled by a financial holding company or wholesale financial holding company may not engage in a covered transaction

(as defined by section 23A(b)(7) of the Federal Reserve Act) with any affiliate controlled by the company pursuant to section 10(c), this subsection, or subparagraph (H) or (I) of subsection (c)(3).

(7) SUNSET OF GRANDFATHER.—A financial holding company engaged in any activity, or retaining direct or indirect ownership or control of shares of a company, pursuant to this subsection, shall terminate such activity and divest ownership or control of the shares of such company before the end of the 10-year period beginning on the date of the enactment of the Financial Services Act of 1999. The Board may, upon application, extend such 10-year period by a period not to exceed an additional 5 years if such extension would not be detrimental to the public interest.

(g) DEVELOPING ACTIVITIES.—A financial holding company and a wholesale financial holding company may engage directly or indirectly, or acquire shares of any company engaged, in any activity that the Board has not determined to be financial in nature or incidental to financial activities under subsection (c) if—

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

(2) the gross revenues from all activities conducted under this subsection represent less than 5 percent of the consolidated gross revenues of the holding company;

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

(4) the total capital invested in activities conducted under this subsection represents less than 5 percent of the consolidated total capital of the holding company;

(5) the Board has not determined that the activity is not financial in nature or incidental to financial activities under subsection (c);

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

(7) the holding company provides written notification to the Board describing the activity commenced or conducted by the company acquired no later than 10 business days after commencing the activity or consummating the acquisition.

[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 share-holder 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 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 (b).

[“(5) DISTRIBUTIONS INVOLVING GIFTS 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) DISTRUBIONS 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 change 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) 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).

[“(c) PROPERTY ACQUIRED AFTER MAY 15, 1955.—

[“(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, 1955, 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 respect 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, 1955, unless such stock was acquired by such corporation (i) 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), 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 securities 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, 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 permitted under section 4(a) of the Bank Holding Company Act of 1956 (including any extensions thereof granted to such corporation under 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 be 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 of 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. WHOLESALE FINANCIAL HOLDING COMPANIES.

(a) COMPANIES THAT CONTROL WHOLESALE FINANCIAL INSTITUTIONS.—

(1) WHOLESALE FINANCIAL HOLDING COMPANY DEFINED.—The term “wholesale financial holding company” means any company that—

(A) is registered as a bank holding company;

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

(C) controls 1 or more wholesale financial institutions;

(D) does not control—

(i) a bank other than a wholesale financial institution;

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

(iii) a savings association; and

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

(2) SAVINGS ASSOCIATION TRANSITION PERIOD.—Notwithstanding paragraph (1)(D)(iii), the Board may permit a company that controls a savings association and that otherwise meets the requirements of paragraph (1) to become supervised under paragraph (1), if the company divests control of any such savings association within such period not to exceed 5 years after becoming supervised under paragraph (1) as permitted by the Board.

(3) COMPANIES SUPERVISED BY SECURITIES AND EXCHANGE COMMISSION.—Any wholesale financial institution holding company for which an election to be subject to supervision by the Commission is in effect under section 17(i) of the Securities Exchange Act of 1934 shall not be treated as a wholesale financial institution holding company, and shall not be subject to supervision by the Board, for purposes of this Act.

(b) SUPERVISION BY THE BOARD.—

(1) IN GENERAL.—The provisions of this section shall govern the reporting, examination, and capital requirements of wholesale financial holding companies.

(2) REPORTS.—

(A) IN GENERAL.—The Board from time to time may require any wholesale financial 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 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 the wholesale financial holding company or any subsidiary of such company has provided or been required to provide to other Federal and State supervisors or to appropriate self-regulatory organizations.

(ii) AVAILABILITY.—A wholesale financial 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).

(C) 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 regulation prescribed under this paragraph.

(ii) CRITERIA FOR CONSIDERATION.—In making any determination under clause (i) with regard to any exemption under such clause, the Board shall consider, among such other factors as the Board may determine to be appropriate, the following 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) or a foreign regulatory authority of a similar type.

(II) The primary business of the company.

(III) The nature and extent of the domestic and foreign regulation of the activities of the company.

(3) EXAMINATIONS.—

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

(i) inform the Board regarding the nature of the operations and financial condition of the wholesale financial holding company and its subsidiaries;

(ii) inform the Board regarding—

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

(II) the systems of the holding company and its 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 the wholesale financial 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 wholesale financial holding company under this paragraph to—

(i) the holding company; and

(ii) any subsidiary (other than an insured depository institution subsidiary) of the holding company that, because of the size, condition, or activities of the subsidiary, the nature or size of transactions between such subsidiary and any affiliated depository institution, 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 holding company.

(C) DEFERENCE TO BANK EXAMINATIONS.—The Board shall, to the fullest extent possible, use the reports of examination of depository institutions made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Director of 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, address the circumstances which might otherwise permit or require an examination by the Board by forgoing an examination and by instead reviewing the reports of examination made of—

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

(ii) any licensed insurance company by or on behalf of any State government insurance agency responsible for the supervision of the insurance company.

(E) CONFIDENTIALITY OF REPORTED INFORMATION.—

(i) IN GENERAL.—Notwithstanding any other provision of law, the Board shall not be compelled to disclose any nonpublic 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 wholesale financial 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 the 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 any 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, the wholesale financial holding company.

(4) CAPITAL ADEQUACY GUIDELINES.—

(A) CAPITAL ADEQUACY PROVISIONS.—Subject to the requirements of, and solely in accordance with, the terms of this paragraph, the Board may adopt capital adequacy rules or guidelines for wholesale financial holding companies.

(B) METHOD OF CALCULATION.—In developing rules or guidelines under this paragraph, the following provisions shall apply:

(i) FOCUS ON DOUBLE LEVERAGE.—The Board shall focus on the use by wholesale financial holding companies of debt and other liabilities to fund capital investments in subsidiaries.

(ii) NO UNWEIGHTED CAPITAL RATIO.—The Board shall not, by regulation, guideline, order, or otherwise, impose under this section a capital ratio that is not based on appropriate risk-weighting considerations.

(iii) NO CAPITAL REQUIREMENT ON REGULATED ENTITIES.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, standards, guidelines, or requirements upon any subsidiary that—

(I) is not a depository institution; and

(II) is in compliance with applicable capital requirements of another Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority.

(iv) LIMITATION.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, standards, guidelines, or requirements upon any subsidiary that is not a depository institution and that is registered as an investment adviser under the Investment Advisers Act of 1940, except that this clause shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to activities of a registered investment adviser other than investment advisory activities or activities incidental to investment advisory activities.

(v) LIMITATIONS ON INDIRECT ACTION.—In developing, establishing, or assessing holding company capital or capital adequacy rules, guidelines, standards, or requirements for purposes of this paragraph, the Board shall not take into account the activities, operations, or investments of an affiliated investment company registered under the Investment Company Act of 1940, unless the investment company is—

(I) a bank holding company; or

(II) controlled by a bank holding company by reason of ownership by the bank holding company (including through all of its affiliates) of 25 percent or more of the shares of the investment company, and the shares owned by the bank holding company have a market value equal to more than $1,000,000.

(vi) APPROPRIATE EXCLUSIONS.—The Board shall take full account of—

(I) the capital requirements made applicable to any subsidiary that is not a depository institution by another Federal regulatory authority or State insurance authority; and

(II) industry norms for capitalization of a company's unregulated subsidiaries and activities.

(vii) INTERNAL RISK MANAGEMENT MODELS.—The Board may incorporate internal risk management models of wholesale financial holding companies into its capital adequacy guidelines or rules and may take account of the extent to which resources of a subsidiary depository institution may be used to service the debt or other liabilities of the wholesale financial holding company.

(c) NONFINANCIAL ACTIVITIES AND INVESTMENTS.—

(1) GRANDFATHERED ACTIVITIES.—

(A) IN GENERAL.—Notwithstanding section 4(a), a company that becomes a wholesale financial holding company may continue to engage, directly or indirectly, in any activity and may retain ownership and control of shares of a company engaged in any activity if—

(i) on the date of the enactment of the Financial Services Act of 1999, such wholesale financial holding company was lawfully engaged in that nonfinancial activity, held the shares of such company, or had entered into a contract to acquire shares of any company engaged in such activity; and

(ii) the company engaged in such activity continues to engage only in the same activities that such company conducted on the date of the enactment of the Financial Services Act of 1999, and other activities permissible under this Act.

(B) NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.—A wholesale financial holding company that engages in activities or holds shares pursuant to this paragraph, or a subsidiary of such wholesale financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company which is engaged in any activity which the Board has not determined to be financial in nature or incidental to activities that are financial in nature under section 6(c).

(C) LIMITATION TO SINGLE EXEMPTION.—No company that engages in any activity or controls any shares under subsection (f) of section 6 may engage in any activity or own any shares pursuant to this paragraph.

(2) COMMODITIES.—

(A) IN GENERAL.—Notwithstanding section 4(a), a wholesale financial holding company which was predominately engaged as of January 1, 1997, in financial 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, 1997, if such wholesale financial 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, 1997, in the United States.

(B) LIMITATION.—The attributed aggregate consolidated assets of a wholesale financial holding company held under the authority granted under this paragraph and not otherwise permitted to be held by all wholesale financial holding companies under this section may not exceed 5 percent of the total consolidated assets of the wholesale financial holding company, except that the Board may increase such percentage of total consolidated assets by such amounts and under such circumstances as the Board considers appropriate, consistent with the purposes of this Act.

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

(A) any company whose shares it owns or controls pursuant to paragraph (1) or (2) to offer or market any product or service of an affiliated wholesale financial institution; or

(B) any affiliated wholesale financial institution to offer or market any product or service of any company whose shares are owned or controlled by such wholesale financial holding company pursuant to such paragraphs.

(d) QUALIFICATION OF FOREIGN BANK AS WHOLESALE FINANCIAL HOLDING COMPANY.—

(1) IN GENERAL.—Any foreign bank, or any company that owns or controls a foreign bank, that operates a branch, agency, or commercial lending company in the United States, including a foreign bank or company that owns or controls a wholesale financial institution, may request a determination from the Board that such bank or company be treated as a wholesale financial holding company other than for purposes of subsection (c), subject to such conditions as the Board considers appropriate, giving due regard to the principle of national treatment and equality of competitive opportunity and the requirements imposed on domestic banks and companies.

(2) CONDITIONS FOR TREATMENT AS A WHOLESALE FINANCIAL HOLDING COMPANY.—A foreign bank and a company that owns or controls a foreign bank may not be treated as a wholesale financial 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 (other than an institution described in subparagraph (D) or (F) of section 2(c)(2)) 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) TRANSACTION 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 and which engages in any activity pursuant to subsection (e) or (g) of section 6, 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 a wholesale financial holding company under this subsection shall be treated as a wholesale financial institution for purposes of subsections (c)(1)(C) and (c)(3) of section 9B of the Federal Reserve Act, and any such foreign bank or company shall be subject to paragraphs (3), (4), and (5) of section 9B(d) of the Federal Reserve Act, 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) SUPERVISION OF FOREIGN BANK WHICH MAINTAINS NO BANKING PRESENCE OTHER THAN CONTROL OF A WHOLESALE FINANCIAL INSTITUTION.—A foreign bank that owns or controls a wholesale financial institution but does not operate a branch, agency, or commercial lending company in the United States (and any company that owns or controls such foreign bank) may request a determination from the Board that such bank or company be treated as a wholesale financial holding company, except that such bank or company shall be subject to the restrictions of paragraphs (2)(A) and (3) of this subsection.

(5) NO EFFECT ON OTHER PROVISIONS.—This section shall not be construed as limiting the authority of the Board under the International Banking Act of 1978 with respect to the regulation, supervision, or examination of foreign banks and their offices and affiliates in the United States.

(6) APPLICABILITY OF COMMUNITY REINVESTMENT ACT OF 1977.—The branches in the United States of a foreign bank that is, or is affiliated with a company that is, treated as a wholesale financial holding company shall be subject to section 9B(b)(11) of the Federal Reserve Act as if the foreign bank were a wholesale financial institution under such section. The Board and the Comptroller of the Currency shall apply the provisions of sections 803(2), 804, and 807(1) of the Community Reinvestment Act of 1977 to branches of foreign banks which receive only such deposits as are permissible for receipt by a corporation organized under section 25A of the Federal Reserve Act, in the same manner and to the same extent such sections apply to such a corporation.

SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SUPERVISORY, AND ENFORCEMENT AUTHORITY OF THE BOARD.

(a) LIMITATION ON DIRECT ACTION.—

(1) IN GENERAL.—The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this Act or section 8 of the Federal Deposit Insurance Act against or with respect to a regulated subsidiary of a bank holding com-

pany unless the action is necessary to prevent or redress an unsafe or unsound practice or breach of fiduciary duty by such subsidiary that poses a material risk to—

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

(B) the domestic or international payment system.

(2) CRITERIA FOR BOARD ACTION.—The Board shall not take action otherwise permitted under paragraph (1) unless the Board finds that it is not reasonably possible to effectively protect against the material risk at issue through action directed at or against the affiliated depository institution or against depository institutions generally.

(b) LIMITATION ON INDIRECT ACTION.—The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this Act or section 8 of the Federal Deposit Insurance Act against or with respect to a financial holding company or a wholesale financial holding company where the purpose or effect of doing so would be to take action indirectly against or with respect to a regulated subsidiary that may not be taken directly against or with respect to such subsidiary in accordance with subsection (a).

(c) ACTIONS SPECIFICALLY AUTHORIZED.—Notwithstanding subsection (a), the Board may take action under this Act or section 8 of the Federal Deposit Insurance Act to enforce compliance by a regulated subsidiary with Federal law that the Board has specific jurisdiction to enforce against such subsidiary.

(d) REGULATED SUBSIDIARY DEFINED.—For purposes of this section, the term "regulated subsidiary" means any company that is not a bank holding company and is—

(1) a broker or dealer registered under the Securities Exchange Act of 1934;

(2) an investment adviser registered by or on behalf of either the Securities and Exchange Commission or any State, whichever is required by law, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;

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

(4) an insurance company or an insurance agency, with respect to the insurance activities and activities incidental to such insurance activities, subject to supervision by a State insurance commission, agency, or similar authority; or

(5) an entity subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities.

SAVING PROVISION

SEC. 11. (a) * * *

(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

and, if the transaction also involves an acquisition under section 4 or section 6, the Board shall also notify the Federal Trade Commission of such approval. If the Board has found that it must act immediately in order to prevent the probable failure of a bank or bank 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 consummated. 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 involved in such a transaction from complying with the antitrust laws after the consummation of such transaction.

* * * * * * *

FEDERAL DEPOSIT INSURANCE ACT

* * * * * * *

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 any wholesale financial institution subject 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.—

* * * * * * *

[(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.—

* * * * * * *

[(9)**]** *(8)* FINAL DECISIONS TO TERMINATE INSURANCE.—Any decision by the Board of Directors to—

(A) * * *

* * * * * * *

[(10)**]** *(9)* LOW- TO MODERATE-INCOME HOUSING LENDER.—In making any determination regarding the termination of insurance of a solvent savings association, the Corporation may consider the extent of the association's low- to moderate-income housing loans.

* * * * * * *

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, in the case of an insured State bank, or to the Corporation and the Comptroller of the Currency, in the case of an insured national bank authorized to operate as a wholesale financial institution, 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, in the case of an insured State bank, or the Corporation and the Comptroller of the Currency, in the case of an insured national bank authorized to operate as a wholesale financial institution, has approved 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; or

(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.

(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 subject to 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.

(i) VOLUNTARY TERMINATION OF DEPOSIT INSURANCE.—The provisions on voluntary termination of insurance in this section shall apply to an insured branch of a foreign bank (including a Federal branch) in the same manner and to the same extent as they apply to an insured State bank or a national bank.

* * * * * * *

SEC. 11. (a) DEPOSIT INSURANCE.—

(1) * * *

* * * * * * *

(4) GENERAL PROVISIONS RELATING TO FUNDS.—

(A) * * *

(B) LIMITATION ON USE.—Notwithstanding any provision of law other than section 13(c)(4)(G), the Bank Insurance Fund and the Savings Association Insurance Fund shall not be used in any manner [to benefit any shareholder of] *to benefit any shareholder, affiliate (other than an insured depository institution that receives assistance in accordance with the provisions of this Act), or subsidiary of—*

(i) * * *

* * * * * * *

(6) SAVINGS ASSOCIATION INSURANCE FUND.—

(A) * * *

* * * * * * *

[(L) ESTABLISHMENT OF SAIF SPECIAL RESERVE.—

[(i) ESTABLISHMENT.—If, on January 1, 1999, the reserve ratio of the Savings Association Insurance Fund exceeds the designated reserve ratio, there is established a Special Reserve of the Savings Association Insurance Fund, which shall be administered by the Corporation and shall be invested in accordance with section 13(a).

[(ii) AMOUNTS IN SPECIAL RESERVE.—If, on January 1, 1999, the reserve ratio of the Savings Association Insurance Fund exceeds the designated reserve ratio, the amount by which the reserve ratio exceeds the designated reserve ratio shall be placed in the Special Reserve of the Savings Association Insurance Fund established by clause (i).

[(iii) LIMITATION.—The Corporation shall not provide any assessment credit, refund, or other payment from any amount in the Special Reserve of the Savings Association Insurance Fund.

[(iv) EMERGENCY USE OF SPECIAL RESERVE.—Notwithstanding clause (iii), the Corporation may, in its sole discretion, transfer amounts from the Special Reserve of the Savings Association Insurance Fund to the Savings Association Insurance Fund for the purposes set forth in paragraph (4), only if—

[(I) the reserve ratio of the Savings Association Insurance Fund is less than 50 percent of the designated reserve ratio; and

[(II) the Corporation expects the reserve ratio of the Savings Association Insurance Fund to remain at less than 50 percent of the designated reserve ratio for each of the next 4 calendar quarters.

[(v) EXCLUSION OF SPECIAL RESERVE IN CALCULATING RESERVE RATIO.—Notwithstanding any other provision of law, any amounts in the Special Reserve of the Savings Association Insurance Fund shall be excluded in calculating the reserve ratio of the Savings Association Insurance Fund.]

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SEC. 18. (a) * * *

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(c)(1) * * *

* * * * * * *

(12) PUBLIC MEETINGS.—In each merger transaction involving 1 or more insured depository institutions each of which has total assets of $1,000,000,000 or more, the responsible agency shall, as necessary and on a timely basis, conduct public meetings in 1 or more areas where the agency believes, in the sole discretion of the agency, there will be a substantial public impact.

* * * * * * *

(t) RECORDKEEPING REQUIREMENTS.—

(1) REQUIREMENTS.—Each appropriate Federal banking agency, after consultation with and consideration of the views of the Commission, shall establish recordkeeping requirements for banks relying on exceptions contained in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934. Such recordkeeping requirements shall be sufficient to demonstrate compliance with the terms of such exceptions and be designed to facilitate compliance with such exceptions. Each appropriate Federal banking agency shall make any such information available to the Commission upon request.

(2) DEFINITIONS.—As used in this subsection the term "Commission" means the Securities and Exchange Commission.

* * * * * * *

SEC. 45. AUTHORITY OF STATE INSURANCE REGULATOR AND SECURITIES AND EXCHANGE COMMISSION.

(a) IN GENERAL.—Notwithstanding any other provision of law, any regulation, order, or other action of the appropriate Federal banking agency which requires a subsidiary to provide funds or other assets to an insured depository institution shall not be effective nor enforceable if—

(1) such funds or assets are to be provided by a subsidiary which is an insurance company, a broker or dealer registered under the Securities Exchange Act of 1934, or an investment company registered under the Investment Company Act of 1940; and

(2) the State insurance authority for the insurance company or the Securities and Exchange Commission for the registered broker or dealer or the investment company, as the case may be, determines in writing sent to the insured depository institution and the appropriate Federal banking agency that the subsidiary shall not provide such funds or assets because such action would have a material adverse effect on the financial condition of the insurance company or the broker, dealer, or investment company, as the case may be.

(b) NOTICE TO STATE INSURANCE AUTHORITY OR SEC REQUIRED.—If the appropriate Federal banking agency requires a subsidiary, which is an insurance company, a broker or dealer, or an investment company described in subsection (a)(1) to provide funds or assets to an insured depository institution pursuant to any regulation, order, or other action of the appropriate Federal banking agency referred to in subsection (a), the appropriate Federal banking agency shall promptly notify the State insurance authority for the insurance company or the Securities and Exchange Commission, as the case may be, of such requirement.

(c) DIVESTITURE IN LIEU OF OTHER ACTION.—If the appropriate Federal banking agency receives a notice described in subsection (a)(2) from a State insurance authority or the Securities and Exchange Commission with regard to a subsidiary referred to in that subsection, the appropriate Federal banking agency may order the insured depository institution to divest the subsidiary not later than 180 days after receiving the notice, or such longer period as the appropriate Federal banking agency determines consistent with the safe and sound operation of the insured depository institution.

(d) CONDITIONS BEFORE DIVESTITURE.—During the period beginning on the date an order to divest is issued by the appropriate Federal banking agency under subsection (c) to an insured depository institution and ending on the date the divestiture is complete, the appropriate Federal banking agency may impose any conditions or restrictions on the insured depository institution ownership or operation of the subsidiary including restricting or prohibiting transactions between the insured depository institution and the subsidiary, as are appropriate under the circumstances.

SECTION 6 OF THE NATIONAL BANK CONSOLIDATION AND MERGER ACT

SEC. 6. PUBLIC MEETINGS FOR LARGE BANK CONSOLIDATIONS AND MERGERS.

In each case of a consolidation or merger under this Act involving 1 or more banks each of which has total assets of $1,000,000,000 or more, the Comptroller shall, as necessary and on a timely basis, conduct public meetings in 1 or more areas where the Comptroller believes, in the sole discretion of the Comptroller, there will be a substantial public impact.

HOME OWNERS' LOAN ACT

* * * * * * *

SEC. 5. FEDERAL SAVINGS ASSOCIATIONS.

(a) * * *

* * * * * * *

[(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—Each Federal savings association, upon receiving its charter, shall become automatically a member of the Federal home loan bank of the district in which it is located, or if convenience requires and the Director approves, shall become a member of a Federal home loan bank of an adjoining district. Such associations shall qualify for such membership in the manner provided in the Federal Home Loan Bank Act with respect to other members.]

(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—On and after January 1, 1999, a Federal savings association may become a member of the Federal Home Loan Bank System, and shall qualify for such membership in the manner provided by the Federal Home Loan Bank Act.

SEC. 10. REGULATION OF HOLDING COMPANIES.

(a) * * *

* * * * * * *

(c) HOLDING COMPANY ACTIVITIES.—

(1) * * *

* * * * * * *

(9) PREVENTION OF NEW AFFILIATIONS BETWEEN S&L HOLDING COMPANIES AND COMMERCIAL FIRMS.—

(A) IN GENERAL.—Notwithstanding paragraph (3), no company may directly or indirectly, including through any merger, consolidation, or other type of business combination, acquire control of a savings association after May 27, 1999, unless the company is engaged, directly or indirectly (including through a subsidiary other than a savings association), only in activities that are permitted—

(i) under paragraphs (1)(C) or (2); or

(ii) for financial holding companies under section 6(c) of the Bank Holding Company Act of 1956.

(B) PREVENTION OF NEW COMMERCIAL AFFILIATIONS.—Notwithstanding paragraph (3), no savings and loan holding company may engage directly or indirectly (including through a subsidiary other than a savings association) in any activity other than as described in clauses (i) and (ii) of subparagraph (A).

(C) PRESERVATION OF AUTHORITY OF EXISTING UNITARY S&L HOLDING COMPANIES.—Subparagraphs (A) and (B) shall not apply with respect to any company that was a savings and loan holding company on May 27, 1999, or that becomes a savings and loan holding company pursuant to an application pending before the Office of Thrift Supervision on or before that date, and that—

(i) meets and continues to meet the requirements of paragraph (3); and

(ii) continues to control not fewer than 1 savings association that it controlled on May 27, 1999, or that it acquired pursuant to an application pending before the

Office of Thrift Supervision on or before that date, or the successor to such savings association.

(D) CORPORATE REORGANIZATIONS PERMITTED.—This paragraph does not prevent a transaction—

(i) that involves solely a company under common control with a savings and loan holding company from acquiring, directly or indirectly, control of the savings and loan holding company or any savings association that is already a subsidiary of the savings and loan holding company; or

(ii) that involves solely a merger, consolidation, or other type of business combination as a result of which a company under common control with the savings and loan holding company acquires, directly or indirectly, control of the savings and loan holding company or any savings association that is already a subsidiary of the savings and loan holding company.

(E) AUTHORITY TO PREVENT EVASIONS.—The Director may issue interpretations, regulations, or orders that the Director deems necessary to administer and carry out the purpose and prevent evasions of this paragraph, including a determination that, notwithstanding the form of a transaction, the transaction would in substance result in a company acquiring control of a savings association.

(F) PRESERVATION OF AUTHORITY FOR FAMILY TRUSTS.—Subparagraphs (A) and (B) shall not apply with respect to any trust that becomes a savings and loan holding company with respect to a savings association, if—

(i) not less than 85 percent of the beneficial ownership interests in the trust are continuously owned, directly or indirectly, by or for the benefit of members of the same family, or their spouses, who are lineal descendants of common ancestors who controlled, directly or indirectly, such savings association on May 27, 1999, or a subsequent date pursuant to an application pending before the Office of Thrift Supervision on or before May 27, 1999; and

(ii) at the time at which such trust becomes a savings and loan holding company, such ancestors or lineal descendants, or spouses of such descendants, have directly or indirectly controlled the savings association continuously since May 27, 1999, or a subsequent date pursuant to an applications pending before the Office of Thrift Supervision on or before May 27, 1999.

* * * * * * *

(e) ACQUISITIONS.—

(1) * * *

* * * * * * *

(7) PUBLIC MEETINGS FOR LARGE DEPOSITORY INSTITUTION ACQUISITIONS AND MERGERS.—In each case involving 1 or more insured depository institutions each of which has total assets of $1,000,000,000 or more, the Director shall, as necessary and on a timely basis, conduct public meetings in 1 or more areas

where the Director believes, in the sole discretion of the Director, there will be a substantial public impact.

* * * * * * *

(o) MUTUAL HOLDING COMPANIES.—

(1) * * *

* * * * * * *

(5) PERMITTED ACTIVITIES.—A mutual holding company may engage only in the following activities:

(A) * * *

* * * * * * *

(E) Engaging in the activities described in subsection (c)(2)**[**, except subparagraph (B)**]**.

(F) In the case of a mutual holding company which is a savings and loan holding company described in subsection (c)(3), engaging in the activities permitted under subsection (c)(9)(A)(ii).

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SECTION 109 OF THE RIEGLE-NEAL INTERSTATE BANKING AND BRANCHING EFFICIENCY ACT OF 1994

SEC. 109. PROHIBITION AGAINST DEPOSIT PRODUCTION OFFICES.

(a) * * *

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(d) APPLICATION.—This section shall apply with respect to any interstate branch established or acquired in a host State pursuant to this title*, the Financial Services Act of 1999,* or any amendment made by this title *or such Act* to any other provision of law.

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

(1) * * *

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(4) INTERSTATE BRANCH.—The term "interstate branch" means a branch established pursuant to this title or any amendment made by this title to any other provision of law *and any branch of a bank controlled by an out-of-State bank holding company (as defined in section 2(o)(7) of the Bank Holding Company Act of 1956)*.

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TITLE LXII.

NATIONAL BANKS.

CHAPTER ONE.

ORGANIZATION AND POWERS.

Sec.
5133. Formation of national banking associations.

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5136A. Subsidiaries of national banks.
5136B. National wholesale financial institutions.
[5136A.] *5136C.* Participation in lotteries prohibited.

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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.

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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. Ex-

cept 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 Financing 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 sub-

section (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, Bank for Economic Cooperation and Development in the Middle East and North Africa, 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.

In addition to the provisions in this paragraph for dealing in, underwriting or purchasing securities, the limitations and restrictions contained in this paragraph as to dealing in, underwriting, and purchasing investment securities for the national bank's own account shall not apply to obligations (including 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 instrumentality of 1 or more States, or any public agency or authority of any State or political subdivision of a State, if the national bank is well capitalized (as defined in section 38 of the Federal Deposit Insurance Act).

SEC. 5136A. SUBSIDIARIES OF NATIONAL BANKS.

(a) SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED TO ENGAGE IN FINANCIAL ACTIVITIES.—

(1) EXCLUSIVE AUTHORITY.—No provision of section 5136 or any other provision of this title LXII of the Revised Statutes shall be construed as authorizing a subsidiary of a national bank to engage in, or own any share of or any other interest in any company engaged in, any activity that—

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

(B) is conducted under terms or conditions other than those that would govern the conduct of such activity by a national bank,

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

(2) SPECIFIC AUTHORIZATION TO CONDUCT AGENCY ACTIVITIES WHICH ARE FINANCIAL IN NATURE.—A national bank may con-

trol a company that engages in agency activities that have been determined to be financial in nature or incidental to such financial activities pursuant to and in accordance with section 6(c) of the Bank Holding Company Act of 1956 if—

(A) the company engages in such activities solely as agent and not directly or indirectly as principal;

(B) the national bank is well capitalized and well managed, and has achieved a rating of satisfactory or better at the most recent examination of the bank under the Community Reinvestment Act of 1977;

(C) all depository institution affiliates of the national bank are well capitalized and well managed, and have achieved a rating of satisfactory or better at the most recent examination of each such depository institution under the Community Reinvestment Act of 1977; and

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

(3) DEFINITIONS.—

(A) COMPANY; CONTROL; AFFILIATE; SUBSIDIARY.—The terms "company", "control", "affiliate", and "subsidiary" have the meanings given to such terms in section 2 of the Bank Holding Company Act of 1956.

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

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

(i) in the case of a depository institution that has been examined, unless otherwise determined in writing by the appropriate Federal banking agency—

(I) the achievement of a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of the depository institution; and

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

(ii) in the case of any depository institution that has not been examined, the existence and use of managerial resources that the appropriate Federal banking agency determines are satisfactory.

(D) OTHER INCORPORATED TERMS.—For purposes of this paragraph, the terms "appropriate Federal banking agency" and "depository institution" have the meanings given to such terms in section 3 of the Federal Deposit Insurance Act.

(b) LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSITORY INSTITUTIONS.—Any depository institution which becomes affiliated with a national bank during the 24-month period preceding the submission of an application to acquire a subsidiary under subsection (a)(2), and any depository institution which becomes so affiliated after the approval of

such application, may be excluded for purposes of subsection (a)(2)(C) during the 24-month period beginning on the date of such acquisition if—

(1) the depository institution has submitted an affirmative plan to the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) to take such action as may be necessary in order for such institution to achieve a "satisfactory record of meeting community credit needs", or better, at the next examination of the institution under the Community Reinvestment Act of 1977; and

(2) the plan has been approved by the appropriate Federal banking agency.

SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.

(a) AUTHORIZATION OF THE COMPTROLLER REQUIRED.—A national bank may apply to the Comptroller on such forms and in accordance with such regulations as the Comptroller may prescribe, for permission to operate as a national wholesale financial institution.

(b) REGULATION.—A national wholesale financial institution may exercise, in accordance with such institution's articles of incorporation and regulations issued by the Comptroller, all the powers and privileges of a national bank formed in accordance with section 5133 of the Revised Statutes of the United States, subject to section 9B of the Federal Reserve Act and the limitations and restrictions contained therein.

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

SEC. ⟦5136A.⟧ *5136C.* (a) A national bank may not—

(1) * * *

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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", "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. *For purposes of this section, a subsidiary of a national bank which engages in activities as an agent pursuant to section 5136A(a)(2) shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank.*

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FEDERAL RESERVE ACT

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SEC. 9. Any bank incorporated by special law of any State, or organized under the general laws of any State or of the United States, including Morris Plan banks and other incorporated banking institutions engaged in similar business, desiring to become a member of the Federal Reserve System, may make application to the Board of Governors of the Federal Reserve System, under such rules and regulations as it may prescribe, for the right to subscribe to the stock of the Federal reserve bank organized within the district in which the applying bank is located. Such application shall be for the same amount of stock that the applying bank would be required to subscribe to as a national bank. For the purposes of membership of any such bank the terms "capital" and "capital stock" shall include the amount of outstanding capital notes and debentures legally issued by the applying bank and purchased by the Reconstruction Finance Corporation. The Board of Governors of the Federal Reserve System, subject to the provisions of this Act and to such conditions as it may prescribe pursuant thereto may permit the applying bank to become a stockholder of such Federal reserve bank.

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If at any time it shall appear to the Board of Governors of the Federal Reserve System that a member bank has failed to comply with the provisions of this section or the regulations of the Board of Governors of the Federal Reserve System made pursuant thereto, or has ceased to exercise banking functions without a receiver or liquidating agent having been appointed therefor, it shall be within the power of the board after hearing to require such bank to surrender its stock in the Federal reserve bank and to forfeit all rights and privileges of membership. [The Board of Governors of the Federal Reserve System may restore membership upon due proof of compliance with the conditions imposed by this section.] *The Board of Governors of the Federal Reserve System, at its discretion, may furnish reports of examination or other confidential supervisory information concerning State member banks or any other entities examined under any other authority of the Board to any Federal or State authorities with supervisory or regulatory authority over the examined entity, to officers, directors, or receivers of the examined entity, and to any other person that the Board determines to be proper.*

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(24) ENFORCEMENT AUTHORITY OVER UNINSURED STATE MEMBER BANKS.—Section 3(u) of the Federal Deposit Insurance Act, subsections (j) and (k) of section 7 of such Act, and subsections (b) through (n), (s), (u), and (v) of section 8 of such Act shall apply to an uninsured State member bank in the same manner and to the same extent such provisions apply to an insured State member bank and any reference in any such provision to "insured depository institution" shall be deemed to be a reference to "uninsured State member bank" for purposes of this paragraph.

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SEC. 9B. WHOLESALE FINANCIAL INSTITUTIONS.

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

(1) APPLICATION REQUIRED.—

(A) IN GENERAL.—Any bank may apply to the Board of Governors of the Federal Reserve System to become a State wholesale financial institution or to the Comptroller of the Currency to become a national wholesale financial institution and, as a wholesale financial institution, to subscribe to the stock of the Federal reserve bank organized within the district where the applying bank is located.

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

(2) INSURANCE TERMINATION.—No bank the deposits of which are 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 or national 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;

(B) subject to subparagraph (A), all references to the appropriate Federal banking agency or to the Corporation in that section shall be deemed to be references to the Comptroller of the Currency, in the case of a national wholesale financial institution, and to the Board, in the case of all other wholesale financial institutions; and

(C) in the case of wholesale financial institutions, the purpose of prompt corrective action shall be to protect taxpayers and the financial system from the risks associated with the operation and activities of wholesale financial institutions.

(3) ENFORCEMENT AUTHORITY.—Section 3(u), 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 or national banks and any ref-

erence in such sections to an insured depository institution shall be deemed to include 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 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 or a national bank.

(6) BRANCHING.—Notwithstanding any other provision of law, a wholesale financial institution may establish and operate a branch at any location on such terms and conditions as established by, and with the approval of—

(A) the Board, in the case of a State-chartered wholesale financial institution; and

(B) the Comptroller of the Currency, in the case of a national bank wholesale financial institution.

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

(A) GENERAL.—A State-chartered wholesale financial institution shall be deemed a State bank and an insured State bank and a national wholesale financial institution shall be deemed a national bank for purposes of paragraphs (1), (2), and (3) of section 24(j) of the Federal Deposit Insurance Act.

(B) DEFINITIONS.—The following definitions shall apply solely for purposes of applying paragraph (1):

(i) HOME STATE.—The term "home State" means, with respect to a State-chartered wholesale financial institution, the State by which the institution is chartered.

(ii) HOST STATE.—The term "host State" means a State, other than the home State of the wholesale financial institution, in which the institution maintains, or seeks to establish and maintain, a branch.

(iii) OUT-OF-STATE BANK.—The term "out-of-State bank" means, with respect to any State, a wholesale financial institution whose home State is another State.

(8) DISCRIMINATION REGARDING INTEREST RATES.—Section 27 of the Federal Deposit Insurance Act shall apply to State-chartered wholesale financial institutions in the same manner and to the same extent as such provisions apply to State member insured banks and any reference in such section to a State-chartered insured depository institution shall be deemed to include a reference to a State-chartered wholesale financial institution.

(9) PREEMPTION OF STATE LAWS REQUIRING DEPOSIT INSURANCE FOR WHOLESALE FINANCIAL INSTITUTIONS.—The appropriate State banking authority may grant a charter to a wholesale financial institution notwithstanding any State constitu-

tion or statute requiring that the institution obtain insurance of its deposits and any such State constitution or statute is hereby preempted solely for purposes of this paragraph.

(10) PARITY FOR WHOLESALE FINANCIAL INSTITUTIONS.—A State bank that is a wholesale financial institution under this section shall have all of the rights, powers, privileges, and immunities (including those derived from status as a federally chartered institution) of and as if it were a national bank, subject to such terms and conditions as established by the Board.

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

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

(1) LIMITATIONS ON DEPOSITS.—

(A) MINIMUM AMOUNT.—

(i) IN GENERAL.—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 wholesale financial institution may receive initial deposits of $100,000 or less if such deposits constitute more than 5 percent of the institution's total deposits.

(B) NO DEPOSIT INSURANCE.—Except as otherwise provided in section 8A(f) of the Federal Deposit Insurance Act, no deposits held by a wholesale financial institution shall be insured deposits under the Federal Deposit Insurance Act.

(C) ADVERTISING AND DISCLOSURE.—The Board and the Comptroller of the Currency shall prescribe jointly 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) MINIMUM CAPITAL LEVELS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—The Board shall, by regulation, adopt capital requirements for wholesale financial institutions—

(A) 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

(B) 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.

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

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

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

(ii) 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 any insured depository institution affiliate of the wholesale financial institution;

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

(iii) 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 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 or any insured depository institution affiliate of the wholesale financial institution;

(B) the protection of the deposit insurance funds; and

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

(5) LIMITATION ON TRANSACTIONS BETWEEN A WHOLESALE FINANCIAL INSTITUTION AND AN INSURED BANK.—For purposes of section 23A(d)(1) of the Federal Reserve Act, a wholesale financial institution that is affiliated with an insured bank shall not be a bank.

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

(d) CAPITAL AND MANAGERIAL REQUIREMENTS.—

(1) IN GENERAL.—A wholesale financial institution shall be well capitalized and well managed.

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

(3) AGREEMENT TO RESTORE INSTITUTION.—Within 45 days of receipt of a notice under paragraph (2) (or such additional period not to exceed 90 days as the Board may permit), the company shall execute an agreement acceptable to the Board to restore the wholesale financial institution to compliance with all of the requirements of paragraph (1).

(4) LIMITATIONS UNTIL INSTITUTION RESTORED.—Until the wholesale financial institution is restored to compliance with all of the requirements of paragraph (1), the Board may impose such limitations on the conduct or activities of the company or any affiliate of the company as the Board determines to be appropriate under the circumstances.

(5) FAILURE TO RESTORE.—If the company does not execute and implement an agreement in accordance with paragraph (3), comply with any limitation imposed under paragraph (4), restore the wholesale financial institution to well capitalized status within 180 days after receipt by the company of the notice described in paragraph (2), or restore the wholesale financial institution to well managed status within such period as the Board may permit, the company shall, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the Board's discretion, divest control of its subsidiary depository institutions.

(6) WELL MANAGED DEFINED.—For purposes of this subsection, the term "well managed" has the same meaning as in section 2 of the Bank Holding Company Act of 1956.

(e) RESOLUTION OF WHOLESALE FINANCIAL INSTITUTIONS.—

(1) CONSERVATORSHIP AND RECEIVERSHIP AUTHORITY.—

(A) APPOINTMENT.—The Board may appoint a conservator or receiver 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 or receiver for a national bank.

(B) POWERS.—The conservator or receiver for a wholesale financial institution shall exercise the same powers, functions, and duties, subject to the same limitations, as a conservator or receiver for a national bank.

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

(3) BANKRUPTCY PROCEEDINGS.—The Comptroller of the Currency (in the case of a national wholesale financial institution) and the Board may direct the conservator or receiver of a wholesale financial institution to file a petition pursuant to title 11, United States Code, in which case, title 11, United States Code, shall apply to the wholesale financial institution in lieu of otherwise applicable Federal or State insolvency law.

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

* * * * * * *

SEC. 11. The Board of Governors of the Federal Reserve System shall be authorized and empowered:

(a) * * *

* * * * * * *

[(m) Upon the affirmative vote of not less than six of its members the Board of Governors of the Federal Reserve System shall have power to fix from time to time for each Federal reserve district the percentage of individual bank capital and surplus which may be represented by loans secured by stock or bond collateral made by member banks within such district, but no such loan shall be made by any such bank to any person in an amount in excess of 15 percent of the unimpaired capital and surplus of such bank: *Provided,* That with respect to loans represented by obligations secured by not less than a like amount of bonds or notes of the United States issued since April 24, 1917, certificates of indebtedness of the United States, Treasury bills of the United States, or obligations fully guaranteed both as to principal and interest by the United States, such limitation of 15 percent on loans to any person shall not apply, but State member banks shall be subject to the same limitations and conditions as are applicable in the case of national banks under section 5200(c)(4) of the Revised Statutes. Any percentage so fixed by the Board of Governors of the Federal Reserve System shall be subject to change from time to time upon ten days' notice, and it shall be the duty of the Board to establish such percentages with a view to preventing the undue use of bank loans for the speculative carrying of securities. The Board of Governors of the Federal Reserve System shall have power to direct any member bank to refrain from further increase of its loans secured by stock or bond collateral for any period up to one year under penalty of suspension of all rediscount privileges at Federal reserve banks.]

(m) [Repealed]

* * * * * * *

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 subject to section 9B of this Act*;

* * * * * * *

RESTRICTIONS ON TRANSACTIONS WITH AFFILIATES

SEC. 23B. (a) IN GENERAL.—

(1) * * *

* * * * * * *

(4) SUBSIDIARY OF NATIONAL BANK.—For purposes of this section, a subsidiary of a national bank which engages in activities as an agent pursuant to section 5136A(a)(2) shall be deemed to be an affiliate of the national bank and not a subsidiary of the bank.

* * * * * * *

BANKING CORPORATIONS AUTHORIZED TO DO FOREIGN BANKING BUSINESS

SEC. 25A. Corporations to be organized for the purpose of engaging in international or foreign banking or other international or foreign financial operations, or in banking or other financial operations in a dependency or insular possession of the United States, either directly or through the agency, ownership, or control of local institutions in foreign countries, or in such dependencies or insular possessions as provided by this section, and to act when required by the Secretary of the Treasury as fiscal agents of the United States, may be formed by any number of natural persons, not less in any case than five: *Provided,* That nothing in this section shall be construed to deny the right of the Secretary of the Treasury to use any corporation organized under this section as depositaries in Panama and the Panama Canal Zone, or in the Philippine Islands and other insular possessions and dependencies of the United States.

* * * * * * *

[Whenever the Board of Governors of the Federal Reserve System shall become satisfied of the insolvency of any such corporation, it may appoint a receiver who shall take possession of all of the property and assets of the corporation and exercise the same rights, privileges, powers, and authority with respect thereto as are now exercised by receivers of national banks appointed by the Comptroller of the Currency of the United States: *Provided, however,* That the assets of the corporation subject to the laws of other countries or jurisdictions shall be dealt with in accordance with the terms of such laws.]

(16) APPOINTMENT OF RECEIVER OR CONSERVATOR.—

(A) IN GENERAL.—The Board may appoint a conservator or receiver for a corporation organized under the provisions of this section to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator or receiver for a national bank, and the conservator or receiver for such corporation shall exercise the same powers, functions, and duties, subject to the same limitations, as a conservator or receiver for a national bank.

(B) EQUIVALENT AUTHORITY.—The Board shall have the same authority with respect to any conservator or receiver appointed for a corporation organized under the provisions of this section under this paragraph and any such corporation as the Comptroller of the Currency has with respect to a conservator or receiver of a national bank and the national bank for which a conservator or receiver has been appointed.

(C) TITLE 11 PETITIONS.—The Board may direct the conservator or receiver of a corporation organized under the provisions of this section to file a petition pursuant to title 11, United States Code, in which case, title 11, United States Code, shall apply to the corporation in lieu of otherwise applicable Federal or State insolvency law.

* * * * * * *

CHAPTER 47 OF TITLE 18, UNITED STATES CODE

CHAPTER 47—FRAUD AND FALSE STATEMENTS

Sec.
1001. Statements or entries generally.

* * * * * * *

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

* * * * * * *

§ 1008. Misrepresentations regarding financial institution liability for obligations of affiliates

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

(b) CRIMINAL PENALTY.—Whoever violates subsection (a) shall be fined under this title, imprisoned for not more than 5 year, or both.

(c) INSTITUTION-AFFILIATED PARTY DEFINED.—For purposes of this section, the term "institution-affiliated party" with respect to a subsidiary or affiliate has the same meaning as in section 3 of the Federal Deposit Insurance Act, except references to an insured depository institution shall be deemed to be references to a subsidiary or affiliate of an insured depository institution.

(d) OTHER DEFINITIONS.—For purposes of this section, the terms "affiliate", "insured depository institution", and "subsidiary" have same meanings as in section 3 of the Federal Deposit Insurance Act.

RIGHT TO FINANCIAL PRIVACY ACT OF 1978

* * * * * * *

DEFINITIONS

SEC. 1101. For the purpose of this title, the term—

(1) * * *

* * * * * * *

(7) "supervisory agency" means with respect to any particular financial institution, holding company, or any subsidiary of a financial institution or holding company, any of the following which has statutory authority to examine the financial condition, business operations, or records or transactions of that institution, holding company, or subsidiary—

(A) * * *

* * * * * * *

(G) the Commodity Futures Trading Commission; or

[(G)] *(H)* the Secretary of the Treasury, with respect to the Bank Secrecy Act and the Currency and Foreign Transactions Reporting Act (Public Law 91–508, title I and II); or

[(H)] *(I)* any State banking or securities department or agency: and

* * * * * * *

USE OF INFORMATION

SEC. 1112. (a) * * *

* * * * * * *

(e) Notwithstanding section 1101(6) or any other provision of this title, the exchange of financial records 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]*, the Securities and Exchange Commission, and the Commodity Futures Trading Commission* is permitted.

* * * * * * *

TITLE 11, UNITED STATES CODE

* * * * * * *

CHAPTER 1—GENERAL PROVISIONS

* * * * * * *

§ 101. Definitions

In this title—

(1) * * *

* * * * * * *

[(22) "financial institution" means a person that is a commercial or savings bank, industrial savings bank, savings and loan association, or trust company and, when any such person is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741 of this title, such customer;]

(22) "financial institution" means a person that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act, or corporation organized under section 25A of the Federal Reserve Act and, when any such person is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741 of this title, such customer,

* * * * * * *

§ 103. Applicability of chapters

(a) * * *

* * * * * * *

(e) Subchapter V of chapter 7 of this title applies only in a case under such chapter concerning the liquidation of a wholesale finan-

cial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act, or a corporation organized under section 25A of the Federal Reserve Act.

[(e)**]** *(f)* Except as provided in section 901 of this title, only chapters 1 and 9 of this title apply in a case under such chapter 9.

[(f)**]** *(g)* Except as provided in section 901 of this title, subchapters I, II, and III of chapter 11 of this title apply only in a case under such chapter.

[(g)**]** *(h)* Subchapter IV of chapter 11 of this title applies only in a case under such chapter concerning a railroad.

[(h)**]** *(i)* Chapter 13 of this title applies only in a case under such chapter.

[(i)**]** *(j)* Chapter 12 of this title applies only in a case under such chapter.

* * * * * * *

§ 109. Who may be a debtor

(a) * * *

(b) A person may be a debtor under chapter 7 of this title only if such person is not—

(1) a railroad;

(2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, a small business investment company licensed by the Small Business Administration under subsection (c) or (d) of section 301 of the Small Business Investment Act of 1958, credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act**[**; or**]***, except that—*

(A) a wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act may be a debtor if a petition is filed at the direction of the Comptroller of the Currency (in the case of a wholesale financial institution established under section 5136B of the Revised Statutes of the United States) or the Board of Governors of the Federal Reserve System (in the case of any wholesale financial institution); and

(B) a corporation organized under section 25A of the Federal Reserve Act may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; or

* * * * * * *

[(d) Only a person that may be a debtor under chapter 7 of this title, except a stockbroker or a commodity broker, and a railroad may be a debtor under chapter 11 of this title.**]**

(d) Only a railroad and a person that may be a debtor under chapter 7 of this title, except that a stockbroker, a wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act, a corporation organized under section 25A of the Federal Reserve

Act, or a commodity broker, may be a debtor under chapter 11 of this title.

* * * * * * *

CHAPTER 7—LIQUIDATION

SUBCHAPTER I—OFFICERS AND ADMINISTRATION

Sec.
701. Interim trustee.

* * * * * * *

SUBCHAPTER V—WHOLESALE BANK LIQUIDATION

781. Definitions for subchapter.
782. Selection of trustee.
783. Additional powers of trustee.
784. Right to be heard.
785. Expedited transfers.

* * * * * * *

SUBCHAPTER V—WHOLESALE BANK LIQUIDATION

§ 781. Definitions for subchapter

In this subchapter—

(1) the term "Board" means the Board of Governors of the Federal Reserve System;

(2) the term "depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act, and includes any wholesale bank;

(3) the term "national wholesale financial institution" means a wholesale financial institution established under section 5136B of the Revised Statutes of the United States; and

(4) the term "wholesale bank" means a national wholesale financial institution, a wholesale financial institution established under section 9B of the Federal Reserve Act, or a corporation organized under section 25A of the Federal Reserve Act.

§ 782. Selection of trustee

Notwithstanding any other provision of this title, the conservator or receiver who files the petition shall be the trustee under this chapter, unless the Comptroller of the Currency (in the case of a national wholesale financial institution for which it appointed the conservator or receiver) or the Board (in the case of any wholesale bank for which it appointed the conservator or receiver) designates an alternative trustee. The Comptroller of the Currency or the Board (as applicable) may designate a successor trustee, if required.

§ 783. Additional powers of trustee

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

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

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

(3) to transfer contracts to the same extent as could a receiver for a depository institution under paragraphs (9) and (10) of section 11(e) of the Federal Deposit Insurance Act;

(4) to transfer assets or liabilities to a depository institution;

(5) to distribute property not of the estate, including distributions to customers that are mandated by subchapters III and IV of this chapter; or

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

(A) the bridge bank shall be treated as a wholesale bank for the purpose of this subsection; and

(B) any references in any such provision of law to the Federal Deposit Insurance Corporation shall be construed to be references to the appointing agency and that references to deposit insurance shall be omitted.

(b) Any reference in this section to transfers of liabilities includes a ratable transfer of liabilities within a priority class.

§ 784. Right to be heard

The Comptroller of the Currency (in the case of a national wholesale financial institution), the Board (in the case of any wholesale bank), or a Federal reserve bank (in the case of a wholesale bank that is a member of that bank) may raise and may appear and be heard on any issue in a case under this subchapter.

§ 785. Expedited transfers

The trustee may make a transfer pursuant to section 783 without prior judicial approval, if the Comptroller of the Currency (in the case of a national wholesale financial institution for which it appointed the conservator or receiver) or the Board (in the case of any wholesale bank for which it appointed the conservator or receiver) determines that the transfer would be necessary to avert serious adverse effects on economic conditions or financial stability.

SECTION 7A OF THE CLAYTON ACT

SEC. 7A. (a) * * *

* * * * * * *

(c) The following classes of transactions are exempt from the requirements of this section—

(1) * * *

* * * * * * *

(7) transactions which require agency approval under section 10(e) of the Home Owners' Loan Act, section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), or section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842)*, except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 6 of the Bank Holding Company Act of 1956; and (B)*

does not require agency approval under section 3 of the Bank Holding Company Act of 1956;

(8) transactions which require agency approval under section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) or section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464), if copies of all information and documentary material filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed transaction*, except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 6 of the Bank Holding Company Act of 1956; and (B) does not require agency approval under section 4 of the Bank Holding Company Act of 1956;*

SECTION 8 OF THE INTERNATIONAL BANKING ACT OF 1978

NONBANKING ACTIVITIES

SEC. 8. (a) * * *

* * * * * * *

(c)(1) * * *

* * * * * * *

(3) TERMINATION OF GRANDFATHERED RIGHTS.—

(A) IN GENERAL.—If any foreign bank or foreign company files a declaration under section 6(b)(1)(D) or receives a determination under section 10(d)(1) of the Bank Holding Company Act of 1956, any authority conferred by this subsection on any foreign bank or company to engage in any activity which the Board has determined to be permissible for financial holding companies under section 6 of such Act shall terminate immediately.

(B) RESTRICTIONS AND REQUIREMENTS AUTHORIZED.—If a foreign bank or company that engages, directly or through an affiliate pursuant to paragraph (1), in an activity which the Board has determined to be permissible for financial holding companies under section 6 of the Bank Holding Company Act of 1956 has not filed a declaration with the Board of its status as a financial holding company under such section or received a determination under section 10(d)(1) by the end of the 2-year period beginning on the date of enactment of the Financial Services Act of 1999, the Board, giving due regard to the principle of national treatment and equality of competitive opportunity, may impose such restrictions and requirements on the conduct of such activities by such foreign bank or company as are comparable to those imposed on a financial holding company organized under the laws of the United States, including a requirement to conduct such activities in compliance with

any prudential safeguards established under section 5(h) of the Bank Holding Company Act of 1956.

* * * * * * *

FEDERAL HOME LOAN BANK ACT

* * * * * * *

DEFINITIONS

SEC. 2. As used in this Act—

(1) BOARD.—The [term "Board" means] *terms "Finance Board" and "Board" mean* the Federal Housing Finance Board established under section 2A.

* * * * * * *

[(3) The term "State" includes the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States.]

(3) STATE.—The term "State", in addition to the States of the United States, includes the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

* * * * * * *

(13) COMMUNITY FINANCIAL INSTITUTION.—

(A) IN GENERAL.—The term "community financial institution" means a member—

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

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

(B) ADJUSTMENTS.—The $500,000,000 limit referred to in subparagraph (A)(ii) shall be adjusted annually by the Finance Board, based on the annual percentage increase, if any, in the Consumer Price Index for all urban consumers, as published by the Department of Labor.

* * * * * * *

SEC. 2B. POWERS AND DUTIES.

(a) GENERAL POWERS.—The Board shall have the following powers:

(1) * * *

* * * * * * *

(5) To issue and serve a notice of charges upon a Federal home loan bank or upon any executive officer or director of a Federal home loan bank if, in the determination of the Finance Board, the bank, executive officer, or director is engaging or has engaged in, or the Finance Board has reasonable cause to believe that the bank, executive officer, or director is about to engage in, any conduct that violates any provision of this Act or any law, order, rule, or regulation or any condition imposed in

writing by the Finance Board in connection with the granting of any application or other request by the bank, or any written agreement entered into by the bank with the agency, in accordance with the procedures provided in section 1371(c) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992. Such authority includes the same authority to take affirmative action to correct conditions resulting from violations or practices or to limit activities of a bank or any executive officer or director of a bank as appropriate Federal banking agencies have to take with respect to insured depository institutions under paragraphs (6) and (7) of section 8(b) of the Federal Deposit Insurance Act, and to have all other powers, rights, and duties to enforce this Act with respect to the Federal home loan banks and their executive officers and directors as the Office of Federal Housing Enterprise Oversight has to enforce the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the Federal National Mortgage Association Charter Act, or the Federal Home Loan Mortgage Corporation Act with respect to the Federal housing enterprises under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

(6) To address any insufficiencies in capital levels resulting from the application of section 5(f) of the Home Owners' Loan Act.

(7) To sue and be sued, by and through its own attorneys.

* * * * * * *

SEC. 4. (a) CRITERIA FOR ELIGIBILITY.—

(1) * * *

(2) QUALIFIED THRIFT LENDER.—An insured depository institution that is not a member on January 1, 1989, may become a member of a Federal Home Loan Bank only if—

(A) the insured depository institution *(other than a community financial institution)* has at least 10 percent of its total assets in residential mortgage loans;

* * * * * * *

(3) LIMITED EXEMPTION FOR COMMUNITY FINANCIAL INSTITUTIONS.—A community financial institution that otherwise meets the requirements of paragraph (2) may become a member without regard to the percentage of its total assets that is represented by residential mortgage loans, as described in subparagraph (A) of paragraph (2).

* * * * * * *

[CAPITAL OF FEDERAL HOME LOAN BANKS AND SUBSCRIPTIONS THERETO

[SEC. 6. (a) The capital stock of each Federal Home Loan Bank shall be divided into shares of a par value of $100 each. The minimum capital stock shall be issued at par. Stock issued thereafter shall be issued at such price not less than par as may be fixed by the Board.

[(b)(1) The original stock subscription of each institution eligible to become a member under section 4 shall be an amount equal to

1 per centum of the subscriber's aggregate unpaid loan principal, but not less than $500. The bank shall annually, as of the close of the calendar year, adjust, at such time and in such manner and upon such terms and conditions as the Board may by regulations or otherwise prescribe, the amount of stock held by each member so that such member shall have invested in the stock of the Federal Home Loan Bank at least an amount calculated in the manner provided in the next preceding sentence (but not less than $500). If the bank finds that the investment of any member in stock is greater than that required under this subsection it may, unless prohibited by said Board or by the provisions of paragraph (2) of this subsection, in its discretion and upon application of such member retire the stock of such member in excess of the amount so required. Said Board, in its discretion, may, by regulations or otherwise, provide for adjustments in amounts of stock to be issued or retired in order that stock may be issued or retired only in entire shares.

[(2) Notwithstanding any other provision of this subsection, no action shall be taken by any bank with respect to any member pursuant to any of the foregoing provisions of this subsection if the effect of such action would be to cause the aggregate outstanding advances, within the meaning of the last sentence of subsection (c) of section 10 of this Act or within the meaning of regulations of the Board defining such term for the purposes of this sentence, made by such bank to such member to exceed twenty times the amounts paid in by such member for outstanding capital stock held by such member.

[(3) Except as provided in subsection (i), upon retirement of stock of any member the bank shall pay such member for the stock retired an amount equal to the par value of such stock, or, at the election of the bank, the whole or any part of the payment which would otherwise be so made shall be credited upon the indebtedness of the member to the bank. In either such event, stock equal in par value to the amount of the payment or credit, or both, as the case may be, shall be canceled.

[(4) For the purposes of this subsection, the term "aggregate unpaid loan principal" means the aggregate unpaid principal of a subscriber's or member's home mortgage loans, home-purchase contracts, and similar obligations.

[(5) The Board, by regulations or otherwise, may require each member to submit such reports and information as said Board, in its discretion, may determine to be necessary or appropriate for the purposes of this subsection.

[(c) Stock subscriptions other than by the United States shall be paid for in cash, and shall be paid for at the time of application therefor, or, at the election of the subscriber, in installments, but not less than one-fourth of the total amount payable shall be paid at the time of filing application, and a further sum of not less than one-fourth of such total shall have been paid at the end of each succeeding period of four months.

[(d) Stock subscribed for otherwise than by the United States, and the right to the proceeds thereof, shall not be transferred or hypothecated except as hereinafter provided and the certificates therefor shall so state.

[(e) Any member other than a Federal savings and loan association may withdraw from membership in a Federal Home Loan Bank six months after filing with the Board written notice of intention so to do, and the Board may, after hearing, remove any member from membership, if, in the opinion of the Board, such member (i) has failed to comply with any provision of this Act or regulation of the Board made pursuant thereto; (ii) is insolvent: *Provided,* That any member of a bank which is a building and loan association, savings and loan association, cooperative bank, or homestead association shall be deemed insolvent if the assets of such member are less than its obligations to its creditors and others, including the holders of its withdrawable accounts; or (iii) has a management or home-financing policy of a character inconsistent with sound and economical home financing or with the purposes of this Act. If any member's membership in a Federal Home Loan Bank is terminated, the indebtedness of such member to the Federal Home Loan Bank shall be liquidated in an orderly manner (as determined by the Federal Home Loan Bank), and upon completion of such liquidation, the capital stock in the Federal Home Loan Bank owned by such member shall be surrendered and canceled. Any such liquidation shall be deemed a prepayment of any such indebtedness, and shall be subject to any penalties or other fees applicable to such prepayment. Upon the liquidation of such indebtedness such member shall be entitled to the return of its collateral, and, upon surrender and cancellation of such capital stock, the member shall receive a sum equal to its cash paid subscriptions for the capital stock surrendered, except that if at any time the Board finds that the paid-in capital of a Federal Home Loan Bank is or is likely to be impaired as a result of losses in or depreciation of the assets held, the Federal Home Loan Bank shall on the order of the Board withhold from the amount to be paid in retirement of the stock a pro rata share of the amount of such impairment as determined by the Board.

[(f) A Federal Home Loan Bank may, with the approval of the Board, permit the disposal of stock to another member, or to an institution eligible to become a member, but only to enable such an institution to become a member.

[(g) All stock of any Federal Home Loan Bank shall share in dividend distributions without preference.

[(h) Notwithstanding any other provision of this Act, an institution which withdraws from membership may acquire membership in any Federal Home Loan Bank only after the expiration of a period of 10 years thereafter, except where such withdrawal is a consequence of a transfer of membership on a non-interrupted basis between banks or in connection with obtaining a charter as a Federal savings association (as defined in section 3 of the Federal Deposit Insurance Act).]

SEC. 6. CAPITAL STRUCTURE OF FEDERAL HOME LOAN BANKS.

(a) REGULATIONS.—

(1) CAPITAL STANDARDS.—Not later than 1 year after the date of enactment of the Financial Services Act of 1999, the Finance Board shall issue regulations prescribing uniform capital standards applicable to each Federal home loan bank, which shall require each such bank to meet—

(A) the leverage requirement specified in paragraph (2); and

(B) the risk-based capital requirements, in accordance with paragraph (3).

(2) LEVERAGE REQUIREMENT.—

(A) IN GENERAL.—The leverage requirement shall require each Federal home loan bank to maintain a minimum amount of total capital based on the aggregate on-balance sheet assets of the bank and shall be 5 percent.

(B) TREATMENT OF STOCK AND RETAINED EARNINGS.—In determining compliance with the minimum leverage ratio established under subparagraph (A), the paid-in value of the outstanding Class B stock shall be multiplied by 1.5, the paid-in value of the outstanding Class C stock and the amount of retained earnings shall be multiplied by 2.0, and such higher amounts shall be deemed to be capital for purposes of meeting the 5 percent minimum leverage ratio.

(3) RISK-BASED CAPITAL STANDARDS.—

(A) IN GENERAL.—Each Federal home loan bank shall maintain permanent capital in an amount that is sufficient, as determined in accordance with the regulations of the Finance Board, to meet—

(i) the credit risk to which the Federal home loan bank is subject; and

(ii) the market risk, including interest rate risk, to which the Federal home loan bank is subject, based on a stress test established by the Finance Board that rigorously tests for changes in market variables, including changes in interest rates, rate volatility, and changes in the shape of the yield curve.

(B) CONSIDERATION OF OTHER RISK-BASED STANDARDS.—In establishing the risk-based standard under subparagraph (A)(ii), the Finance Board shall take due consideration of any risk-based capital test established pursuant to section 1361 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4611) for the enterprises (as defined in that Act), with such modifications as the Finance Board determines to be appropriate to reflect differences in operations between the Federal home loan banks and those enterprises.

(4) OTHER REGULATORY REQUIREMENTS.—The regulations issued by the Finance Board under paragraph (1) shall—

(A) permit each Federal home loan bank to issue, with such rights, terms, and preferences, not inconsistent with this Act and the regulations issued hereunder, as the board of directors of that bank may approve, any 1 or more of—

(i) Class A stock, which shall be redeemable in cash and at par 6 months following submission by a member of a written notice of its intent to redeem such shares;

(ii) Class B stock, which shall be redeemable in cash and at par 5 years following submission by a member of a written notice of its intent to redeem such shares; and

(iii) Class C stock, which shall be nonredeemable;

(B) provide that the stock of a Federal home loan bank may be issued to and held by only members of the bank, and that a bank may not issue any stock other than as provided in this section;

(C) prescribe the manner in which stock of a Federal home loan bank may be sold, transferred, redeemed, or repurchased; and

(D) provide the manner of disposition of outstanding stock held by, and the liquidation of any claims of the Federal home loan bank against, an institution that ceases to be a member of the bank, through merger or otherwise, or that provides notice of intention to withdraw from membership in the bank.

(5) DEFINITIONS OF CAPITAL.—For purposes of determining compliance with the capital standards established under this subsection—

(A) permanent capital of a Federal home loan bank shall include (as determined in accordance with generally accepted accounting principles)—

(i) the amounts paid for the Class C stock and any other nonredeemable stock approved by the Finance Board;

(ii) the amounts paid for the Class B stock, in an amount not to exceed 1 percent of the total assets of the bank; and

(iii) the retained earnings of the bank; and

(B) total capital of a Federal home loan bank shall include—

(i) permanent capital;

(ii) the amounts paid for the Class A stock, Class B stock (excluding any amount treated as permanent capital under subparagraph (5)(A)(ii)), or any other class of redeemable stock approved by the Finance Board;

(iii) consistent with generally accepted accounting principles, and subject to the regulation of the Finance Board, a general allowance for losses, which may not include any reserves or allowances made or held against specific assets; and

(iv) any other amounts from sources available to absorb losses incurred by the bank that the Finance Board determines by regulation to be appropriate to include in determining total capital.

(6) TRANSITION PERIOD.—Notwithstanding any other provisions of this Act, the requirements relating to purchase and retention of capital stock of a Federal home loan bank by any member thereof in effect on the day before the date of enactment of the Federal Home Loan Bank System Modernization Act of 1999, shall continue in effect with respect to each Federal home loan bank until the regulations required by this subsection have taken effect and the capital structure plan required by subsection (b) has been approved by the Finance Board and implemented by such bank.

(b) CAPITAL STRUCTURE PLAN.—

(1) APPROVAL OF PLANS.—Not later than 270 days after the date of publication by the Finance Board of final regulations in accordance with subsection (a), the board of directors of each Federal home loan bank shall submit for Finance Board approval a plan establishing and implementing a capital structure for such bank that—

(A) the board of directors determines is best suited for the condition and operation of the bank and the interests of the members of the bank;

(B) meets the requirements of subsection (c); and

(C) meets the minimum capital standards and requirements established under subsection (a) and other regulations prescribed by the Finance Board.

(2) APPROVAL OF MODIFICATIONS.—The board of directors of a Federal home loan bank shall submit to the Finance Board for approval any modifications that the bank proposes to make to an approved capital structure plan.

(c) CONTENTS OF PLAN.—The capital structure plan of each Federal home loan bank shall contain provisions addressing each of the following:

(1) MINIMUM INVESTMENT.—

(A) IN GENERAL.—Each capital structure plan of a Federal home loan bank shall require each member of the bank to maintain a minimum investment in the stock of the bank, the amount of which shall be determined in a manner to be prescribed by the board of directors of each bank and to be included as part of the plan.

(B) INVESTMENT ALTERNATIVES.—

(i) IN GENERAL.—In establishing the minimum investment required for each member under subparagraph (A), a Federal home loan bank may, in its discretion, include any 1 or more of the requirements referred to in clause (ii), or any other provisions approved by the Finance Board.

(ii) AUTHORIZED REQUIREMENTS.—A requirement is referred to in this clause if it is a requirement for—

(I) a stock purchase based on a percentage of the total assets of a member; or

(II) a stock purchase based on a percentage of the outstanding advances from the bank to the member.

(C) MINIMUM AMOUNT.—Each capital structure plan of a Federal home loan bank shall require that the minimum stock investment established for members shall be set at a level that is sufficient for the bank to meet the minimum capital requirements established by the Finance Board under subsection (a).

(D) ADJUSTMENTS TO MINIMUM REQUIRED INVESTMENT.—The capital structure plan of each Federal home loan bank shall impose a continuing obligation on the board of directors of the bank to review and adjust the minimum investment required of each member of that bank, as necessary to ensure that the bank remains in compliance with applicable minimum capital levels established by the Finance

Board, and shall require each member to comply promptly with any adjustments to the required minimum investment.

(2) TRANSITION RULE.—

(A) IN GENERAL.—The capital structure plan of each Federal home loan bank shall specify the date on which it shall take effect, and may provide for a transition period of not longer than 3 years to allow the bank to come into compliance with the capital requirements prescribed under subsection (a), and to allow any institution that was a member of the bank on the date of enactment of the Financial Services Act of 1999, to come into compliance with the minimum investment required pursuant to the plan.

(B) INTERIM PURCHASE REQUIREMENTS.—The capital structure plan of a Federal home loan bank may allow any member referred to in subparagraph (A) that would be required by the terms of the capital structure plan to increase its investment in the stock of the bank to do so in periodic installments during the transition period.

(3) DISPOSITION OF SHARES.—The capital structure plan of a Federal home loan bank shall provide for the manner of disposition of any stock held by a member of that bank that terminates its membership or that provides notice of its intention to withdraw from membership in that bank.

(4) CLASSES OF STOCK.—

(A) IN GENERAL.—The capital structure plan of a Federal home loan bank shall afford each member of that bank the option of maintaining its required investment in the bank through the purchase of any combination of classes of stock authorized by the board of directors of the bank and approved by the Finance Board in accordance with its regulations.

(B) RIGHTS REQUIREMENT.—A Federal home loan bank shall include in its capital structure plan provisions establishing terms, rights, and preferences, including minimum investment, dividends, voting, and liquidation preferences of each class of stock issued by the bank, consistent with Finance Board regulations and market requirements.

(C) REDUCED MINIMUM INVESTMENT.—The capital structure plan of a Federal home loan bank may provide for a reduced minimum stock investment for any member of that bank that elects to purchase Class B, Class C, or any other class of nonredeemable stock, in a manner that is consistent with meeting the minimum capital requirements of the bank, as established by the Finance Board.

(D) LIQUIDATION OF CLAIMS.—The capital structure plan of a Federal home loan bank shall provide for the liquidation in an orderly manner, as determined by the bank, of any claim of that bank against a member, including claims for any applicable prepayment fees or penalties resulting from prepayment of advances prior to stated maturity.

(5) LIMITED TRANSFERABILITY OF STOCK.—The capital structure plan of a Federal home loan bank shall—

(A) provide that—

(i) any stock issued by that bank shall be available only to, held only by, and tradable only among members of that bank and between that bank and its members; and

(ii) a bank has no obligation to repurchase its outstanding Class C stock but may do so, provided it is consistent with Finance Board regulations and is at a price that is mutually agreeable to the bank and the member; and

(B) establish standards, criteria, and requirements for the issuance, purchase, transfer, retirement, and redemption of stock issued by that bank.

(6) BANK REVIEW OF PLAN.—Before filing a capital structure plan with the Finance Board, each Federal home loan bank shall conduct a review of the plan by—

(A) an independent certified public accountant, to ensure, to the extent possible, that implementation of the plan would not result in any write-down of the redeemable bank stock investment of its members; and

(B) at least 1 major credit rating agency, to determine, to the extent possible, whether implementation of the plan would have any material effect on the credit ratings of the bank.

(d) TERMINATION OF MEMBERSHIP.—

(1) VOLUNTARY WITHDRAWAL.—Any member may withdraw from a Federal home loan bank by providing written notice to the bank of its intent to do so. The applicable stock redemption notice periods shall commence upon receipt of the notice by the bank. Upon the expiration of the applicable notice period for each class of redeemable stock, the member may surrender such stock to the bank, and shall be entitled to receive in cash the par value of the stock. During the applicable notice periods, the member shall be entitled to dividends and other membership rights commensurate with continuing stock ownership.

(2) INVOLUNTARY WITHDRAWAL.—

(A) IN GENERAL.—The board of directors of a Federal home loan bank may terminate the membership of any institution if, subject to Finance Board regulations, it determines that—

(i) the member has failed to comply with a provision of this Act or any regulation prescribed under this Act; or

(ii) the member has been determined to be insolvent, or otherwise subject to the appointment of a conservator, receiver, or other legal custodian, by a State or Federal authority with regulatory and supervisory responsibility for the member.

(B) STOCK DISPOSITION.—An institution, the membership of which is terminated in accordance with subparagraph (A)—

(i) shall surrender redeemable stock to the Federal home loan bank, and shall receive in cash the par value of the stock, upon the expiration of the applicable notice period under subsection (a)(4)(A);

(ii) shall receive any dividends declared on its redeemable stock, during the applicable notice period under subsection (a)(4)(A); and

(iii) shall not be entitled to any other rights or privileges accorded to members after the date of the termination.

(C) COMMENCEMENT OF NOTICE PERIOD.—With respect to an institution, the membership of which is terminated in accordance with subparagraph (A), the applicable notice period under subsection (a)(4) for each class of redeemable stock shall commence on the earlier of—

(i) the date of such termination; or

(ii) the date on which the member has provided notice of its intent to redeem such stock.

(3) LIQUIDATION OF INDEBTEDNESS.—Upon the termination of the membership of an institution for any reason, the outstanding indebtedness of the member to the bank shall be liquidated in an orderly manner, as determined by the bank and, upon the extinguishment of all such indebtedness, the bank shall return to the member all collateral pledged to secure the indebtedness.

(e) REDEMPTION OF EXCESS STOCK.—

(1) IN GENERAL.—A Federal home loan bank, in its sole discretion, may redeem or repurchase, as appropriate, any shares of Class A or Class B stock issued by the bank and held by a member that are in excess of the minimum stock investment required of that member.

(2) EXCESS STOCK.—Shares of stock held by a member shall not be deemed to be "excess stock" for purposes of this subsection by virtue of a member's submission of a notice of intent to withdraw from membership or termination of its membership in any other manner.

(3) PRIORITY.—A Federal home loan bank may not redeem any excess Class B stock prior to the end of the 5-year notice period, unless the member has no Class A stock outstanding that could be redeemed as excess.

(f) IMPAIRMENT OF CAPITAL.—If the Finance Board or the board of directors of a Federal home loan bank determines that the bank has incurred or is likely to incur losses that result in or are expected to result in charges against the capital of the bank, the bank shall not redeem or repurchase any stock of the bank without the prior approval of the Finance Board while such charges are continuing or are expected to continue. In no case may a bank redeem or repurchase any applicable capital stock if, following the redemption, the bank would fail to satisfy any minimum capital requirement.

(g) REJOINING AFTER DIVESTITURE OF ALL SHARES.—

(1) IN GENERAL.—Except as provided in paragraph (2), and notwithstanding any other provision of this Act, an institution that divests all shares of stock in a Federal home loan bank may not, after such divestiture, acquire shares of any Federal home loan bank before the end of the 5-year period beginning on the date of the completion of such divestiture, unless the divestiture is a consequence of a transfer of membership on an uninterrupted basis between banks.

(2) EXCEPTION FOR WITHDRAWALS FROM MEMBERSHIP BEFORE 1998.—Any institution that withdrew from membership in any Federal home loan bank before December 31, 1997, may acquire shares of a Federal home loan bank at any time after that date, subject to the approval of the Finance Board and the requirements of this Act.

(h) TREATMENT OF RETAINED EARNINGS.—

(1) IN GENERAL.—The holders of the Class C stock of a Federal home loan bank, and any other classes of nonredeemable stock approved by the Finance Board (to the extent provided in the terms thereof), shall own the retained earnings, surplus, undivided profits, and equity reserves, if any, of the bank.

(2) NO NONREDEEMABLE CLASSES OF STOCK.—If a Federal home loan bank has no outstanding Class C or other such nonredeemable stock, then the holders of any other classes of stock of the bank then outstanding shall have ownership in, and a private property right in, the retained earnings, surplus, undivided profits, and equity reserves, if any, of the bank.

(3) EXCEPTION.—Except as specifically provided in this section or through the declaration of a dividend or a capital distribution by a Federal home loan bank, or in the event of liquidation of the bank, a member shall have no right to withdraw or otherwise receive distribution of any portion of the retained earnings of the bank.

(4) LIMITATION.—A Federal home loan bank may not make any distribution of its retained earnings unless, following such distribution, the bank would continue to meet all applicable capital requirements.

MANAGEMENT OF BANKS

SEC. 7. (a) * * *

* * * * * * *

[(d) The term**]** *(d) TERMS OF OFFICE.—The term* of each elective directorship **[**shall be two years**]** and the term of each appointive directorship shall be four years. If any person, before or after, or partly before and partly after, the date of the enactment of this sentence, has been elected to each of three consecutive full terms as an elective director of a Federal home loan bank in any elective directorship or elective directorships and has served for all or part of each of said terms, such person shall not be eligible for election to an elective directorship of such bank for a term which begins earlier than two years after the expiration of the last expiring of said three terms. The Board is hereby authorized to prescribe such rules and regulations as it may deem necessary or appropriate for the nomination and election of directors of Federal home loan banks, including, without limitation on the generality of the foregoing, rules and regulations with respect to the breaking of ties and with respect to the inclusion of more than one directorship on a single ballot and the methods of voting and of determining the results of voting in such cases.

* * * * * * *

(i) Each bank may pay its directors reasonable compensation for the time required of them, and their necessary expenses, in the

performance of their duties, in accordance with the resolutions adopted by the such directors[, subject to the approval of the board].

* * * * * * *

SEC. 9. Any member of a Federal Home Loan Bank shall be entitled to apply in writing for advances. Such application shall be in such form as shall be required by the Federal Home Loan Bank [with the approval of the Board]. Such Federal Home Loan Bank may at its discretion deny any such application, or[, subject to the approval of the Board,] may grant it on such conditions as the Federal Home Loan Bank may prescribe.

* * * * * * *

[ADVANCES TO MEMBERS

[SEC. 10. (a) Each]

SEC. 10. ADVANCES TO MEMBERS.

(a) IN GENERAL.—

(1) ALL ADVANCES.—Each Federal Home Loan Bank is authorized to make secured advances to its members upon collateral sufficient, in the judgment of the Bank, to fully secure advances obtained from the Bank under this section or section 11(g) of this Act. [All long-term advances shall only be made for the purpose of providing funds for residential housing finance. A Bank]

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

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

(B) providing funds to any community financial institution for small businesses, agricultural, rural development, or low-income community development lending.

(3) COLLATERAL.—A Bank, at the time of origination or renewal of a loan or advance, shall obtain and maintain a security interest in collateral eligible pursuant to one or more of the following categories:

[(1)] *(A)* Fully disbursed, whole first mortgages on improved residential property (not more than 90 days delinquent), or securities representing a whole interest in such mortgages.

[(2)] *(B)* Securities issued, insured, or guaranteed by the United States Government or any agency thereof (including without limitation, mortgage-backed securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Corporation, and the Government National Mortgage Association).

[(3)] *(C)* [Deposits] *Cash or deposits* of a Federal Home Loan Bank.

[(4)] *(D)* Other real estate related collateral acceptable to the Bank if such collateral has a readily ascertainable value and the Bank can perfect its interest in the collateral. [The aggregate amount of outstanding advances se-

cured by such other real estate related collateral shall not exceed 30 percent of such member's capital.]

(E) Secured loans for small business, agriculture, rural development, or low-income community development, or securities representing a whole interest in such secured loans, in the case of any community financial institution.

[(5) Paragraphs (1) through (4)] *(4) ADDITIONAL BANK AUTHORITY.—Subparagraphs (A) through (E) of paragraph (3)* shall not affect the ability of any Federal Home Loan Bank to take such steps as it deems necessary to protect its security position with respect to outstanding advances, including requiring deposits of additional collateral security, whether or not such additional security would be eligible to originate an advance. If an advance existing on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 matures and the member does not have sufficient eligible collateral to fully secure a renewal of such advance, a Bank may renew such advance secured by such collateral as the Bank [and the Board] determines is appropriate. A member that has an advance secured by such insufficient eligible collateral must reduce its level of outstanding advances promptly and prudently in accordance with a schedule determined by the [Board] *Federal home loan bank*.

(5) REVIEW OF CERTAIN COLLATERAL STANDARDS.—The Board may review the collateral standards applicable to each Federal home loan bank for the classes of collateral described in subparagraphs (D) and (E) of paragraph (3), and may, if necessary for safety and soundness purposes, require an increase in the collateral standards for any or all of those classes of collateral.

(6) DEFINITIONS.—For purposes of this subsection, the terms "small business", "agriculture", "rural development", and "low-income community development" shall have the meanings given those terms by rule or regulation of the Finance Board.

* * * * * * *

(c) Such advances shall be made upon the note or obligation of the member secured as provided in this section, bearing such rate of interest as the [Board] *Federal home loan bank* may approve or determine, and the Federal Home Loan Bank shall have a lien upon and shall hold the stock of such member as further collateral security for all indebtedness of the member to the Federal Home Loan Bank. [At no time shall the aggregate outstanding advances made by any Federal Home Loan Bank to any member exceed twenty times the amounts paid in by such member for outstanding capital stock held by it exceed twenty times the value of the security required to be deposited under section 6(e)].

(d) The institution applying for an advance shall enter into a primary and unconditional obligation to pay off all advances, together with interest and any unpaid costs and expenses in connection therewith according to the terms under which they were made, in such form as shall meet the requirements of the bank [and the approval of the Board]. The bank shall reserve the right to require at any time, when deemed necessary for its protection, deposits of additional collateral security or substitutions of security by the borrowing institution, and each borrowing institution shall assign ad-

ditional or substituted security when and as so required. [Subject to the approval of the Board, any] *Any* Federal Home Loan Bank shall have power to sell to any other Federal Home Loan Bank, with or without recourse, any advance made under the provisions of this Act, or to allow to such bank a participation therein, and any other Federal Home Loan Bank shall have power to purchase such advance or to accept a participation therein, together with an appropriate assignment of security therefor.

(e) QUALIFIED THRIFT LENDER STATUS.—

(1) IN GENERAL.—A member that is not a qualified thrift lender may only receive an advance if it holds stock in its Federal Home Loan Bank at the time it receives that advance in an amount equal to at least—

(A) 5 percent of that member's total advances, divided by

(B) such member's actual thrift investment percentage.

Such members that are not qualified thrift lenders may only apply for advances under this section for the purpose of obtaining funds for housing finance *or, in the case of any community financial institution, for the purposes described in subsection (a)(2).*

* * * * * * *

(5) DEFINITIONS.—As used in this subsection—

(A) * * *

* * * * * * *

(C) ACTUAL THRIFT INVESTMENT PERCENTAGE.—The term "actual thrift investment percentage" has the same meaning as in section 10(m) of the Home Owners' Loan Act *except that, in determining the actual thrift investment percentage of any community financial institution for purposes of this subsection, the total investment of such member in loans for small business, agriculture, rural development, or low-income community development, or securities representing a whole interest in such loans, shall be treated as a qualified thrift investment (as defined in such section 10(m)).*

* * * * * * *

(j) AFFORDABLE HOUSING PROGRAM.—

(1) IN GENERAL.—[Pursuant]

(A) ESTABLISHMENT.—Pursuant to regulations promulgated by the Board, each Bank shall establish an Affordable Housing Program [to subsidize the interest rate on advances] *to provide subsidies, including subsidized interest rates on advances* to members engaged in lending for long term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates.

(B) NONDELEGATION OF APPROVAL AUTHORITY.—Subject to such regulations as the Finance Board may prescribe, the board of directors of each Federal home loan bank may approve or disapprove requests from members for Affordable Housing Program subsidies, and may not delegate such authority.

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INCORPORATION OF BANKS, AND CORPORATE POWERS

SEC. 12. (a) The directors of each Federal Home Loan Bank shall, in accordance with such rules and regulations as the Board may prescribe, make and file with the Board at the earliest practicable date after the establishment of such bank, an organization certificate which shall contain such information as the Board may require. Upon the making and filing of such organization certificate with the Board, such bank shall become, as of the date of the execution of its organization certificate, a body corporate, and as such and in its name as designated by the Board it shall have power to adopt, alter, and use a corporate seal; to make contracts; to purchase or lease and hold or dispose of such real estate as may be necessary or convenient for the transaction of its business[, but, except with the prior approval of the Board, no bank building shall be bought or erected to house any such bank, or leased by such bank under any lease for such purpose which has a term of more than ten years]; to sue and be sued, to complain, and to defend, in any court of competent jurisdiction, State or Federal; to select, employ, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary for the transaction of its business [subject to the approval of the Board]; to define their duties, require bonds of them and fix the penalties thereof, and to dismiss at pleasure such officers, employees, attorneys, and agents; [and, by its Board of directors, to prescribe, amend, and repeal by-laws, rules, and regulations governing the manner in which its affairs may be administered; and the powers granted to it by law may be exercised and enjoyed subject to the approval of the Board. The president of a Federal Home Loan Bank may also be a member of the Board of directors thereof, but no other officer, employee, attorney, or agent of such bank,] *and, by the board of directors of the bank, to prescribe, amend, and repeal by-laws governing the manner in which its affairs may be administered, consistent with applicable laws and regulations, as administered by the Finance Board. No officer, employee, attorney, or agent of a Federal home loan bank* who receives compensation, may be a member of the [Board] *board* of directors. Each such bank shall have all such incidental powers, not inconsistent with the provisions of this Act, as are customary and usual in corporations generally.

(b) Subject to such regulations as may be prescribed by the Board, one or more Federal home [loans banks] *loan banks* may acquire, hold, or dispose of, in whole or in part, or facilitate such acquisition, holding, or disposition by members of any such bank of, housing project loans, or interests therein, having the benefit of any guaranty under section 221 of the Foreign Assistance Act of 1961, as now or hereafter in effect, or loans, or interests therein, having the benefit of any guaranty under section 224 of such Act, or any commitment or agreement with respect to such loans, or interests therein, made pursuant to either of such sections. This authority extends to the acquisition, holding, and disposition of loans, or interests therein, having the benefit of any guaranty under section 221 or 222 of the Foreign Assistance Act of 1961, as amended by section 105 of the Foreign Assistance Act of 1969 or as hereafter

amended or extended, or of any commitment or agreement for any such guaranty.

* * * * * * *

RESERVES AND DIVIDENDS

SEC. 16. (a) Each Federal Home Loan Bank may carry to a reserve account from time-to-time such portion of its net earnings as may be determined by its board of directors. Each Federal Home Loan Bank shall establish such additional reserves and/or make such charge-offs on account of depreciation or impairment of its assets as the Board shall require from time to time. No dividends shall be paid except out of [net earnings] *previously retained earnings or current net earnings* remaining after reductions for all reserves, chargeoffs, purchases of capital certificates of the Financing Corporation, and payments relating to the Funding Corporation required under this Act have been provided for, other than chargeoffs or expenses incurred by a Bank in connection with the purchase of capital stock of the Financing Corporation under section 21 or payments relating to the Funding Corporation Principal Fund under section 21B(e)[, and then only with the approval of the Federal Housing Finance Board]. [Beginning on January 1, 1992, the preceding sentence shall be applied by substituting "previously retained earnings or current net earnings" for "net earnings".] The reserves of each Federal Home Loan Bank shall be invested, subject to such regulations, restrictions, and limitations as may be prescribed by the Board, in direct obligations of the United States, in obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association, in 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, and in such securities as fiduciary and trust funds may be invested in under the laws of the State in which the Federal Home Loan Bank is located.

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ADMINISTRATIVE EXPENSES

SEC. 18. (a) * * *

(b) ASSESSMENTS FOR ADMINISTRATIVE EXPENSES.—

(1) * * *

* * * * * * *

[(4) TRANSITION PROVISION.—On or after the effective date of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Board may levy a one-time special assessment on the Banks pursuant to this subsection for the Board's estimated expenses for the transitional period following enactment of such Act, if such assessment is made before the Board's first semiannual assessment under paragraph (1).]

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SEC. 21B. RESOLUTION FUNDING CORPORATION ESTABLISHED.

(a) * * *

* * * * * * *

(f) OBLIGATIONS OF FUNDING CORPORATION.—

(1) * * *

(2) INTEREST PAYMENTS.—The Funding Corporation shall pay the interest due on such obligations from funds obtained for such interest payments from the following sources:

(A) * * *

* * * * * * *

[(C) PAYMENTS BY FEDERAL HOME LOAN BANKS.—To the extent the amounts available pursuant to subparagraphs (A) and (B) are insufficient to cover the amount of interest payments, the Federal Home Loan Banks shall pay to the Funding Corporation each calendar year the aggregate amount of $300,000,000 minus the amounts required in such year for Financing Corporation principal payments (pursuant to section 21) and the amounts required in such year by the Funding Corporation pursuant to subsection (e). Each Bank's individual share of any amounts required to be paid by the Banks under this subparagraph shall be determined as follows:

[(i) AMOUNTS UP TO 20 PERCENT OF NET EARNINGS.—Each Federal Home Loan Bank shall pay an equal percentage of its net earnings for the year for which such amount is required to be paid, up to a maximum of 20 percent of net earnings.

[(ii) AMOUNTS IN EXCESS OF 20 PERCENT OF NET EARNINGS.—If the aggregate amount required to be paid by the Federal Home Loan Banks under this subparagraph for any year exceeds 20 percent of the aggregate net earnings of the Banks for such year, each Bank shall pay 20 percent of its net earnings for such year as provided in clause (i), and each Bank's individual share of the excess of the required amount over 20 percent of the aggregate net earnings of the Banks for such year shall be determined by dividing—

[(I) the average month-end level in the prior year of advances outstanding by such Bank to Savings Associations Insurance Fund members; by

[(II) the average month-end level in the prior year of advances outstanding by all such Banks to Savings Associations Insurance Fund members.]

(C) PAYMENTS BY FEDERAL HOME LOAN BANKS.—

(i) IN GENERAL.—To the extent that the amounts available pursuant to subparagraphs (A) and (B) are insufficient to cover the amount of interest payments, each Federal home loan bank shall pay to the Funding Corporation in each calendar year, 20.75 percent of the net earnings of that bank (after deducting expenses relating to section 10(j) and operating expenses).

(ii) ANNUAL DETERMINATION.—The Board annually shall determine the extent to which the value of the ag-

gregate amounts paid by the Federal home loan banks exceeds or falls short of the value of an annuity of $300,000,000 per year that commences on the issuance date and ends on the final scheduled maturity date of the obligations, and shall select appropriate present value factors for making such determinations.

(iii) PAYMENT TERM ALTERATIONS.—The Board shall extend or shorten the term of the payment obligations of a Federal home loan bank under this subparagraph as necessary to ensure that the value of all payments made by the banks is equivalent to the value of an annuity referred to in clause (ii).

(iv) TERM BEYOND MATURITY.—If the Board extends the term of payments beyond the final scheduled maturity date for the obligations, each Federal home loan bank shall continue to pay 20.75 percent of its net earnings (after deducting expenses relating to section 10(j) and operating expenses) to the Treasury of the United States until the value of all such payments by the Federal home loan banks is equivalent to the value of an annuity referred to in clause (ii). In the final year in which the Federal home loan banks are required to make any payment to the Treasury under this subparagraph, if the dollar amount represented by 20.75 percent of the net earnings of the Federal home loan banks exceeds the remaining obligation of the banks to the Treasury, the Finance Board shall reduce the percentage pro rata to a level sufficient to pay the remaining obligation.

* * * * * * *

[SEC. 22A. INFORMAL REVIEW OF CERTAIN SUPERVISORY DECISIONS.

[(a) REVIEW OF CERTAIN SUPERVISORY DECISIONS.—The Board shall establish an informal review procedure under which any association, insured institution, or member may obtain a review, by the principal supervisory agent for the Federal home loan bank district in which such association, institution, or member is located, of any decision by any examiner or supervisory agent of the Federal home loan bank for such district with respect to—

[(1) the appraisal value of—

[(A) any loan held by the association, insured institution, or member; or

[(B) any property serving as collateral to secure the repayment of any loan (held by the association, institution, or member);

[(2) the classification of any loan held by the association, institution, or member; or

[(3) any requirement imposed on the association, institution, or member to establish or to add to a reserve or allowance for a possible loss on any loan held by such institution.

[(b) STANDARDS FOR REVIEW.—The review procedure established pursuant to subsection (a) shall provide that the principal supervisory agent for the appropriate Federal home loan bank district, after taking into account the report described in subsection (c)(2)

by the arbiter (or panel of arbiters), shall approve, modify, or set aside any decision for which a review has been requested on the basis of the supervisory agent's review of all the facts and the regulations applicable to such decision and shall take such action as such agent may determine to be necessary or appropriate in light of such review.

[(c) APPOINTMENT OF INDEPENDENT ARBITER.—The review procedure established pursuant to subsection (a) shall provide for the appointment (by the principal supervisory agent for the appropriate Federal home loan bank district, upon the filing of a request for a review under this section by an association, insured institution, or member) of an independent arbiter (or, upon the request of such association, institution, or member, a panel of independent arbiters) who shall—

[(1) review the decision which is the subject of the review in light of all the facts of the case and the regulations applicable to such determination; and

[(2) report the conclusions and recommendations of the independent arbiter (or the panel) with respect to the decision under review to the principal supervisory agent for the appropriate Federal home loan bank district and the association, insured institution, or member.

[(d) CONSOLIDATION OF REVIEWS OF RELATED DECISIONS.—The principal supervisory agent may consolidate requests for review under this section of related decisions and conduct a single review of all such related decisions.

[(e) 25-DAY ARBITER REVIEW PERIOD; 20-DAY PSA REVIEW PERIOD.—

[(1) ARBITER REVIEW.—The review procedure established pursuant to subsection (a) shall provide that any review described in subsection (c) by an arbiter (or panel of arbiters) shall be completed before the end of the 25-day period beginning on the date the request for the review was filed with the principal supervisory agent.

[(2) REVIEW BY PSA.—The review procedure established pursuant to subsection (a) shall provide that any review by the principal supervisory agent of an arbiter's report described in subsection (c)(2) (or the report of a panel of arbiters) shall be completed before the end of the 20-day period beginning on the date the agent receives such report.

[(3) ONLY BUSINESS DAYS INCLUDED.—Saturdays, Sundays, and holidays shall not be taken into account in determining the periods described in paragraphs (1) and (2).

[(f) CLARIFICATION OF RELATIONSHIP BETWEEN INFORMAL REVIEW AND OTHER AVAILABLE REVIEW.—

[(1) INFORMAL REVIEW NOT EXCLUSIVE.—The informal review procedure established pursuant to subsection (a) for reviewing any decision referred to in such subsection shall be in addition to, and not in lieu of, any other procedure established by law, or any regulation of the Board, which provides for formal administrative or judicial review of such decision.

[(2) ONLY THE ORIGINAL DECISION IS WITHIN SCOPE OF ADMINISTRATIVE AND JUDICIAL REVIEW.—If any association, insured institution, or member seeks administrative or judicial

review of any examiner or supervisory agent decision for which such association, insured institution, or member obtained an informal review under the procedure established pursuant to subsection (a), such administrative or judicial review shall be carried out—

[(A) without regard to the fact that such informal review was made; and

[(B) without admitting into evidence, or otherwise taking into account, the findings, recommendations, or conclusions of the principal supervisory agent and the independent arbiter (or the panel of independent arbiters) which conducted the informal review.

[(3) INFORMAL REVIEW NOT SUBJECT TO FORMAL REVIEW.—The findings, recommendations, or conclusions of any principal supervisory agent who conducted a review under the procedure established pursuant to subsection (a) are not decisions which may be subject to review by the Board or any court under any regulation of the Board or any law.

[(g) EXPENSES OF REVIEW BORNE BY ASSOCIATION, INSTITUTION, OR MEMBER.—All reasonable expenses incurred as a direct or indirect result of any review under the procedure established pursuant to subsection (a) shall be paid by the association, insured institution, or member which requested the review.]

* * * * * * *

[SEC. 27. HOUSING OPPORTUNITY HOTLINE PROGRAM.

[(a) ESTABLISHMENT.—The Federal Home Loan Banks shall, individually or (at the discretion of the Federal Housing Finance Board) on a consolidated basis, establish and provide a service substantially similar (in the determination of the Board) to the "Housing Opportunity Hotline" program established in October 1992, by the Federal Home Loan Bank of Dallas.

[(b) PURPOSE.—The service or services established under this section shall provide information regarding the availability for purchase of single family properties that are owned or held by Federal agencies and are located in the Federal Home Loan Bank district for such Bank. Such agencies shall provide to the Federal Home Loan Banks the information necessary to provide such service or services.

[(c) REQUIRED INFORMATION.—The service or services established under this section shall use the information obtained from Federal agencies to provide information regarding the size, location, price, and other characteristics of such single family properties, the eligibility requirements for purchasers of such properties, the terms for such sales, and the terms of any available seller financing, and shall identify properties that are affordable to low- and moderate-income families.

[(d) TOLL-FREE TELEPHONE NUMBER.—The service or services established under this section shall establish and maintain a toll-free telephone line for providing the information made available under the service or services.

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

[(1) FEDERAL AGENCIES.—The term "Federal agencies" means—

[(A) the Farmers Home Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the General Services Administration, the Department of Housing and Urban Development, and the Department of Veterans Affairs;

[(B) the Resolution Trust Corporation, subject to the discretion of such Corporation; and

[(C) the Federal Deposit Insurance Corporation, subject to the discretion of such Corporation.

[(2) SINGLE FAMILY PROPERTY.—The term "single family property" means a 1- to 4-family residence, including a manufactured home.]

* * * * * * *

ACT OF OCTOBER 28, 1974

AN ACT To increase deposit insurance from $20,000 to $40,000, to provide full insurance for public unit deposits of $100,000 per account, to establish a National Commission on Electronic Fund Transfers, and for other purposes.

TITLE I—AMENDMENTS TO AND EXTENSIONS OF PROVISIONS OF LAW RELATING TO FEDERAL REGULATION OF DEPOSITORY INSTITUTIONS

* * * * * * *

INDEPENDENCE OF FINANCIAL REGULATORY AGENCIES

SEC. 111. No officer or agency of the United States shall have any authority to require the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the [Federal Home Loan Bank Board,] *Director of the Office of Thrift Supervision, the Federal Housing Finance Board,* or the National Credit Union Administration to submit legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress if such recommendations, testimony, or comments to the Congress include a statement indicating that the views expressed therein are those of the agency submitting them and do not necessarily represent the views of the President.

* * * * * * *

ELECTRONIC FUND TRANSFER ACT

* * * * * * *

§ 904. Regulations

(a) * * *

* * * * * * *

(d) APPLICABILITY TO SERVICE PROVIDERS OTHER THAN CERTAIN FINANCIAL INSTITUTIONS.—

(1) * * *

* * * * * * *

(3) FEE DISCLOSURES AT AUTOMATED TELLER MACHINES.—

(A) IN GENERAL.—The regulations prescribed under paragraph (1) shall require any automated teller machine operator who imposes a fee on any consumer for providing host transfer services to such consumer to provide notice in accordance with subparagraph (B) to the consumer (at the time the service is provided) of—

(i) the fact that a fee is imposed by such operator for providing the service; and

(ii) the amount of any such fee.

(B) NOTICE REQUIREMENTS.—

(i) ON THE MACHINE.—The notice required under clause (i) of subparagraph (A) with respect to any fee described in such subparagraph shall be posted in a prominent and conspicuous location on or at the automated teller machine at which the electronic fund transfer is initiated by the consumer; and

(ii) ON THE SCREEN.—The notice required under clauses (i) and (ii) of subparagraph (A) with respect to any fee described in such subparagraph shall appear on the screen of the automated teller machine, or on a paper notice issued from such machine, after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(C) PROHIBITION ON FEES NOT PROPERLY DISCLOSED AND EXPLICITLY ASSUMED BY CONSUMER.—No fee may be imposed by any automated teller machine operator in connection with any electronic fund transfer initiated by a consumer for which a notice is required under subparagraph (A), unless—

(i) the consumer receives such notice in accordance with subparagraph (B); and

(ii) the consumer elects to continue in the manner necessary to effect the transaction after receiving such notice.

(D) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

(i) ELECTRONIC FUND TRANSFER.—The term "electronic fund transfer" includes a transaction which involves a balance inquiry initiated by a consumer in the same manner as an electronic fund transfer, whether or not the consumer initiates a transfer of funds in the course of the transaction.

(ii) AUTOMATED TELLER MACHINE OPERATOR.—The term "automated teller machine operator" means any person who—

(I) operates an automated teller machine at which consumers initiate electronic fund transfers; and

(II) is not the financial institution which holds the account of such consumer from which the transfer is made.

(iii) HOST TRANSFER SERVICES.—The term "host transfer services" means any electronic fund transfer made by an automated teller machine operator in connection with a transaction initiated by a consumer at an automated teller machine operated by such operator.

* * * * * * *

§ 905. Terms and conditions of transfers

(a) The terms and conditions of electronic fund transfers involving a consumer's account shall be disclosed at the time the consumer contracts for an electronic fund transfer service, in accordance with regulations of the Board. Such disclosures shall be in readily understandable language and shall include, to the extent applicable—

(1) * * *

* * * * * * *

(8) the financial institution's liability to the consumer under section 910; **[**and**]**

(9) under what circumstances the financial institution will in the ordinary course of business disclose information concerning the consumer's account to third persons**[**.**]***; and*

(10) a notice to the consumer that a fee may be imposed by—

(A) an automated teller machine operator (as defined in section 904(d)(3)(D)(ii)) if the consumer initiates a transfer from an automated teller machine which is not operated by the person issuing the card or other means of access; and

(B) any national, regional, or local network utilized to effect the transaction.

* * * * * * *

§ 910. Liability of financial institutions

(a) * * *

* * * * * * *

(d) EXCEPTION FOR DAMAGED NOTICES.—If the notice required to be posted pursuant to section 904(d)(3)(B)(i) by an automated teller machine operator has been posted by such operator in compliance with such section and the notice is subsequently removed, damaged, or altered by any person other than the operator of the automated teller machine, the operator shall have no liability under this section for failure to comply with section 904(d)(3)(B)(i).

* * * * * * *

DEPOSIT INSURANCE FUNDS ACT OF 1996

* * * * * * *

SEC. 2704. MERGER OF BIF AND SAIF.

(a) * * *

* * * * * * *

[(b) SPECIAL RESERVE OF THE DEPOSIT INSURANCE FUND.—

[(1) IN GENERAL.—Immediately before the merger of the Bank Insurance Fund and the Savings Association Insurance Fund, if the reserve ratio of the Savings Association Insurance Fund exceeds the designated reserve ratio, the amount by which that reserve ratio exceeds the designated reserve ratio shall be placed in the Special Reserve of the Deposit Insurance Fund, established under section 11(a)(5) of the Federal Deposit Insurance Act, as amended by this section.

[(2) DEFINITION.—For purposes of this subsection, the term "reserve ratio" means the ratio of the net worth of the Savings Association Insurance Fund to the aggregate estimated amount of deposits insured by the Savings Association Insurance Fund.]

* * * * * * *

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) * * *

* * * * * * *

[(4) SPECIAL RESERVE OF DEPOSITS.—Section 11(a)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(5)) is amended to read as follows:

["(5) SPECIAL RESERVE OF DEPOSIT INSURANCE FUND.—

["(A) ESTABLISHMENT.—

["(i) IN GENERAL.—There is established a Special Reserve of the Deposit Insurance Fund, which shall be administered by the Corporation and shall be invested in accordance with section 13(a).

["(ii) LIMITATION.—The Corporation shall not provide any assessment credit, refund, or other payment from any amount in the Special Reserve.

["(B) EMERGENCY USE OF SPECIAL RESERVE.—Notwithstanding subparagraph (A)(ii), the Corporation may, in its sole discretion, transfer amounts from the Special Reserve to the Deposit Insurance Fund, for the purposes set forth in paragraph (4), only if—

["(i) the reserve ratio of the Deposit Insurance Fund is less than 50 percent of the designated reserve ratio; and

["(ii) the Corporation expects the reserve ratio of the Deposit Insurance Fund to remain at less than 50 percent of the designated reserve ratio for each of the next 4 calendar quarters.

["(C) EXCLUSION OF SPECIAL RESERVE IN CALCULATING RESERVE RATIO.—Notwithstanding any other provision of law, any amounts in the Special Reserve shall be excluded in calculating the reserve ratio of the Deposit Insurance Fund under section 7.".]

* * * * * * *

(6) REPEALS.—

(A) * * *

* * * * * * *

(C) SECTION 11.—Section 11(a) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)) is amended—

(i) by striking paragraphs [(6) and (7)] *(5), (6), and (7)*; and

[(ii) by redesignating paragraph (8) as paragraph (6).]

(ii) by redesignating paragraph (8) as paragraph (5).

* * * * * * *

SECURITIES EXCHANGE ACT OF 1934

* * * * * * *

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) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a broker because the bank engages in any one or more of the following activities under the conditions described:

(i) THIRD PARTY BROKERAGE ARRANGEMENTS.—The bank enters into a contractual or other written 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, to the extent practicable, 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 arrangement clearly indicate

that the brokerage services 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 arrangement are in compliance with the Federal securities laws before distribution;

(V) bank employees (other than associated persons of a broker or dealer who are qualified pursuant to the rules of a self-regulatory organization) perform only clerical or ministerial functions in connection with brokerage transactions including scheduling appointments with the associated persons of a broker or dealer, except that bank employees may forward customer funds or securities and may describe in general terms the types of investment vehicles available from the bank and the broker or dealer under the arrangement;

(VI) bank employees do not receive incentive compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the rules of a self-regulatory organization, except that the bank employees may receive compensation for the referral of any customer if the compensation is a nominal one-time cash 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;

(VIII) the bank does not carry a securities account of the customer except as permitted under clause (ii) or (viii) of this subparagraph; and

(IX) the bank, 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 effects transactions in a trustee or fiduciary capacity in its trust department, or another department where the trust or fiduciary activity is regularly examined by bank examiners under the same standards and in the same way as such activities are examined in the trust department, and—

(I) is chiefly compensated for such transactions, consistent with fiduciary principles and standards, on the basis of an administration or annual fee (payable on a monthly, quarterly, or other basis), a percentage of assets under management, or a flat

or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers, or any combination of such fees; and

(II) does not solicit brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities.

(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in—

(I) commercial paper, bankers acceptances, or commercial bills;

(II) exempted securities;

(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

(iv) CERTAIN STOCK PURCHASE PLANS.—

(I) EMPLOYEE BENEFIT PLANS.—The bank effects transactions, as a registered transfer agent (including as a registrar of stocks), in the securities of an issuer as part of any pension, retirement, profit-sharing, bonus, thrift, savings, incentive, or other similar benefit plan for the employees of that issuer or its affiliates, if—

(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan; and

(bb) the bank's compensation for such plan or program consists chiefly of administration fees, or flat or capped per order processing fees, or both.

(II) DIVIDEND REINVESTMENT PLANS.—The bank effects transactions, as a registered transfer agent (including as a registrar of stocks), in the securities of an issuer as part of that issuer's dividend reinvestment plan, if—

(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan;

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

(cc) the bank's compensation for such plan or program consists chiefly of administration fees, or flat or capped per order processing fees, or both.

(III) ISSUER PLANS.—The bank effects transactions, as a registered transfer agent (including as a registrar of stocks), in the securities of an issuer as part of that issuer's plan for the purchase or sale of that issuer's shares, if—

(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan or program;

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

(cc) the bank's compensation for such plan or program consists chiefly of administration fees, or flat or capped per order processing fees, or both.

(IV) PERMISSIBLE DELIVERY OF MATERIALS.—The exception to being considered a broker for a bank engaged in activities described in subclauses (I), (II), and (III) will not be affected by a bank's delivery of written or electronic plan materials to employees of the issuer, shareholders of the issuer, or members of affinity groups of the issuer, so long as such materials are—

(aa) comparable in scope or nature to that permitted by the Commission as of the date of the enactment of the Financial Services Act of 1999; or

(bb) otherwise permitted by the Commission.

(v) SWEEP ACCOUNTS.—The bank effects transactions as part of a program for the investment or reinvestment of 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.

(vi) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate (as defined in section 2 of the Bank Holding Company Act of 1956) of the bank other than—

(I) a registered broker or dealer; or

(II) an affiliate that is engaged in merchant banking, as described in section 6(c)(3)(H) of the Bank Holding Company Act of 1956.

(vii) PRIVATE SECURITIES OFFERINGS.—The bank—

(I) effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 or the rules and regulations issued thereunder;

(II) at any time after one year after the date of enactment of the Financial Services Act of 1999, is not affiliated with a broker or dealer that has been registered for more than one year; and

(III) effects transactions exclusively with qualified investors.

(viii) SAFEKEEPING AND CUSTODY ACTIVITIES.—

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

(aa) provides safekeeping or custody services with respect to securities, including the exercise of warrants and other rights on behalf of customers;

(bb) facilitates the transfer of funds or securities, as a custodian or a clearing agency, in connection with the clearance and settlement of its customers' transactions in securities;

(cc) effects securities lending or borrowing transactions with or on behalf of customers as part of services provided to customers pursuant to division (aa) or (bb) or invests cash collateral pledged in connection with such transactions; or

(dd) holds securities pledged by a customer to another person or securities subject to purchase or resale agreements involving a customer, or facilitates the pledging or transfer of such securities by book entry or as otherwise provided under applicable law, if the bank maintains records separately identifying the securities and the customer.

(II) EXCEPTION FOR CARRYING BROKER ACTIVITIES.—The exception to being considered a broker for a bank engaged in activities described in subclause (I) shall not apply if the bank, in connection with such activities, acts in the United States as a carrying broker (as such term, and different formulations thereof, are used in section 15(c)(3) of this title and the rules and regulations thereunder) for any broker or dealer, unless such carrying broker activities are engaged in with respect to government securities (as defined in paragraph (42) of this subsection).

(ix) EXCEPTED FINANCIAL PRODUCTS.—The bank effects transactions in excepted financial products, as defined in paragraph (56)(A) of this subsection.

(x) MUNICIPAL SECURITIES.—The bank effects transactions in municipal securities.

(xi) DE MINIMIS EXCEPTION.—The bank effects, other than in transactions referred to in clauses (i) through (x), not more than 500 transactions in securities in any calendar year, and such transactions are not effected by an employee of the bank who is also an employee of a broker or dealer.

(C) BROKER DEALER EXECUTION.—The exception to being considered a broker for a bank engaged in activities described in clauses (ii), (iv), and (viii) of subparagraph (B) shall not apply if the activities described in such provisions result in the trade in the United States of any security that is a publicly traded security in the United States, unless—

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

(ii) the trade is a cross trade or other substantially similar trade of a security that—

(I) is made by the bank or between the bank and an affiliated fiduciary; and

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

(iii) the trade is conducted in some other manner permitted under rules, regulations, or orders as the Commission may prescribe or issue.

(D) FIDUCIARY CAPACITY.—For purposes of subparagraph (B)(ii), the term "fiduciary capacity" means—

(i) in the capacity as trustee, executor, administrator, guardian, assignee, receiver, or custodian under a uniform gift to minor act, or as an investment adviser if the bank receives a fee for its investment advice;

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

(iii) in any other similar capacity.

(F) EXCEPTION 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 Act of 1999, subject to section 15(e) of this title; and

(ii) is subject to such restrictions and requirements as the Commission considers appropriate.

(5) DEALER.—

(A) IN GENERAL.—The term "dealer" means any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise.

(B) EXCEPTION FOR PERSON NOT ENGAGED IN THE BUSINESS OF DEALING.—The term "dealer" does not include 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.

(C) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a dealer because the bank engages in any of the following activities under the conditions described:

(i) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank buys or sells—

(I) commercial paper, bankers acceptances, or commercial bills;

(II) exempted securities;

(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes

of the United States, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

(ii) INVESTMENT, TRUSTEE, AND FIDUCIARY TRANSACTIONS.—The bank buys or sells securities for investment purposes—

(I) for the bank; or

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

(iii) ASSET-BACKED TRANSACTIONS.—The bank engages in the issuance or sale to qualified investors, through a grantor trust or other separate entity, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations (other than securities of which the bank is not the issuer), or pools of any such obligations predominantly originated by the bank, or an affiliate of any such bank other than a broker or dealer, or, in the case of mortgage obligations or consumer-related receivables, a syndicate of banks of which the bank is a member (other than as an insignificant member).

(iv) EXCEPTED FINANCIAL PRODUCTS.—The bank buys or sells excepted financial products, as defined in paragraph (56)(A) of this subsection.

(v) DERIVATIVE INSTRUMENTS.—The bank issues, buys, or sells any derivative instrument to which the bank is a party—

(I) to or from a corporation, limited liability company, or partnership that owns and invests on a discretionary basis, not less than $100,000,000 in investments, or to or from a qualified investor, except that if the instrument provides for the delivery of one or more securities (other than a derivative instrument or government security), the transaction shall be effected with or through a registered broker or dealer; or

(II) to or from other persons, except that if the derivative instrument provides for the delivery of one or more securities (other than a derivative instrument or government security), or is a security (other than a government security), the transaction shall be effected with or through a registered broker or dealer; or

(III) to or from any person if the instrument is neither a security nor provides for the delivery of one or more securities (other than a derivative instrument).

(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;

* * * * * * *

(34) The term "appropriate regulatory agency" means—

(A) * * *

* * * * * * *

(H) When used with respect to an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956—

(i) the Comptroller of the Currency, in the case of a national bank or a bank in the District of Columbia examined by the Comptroller of the Currency;

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

(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act; or

(iv) the Commission in the case of all other such institutions.

* * * * * * *

(42) The term "government securities" means—

(A) * * *

* * * * * * *

(C) securities issued or guaranteed as to principal or interest by any corporation the securities of which are designated, by statute specifically naming such corporation, to constitute exempt securities within the meaning of the laws administered by the Commission; [or]

(D) for purposes of sections 15C and 17A, any put, call, straddle, option, or privilege on a security described in subparagraph (A), (B), or (C) other than a put, call, straddle, option, or privilege—

(i) that is traded on one or more national securities exchanges; or

(ii) for which quotations are disseminated through an automated quotation system operated by a registered securities association**[.]***; or*

(E) for purposes of sections 15, 15C, and 17A as applied to a bank, a qualified Canadian government obligation as defined in section 5136 of the Revised Statutes of the United States.

* * * * * * *

(54) DERIVATIVE INSTRUMENT.—

(A) DEFINITION.—The term "derivative instrument" means any individually negotiated contract, agreement, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets, but does not include an excepted financial product, as defined in clauses (i) through (v) of paragraph (56)(A) of this subsection.

(B) CLASSIFICATION LIMITED.—Classification of a particular contract as a derivative instrument pursuant to this paragraph shall not be construed as finding or implying that such instrument is or is not a security for any purpose under the securities laws, or is or is not an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.

(55) QUALIFIED INVESTOR.—

(A) DEFINITION.—For purposes of this title, the term "qualified investor" means—

(i) any investment company registered with the Commission under section 8 of the Investment Company Act of 1940;

(ii) any issuer eligible for an exclusion from the definition of investment company pursuant to section 3(c)(7) of the Investment Company Act of 1940;

(iii) any bank (as defined in paragraph (6) of this subsection), savings and loan association (as defined in section 3(b) of the Federal Deposit Insurance Act), broker, dealer, insurance company (as defined in section 2(a)(13) of the Securities Act of 1933), or business development company (as defined in section 2(a)(48) of the Investment Company Act of 1940);

(iv) any small business investment company licensed by the United States Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958;

(v) any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, other than an individual retirement account, if the investment decisions are made by a plan fiduciary, as defined in section 3(21) of that Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser;

(vi) any trust whose purchases of securities are directed by a person described in clauses (i) through (v) of this subparagraph;

(vii) any market intermediary exempt under section 3(c)(2) of the Investment Company Act of 1940;

(viii) any associated person of a broker or dealer other than a natural person;

(ix) any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978); or

(x) the government of any foreign country.

(B) ADDITIONAL QUALIFICATIONS DEFINED.—For purposes of paragraphs (4)(B)(vii), (5)(C)(iii), and (56)(A)(v) of this subsection, the term "qualified investor" also means—

(i) any corporation, company, or partnership that owns and invests on a discretionary basis, not less than $10,000,000 in investments;

(ii) any natural person who owns and invests on a discretionary basis, not less than $10,000,000 in investments;

(iii) any government or political subdivision, agency, or instrumentality of a government who owns and invests on a discretionary basis not less than $50,000,000 in investments; or

(iv) any multinational or supranational entity or any agency or instrumentality thereof.

(C) ADDITIONAL AUTHORITY.—The Commission may, by rule or order, define a "qualified investor" as any other person, other than a natural person, taking into consideration such factors as the person's financial sophistication, net worth, and knowledge and experience in financial matters.

(56) EXCEPTED FINANCIAL PRODUCTS.—

(A) IN GENERAL.—For purposes of paragraphs (4) and (5) of this subsection, the term "excepted financial product" means—

(i) a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank;

(ii) a banker's acceptance;

(iii) a letter of credit issued or loan made by a bank;

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

(v) a participation in a loan which the bank or an affiliate of the bank (other than a broker or dealer) funds, participates in, or owns that is sold—

(I) to qualified investors; or

(II) to other persons that—

(aa) have the opportunity to review and assess any material information, including information regarding the borrower's creditworthiness; and

(bb) based on such factors as financial sophistication, net worth, and knowledge and experience in financial matters, have the capability to evaluate the information available, as

determined under generally applicable banking standards or guidelines; or

(vi) a derivative instrument that involves or relates to—

(I) currencies, except options on currencies that trade on a national securities exchange;

(II) interest rates, except interest rate derivative instruments that—

(aa) are based on a security or a group or index of securities (other than government securities or a group or index of government securities);

(bb) provide for the delivery of one or more securities (other than government securities); or

(cc) trade on a national securities exchange; or

(III) commodities, other rates, indices, or other assets, except derivative instruments that—

(aa) are securities or that are based on a group or index of securities (other than government securities or a group or index of government securities);

(bb) provide for the delivery of one or more securities (other than government securities); or

(cc) trade on a national securities exchange.

(B) CLASSIFICATION LIMITED.—Classification of a particular product as a excepted financial product pursuant to this subsection shall not be construed as finding or implying that such product is or is not a security for any purpose under the securities laws, or is or is not an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.

* * * * * * *

REGISTRATION AND REGULATION OF BROKERS AND DEALERS

SEC. 15. (a) * * *

* * * * * * *

(i) RULEMAKING TO EXTEND REQUIREMENTS TO NEW HYBRID PRODUCTS.—

(1) LIMITATION.—The Commission shall not—

(A) require a bank to register as a broker or dealer under this section because the bank engages in any transaction in, or buys or sells, a new hybrid product; or

(B) bring an action against a bank for a failure to comply with a requirement described in subparagraph (A);

unless the Commission has imposed such requirement by rule or regulation issued in accordance with this section.

(2) CRITERIA FOR RULEMAKING.—The Commission shall not impose a requirement under paragraph (1) of this subsection with respect to any new hybrid product unless the Commission determines that—

(A) the new hybrid product is a security; and

(B) imposing such requirement is necessary or appropriate in the public interest and for the protection of investors, consistent with the requirements of section 3(f).

(3) NEW HYBRID PRODUCT.—For purposes of this subsection, the term "new hybrid product" means a product that—

(A) was not subjected to regulation by the Commission as a security prior to the date of enactment of this subsection; and

(B) is not an excepted financial product, as such term is defined in section 3(a)(56)(A) of this title.

(4) CONSULTATION.—In promulgating rules under this subsection, the Commission shall consult with and consider the views of the appropriate regulatory agencies concerning the proposed rule and the impact on the banking industry.

* * * * * * *

REGISTERED SECURITIES ASSOCIATIONS

SEC. 15A. (a) * * *

* * * * * * *

(j) REGISTRATION FOR SALES OF PRIVATE SECURITIES OFFERINGS.—A registered securities association shall create a limited qualification category for any associated person of a member who effects sales as part of a primary offering of securities 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 thereunder, and shall deem qualified in such limited qualification category, without testing, any bank employee who, in the six month period preceding the date of enactment of this Act, engaged in effecting such sales.

* * * * * * *

ACCOUNTS AND RECORDS, EXAMINATIONS OF EXCHANGES, MEMBERS, AND OTHERS

SEC. 17. (a) * * *

* * * * * * *

(i) INVESTMENT BANK HOLDING COMPANIES.—

(1) ELECTIVE SUPERVISION OF AN INVESTMENT BANK HOLDING COMPANY NOT HAVING A BANK OR SAVINGS ASSOCIATION AFFILIATE.—

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

(i) an affiliate of an insured bank (other than an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956), or a savings association;

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

(iii) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act,

may elect to become supervised by filing with the Commission a notice of intention to become supervised, pursuant to subparagraph (B) of this paragraph. Any investment bank holding company filing such a notice shall be supervised in accordance with this section and comply with the rules promulgated by the Commission applicable to supervised investment bank holding companies.

(B) NOTIFICATION OF STATUS AS A SUPERVISED INVESTMENT BANK HOLDING COMPANY.—An investment bank holding company that elects under subparagraph (A) to become supervised by the Commission shall file with the Commission a written notice of intention to become supervised by the Commission in such form and containing such information and documents concerning such investment bank holding company as the Commission, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of this section. Unless the Commission finds that such supervision is not necessary or appropriate in furtherance of the purposes of this section, such supervision shall become effective 45 days after the date of receipt of such written notice by the Commission or within such shorter time period as the Commission, by rule or order, may determine.

(2) ELECTION NOT TO BE SUPERVISED BY THE COMMISSION AS AN INVESTMENT BANK HOLDING COMPANY.—

(A) VOLUNTARY WITHDRAWAL.—A supervised investment bank holding company that is supervised pursuant to paragraph (1) may, upon such terms and conditions as the Commission deems necessary or appropriate, elect not to be supervised by the Commission by filing a written notice of withdrawal from Commission supervision. Such notice shall not become effective until one year after receipt by the Commission, or such shorter or longer period as the Commission deems necessary or appropriate to ensure effective supervision of the material risks to the supervised investment bank holding company and to the affiliated broker or dealer, or to prevent evasion of the purposes of this section.

(B) DISCONTINUATION OF COMMISSION SUPERVISION.—If the Commission finds that any supervised investment bank holding company that is supervised pursuant to paragraph (1) is no longer in existence or has ceased to be an investment bank holding company, or if the Commission finds that continued supervision of such a supervised investment bank holding company is not consistent with the purposes of this section, the Commission may discontinue the supervision pursuant to a rule or order, if any, promulgated by the Commission under this section.

(3) SUPERVISION OF INVESTMENT BANK HOLDING COMPANIES.—

(A) RECORDKEEPING AND REPORTING.—

(i) IN GENERAL.—Every supervised investment bank holding company and each affiliate thereof shall make

and keep for prescribed periods such records, furnish copies thereof, and make such reports, as the Commission may require by rule, in order to keep the Commission informed as to—

(I) the company's or affiliate's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions and relationships between any broker or dealer affiliate of the supervised investment bank holding company; and

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

(ii) FORM AND CONTENTS.—Such records and reports shall be prepared in such form and according to such specifications (including certification by an independent public accountant), as the Commission may require and shall be provided promptly at any time upon request by the Commission. Such records and reports may include—

(I) a balance sheet and income statement;

(II) an assessment of the consolidated capital of the supervised investment bank holding company;

(III) an independent auditor's report attesting to the supervised investment bank holding company's compliance with its internal risk management and internal control objectives; and

(IV) reports concerning the extent to which the company or affiliate has complied with the provisions of this title and any regulations prescribed and orders issued under this title.

(B) USE OF EXISTING REPORTS.—

(i) IN GENERAL.—The Commission shall, to the fullest extent possible, accept reports in fulfillment of the requirements under this paragraph that the supervised investment bank holding company or its affiliates have been required to provide to another appropriate regulatory agency or self-regulatory organization.

(ii) AVAILABILITY.—A supervised investment bank holding company or an affiliate of such company shall provide to the Commission, at the request of the Commission, any report referred to in clause (i).

(C) EXAMINATION AUTHORITY.—

(i) FOCUS OF EXAMINATION AUTHORITY.—The Commission may make examinations of any supervised investment bank holding company and any affiliate of such company in order to—

(I) inform the Commission regarding—

(aa) the nature of the operations and financial condition of the supervised investment bank holding company and its affiliates;

(bb) the financial and operational risks within the supervised investment bank holding

company that may affect any broker or dealer controlled by such supervised investment bank holding company; and

(cc) the systems of the supervised investment bank holding company and its affiliates for monitoring and controlling those risks; and

(II) monitor compliance with the provisions of this subsection, provisions governing transactions and relationships between any broker or dealer affiliated with the supervised investment bank holding company and any of the company's other affiliates, and applicable provisions of subchapter II of chapter 53, title 31, United States Code (commonly referred to as the "Bank Secrecy Act") and regulations thereunder.

(ii) RESTRICTED FOCUS OF EXAMINATIONS.—The Commission shall limit the focus and scope of any examination of a supervised investment bank holding company to—

(I) the company; and

(II) any affiliate of the company that, because of its size, condition, or activities, the nature or size of the transactions between such affiliate and any affiliated broker or dealer, or the centralization of functions within the holding company system, could, in the discretion of the Commission, have a materially adverse effect on the operational or financial condition of the broker or dealer.

(iii) DEFERENCE TO OTHER EXAMINATIONS.—For purposes of this subparagraph, the Commission shall, to the fullest extent possible, use the reports of examination of an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956 made by the appropriate regulatory agency, or of a licensed insurance company made by the appropriate State insurance regulator.

(4) HOLDING COMPANY CAPITAL.—

(A) AUTHORITY.—If the Commission finds that it is necessary to adequately supervise investment bank holding companies and their broker or dealer affiliates consistent with the purposes of this subsection, the Commission may adopt capital adequacy rules for supervised investment bank holding companies.

(B) METHOD OF CALCULATION.—In developing rules under this paragraph:

(i) DOUBLE LEVERAGE.—The Commission shall consider the use by the supervised investment bank holding company of debt and other liabilities to fund capital investments in affiliates.

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

(iii) NO CAPITAL REQUIREMENT ON REGULATED ENTITIES.—The Commission shall not, by rule, regulation, guideline, order or otherwise, impose any capital adequacy provision on a nonbanking affiliate (other than a broker or dealer) that is in compliance with applicable capital requirements of another Federal regulatory authority or State insurance authority.

(iv) APPROPRIATE EXCLUSIONS.—The Commission shall take full account of the applicable capital requirements of another Federal regulatory authority or State insurance regulator.

(C) INTERNAL RISK MANAGEMENT MODELS.—The Commission may incorporate internal risk management models into its capital adequacy rules for supervised investment bank holding companies.

(5) FUNCTIONAL REGULATION OF BANKING AND INSURANCE ACTIVITIES OF SUPERVISED INVESTMENT BANK HOLDING COMPANIES.—The Commission shall defer to—

(A) the appropriate regulatory agency with regard to all interpretations of, and the enforcement of, applicable banking laws relating to the activities, conduct, ownership, and operations of banks, and institutions described in subparagraph (D), (F), and (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956; and

(B) the appropriate State insurance regulators with regard to all interpretations of, and the enforcement of, applicable State insurance laws relating to the activities, conduct, and operations of insurance companies and insurance agents.

(6) DEFINITIONS.—For purposes of this subsection and subsection (j):

(A) The term "investment bank holding company" means—

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

(ii) the associated persons of the investment bank holding company.

(B) The term "supervised investment bank holding company" means any investment bank holding company that is supervised by the Commission pursuant to this subsection.

(C) The terms "affiliate", "bank", "bank holding company", "company", "control", "savings association", and "wholesale financial institution" have the meanings given to those terms in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

(D) The term "insured bank" has the meaning given to that term in section 3 of the Federal Deposit Insurance Act.

(E) The term "foreign bank" has the meaning given to that term in section 1(b)(7) of the International Banking Act of 1978.

(F) The terms "person associated with an investment bank holding company" and "associated person of an investment bank holding company" mean any person directly

or indirectly controlling, controlled by, or under common control with, an investment bank holding company.

(j) COMMISSION BACKUP AUTHORITY.—

(1) AUTHORITY.—The Commission may make inspections of any wholesale financial holding company (as defined in section 10A(a)(1) of the Bank Holding Company Act of 1956) that—

(A) controls a wholesale financial institution;

(B) is not a foreign bank; and

(C) does not control an insured bank (other than an institution permitted under subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956) or a savings association,

and any affiliate of such company, for the purpose of monitoring and enforcing compliance by the wholesale financial holding company with the Federal securities laws.

(2) LIMITATION.—The Commission shall limit the focus and scope of any inspection under paragraph (1) to those transactions, policies, procedures, or records that are reasonably necessary to monitor and enforce compliance by the wholesale financial holding company or any affiliate with the Federal securities laws.

(3) DEFERENCE TO EXAMINATIONS.—To the fullest extent possible, the Commission shall use, for the purposes of this subsection, the reports of examinations—

(A) made by the Board of Governors of the Federal Reserve System of any wholesale financial holding company that is supervised by the Board that is supervised by the Board;

(B) made by or on behalf of any State regulatory agency responsible for the supervision of an insurance company; and

(C) made by any Federal or State banking agency of any bank or institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956.

(4) NOTICE.—To the fullest extent possible, the Commission shall notify the appropriate regulatory agency prior to conducting an inspection of a wholesale financial institution or institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956.

(k) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under subsection (h) or (i) or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a broker or dealer, investment bank holding company, or any affiliate of an investment bank holding company. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of

a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraphs (A), (B), and (C) of subsection (i)(5) as confidential information for purposes of section 24(b)(2) of this title.

[(i)] *(l)* COORDINATION OF EXAMINING AUTHORITIES.—

(1) * * *

* * * * * * *

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 1(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) The term "broker" has the same meaning as in section 3 of the Securities Exchange Act of 1934, except that such term does not include any person solely by reason of the fact that such person is an underwriter for one 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 or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, 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,

(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property 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,

[(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

(B) when used with respect to an investment adviser of or principal underwriter for any 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 or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

(I) any investment company for which the investment adviser or principal underwriter serves as such;

(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

(III) any account over which the investment adviser has brokerage placement discretion,

(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

(I) any investment company for which the investment adviser or principal underwriter serves as such;

(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

(III) any account for which the investment adviser has borrowing authority,

[(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 investment company a material business or professional relationship with such investment adviser or principal underwriter or with the principal executive officer or any controlling person of such investment adviser or principal underwriter.

* * * * * * *

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.

* * * * * * *

INELIGIBILITY OF CERTAIN AFFILIATED PERSONS AND UNDERWRITERS

SEC. 9. (a) It shall be unlawful for any of the following persons to serve or act in the capacity of employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company:

(1) any person who within 10 years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer, investment adviser, municipal securi-

ties dealer, government securities broker, government securities dealer, *bank,* transfer agent, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act;

(2) any person who, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, *bank,* transfer agent, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security; or

* * * * * * *

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 (together with its affiliates and subsidiaries) or any one bank holding company (together with its affiliates and subsidiaries) (as such terms are defined in section 2 of the Bank Holding Company Act of 1956), 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.

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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 an 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 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 or issue consistent with the protection of investors.

(2) EXEMPTION.—Paragraph (1) shall not apply to any investment adviser to a registered investment company, or any affiliated person of that investment adviser, that holds shares of the investment company in a trustee or fiduciary capacity if that registered investment company consists solely of assets 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).

* * * * * * *

TRANSACTIONS OF CERTAIN AFFILIATED PERSONS AND UNDERWRITERS

SEC. 17. (a) It shall be unlawful for any affiliated person or promoter of or principal underwriter for a registered investment company (other than a company of the character described in section 12(d)(3) (A) and (B)), or any affiliated person of such a person, promoter, or principal underwriter, acting as principal—

(1) * * *

(2) knowingly to purchase from such registered company, or from any company controlled by such registered company, any security or other property (except securities of which the seller is the issuer); **[**or**]**

(3) to borrow money or other property from such registered company or from any company controlled by such registered company (unless the borrower is controlled by the lender) except as permitted in section 21(b)**[**.**]***; or*

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

* * * * * * *

[(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) The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person, promoter, organizer, or sponsor of, or principal underwriter for, a registered management company may serve as custodian of that registered management company.

* * * * * * *

UNIT INVESTMENT TRUSTS

SEC. 26. (a) * * *

(b) The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person of a principal underwriter for, or depositor of, a registered unit investment trust, may serve as trustee or custodian under subsection (a)(1).

[(b)**]** *(c)* It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

[(c)**]** *(d)* In the event that a trust indenture, agreement of custodianship, or other instrument pursuant to which securities of a registered unit investment trust are issued does not comply with the requirements of subsection (a) of this section, such instrument will be deemed to meet such requirements if a written contract or agreement binding on the parties and embodying such requirements has been executed by the depositor on the one part and the trustee or custodian on the other part, and three copies of such contract or agreement have been filed with the Commission.

[(d)**]** *(e)* Whenever the Commission has reason to believe that a unit investment trust is inactive and that its liquidation is in the interest of the security holders of such trust, the Commission may file a complaint seeking the liquidation of such trust in the district court of the United States in any district wherein any trustee of such trust resides or has its principal place of business. A copy of such complaint shall be served on every trustee of such trust, and notice of the proceeding shall be given such other interested persons in such manner and at such times as the court may direct. If the court determines that such liquidation is in the interest of the security holders of such trust, the court shall order such liquidation and, after payment of necessary expenses, the distribution

of the proceeds to the security holders of the trust in such manner and on such terms as may to the court appear equitable.

[(e)] *(f)* EXEMPTION.—

(1) * * *

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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 that is advised by, or sold through, a bank shall prominently disclose that an investment in the company is not insured by the Federal Deposit Insurance Corporation or any other government agency. The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the manner in which the disclosure under this paragraph shall be provided.

(3) DEFINITIONS.—The terms "insured depository institution" and "appropriate Federal banking agency" have the same meanings given as in section 3 of the Federal Deposit Insurance Act.

* * * * * * *

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.

* * * * * * *

INVESTMENT ADVISERS ACT OF 1940

TITLE II—INVESTMENT ADVISERS

* * * * * * *

DEFINITIONS

SEC. 202. (a) When used in this title, unless the context otherwise requires, the following definitions shall apply:

(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 section 3 of 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 section 3 of 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 securities 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 bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company, but if, in the*

case of a bank, such services or actions 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.

* * * * * * *

(26) 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 one 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 by the Commission 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.

* * * * * * *

(c) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

* * * * * * *

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, re-

ports, records, or other information to which such agency may have access with respect to the investment advisory activities—

(A) of any—

(i) bank holding company;

(ii) bank; or

(iii) separately identifiable department or division of a bank,

that is registered under section 203 of this title; and

(B) in the case of a bank holding company or bank that has a subsidiary or a separately identifiable department or division registered under that section, of such bank or bank holding company.

(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 bank holding company, bank, or separately identifiable department or division of a bank, which is registered under section 203 of this title.

(b) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to such bank holding company, bank, or department or division under any other 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;

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.

ACT OF MAY 1, 1886

CHAP. 73.—An Act to enable national banking associations to increase their capital stock and to change their names or locations.

* * * * * * *

SEC. 2. (a) * * *

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(d) RETENTION OF "FEDERAL" IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.—

(1) IN GENERAL.—Notwithstanding subsection (a) or any other provision of law, any depository institution the charter of which is converted from that of a Federal savings association to a national bank or a State bank after the date of the enactment of the Financial Services Act of 1999 may retain the term "Federal" in the name of such institution if such depository institution remains an insured depository institution.

(2) DEFINITIONS.—For purposes of this subsection, the terms "depository institution", "insured depository institution", "national bank", and "State bank" have the same meanings as in section 3 of the Federal Deposit Insurance Act.

ADDITIONAL VIEWS

During the consideration of H.R. 10, an amendment was offered to add a new section 351, entitled "Confidentiality of Health and Medical Information." While we support increased protection for medical information, we opposed this provision, because, unfortunately, the provision weakens existing protections for medical confidentiality, and establishes a number of poor precedents for private medical information disclosure.

While the provision at first blush appears to place limits on the disclosure of medical information, the lengthy list of exceptions to these limits leaves the consumer with little, if any protection. In fact, the provision ends up authorizing disclosure of information rather than limiting it.

In medicine, the first principle is "Do no harm." In crafting a Federal medical privacy law, this principle requires that state laws providing a greater level of protection be left in place. Yet section 351 could preempt the laws of 21 states that have enacted medical privacy laws. While we agree that genetic information should also be protected—in fact, should deserve a higher level of protection—this provision could also preempt 36 state laws which protect the confidentiality of genetic information.

The provision also lacks any right for the individual to inspect and correct one's medical records. As a result, an individual has greater rights to inspect and correct credit information than medical records.

There is no requirement that the customer even be told that his medical information is being provided to a third party. Thus there is no way that the customer could prevent the records from being disseminated if the customer believed that statutory rights were being violated.

An individual has no right to seek redress if the rights under this provision are violated. In fact, the customer is unlikely to even know that the rights were violated. The only enforcement authority is given to the states. If the individual is unlikely to have knowledge of the transfer of confidential medical records, it is hard to understand how the state Attorney General would know to bring an action as provided in subsection (b) of the provision. Even if the state brings an action, it can only enjoin further disclosures. The customer has no right to seek damages.

The provision places absolutely no restrictions on the subsequent disclosure of medical records by anyone receiving the records. Once the records are out the door for any of the myriad exceptions in this provision, they are fair game for anyone.

We agree that information should be disclosed only with the consent of the customer, as provided in (a)(1), but this right is rendered meaningless with the extensive laundry list of exceptions

that swallows this simple rule. We shall only discuss a few of these exceptions.

The provision allows financial institutions to provide medical records, including genetic information, for purposes of underwriting. As a result, customers could find themselves being uninsurable, or facing whopping rate increases for health insurance, based upon their genetic information, or health records. In addition, the information may be inaccurate, but the customer cannot correct it.

The provision allows financial institutions to provide medical records for "research projects." This term is undefined, and could include marketing research, or nearly anything else. For example, a customer's prescription drug information could be provided to a drug company doing marketing research on candidates for a new related drug.

Moreover, the provision establishes no research protections for individually identifiable records. The majority of human subject research studies conducted in this country are subject to the Common Rule, a set of requirements for federally-funded research. Analogous requirements apply to clinical trials conducted pursuant to the FDA's product approval procedures. The Common Rule dictates that a study must be approved by an entity that specifically examines whether the potential benefits of the study outweigh the potential intrusion into an individual's private records and whether the study includes strong safeguards to protect the confidentiality of those records. Two weeks ago at a hearing before the Health and Environment Subcommittee, witnesses from the National Breast Cancer Coalition and the National Organization for Rare Disorders testified that these Federal standards should be extended to all research using individually-identifiable medical records. Extending these protections would strengthen confidence in the integrity of the research community and encourage more individuals to participate in studies. Because this provision establishes no protections for individually-identifiable records, it could actually stifle research.

The provision allows the disclosure of confidential medical records "in connection with" a laundry list of transactions, most of which have nothing to do with medical records. The provision does not define who can receive the records, but instead allows disclosure to anyone, so long as it is "in connection with" a transaction. There was no explanation at the markup why medical records should be disclosed in connection with "the transfer of receivables, accounts, or interest therein." There is no definition of "fraud protection" or "risk control" for which the provision also authorizes disclosure. The provision gives carte blanche to financial institutions to disclose confidential medical records for "account administration" or for "reporting, investigating, or preventing fraud." Reporting to whom? An investigation by whom?

While most laws protecting medical records provide for disclosure in compliance with criminal investigations, those laws provide safeguards to permit the individual the opportunity to raise legal issues. This provision does not. In fact, as is the case with all other disclosures in this provision, the consumer would not even be informed that the information has been disclosed. Thus, a customer's

medical records could be disclosed to an opponent in a civil action without the customer even knowing it.

Within hours of passage of this provision, we began learning from patient groups and others who have fought to improve the privacy rights of individuals that this provision is seriously flawed. These concerns demonstrate why Congress needs to deal comprehensively with the issue of medical confidentiality, not in a slapdash amendment that has received no scrutiny. The Health and Environment Subcommittee of the Commerce Committee has already held a hearing on medical privacy, and a Senate committee has held multiple hearings on the subject. We look forward to enacting real medical information privacy provisions that will truly protect individuals. Unfortunately, this premature move by the Committee will actually set back the health and medical information privacy rights of all Americans.

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