

104TH CONGRESS
1ST SESSION

S. 337

To enhance competition in the financial services sector, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2 (legislative day, JANUARY 30), 1995

Mr. D'AMATO introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To enhance competition in the financial services sector, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Depository Institution Affiliation Act”.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.

TITLE I—CREATION AND CONTROL OF FINANCIAL SERVICES HOLDING COMPANIES

Sec. 101. Definitions.

- Sec. 102. Amendments to the Bank Holding Company Act of 1956.
- Sec. 103. Amendments to the Federal Reserve Act.
- Sec. 104. Amendments to the Banking Act of 1933.
- Sec. 105. Amendments to the Federal Deposit Insurance Act.
- Sec. 106. Amendments to the Securities Exchange Act of 1934.
- Sec. 107. Amendment to the Home Owners' Loan Act.
- Sec. 108. Amendments to the Community Reinvestment Act.

TITLE II—SUPERVISORY IMPROVEMENTS

- Sec. 201. National Financial Services Committee.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—The Congress finds that—

3 (1) current laws and regulations restrain effi-
 4 ciency, competition, and innovation in the design
 5 and delivery of financial services to the disadvantage
 6 of consumers;

7 (2) restrictions on ownership of depository insti-
 8 tutions and affiliations with other business organiza-
 9 tions interfere with their ability to attract and retain
 10 capital and managerial resources;

11 (3) the vulnerability of the financial system and
 12 its discrete components is increased and effective
 13 monitoring, supervision, and coordination of actions
 14 during periods of stress is impeded by fragmented
 15 and disparate regulation; and

16 (4) current laws inhibit the ability of domestic
 17 financial markets and intermediaries to respond to
 18 the serious competitive challenges presented by for-
 19 eign intermediaries and the globalization of markets.

1 (b) PURPOSES.—The purposes of this Act are to pro-
2 mote the safety and soundness of the Nation’s financial
3 system, enhance the quality of regulation and supervision
4 of financial intermediaries, and achieve a more efficient
5 market and effective regulatory structure by—

6 (1) establishing an alternative and comprehen-
7 sive legislative framework for the creation and regu-
8 lation of financial services holding companies;

9 (2) increasing the capital adequacy of commer-
10 cial banks, brokers and dealers, and savings and
11 loan associations and other financial companies by
12 eliminating restrictions on common ownership and
13 affiliation within a financial services holding com-
14 pany;

15 (3) permitting affiliates to engage in any activ-
16 ity subject to functional and equal regulation by the
17 appropriate Federal or State regulator;

18 (4) insulating and protecting insured depository
19 institutions through higher capital requirements, ex-
20 panded restrictions on relationships with affiliates,
21 broader examination and enforcement authority and
22 increased civil and criminal penalties;

23 (5) permitting the efficient marketing and dis-
24 tribution of financial services to consumers subject

1 to safeguards against coercive tie-ins and other un-
2 fair and abusive practices; and

3 (6) establishing the National Financial Services
4 Committee to oversee the evolution and supervision
5 of the financial services industry and to report to the
6 Congress.

7 **TITLE I—CREATION AND CON-**
8 **TROL OF FINANCIAL SERV-**
9 **ICES HOLDING COMPANIES**

10 **SEC. 101. DEFINITIONS.**

11 (a) DEFINITIONS.—For purposes of this Act—

12 (1) the term “financial services holding com-
13 pany” means a company that—

14 (A) has filed with the National Financial
15 Services Committee, established under section
16 201, a notice stating such company’s intent to
17 comply with the requirements of this Act and
18 has not withdrawn such notice; and

19 (B) controls an insured depository institu-
20 tion, or either—

21 (i) has, within the preceding 12
22 months, filed a notice under subsection (b)
23 to acquire control of an insured depository
24 institution, a bank holding company, a sav-
25 ings and loan holding company, or a finan-

1 cial services holding company, which notice
2 has not been disapproved; or

3 (ii) controls a depository institution
4 which has, within the preceding 12
5 months, filed an application for deposit in-
6 surance under section 5 of the Federal De-
7 posit Insurance Act which has not been
8 disapproved,

9 except that the filing of the notice described in
10 subparagraph (A) by a bank holding company
11 that does not control any bank, as defined in
12 section 2(c) of the Bank Holding Company Act
13 of 1956, that is not an insured depository insti-
14 tution, other than a bank that has filed an ap-
15 plication for deposit insurance under section 5
16 of the Federal Deposit Insurance Act, that has
17 not been disapproved, shall result in immediate
18 termination of the status of such company as a
19 bank holding company, and the filing of the no-
20 tice described in subparagraph (A) by a savings
21 and loan holding company shall result in the
22 immediate termination of the status of such
23 company as a savings and loan holding com-
24 pany, except that, upon denial of any such ap-
25 plication for deposit insurance filed by a bank

1 that is controlled by a company, the status of
2 which as a bank holding company is terminated
3 under this subparagraph, such company shall
4 resume its status as a bank holding company;

5 (2) the term “bank holding company” has the
6 same meaning as in section 2(a) of the Bank Hold-
7 ing Company Act of 1956;

8 (3) the term “savings and loan holding com-
9 pany” has the same meaning as in section 10(a) of
10 the Home Owners’ Loan Act;

11 (4) except as provided in subsection (f)(5), the
12 term “affiliate” of a company means any other com-
13 pany which controls, is controlled by, or is under
14 common control with such company;

15 (5) the term “appropriate Federal banking
16 agency” has the same meaning as in section 3 of the
17 Federal Deposit Insurance Act;

18 (6) the terms “depository institution” and “in-
19 sured depository institution” have the same mean-
20 ings as in section 3 of the Federal Deposit Insur-
21 ance Act;

22 (7) the term “State” has the same meaning as
23 in section 3 of the Federal Deposit Insurance Act;

24 (8) the term “company” means any corpora-
25 tion, partnership, business trust, association, or

1 similar organization, or any other trust unless by its
2 terms it must terminate within 25 years or not later
3 than 21 years and 10 months after the death of in-
4 dividuals living on the effective date of the trust, but
5 shall not include any corporation the majority of the
6 shares of which are owned by the United States or
7 by any State;

8 (9) the term “control” means the power, di-
9 rectly or indirectly, to direct the management or
10 policies of a company, or to vote 25 percent or more
11 of any class of voting securities of a company, except
12 that—

13 (A) no company shall be deemed to control
14 or to have acquired control of any other com-
15 pany by virtue of its ownership of the voting se-
16 curities of such other company—

17 (i) acquired or held in an agency,
18 trust, or other fiduciary capacity;

19 (ii) acquired or held in connection
20 with or incidental to—

21 (I) the underwriting of securities
22 if such securities are held only for
23 such period of time as will permit the
24 sale thereof on a reasonable basis; or

1 (II) market making, dealing,
2 trading, brokerage, or other securities-
3 related activities, and not with a view
4 to acquiring, exercising, or transfer-
5 ring any control over the management
6 or policies of such company; or

7 (iii) acquired in securing or collecting
8 a debt previously contracted in good faith,
9 until 2 years after the date of acquisition
10 or for such additional period of time as the
11 appropriate Federal banking agency may
12 permit; and

13 (B) no company formed for the sole pur-
14 pose of participating in a proxy solicitation is in
15 control of a company by virtue of its acquisition
16 of voting rights with respect to shares of such
17 company acquired in the course of such solici-
18 tation;

19 (10) the term “adequately capitalized”, with re-
20 spect to an insured depository institution, has the
21 same meaning as in section 38(b)(1) of the Federal
22 Deposit Insurance Act;

23 (11) the term “well capitalized” has the same
24 meaning as in section 38(b)(1) of the Federal De-
25 posit Insurance Act;

1 (12) the term “minimum required capital”,
2 with respect to an insured depository institution,
3 means the amount of capital that is required for the
4 institution to be adequately capitalized; and

5 (13) the term “domestic branch” has the same
6 meaning as in section 3(o) of the Federal Deposit
7 Insurance Act.

8 (b) CHANGES IN CONTROL OF INSURED BANKS AND
9 INSURED INSTITUTIONS.—No financial services holding
10 company acting directly or indirectly, or through or in con-
11 cert with one or more other persons, shall acquire control
12 of an insured depository institution, a bank holding com-
13 pany, a savings and loan holding company, or a financial
14 services holding company not controlled by such company
15 on the date it became a financial services holding com-
16 pany, if such acquisition and control occurs through a pur-
17 chase, assignment, transfer, pledge, or other disposition
18 of voting stock of such insured depository institution, bank
19 holding company, savings and loan holding company, or
20 financial services holding company, unless the financial
21 services holding company has complied with the require-
22 ments of section 7(j) of the Federal Deposit Insurance
23 Act. Any failure to comply with the preceding require-
24 ments shall subject the relevant financial services holding
25 company to the penalties and other procedures provided

1 in subsections (i) through (m) of this section, in addition
2 to otherwise applicable penalties.

3 (c) AFFILIATE TRANSACTIONS.—

4 (1) IN GENERAL.—The appropriate Federal
5 banking agency may—

6 (A) upon a finding of probable harm that
7 cannot adequately be prevented by less burden-
8 some rules and regulations, adopt such rules
9 and regulations, consistent with the purposes of
10 this Act, as may be necessary in order to pre-
11 vent an insured depository institution that is
12 controlled by a financial services holding com-
13 pany from engaging in unsafe or unsound prac-
14 tices that involve the financial services holding
15 company or any of its affiliates including, with-
16 out limitation, unsafe or unsound practices that
17 involve covered transactions, as defined in sec-
18 tion 23A of the Federal Reserve Act, and any
19 transactions described in section 23B(a)(2) of
20 the Federal Reserve Act; and

21 (B) by rule, regulation or order, exempt
22 any insured depository institution that is con-
23 trolled by a financial services holding company
24 or class of such banks or institutions, or any
25 transaction or class of transactions, from any

1 requirement under subparagraph (A), or under
2 section 23A or 23B of the Federal Reserve Act,
3 notwithstanding the provisions of any other law,
4 rule, regulation or order, if the appropriate
5 Federal banking agency deems such an exemp-
6 tion to be reasonable and not inconsistent with
7 the purposes of this Act and in the public inter-
8 est.

9 (2) REGULATORY ACTIVITY.—Any rule or regu-
10 lation adopted pursuant to paragraph (1)(A) shall be
11 adopted in accordance with section 553 of title 5,
12 United States Code, except that the appropriate
13 Federal banking agency shall give interested persons
14 an opportunity for oral presentations of data, views,
15 and arguments, in addition to written submissions.

16 (3) APPLICATION TO PRIOR APPROVED TRANS-
17 ACTIONS.—Any transaction that was approved by a
18 Federal regulatory agency before the date of enact-
19 ment of this Act shall be exempt from any rules or
20 regulations adopted pursuant to paragraph (1)(A).

21 (4) FEDERAL RESERVE ACT TREATMENT.—
22 Subject to paragraph (1)(B), the provisions of sec-
23 tions 23A and 23B of the Federal Reserve Act shall
24 be applicable to every insured depository institution
25 controlled by a financial services holding company in

1 the same manner and to the extent as if such in-
2 sured depository institution were a member bank;
3 and for this purpose, any company which would be
4 an affiliate of an insured depository institution for
5 purposes of such sections 23A and 23B if such in-
6 sured depository institution were a member bank
7 shall be deemed to be an affiliate of such insured de-
8 pository institution.

9 (5) LIMITATIONS.—No insured depository insti-
10 tution that is an affiliate of a financial services hold-
11 ing company shall, directly or indirectly—

12 (A) extend credit in any manner to a secu-
13 rities affiliate or a subsidiary thereof;

14 (B) purchase for its own account assets of
15 a securities affiliate or a subsidiary thereof;

16 (C) issue a guarantee, acceptance, or letter
17 of credit, including an endorsement or standby
18 letter of credit, for the benefit of a securities af-
19 filiate or a subsidiary thereof; or

20 (D) extend credit in any manner to any in-
21 vestment company advised by or the shares of
22 which are distributed by a securities affiliate.

23 (6) EXCEPTION.—Subparagraphs (A) and (B)
24 of paragraph (5) do not apply to any extension of
25 credit by an insured depository institution made to

1 acquire or sell any securities of the United States
2 if—

3 (A) the extension of credit is to be repaid
4 on the same calendar day;

5 (B) the extension of credit is incidental to
6 the clearing of transactions in those securities
7 through that insured depository institution; and

8 (C) both the principal of and the interest
9 on the extension of credit are fully secured by
10 securities of the United States.

11 (7) LIMITATION ON CERTAIN MARKETABILITY
12 ACTIVITIES.—No insured depository institution that
13 is an affiliate of a financial services holding company
14 shall directly or indirectly extend credit, or issue or
15 enter into a standby letter of credit, asset purchase
16 agreement, indemnity, guarantee, insurance, or
17 other facility, for the purpose of enhancing the mar-
18 ketability of a securities issue underwritten or dis-
19 tributed by a securities affiliate.

20 (8) ACTIVITIES DURING SECURITIES DISTRIBUTION.—No insured depository institution that is an
21 affiliate of a financial services holding company shall
22 knowingly extend or arrange for the extension of
23 credit, directly or indirectly, secured by or for the
24 purpose of purchasing any security while, or for 30
25

1 days after, that security is the subject of a distribu-
2 tion in which a securities affiliate of that insured de-
3 pository institution participates as an underwriter or
4 a member of a selling group.

5 (9) EXTENSIONS OF CREDIT FOR PAYMENT OF
6 DIVIDENDS.—No depository institution that is an af-
7 filiate of a financial services holding company shall,
8 directly or indirectly, extend credit to an issuer of
9 securities underwritten by a securities affiliate for
10 the purpose of paying the principal of those securi-
11 ties or interest for dividends on those securities.

12 (10) “SECURITIES AFFILIATE” DEFINED.—For
13 purposes of paragraphs (5) through (9), the term
14 “securities affiliate” means a company that engages
15 in underwriting, distributing, or dealing in securities
16 of any type, except that such term shall not include
17 insurance products deemed to be securities, includ-
18 ing and without limitation variable annuities and
19 variable life insurance.

20 (d) CAPITALIZATION.—

21 (1) IN GENERAL.—Each insured depository in-
22 stitution that is controlled by a financial services
23 holding company shall be well capitalized.

24 (2) ACTIONS BY FEDERAL REGULATORS.—In
25 the event of a finding by the appropriate Federal

1 banking agency that an insured depository institu-
2 tion controlled by a financial services holding com-
3 pany is not well capitalized, the financial services
4 holding company shall—

5 (A) execute an agreement with the appro-
6 priate Federal banking agency within 30 days
7 to return the insured depository institution
8 within a reasonable period of time to being well
9 capitalized; or

10 (B) divest control of the insured bank or
11 insured institution in an orderly manner within
12 180 days, or such additional period of time as
13 the appropriate Federal banking agency may
14 determine is reasonably required in order to ef-
15 fect such divestiture.

16 (3) CAPITAL OF HOLDING COMPANY.—The ap-
17 propriate Federal banking agency may not impose
18 by regulation, order, agreement, or any other means,
19 any requirement pertaining to the capital of a finan-
20 cial services holding company.

21 (e) INTERSTATE ACQUISITIONS AND ACTIVITIES OF
22 INSURED DEPOSITORY INSTITUTIONS.—

23 (1) INSURED BANKS.—No financial services
24 holding company may acquire control of an addi-
25 tional insured bank (as such term is defined in sec-

1 tion 2(c) of the Bank Holding Company Act of
2 1956) if the acquisition could not be approved by the
3 Board of Governors of the Federal Reserve System
4 under section 3(d)(1)(B), 3(d)(1)(C), 3(d)(1)(D),
5 3(d)(2), 3(d)(3), 3(d)(4) or 3(d)(5) of the Bank
6 Holding Company Act of 1956, were such acqui-
7 sition made by a bank holding company, except as
8 otherwise authorized pursuant to section 13(f) of the
9 Federal Deposit Insurance Act.

10 (2) TREATMENT OF FINANCIAL SERVICES
11 HOLDING COMPANIES AND SUBSIDIARIES.—A finan-
12 cial services holding company shall be treated as a
13 bank holding company, and any insured depository
14 institution affiliate of a financial services holding
15 company shall be treated as a bank subsidiary for
16 purposes of section 18(r) of the Federal Deposit In-
17 surance Act.

18 (3) SAVINGS ASSOCIATIONS.—No financial serv-
19 ices holding company may acquire control of an ad-
20 ditional savings association if the acquisition would
21 be in violation of section 10(e)(3) of the Home Own-
22 ers' Loan Act, were such acquisition made by a sav-
23 ings and loan holding company, except as otherwise
24 authorized pursuant to section 13(k) of the Federal
25 Deposit Insurance Act.

1 (f) DIFFERENTIAL TREATMENT PROHIBITION; LAWS
2 INCONSISTENT WITH THIS ACT.—

3 (1) IN GENERAL.—Notwithstanding any other
4 Federal law, no State, and no Federal or State regu-
5 latory agency, including the appropriate Federal
6 banking agency, may act by law, rule, regulation,
7 order, or otherwise if the effect of such action would
8 be to differentiate insured depository institutions
9 controlled by financial services holding companies
10 from any other insured depository institutions in a
11 manner adverse to insured depository institutions
12 controlled by financial services holding companies, or
13 to differentiate financial services holding companies
14 or their affiliates from bank holding companies or
15 savings and loan holding companies and their affili-
16 ates in a manner adverse to financial services hold-
17 ing companies or their affiliates, except to the extent
18 that the appropriate Federal banking agency may
19 act to implement this Act as authorized herein.

20 (2) APPLICATION OF STATE LAWS.—

21 (A) FINDINGS.—The Congress finds
22 that—

23 (i) certain State laws and regulations
24 have the purpose or effect of preventing in-
25 sured depository institutions from being or

1 becoming affiliated with, companies or per-
2 sons engaged in nonbanking activities;

3 (ii) such laws restrain legitimate com-
4 petition in interstate commerce and deny
5 consumers freedom of choice in selecting
6 financial services;

7 (iii) such restrictions also threaten the
8 long-term safety and soundness of insured
9 depository institutions by denying them ac-
10 cess to capital;

11 (iv) given the preponderant Federal
12 interest in ensuring competition in national
13 markets for financial services and in ensur-
14 ing the safety and soundness of the feder-
15 ally insured banking and thrift industries,
16 it is necessary to preempt such anti-
17 competitive State laws and regulations to
18 the extent necessary to permit the forma-
19 tion and efficient operation of financial
20 services holding companies;

21 (v) there is, however, a legitimate and
22 traditional State interest in ensuring that
23 State banks and other companies are oper-
24 ated in a safe and sound manner to serve

1 the interests of the public and consumers;
2 and

3 (vi) the preemption provided in sub-
4 paragraph (B) is not intended to preempt
5 State laws that concern the regulation, su-
6 pervision, and examination of State char-
7 tered entities, and that are not inconsistent
8 with the purposes of this Act.

9 (B) PREEMPTION.—Any provision of Fed-
10 eral or State law, rule, regulation, or order that
11 is expressed or implied inconsistent with the
12 provisions and purposes of this section is hereby
13 preempted, including, without limitation, State
14 banking, savings and loan, insurance, real es-
15 tate, securities, finance company, retail, or
16 other laws which have the purpose or effect
17 of—

18 (i) preventing or impeding insured de-
19 pository institutions or affiliates, agents,
20 principals, brokers, directors, officers, em-
21 ployees, or other representatives of such
22 institutions or affiliates thereof from being
23 owned or controlled by or from being affili-
24 ated in any way with a financial services
25 holding company or any affiliate thereof as

1 a result of the types of nonbanking activi-
2 ties engaged in directly or indirectly by
3 such company or any affiliate thereof or by
4 any agent, principal, solicitor, broker, di-
5 rector, officer, employee, or other rep-
6 resentative of such company or affiliate
7 thereof; or

8 (ii) preventing insured banks or in-
9 sured institutions or affiliates, agents,
10 principals, brokers, directors, officers, em-
11 ployees, or other representatives of such
12 institutions or affiliates thereof from offer-
13 ing or marketing products or services of
14 their affiliated financial services holding
15 company or any affiliate thereof or from
16 having their products or services offered or
17 marketed by their affiliated financial serv-
18 ices holding company or any affiliate there-
19 of, or by any agent, principal, broker, di-
20 rector, officer, employee, or other rep-
21 resentative of such company or affiliate
22 thereof.

23 (3) LAWS AFFECTING COURT ACTIONS.—

24 (A) IN GENERAL.—No State or State regu-
25 latory agency may act by law, rule, regulation,

1 or order if the effect of such action would be to
2 impede or prevent an insured bank or insured
3 institution that is located in another State from
4 qualifying to maintain or defend in court any
5 action which could be maintained or defended
6 under similar circumstances by a company that
7 is located in such other State and that is not
8 an insured depository institution, if the insured
9 depository institution does not establish or op-
10 erate in that State a “domestic branch”.

11 (B) EXCEPTION.—Where the maintenance
12 or defense of a court action referred to in sub-
13 paragraph (A) by a company that is located in
14 such other State and that is not an insured de-
15 pository institution is subject to certain condi-
16 tions, the maintenance or defense of such an
17 action by an insured depository institution lo-
18 cated in such other State may be subject to
19 those same conditions, if such conditions are
20 applied in a nondiscriminatory manner to fulfill
21 legitimate State objectives and do not have the
22 effect, directly or indirectly, of denying insured
23 depository institutions located in other States
24 the opportunity to maintain or defend such ac-
25 tions.

1 (4) OTHER RESTRICTIONS.—Except for licens-
2 ing, marketing, compensation, employment, or other
3 requirements applied in a nondiscriminatory manner
4 to fulfill legitimate State regulatory objectives which
5 are not inconsistent with the purposes of this Act,
6 no State may, through legislative, administrative, ex-
7 ecutive, or judicial action, impede or prevent a finan-
8 cial services holding company or affiliate thereof
9 from utilizing or compensating any agent (including
10 an affiliated insured depository institution acting in
11 accordance with section 18(r) of the Federal Deposit
12 Insurance Act), solicitor, broker, employee, or other
13 person located in that State and representing in any
14 lawful capacity any insured depository institution or
15 any such financial services holding company or such
16 affiliate thereof, if, where any such person is being
17 utilized or compensated for the performance of ac-
18 tivities on behalf of an insured depository institu-
19 tion, such activities do not result in the establish-
20 ment or operation by the insured depository institu-
21 tion of a domestic branch at any location other than
22 the main or branch offices of such depository insti-
23 tution.

24 (5) DEFINITIONS.—As used in paragraphs (2)
25 through (4) only—

1 (A) the term “affiliate” means a person
2 that directly or indirectly controls or is con-
3 trolled by, or is under common control with the
4 person specified; and

5 (B) the term “control”, including the
6 terms “controlled by” and “under common con-
7 trol with”, means the power, directly or indi-
8 rectly, to direct the management or policies of
9 a person and shall be presumed to exist if any
10 person, directly or indirectly, owns, controls, or
11 holds with power to vote 10 percent or more of
12 the voting securities of any other person.

13 (g) SECURITIES, INSURANCE, AND REAL ESTATE AC-
14 TIVITIES OF INSURED BANKS AND INSURED INSTITU-
15 TIONS.—

16 (1) IN GENERAL.—No insured depository insti-
17 tution that is an affiliate of a financial services hold-
18 ing company shall directly engage in—

19 (A) dealing in or underwriting securities,
20 or purchasing or selling securities as agent, ex-
21 cept to the extent that such activities are per-
22 formed only with regard to obligations of the
23 United States or would be authorized for a na-
24 tional bank under the first section of the Act of
25 September 28, 1962 (12 U.S.C. 92a);

1 (B) insurance underwriting; or

2 (C) real estate investment or development,
3 except to the extent that such activities are per-
4 formed in relation to the premises of the in-
5 sured depository institution or in connection
6 with securing or collecting a debt previously
7 contracted in good faith, or would be authorized
8 for a national bank under the first section of
9 the Act of September 28, 1962 (12 U.S.C.
10 92a).

11 (2) CONSTRUCTION.—Nothing contained in this
12 subsection shall be construed to prohibit or im-
13 pede—

14 (A) a financial services holding company or
15 any affiliate of a financial services holding com-
16 pany other than an insured depository institu-
17 tion from engaging in any of the activities set
18 forth in paragraph (1); or

19 (B) any employee of an insured depository
20 institution that is an affiliate of a financial
21 services holding company from promoting or
22 advertising products or services of an affiliate
23 of such insured depository institution that en-
24 gages in any of such activities.

1 (3) INSURANCE AND REAL ESTATE ACTIVI-
2 TIES.—No bank holding company which becomes a
3 financial services holding company and no financial
4 services holding company which did not at any time
5 prior to becoming such a holding company may, di-
6 rectly or indirectly, engage in insurance agency or
7 real estate brokerage activities shall commence any
8 insurance agency or real estate brokerage activities
9 not permissible for bank holding companies under
10 section 4(c)(8) of the Bank Holding Company Act of
11 1956, unless such activities are conducted through
12 an existing insurance agency or real estate broker-
13 age firm, as the case may be, acquired directly or in-
14 directly by such financial services holding company
15 or through any successor to such insurance agency
16 or real estate brokerage, and unless such acquired
17 insurance agency or real estate brokerage firm shall
18 have been actively engaged in such insurance or real
19 estate agency activities during the 2-year period pre-
20 ceding the date of enactment of this Act.

21 (4) EXISTING CONTRACTS.—Nothing in this
22 subsection shall require the breach of any contract
23 entered into before the date of enactment of this
24 Act.

25 (h) TYING AND INSIDER LENDING PROVISIONS.—

1 (1) IN GENERAL.—A financial services holding
2 company shall be treated as a bank holding company
3 for purposes of section 106 of the Bank Holding
4 Company Act Amendments of 1970 and section
5 22(h) of the Federal Reserve Act and any regulation
6 prescribed under any such section.

7 (2) TREATMENT UNDER BANK HOLDING COM-
8 PANY ACT.—A financial services holding company
9 and any of such company's other affiliates shall be
10 subject to section 106 of the Bank Holding Com-
11 pany Act Amendments of 1970, in connection with
12 any transaction involving the products or services of
13 such company or affiliate and those of an insured
14 depository institution affiliate, as if such company or
15 any such company's other affiliates were an insured
16 depository institution and such insured depository
17 institution were a subsidiary of a bank holding com-
18 pany.

19 (3) REGULATORY AUTHORITY.—For purposes
20 of this subsection, the appropriate Federal banking
21 agency shall exercise the authority provided to the
22 Board of Governors of the Federal Reserve System
23 under section 106 of the Bank Holding Company
24 Act Amendments of 1970 and section 22(h) of the
25 Federal Reserve Act.

1 (i) EXAMINATION AND ENFORCEMENT.—

2 (1) APPROPRIATE FEDERAL BANKING AGENCY
3 ACTIONS.—The appropriate Federal banking agency
4 shall enforce the provisions of this section and any
5 regulations adopted under the authority conferred in
6 this section by using its examination and supervisory
7 powers to ensure that each insured depository insti-
8 tution under its supervision is in compliance with
9 the limitations of this section.

10 (2) NO EXTENSION OF INSURANCE COV-
11 ERAGE.—In no instance shall the benefits of Federal
12 deposit insurance coverage applicable to an insured
13 depository institution that is controlled by a finan-
14 cial services holding company be extended to either
15 such financial services holding company or to any
16 other company controlled by such financial services
17 holding company that is not an insured depository
18 institution.

19 (3) AGENCY REVIEW OF RECORDS.—The appro-
20 priate Federal banking agency may examine the
21 books, records and affairs of, or require reports
22 from, any affiliate of an insured depository institu-
23 tion controlled by a financial services holding com-
24 pany in order to ensure compliance with the limita-
25 tions of this section.

1 (4) ENFORCEMENT OF VIOLATIONS.—Whenever
2 it appears to the appropriate Federal banking agen-
3 cy that any financial services holding company is
4 violating, has violated, or is about to violate any pro-
5 vision of this section or any regulation prescribed
6 under this section, such agency may, in its discre-
7 tion, apply to the appropriate district court of the
8 United States or the United States court of any ter-
9 ritory for—

10 (A) a temporary or permanent injunction
11 or restraining order enjoining such financial
12 services holding company from violating this
13 section or any regulation prescribed under this
14 section; or

15 (B) such other equitable relief, including
16 divestiture, as may be necessary to prevent such
17 violation.

18 (5) COURT JURISDICTION.—The district courts
19 of the United States and the United States court in
20 any territory shall have jurisdiction and power to
21 issue any injunction or restraining order or grant
22 any other relief described in paragraph (3). When
23 appropriate, any injunction, order, or other equitable
24 relief granted under this subparagraph shall be
25 granted without requiring the posting of any bond.

1 (6) NOTICE OF VIOLATIONS.—Whenever it ap-
2 pears to a Federal or State official or agency with
3 supervisory or examination authority over any affili-
4 ate of a financial services holding company that such
5 affiliate or such financial services holding company
6 is violating, has violated, or is about to violate any
7 provision of this section or any regulation prescribed
8 under this section, such official or agency shall
9 promptly notify the appropriate Federal regulatory
10 authority in order that the appropriate Federal reg-
11 ulatory authority in consultation with the notifying
12 agency may determine whether action under this
13 subsection is appropriate.

14 (j) DIVESTITURE.—

15 (1) IN GENERAL.—In addition to all of its other
16 regulatory and supervisory powers, if the appro-
17 priate Federal banking agency determines that an
18 insured depository institution under its supervision
19 has engaged in a continuing course of conduct in-
20 volving its financial services holding company or any
21 affiliate of such holding company which has had, or
22 has a significant probability of having, the effect of
23 causing such insured depository institution to be in
24 an unsafe or unsound condition, it may make an ini-
25 tial finding that the financial services holding com-

1 pany should be required to terminate its control of
2 the insured depository institution. If the appropriate
3 Federal banking agency makes such an initial find-
4 ing, it shall within 3 days so notify the financial
5 services holding company controlling the insured de-
6 pository institution and the National Financial Serv-
7 ices Committee. Such notice shall provide a state-
8 ment for the basis of the appropriate Federal bank-
9 ing agency's action.

10 (2) HEARING PROCEDURES.—Not later than 30
11 days after receipt of the notice described in para-
12 graph (1), the financial services holding company re-
13 ceiving such notice may request an agency hearing
14 before the appropriate Federal banking agency. In
15 such hearing, all issues shall be determined pursuant
16 to section 554 of title 5, United States Code. The
17 length of the hearing shall be determined by the ap-
18 propriate Federal banking agency, and such hearing
19 may be before a hearing examiner appointed by such
20 agency. At the conclusion thereof, the appropriate
21 Federal banking agency shall issue a final order, on
22 the basis of the record made at such hearing, affirm-
23 ing or reversing the initial finding of the appropriate
24 Federal banking agency. A company that fails to re-
25 quest an agency hearing under this paragraph shall

1 be deemed to have consented to the issuance of a
2 final order affirming the initial finding without the
3 necessity of the hearing provided for in this para-
4 graph.

5 (3) TERMINATION OF CONTROL.—If such final
6 order affirms the initial finding, the financial serv-
7 ices holding company shall, upon completion of the
8 judicial review, if any, of the appropriate Federal
9 banking agency's final order as provided for in sub-
10 section (m), terminate its control of the insured de-
11 pository institution involved within 1 year.

12 (k) CRIMINAL PENALTIES.—

13 (1) WILLFUL VIOLATIONS.—Any company or
14 insured depository institution which knowingly and
15 willfully violates or knowingly and willfully partici-
16 pates in a violation of any provision of this section,
17 or any rule, regulation, or order issued by an appro-
18 priate Federal banking agency pursuant thereto,
19 shall, upon conviction, be fined for each violation not
20 more than the greater of \$250,000 or an amount
21 equal to $\frac{1}{100}$ of 1 percent of the minimum required
22 capital of the relevant insured depository institution
23 for each day during which the violation continues,
24 except that in no case shall any such amount for any
25 violation or related series of violations exceed 1 per-

1 cent of the minimum required capital of the relevant
2 insured depository institution.

3 (2) ENFORCEMENT AGAINST INDIVIDUALS.—

4 Any officer, director, employee, or agent of any com-
5 pany, insured depository institution, and any other
6 natural person who knowingly and willfully partici-
7 pates in a violation of any provision of this section
8 or any rule, regulation, or order issued pursuant
9 thereto, shall upon conviction be imprisoned not less
10 than 5 years and fined for each violation not more
11 than the greater of \$250,000 or double the individ-
12 ual's annual compensation at the time the violation
13 occurred.

14 (3) ENFORCEABILITY AGAINST OFFICERS AND

15 EMPLOYEES.—Every officer, director, employee, and
16 agent of a financial services holding company or in-
17 sured depository institution also shall be subject to
18 the same penalties for false entries in any book, re-
19 port, or statement of such company or insured de-
20 pository institution as are applicable to officers, di-
21 rectors, employees, and agents of member banks for
22 false entries in any books, reports, or statements of
23 member banks under section 1005 of title 18, Unit-
24 ed States Code.

1 (4) ENFORCEABILITY AGAINST HOLDING COM-
2 PANIES.—A financial services holding company and
3 its affiliates shall be subject to the provisions of title
4 18, United States Code, to the same extent as a reg-
5 istered bank holding company or savings and loan
6 holding company or any affiliate of such a company.

7 (l) CIVIL ENFORCEMENT, CEASE-AND-DESIST OR-
8 DERS, CIVIL MONEY PENALTIES, REMOVAL, AND PROHI-
9 BITION AUTHORITY.—Subsections (b) through (s) and
10 subsection (u) of section 8 of the Federal Deposit Insur-
11 ance Act shall apply to any financial services holding com-
12 pany in the same manner as they apply to an insured de-
13 pository institution. Nothing in subsection (b) or (c) of
14 that section 8 shall authorize any Federal banking agency,
15 other than the appropriate Federal banking agency, to
16 issue a notice of charges or cease-and-desist order against
17 a financial services holding company.

18 (m) CIVIL MONEY PENALTIES.—

19 (1) IN GENERAL.—The appropriate Federal
20 banking agency shall have authority to assess such
21 a civil money penalty, after giving notice and an op-
22 portunity to the company or insured depository insti-
23 tution, officer, director, employee, agent, or other
24 natural person to submit data, views, and argu-
25 ments, and after giving due consideration to the ap-

1 appropriateness of the penalty with respect to the size
2 of financial resources and good faith of the com-
3 pany, insured depository institution, or natural per-
4 son charged, the gravity of the violation, the history
5 of previous violations, and any data, views, and ar-
6 guments submitted.

7 (2) COLLECTION OF PENALTIES.—The appro-
8 priate Federal banking agency may, in its discretion,
9 compromise, modify, or remit any civil money pen-
10 alty which is subject to imposition or has been im-
11 posed. The appropriate Federal banking agency may
12 collect such civil money penalty by agreement with
13 the company, insured bank or insured institution, or
14 person, or by bringing an action in the appropriate
15 United States district court, except that in any such
16 action, the company, insured depository institution
17 or person against whom the penalty has been as-
18 sessed shall have a right to trial de novo.

19 (n) JUDICIAL REVIEW.—Any party aggrieved by an
20 appropriate Federal banking agency's findings or other ac-
21 tions under this Act may obtain review by the United
22 States court of appeals of the circuit wherein such party
23 has its principal place of business or the United States
24 Court of Appeals for the District of Columbia Circuit, by
25 filing a Notice of Appeal in such court within 30 days from

1 the date of such action, and simultaneously sending a copy
 2 of such notice by registered or certified mail to the appro-
 3 priate Federal banking agency. The appropriate Federal
 4 banking agency shall promptly certify and file in such
 5 court the record upon which such action or finding was
 6 based. The actions or findings of the appropriate Federal
 7 banking agency shall be set aside if not supported by sub-
 8 stantial evidence or if found to violate procedures estab-
 9 lished by this Act. An initial finding by the appropriate
 10 Federal banking agency under subsection (j) shall be sub-
 11 ject to judicial review only in the context of review of a
 12 final order under paragraph (2) of subsection (j).

13 **SEC. 102. AMENDMENTS TO THE BANK HOLDING COMPANY**
 14 **ACT OF 1956.**

15 Section 2(c)(2) of the Bank Holding Company Act
 16 of 1956 (12 U.S.C. 1841(c)(2)) is amended by adding at
 17 the end the following new subparagraph:

18 “(K) An insured bank, as defined in sec-
 19 tion 3 of the Federal Deposit Insurance Act,
 20 that is controlled by no company other than a
 21 financial services holding company, as defined
 22 in section 101 of the Depository Institution Af-
 23 filiation Act.”.

1 **SEC. 103. AMENDMENTS TO THE FEDERAL RESERVE ACT.**

2 Section 23A(a)(2) of the Federal Reserve Act (12
3 U.S.C. 371c(a)(2)) is amended by adding at the end the
4 following: “Notwithstanding the foregoing, a loan or ex-
5 tension of credit shall not be deemed to be made to an
6 affiliate if—

7 “(A) the member bank approves such loan or
8 extension of credit in accordance with substantially
9 the same standards and procedures and on substan-
10 tially the same terms that it applies to similar loans
11 or extensions of credit the proceeds of which are not
12 transferred to or for the benefit of an affiliate; and

13 “(B) such loan or extension of credit is not
14 made for the purposes of evading any of the require-
15 ments of this section.”.

16 **SEC. 104. AMENDMENTS TO THE BANKING ACT OF 1933.**

17 (a) SECTION 20.—Section 20 of the Banking Act of
18 1933 (12 U.S.C. 377) is amended by inserting after the
19 first undesignated paragraph the following:

20 “The provisions of this section shall not apply
21 to the affiliation of any bank that is an affiliate of
22 a financial services holding company as defined in
23 the Depository Institution Affiliation Act with the fi-
24 nancial services holding company or any other affili-
25 ate of the financial services holding company.”.

1 (b) SECTION 32.—Section 32 of the Banking Act of
 2 1933 (12 U.S.C. 78) is amended by adding at the end
 3 the following: “The provisions of this section shall not
 4 apply to relationships involving an affiliate of a financial
 5 services holding company, as defined in section 101 of the
 6 Depository Institution Affiliation Act, and either that fi-
 7 nancial services holding company or any other affiliate of
 8 that financial services holding company.”.

9 **SEC. 105. AMENDMENTS TO THE FEDERAL DEPOSIT INSUR-**
 10 **ANCE ACT.**

11 (a) SECTION 7.—Section 7(j) of the Federal Deposit
 12 Insurance Act (12 U.S.C. 1817(j)) is amended—

13 (1) in paragraph (8), by striking subparagraph
 14 (B) and inserting the following:

15 “(B) the term ‘control’ means the power,
 16 directly or indirectly, to direct the management
 17 or policies of a company, or to vote 25 percent
 18 or more of any class of voting securities of a
 19 company, except that no company shall be
 20 deemed to control or to have acquired control of
 21 any other company by virtue of its ownership of
 22 the voting securities of such other company—

23 “(i) acquired or held in an agency,
 24 trust, or other fiduciary capacity;

1 “(ii) acquired or held in connection
2 with or incidental to—

3 “(I) the underwriting of securi-
4 ties if such securities are held only for
5 such period of time as will permit the
6 sale thereof on a reasonable basis; or

7 “(II) market making, dealing,
8 trading, brokerage, or other securities-
9 related activities and not with a view
10 to acquiring, exercising, or transfer-
11 ring any control over the management
12 or policies of such company; or

13 “(iii) acquired in securing or collect-
14 ing a debt previously contracted in good
15 faith, until 2 years after the date of acqui-
16 sition, except that no company formed for
17 the sole purpose of participating in a proxy
18 solicitation is in control of a company by
19 virtue of its acquisition of voting rights
20 with respect to shares of such company ac-
21 quired in the course of such solicitation.”;

22 and

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

1 “(18) DEFINITION.—For purposes of this sub-
2 section, the term ‘insured depository institution’
3 shall include—

4 “(A) any ‘bank holding company’, as that
5 term is defined in section 2 of the Bank Hold-
6 ing Company Act of 1956, which has control of
7 any insured bank (as defined in that section 2),
8 and the appropriate Federal banking agency in
9 the case of a bank holding company shall be the
10 Board of Governors of the Federal Reserve Sys-
11 tem;

12 “(B) any ‘savings and loan holding com-
13 pany’, as that term is defined in section 10 of
14 the Home Owners’ Loan Act, which has control
15 of any insured savings association (as defined
16 in that section 10), and the appropriate Federal
17 banking agency, in the case of a savings and
18 loan holding company shall be the Office of
19 Thrift Supervision; and

20 “(C) any ‘financial services holding com-
21 pany’, as that term is defined in section
22 101(a)(1) of the Depository Institution Affili-
23 ation Act, which has control of any such in-
24 sured bank, and the appropriate Federal bank-
25 ing agency in the case of a financial services

1 holding company shall be the appropriate Fed-
 2 eral banking agency, as defined in section
 3 101(a)(5) of the Depository Institution Affili-
 4 ation Act, of such insured bank, or each such
 5 agency, if more than one, in the case of a finan-
 6 cial services holding company which has control
 7 of more than one such insured bank.”.

8 (b) SECTION 18.—Section 18(j)(1)(A) of the Federal
 9 Deposit Insurance Act (12 U.S.C. 1828(j)(1)(A)) is
 10 amended by striking “Sections” and inserting “Subject to
 11 section 101(c)(1)(B) of the Depository Institution Affili-
 12 ation Act, sections”.

13 **SEC. 106. AMENDMENTS TO THE SECURITIES EXCHANGE**
 14 **ACT OF 1934.**

15 (a) REGISTRATION OF BROKERS AND DEALERS.—
 16 Section 15 of the Securities Exchange Act of 1934 (15
 17 U.S.C. 78o) is amended by adding at the end the following
 18 new subsection:

19 “(h) ADHERENCE TO OTHER LAWS.—The Commis-
 20 sion shall not grant registration to any broker or dealer
 21 unless such broker or dealer establishes to the satisfaction
 22 of the Commission that all requirements established by the
 23 Depository Institution Affiliation Act in connection with
 24 the activities of such broker or dealer (including any cap-
 25 ital adequacy requirement) have been met.”.

1 (b) REGULATION OF BROKERS AND DEALERS.—Sec-
 2 tion 15(b)(4) of the Securities Exchange Act of 1934 (15
 3 U.S.C. 78o (b)(4)) is amended—

4 (1) in subparagraph (D), by inserting “the De-
 5 pository Institution Affiliation Act,” after “the Com-
 6 modity Exchange Act,”; and

7 (2) in subparagraph (E), by inserting “the De-
 8 pository Institution Affiliation Act,” after “the Com-
 9 modity Exchange Act,”.

10 **SEC. 107. AMENDMENT TO THE HOME OWNERS’ LOAN ACT.**

11 Section 11(a)(1) of the Home Owners’ Loan Act (12
 12 U.S.C. 1468(a)(1)) is amended by striking “Sections” and
 13 inserting “Subject to section 101(c)(1)(B) of the Deposi-
 14 tory Institution Affiliation Act, sections”.

15 **SEC. 108. AMENDMENT TO THE COMMUNITY REINVEST-**
 16 **MENT ACT.**

17 Section 803(3) of the Community Reinvestment Act
 18 of 1977 (12 U.S.C. 2902(3)) is amended—

19 (1) by inserting “or notice, as appropriate”
 20 after “an application”;

21 (2) in subparagraph (E), by striking “or” at
 22 the end;

23 (3) in subparagraph (F), by striking the period
 24 at the end and inserting “; or”; and

1 (4) by adding at the end the following new sub-
 2 paragraph:

3 “(G) the acquisition of an insured deposi-
 4 tory institution requiring prior notice under sec-
 5 tion 101(b) of the Depository Institution Affili-
 6 ation Act.”.

7 **TITLE II—SUPERVISORY** 8 **IMPROVEMENTS**

9 **SEC. 201. NATIONAL FINANCIAL SERVICES COMMITTEE.**

10 (a) ESTABLISHMENT OF NATIONAL FINANCIAL
 11 SERVICES OVERSIGHT COMMITTEE.—There is established
 12 a National Financial Services Oversight Committee which
 13 shall consist of—

14 (1) the Secretary of the Treasury;

15 (2) the Chairman of the Board of Governors of
 16 the Federal Reserve System;

17 (3) the Chairman of the Board of Directors of
 18 the Federal Deposit Insurance Corporation;

19 (4) the Director of the Office of Thrift Super-
 20 vision;

21 (5) the Comptroller of the Currency;

22 (6) the Secretary of Commerce;

23 (7) the Attorney General;

24 (8) the Chairman of the Securities and Ex-
 25 change Commission; and

1 (9) the Chairman of the Commodities Futures
2 Trading Commission.

3 (b) MEMBER AGENCIES.—For purposes of this Act,
4 the agencies or departments headed by members of the
5 committee shall be referred to as “member agencies”.

6 (c) CHAIR.—The chair of the committee shall be the
7 Secretary of the Treasury.

8 (d) COMPENSATION.—Each member of the committee
9 shall serve without additional compensation, but shall be
10 entitled to reasonable expenses incurred in carrying out
11 the official duties as such a member.

12 (e) PUBLIC MEETINGS.—The committee shall hold
13 public meetings at least annually. All meetings of the com-
14 mittee shall be conducted in conformity with the provisions
15 of section 3(a) of the Government in the Sunshine Act
16 (5 U.S.C. 552b). The committee may not take any action
17 unless such action is approved by a vote of two-thirds of
18 the members of the committee.

19 (f) SECRETARIAT.—The Department of the Treasury
20 shall provide the secretariat for the committee and shall
21 assume any expenses arising for execution of the respon-
22 sibilities of the committee.

23 (g) ACCESS TO RECORDS.—For the purpose of carry-
24 ing out this section, the committee shall have access to
25 all books, accounts, records, reports, files, memoranda, pa-

1 pers, things, and property belonging to or in use by any
2 appropriate Federal banking agency.

3 (h) FUNCTIONS OF THE COMMITTEE.—

4 (1) UNIFORM PRINCIPLES AND STANDARDS.—

5 The committee shall, insofar as is practicable, estab-
6 lish uniform principles and standards for the exam-
7 ination and supervision of financial institutions and
8 other providers of financial services, which shall be
9 applied by the member agencies.

10 (2) RECOMMENDATIONS.—The committee shall
11 make recommendations for uniformity in other su-
12 pervisory matters, such as, but not limited to, identi-
13 fying financial institutions and other providers of fi-
14 nancial services in need of special supervisory atten-
15 tion, the adequacy of supervisory tools for determin-
16 ing the impact of affiliate operations on insured de-
17 pository institutions and the ability of the member
18 agencies to discover possible fraud or questionable
19 practices.

20 (3) RECOMMENDATIONS TO CONGRESS.—The
21 committee shall, from time to time, recommend to
22 the Congress additional measures to strengthen the
23 separation between insured depository institutions
24 controlled by depository institutions holding compa-
25 nies from the activities of any of their affiliates in-

1 cluding, the imposition of additional restrictions on
2 interaffiliate transactions and the strict application
3 of Federal deposit insurance coverage only for the
4 benefit of depositors of insured depository institu-
5 tions that are controlled by a financial services hold-
6 ing company.

7 (i) CONSULTATION WITH STATE REGULATORS.—The
8 committee shall consult with the appropriate organizations
9 representing the State regulators of banks, savings and
10 loan associations, savings banks, securities firms, insur-
11 ance companies, and other providers of financial services,
12 and as deemed appropriate, meet with such State regu-
13 lators. The committee shall invite to each public meeting
14 of the committee representatives of such organizations.

15 (j) STUDIES AND RECOMMENDATIONS.—The com-
16 mittee may conduct or authorize studies to carry out the
17 purposes of this Act. On the basis of such studies, the
18 committee may make recommendations to the Congress
19 and member agencies concerning the implementation of
20 this Act and changes in statutes and regulations necessary
21 to promote the strength and stability of the Nation's fi-
22 nancial system and financial institutions, the competitive-
23 ness of providers of financial services in domestic and
24 international markets and the purposes of this Act. Not
25 later than 1 year after the date of enactment of this Act,

1 the committee shall report to the Congress on proposals
2 for legislative or regulatory actions that will improve the
3 examination process to permit better oversight of all in-
4 sured depository institutions. In particular, the committee
5 shall consider whether the number of or compensation for
6 examiners employed by the appropriate Federal regulatory
7 agencies should be increased.

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