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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 1999

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

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

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SEC. 2. TABLE OF CONTENTS.

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

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Subtitle A—Affiliations
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Subtitle B—Streamlining Supervision of Bank Holding Companies
Sec. 111. Streamlining bank holding company supervision.
Sec. 112. Authority of State insurance regulator and securities and exchange commission.
Sec. 113. Limitation on rulemaking, prudential, supervisory, and enforcement authority of the Board.
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Sec. 131. Amendment to the Bank Holding Company Act of 1956 to modify notification and post-approval waiting period for section 3 transactions.
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TITLE IV—CUSTOMER SERVICE AND EDUCATION

Sec. 401. Customer service and education regulations.
TITLE I—FINANCIAL SERVICES
MODERNIZATION
Subtitle A—Affiliations

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STEAGALL ACT” REPEALED.

(a) Section 20 Repealed.—Section 20 of the
Banking Act of 1933 (12 U.S.C. 377) is repealed.

(b) Section 32 Repealed.—Section 32 of the

SEC. 102. FINANCIAL ACTIVITIES.

(a) Engaging in Activities Financial in Na-
ture.—Section 4 of the Bank Holding Company Act of
1956 (12 U.S.C. 1843) is amended by adding at the end
the following new subsections:

“(k) Engaging in Activities Financial in Na-
ture.—

“(1) In general.—Notwithstanding subsection
(a) and subject to subsection (l) and (m), a bank
holding company may engage in any activity, and ac-
quire and retain the shares of any company engaged
in any activity, which the Board and the Secretary
of the Treasury have jointly determined (by regula-
tion or order) to be financial in nature or incidental
to such financial activities.
“(2) FACTORS TO BE CONSIDERED.—In determining whether an activity is financial in nature or incidental to financial activities, the Board and the Secretary shall take into account—

“(A) the purposes of this Act and the Financial Services Modernization Act;

“(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 bank holding companies 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 efficiency 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, in any State, in full compliance with the laws and regulations of such State that apply to each type of insurance license or authorization in such State, except that—

“(i) in no event shall the bank holding company or any affiliate of the bank holding company be subject to any State law or regulation that restricts a bank from having an affiliate, agent, or employee in such State licensed to provide insurance as principal, agent, or broker; and
“(ii) the Board shall prescribe regula-
tions concerning insurance affiliations that
provide equivalent treatment for all stock
and mutual insurance companies that con-
trol or are otherwise affiliated with a bank
and fully accommodate and are consistent
with State law.

“(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 rep-
resenting 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 Modernization Act, to be so
closely related to banking or managing or con-
trolling banks as to be a proper incident thereto
(subject to the same terms and conditions con-
tained in such order or regulation, unless modi-
ﬁed 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 subsection (c)(13) (as in effect on the day before the date of enactment of the Financial Services Modernization Act) 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 bank 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 de-
pository institution;

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

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

“(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not actively participate, directly or indirectly, 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 any subsidiary of the holding company which is not a depository institution or subsidiary of a depository institution) 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);

“(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 bank 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 clause (iii).

“(4) ACTIONS REQUIRED.—

“(A) Regulation of merchant banking.—The Board may prescribe regulations and issue interpretations to implement paragraph 3(H);

“(B) Regulation of other activities.—The Board and the Secretary—

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

“(ii) shall jointly define by regulation the following activities, to the extent they are consistent with the purposes of this Act, as finan-
cial in nature or incidental to activities that are financial in nature:

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

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

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

“(5) Notification.—

“(A) Commencement of new activity.—A bank holding company that 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) Notice required for acquisitions.—

“(i) In general.—At least 12 business days before acquiring shares or assets
of any going concern pursuant to paragraphs (3), (4), or (5), a bank holding company shall provide written notice of the proposal to the Board, unless the Board determines that no notice or a shorter notice period is appropriate.

“(ii) GROUNDS FOR DISAPPROVAL

The Board shall not approve—

“(I) any acquisition which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the business of financial intermediation in any part of the United States, or

“(II) any other proposed acquisition whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the trans-
action in meeting the convenience and needs of the community to be served.

“(iii) ADDITIONAL INFORMATION AND EXTENSION OF PERIOD.—Before the expiration of the 12-day period referred to in clause (i), the Board may require the submission of additional information and may extend the 12-day period for no more than 60 calendar days to consider such additional information.

“(iv) DISAPPROVAL BEFORE END OF PERIOD.—If, at the end of the 12-day period referred to in clause (i) or the end of any extension of such period pursuant to clause (iii), as the case may be, the Board has not issued an order disapproving the notice, the notice shall be deemed approved.”

“(C) APPROVAL NOT REQUIRED FOR CERTAIN FINANCIAL ACTIVITIES.—Except as provided in subsection (j) with regard to the acquisition of a savings association, a bank holding company may commence any activity pursuant to paragraph (3) or any regulation prescribed
under paragraph (4), without prior approval of the Board.

“(l) CONDITIONS FOR ENGAGING IN BROAD RANGE OF FINANCIAL ACTIVITIES.—Notwithstanding subsection (k), a bank holding company may not engage in any activity, or directly or indirectly acquire or retain shares of any company engaged in any activity, under subsection (k), other than activities permissible for a bank holding company under subsection (e)(8), unless the bank holding company meets the following requirements:

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

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

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

“(4) The company has filed with the Board—
“(A) a declaration that the company elects to engage in activities or acquire and retain shares of a company which were not permissible for a bank holding company to engage in or acquire before the enactment of the Financial Services Modernization Act; and

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

“(m) PROVISIONS APPLICABLE TO BANK HOLDING COMPANIES THAT FAIL TO MEET CERTAIN REQUIREMENTS.—

“(1) IN GENERAL.—If—

“(A) a bank holding company is engaged, directly or indirectly, in any activity under subsection (k), other than activities permissible for a bank holding company under subsection (c)(8); and

“(B) such company is not in compliance with the requirements of subsection (l),

the Board shall give notice to the company to that effect, describing the conditions giving rise to the notice.

“(2) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—Within 45 days of receipt by a bank hold-
ing company of a notice given under paragraph (1) 
or such additional period as the Board may per-
mit), the company shall execute an agreement with 
the Board to comply with the requirements applica-
able to a bank holding company under subsection (l). 

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

“(4) FAILURE TO CORRECT.—If the conditions 
described in a notice to a bank holding company 
under paragraph (1) are not corrected within 180 
days after receipt by the company of notice under 
paragraph (1), the Board may require such com-
pany, 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, 
either—

“(A) to divest control of any subsidiary in-
sured depository institutions; or
“(B) to cease to engage in any activity conducted by such company or its subsidiaries (other than a depository institution or a subsidiary of a depository institution) that is not an activity that is permissible for a bank holding company under subsection (c)(8).”.

(b) Financial Activities of Bank Holding Companies Ineligible for Subsection (k) Powers.—

(1) 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 under this paragraph as of the day before the date of the enactment of the Financial Services Modernization Act, to be so closely related to banking as to be a proper incident thereto (subject to such terms and conditions contained in such regulation, unless modified by the Board);”.

(2) Conforming changes to other statutes.—

(A) 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,”.

(B) AMENDMENTS TO THE HOMEOWNERS LOAN ACT.—

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

(I) by inserting “is permitted for bank holding companies under subsections (c) or (k) of section 4 of the Bank Holding company Act of 1956, or which” after “(i) which”; and

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

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

SEC. 103. LIMITED NONFINANCIAL ACTIVITIES AND AFFILIATIONS PERMITTED.

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

“(n) NONFINANCIAL ACTIVITIES.—
“(1) IN GENERAL.—Notwithstanding subsection (a), a bank holding company may engage in activities which are not (or have not been determined to be) financial in nature or incidental to activities which are financial in nature, or acquire and retain ownership and control of the shares of a company engaged in such activities, if—

“(A) 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 bank holding company;

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

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

“(2) FOREIGN BANKS.—In lieu of the limitation contained in paragraph (1)(A) in the case of a foreign bank or a company that owns or controls a foreign bank which engages in any activity or acquires...
or retains ownership or control of shares of any company pursuant to paragraph (1), the aggregate annual gross revenues derived from all such activities and all such companies in the United States shall not exceed 15 percent of the consolidated annual gross revenues of the foreign bank or company in the United States derived from any branch, agency, commercial lending company, or depository institution controlled by the foreign bank or company and any subsidiary engaged in the United States in activities permissible under this section.

“(3) Nonapplicability of other exemption.—Any foreign bank or company that owns or controls a foreign bank which engages in any activity or acquires or retains ownership or control of shares of any company pursuant to this subsection shall not be eligible for any exception described in section 2(h).

“(4) Transactions with nonfinancial affiliates.—An insured depository institution controlled by a bank 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 this
subsection or subparagraph (H) or (I) of subsection (k)(3).”.

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 a subsidiary or affiliate thereof, from being affiliated directly or indirectly or associated with any person or entity, 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 any subsidiary or affiliate thereof, and persons or entities engaged in the business of insurance, paragraph (1) does not prohibit any State from—

(A) requiring any person or entity that proposes to acquire control of an entity that is engaged in the business of insurance and domiciled in that State (hereafter in this subparagraph referred to as the “insurer”) to furnish to the insurance regulatory authority of that State, not later than 60 days before the effective date of the proposed acquisition—
(i) the name and address of each person by whom, or on whose behalf, the affiliation referred to in this subparagraph is to be effected (hereafter in this subparagraph referred to as the “acquiring party”);

(ii) if the acquiring party is an individual, his or her principal occupation and all offices and positions held during the 5 years preceding the date of notification, and any conviction of crimes other than minor traffic violations during the 10 years preceding the date of notification;

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

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

(II) an informative description of the business intended to be done by the acquiring party and any subsidiary thereof; and
(III) a list of all individuals who are, or who have been selected to become, directors or executive officers of the acquiring party or who perform, or will perform, functions appropriate to such positions, including, for each such individual, the information required by clause (ii);

(iv) the source, nature, and amount of the consideration used, or to be used, in effecting the merger or other acquisition of control, a description of any transaction wherein funds were, or are to be, obtained for any such purpose, and the identity of persons furnishing such consideration, except that, if a source of such consideration is a loan made in the lender’s ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests;

(v) fully audited financial information as to the earnings and financial condition of each acquiring party for the 5 fiscal years preceding the date of notification of each such acquiring party, or for such less-
er period as such acquiring party and any
predecessors thereof shall have been in ex-
istence, and similar unaudited information
as of a date not earlier than 90 days be-
fore the date of notification, except that, in
the case of an acquiring party that is an
insurer actively engaged in the business of
insurance, the financial statements of such
insurer need not be audited, but such audit
may be required if the need therefor is de-
termined by the insurance regulatory au-
thority of the State;

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

(vii) the number of shares of any se-
curity of the insurer that each acquiring
party proposes to acquire, the terms of any
offer, request, invitation, agreement, or ac-
quision, and a statement as to the meth-
od by which the fairness of the proposal
was arrived at;
(viii) the amount of each class of any security of the insurer that is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(ix) a full description of any contracts, arrangements, or understandings with respect to any security of the insurer in which any acquiring party is involved, including transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies, and identification of the persons with whom such contracts, arrangements, or understandings have been entered into;

(x) a description of the purchase of any security of the insurer during the 12-month period preceding the date of notification by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid, or agreed to be paid, therefor;
(xi) a description of any recommendations to purchase any security of the insurer made during the 12-month period preceding the date of notification by any acquiring party or by any person based upon interviews or at the suggestion of such acquiring party;

(xii) copies of all tender offers for, requests or invitations for tenders of, exchange offers for and agreements to acquire or exchange any securities of the insurer and, if distributed, of additional soliciting material relating thereto; and

(xiii) the terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of securities of the insurer for tender and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto;

(B) 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 pre-
paring and filing with the insurance regulatory
authority of that State a plan to increase the
capital of the entity, except that any determina-
tion by the State insurance regulatory authority
with respect to such requirement shall be made
not later than 60 days after the date of notifi-
cation under subparagraph (A);

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

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

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

(A) IN GENERAL.—Nothing in paragraph
(1) shall be construed as affecting State laws,
regulations, orders, interpretations, or other ac-
tions of general applicability relating to the gov-
ernance 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 paragraphs (2) and (3), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict an insured depository institution or any subsidiary or affiliate of an insured depository institution from engaging 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 ACTIVITIES OTHER THAN SALES.—State statutes, regulations, interpretations,
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 or entities that are not insured depository institutions, but that are directly engaged in the business of insurance (except that they may apply to depository institutions engaged in providing savings bank life insurance as principal to the extent of regulating such insurance);

(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).

3 (3) 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 reg-
ulating, directly or indirectly, insurance sales, solicitations, or cross marketing activities;

(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;

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

(D) it—

(i) does not distinguish by its terms between insured depository 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 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 depository 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, or subsidiaries or affiliates thereof, or persons or entities affiliated therewith;

(iii) does not effectively prevent a depository institution, or a 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.

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

(e) NONDISCRIMINATION.—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 a subsidiary or affiliate thereof,
to the extent that such statute, regulation, order, interpre-
tation, or other action—

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

(2) as interpreted or applied, has or will have
an impact on depository institutions, or subsidiaries
or affiliates thereof, that is substantially more ad-
verse 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, or subsidiaries or affiliates thereof, or
persons or entities affiliated therewith;

(3) effectively prevents a depository 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

(4) conflicts with the intent of this Act gen-
erally to permit affiliations that are authorized or
permitted by Federal law between insured depository
institutions, or subsidiaries or affiliates thereof, and
persons and entities engaged in the business of in-
surance.

(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 func-
tions) of any State, under the laws of such State, to inves-
tigate and bring enforcement actions, consistent with sec-
tion 18(c) of the Securities Act of 1933, with respect to
fraud or deceit or unlawful conduct by any person, in con-
nection with securities or securities transactions.

(e) DEFINITION.—For purposes of this section, 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 North-
ern Mariana Islands.

SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHOR-
IZED.

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 reg-
ulated on terms, and shall be subject to limitations,
comparable to those applicable to any other bank holding company.”.

SEC. 106. AMENDMENTS RELATING TO LIMITED PURPOSE BANKS.

(a) IN GENERAL.—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 sub-clause (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) consumer loan assets that are derived from, or are incidental to, activities in which institutions described in subparagraph (F) or (H) of section 2(c)(2) 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, un-
less the bank is well managed and well capital-
ized;

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

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

“(ii) engages in the business of mak-
ing 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 ac-
count 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 in-
serting 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 begin-
ing on the date that the company receives notice
from the Board that the company has failed to con-
tinue 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 con-
tinue to qualify for the exemption; and

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

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

SEC. 111. STREAMLINING BANK 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 re-
ports 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 record-keeping 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 sys-
tem that may pose a threat to the
safety and soundness of any subsidi-
ary 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 af-
iliates.
“(C) Restricted focus of examina-
tions.—The Board shall, to the fullest extent
possible, limit the focus and scope of any exam-
ination 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 activi-
ties of the subsidiary;
“(II) the nature or size of trans-
actions between such subsidiary and
any depository institution which is
also a subsidiary of such holding com-
pany; or
“(III) 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.

“(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 registered investment adviser properly registered by or on behalf of ei-
ther the Securities and Exchange Commission or any State;

“(iii) any licensed insurance company

by or on behalf of any state regulatory au-

thority responsible for the supervision of

insurance companies; and

“(iv) any other subsidiary that the

Board finds to be comprehensively super-

vised by a Federal or State authority.

“(3) CAPITAL.—

“(A) IN GENERAL.—The Board shall not,

by regulation, guideline, order or otherwise, pre-

scribe or impose any capital or capital adequacy

rules, guidelines, standards, or requirements on

any subsidiary of a bank holding company that

is not a depository institution and—

“(i) is in compliance with applicable

capital requirements of another Federal

regulatory authority (including the Securi-

ties and Exchange Commission) or State

insurance authority; or

“(ii) is properly registered as an in-

vestment adviser under the Investment Ad-

visers Act of 1940, or with any State.
“(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 activities of a registered investment adviser other than investment advisory activities or activities incidental to investment advisory activities.

“(4) Transfer of board authority to appropriate federal banking agency.—

“(A) In general.—In the case of any bank holding company which is not significantly engaged in nonbanking activities, the Board, in consultation with the appropriate Federal banking agency, may designate the appropriate Federal banking agency of the lead insured depository institution subsidiary of such holding company as the appropriate Federal banking agency for the bank holding company.

“(B) Authority transferred.—An agency designated by the Board under subparagraph (A) shall have the same authority as the Board under this Act to—

“(i) examine and require reports from the bank holding company and any affiliate
of such company (other than a depository institution) under section 5;

“(ii) approve or disapprove applications or transactions under section 3;

“(iii) take actions and impose penalties under subsections (e) and (f) of section 5 and section 8; and

“(iv) take actions regarding the holding company, any affiliate of the holding company (other than a depository institution), or any institution-affiliated party of such company or affiliate under the Federal Deposit Insurance Act and any other statute which the Board may designate.

“(C) AGENCY ORDERS.—Section 9 of this Act and section 105 of the Bank Holding Company Act Amendments of 1970 shall apply to orders issued by an agency designated under subparagraph (A) in the same manner such sections apply to orders issued by the Board.”.
SEC. 112. AUTHORITY OF STATE INSURANCE REGULATOR
AND SECURITIES AND EXCHANGE COMMISSION.

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 or is a broker or dealer registered under the Securities Exchange Act of 1934; 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 Ex-
change Commission for the registered broker or
dealer, as the case may be, determines in writ-
ing 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 condi-
tion of the insurance company or the broker or
dealer, 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 or dealer described in paragraph (1)(A) to
provide funds or assets to an insured depository in-
stitution 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 require-
ment.

“(3) DIVESTITURE IN LIEU OF OTHER AC-
TION.—If the Board receives a notice described in
paragraph (1)(B) from a State insurance authority
or the Securities and Exchange Commission with re-
ward to a bank holding company or affiliate referred

to in such paragraph, the Board may order the bank
holding company to divest the insured depository in-
stitution within 180 days of receiving notice or such
longer period as the Board determines consistent
with the safe and sound operation of the insured de-
pository institution.

“(4) CONDITIONS BEFORE DIVESTITURE.—Dur-
ing the period beginning on the date an order to di-
vest 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 in-
stitution, including restricting or prohibiting trans-
actions between the insured depository institution
and any affiliate of the institution, as are appro-
priate under the circumstances.”.

SEC. 113. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-
PERVISORY, AND ENFORCEMENT AUTHORITY

OF THE BOARD.

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 di-
rected 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 bank 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 under the Investment Advisers Act of 1940, 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 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. 114. 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 reg-
istered 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. 115. 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; 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 the Federal Deposit Insurance Corporation 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.—Nothing in this section shall prevent 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.
Subtitle C—Subsidiaries of National Banks

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

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

(1) by redesignating section 5136A (12 U.S.C. 25a) 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) Activities Permissible.—

“(1) In General.—A subsidiary of a national bank may—

“(A) engage in any activity that is permissible for the parent national bank; and

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

“(i) paragraph (3)(B) of such section (relating to insurance activities) insofar as such paragraph permits a bank holding company to engage as principal in insuring, guaranteeing, or indemnifying against
loss, harm, damage, illness, disability, or death, on in providing or issuing annuities; and

“(ii) paragraph (3)(I) of such section (relating to insurance company investments).

“(2) Limitations.—A subsidiary of a national bank—

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

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

“(ii) engage in real estate investment or development activities (except to the extent that a Federal statute expressly authorizes a national bank to engage directly in such an activity); and

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

“(b) Requirements Applicable to National Banks With Financial Subsidiaries.—

“(1) In general.—A financial subsidiary of a national bank may engage in activities pursuant to subsection (a)(1)(C) only if—
“(A) the national bank is well capitalized, is well managed, and achieved the rating described in section 4(l)(3) of the Bank Holding Company Act of 1956 during the most recent examination of the bank by the Comptroller of the Currency;

“(B) each insured depository institution affiliate of the national bank is well capitalized, is well managed, and achieved the rating described in section 4(1)(3) of the Bank Holding Company Act of 1956 during the most recent examination of the institution by the appropriate Federal banking agency; and

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

“(2) CORRECTIVE PROCEDURES.—

“(A) IN GENERAL.—The Comptroller of the Currency shall, by regulation prescribe procedures to enforce paragraph (1).

“(B) STRINGENCY.—The regulation prescribed under subparagraph (A) shall be no less stringent than the corresponding restrictions and requirements of section 4(m) of the Bank Holding Company Act of 1956.
“(c) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

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

“(2) FINANCIAL SUBSIDIARY.—The term ‘financial subsidiary’ means a company that—

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

“(B) is engaged as principal in any financial activity that is not permissible under subparagraph (A) or (B) of subsection (a)(1) of this section.

“(3) SUBSIDIARY.—The term ‘subsidiary’ has the same meaning as in section 2 of the Bank Holding Company Act of 1956.

“(4) WELL CAPITALIZED.—The term ‘well capitalized’ has the same meaning as in section 38 of the Federal Deposit Insurance Act.

“(5) WELL MANAGED.—The term ‘well managed’ means—

“(A) in the case of an insured depository institution that has been examined, the achievement of—
“(i) 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 insured depository institution; and

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

“(B) in the case of an insured depository institution that has not been examined, the existence and use of managerial resources that the appropriate Federal banking agency determines are satisfactory.

“(d) RULE OF CONSTRUCTION.—No provision of this section shall be construed so as to prohibit national banks from owning or controlling subsidiaries pursuant to section 25 or 25A of the Federal Reserve Act, the Bank Service Company Act, or any other Federal statute that expressly by its terms authorizes national banks to own or control subsidiaries.”

SEC. 122. SAFETY AND SOUNDNESS FIREWALLS BETWEEN BANKS AND THEIR FINANCIAL SUBSIDIARIES.

(a) PURPOSES.—The purposes of this section are—
(1) to protect the safety and soundness of any insured bank that has a financial subsidiary;

(2) to apply to any transaction between the bank and the financial subsidiary (including a loan, extension of credit, guarantee, or purchase of assets), other than an equity investment, the same restrictions and requirements as would apply if the financial subsidiary were a subsidiary of a bank holding company having control of the bank; and

(3) to apply to any equity investment of the bank in the financial subsidiary restrictions and requirements equivalent to those that would apply if—

(A) the bank paid a dividend in the same dollar amount to a bank holding company having control of the bank; and

(B) the bank holding company used the proceeds of the dividend to make an equity investment in a subsidiary that was engaged in the same activities as the financial subsidiary of the bank.

(b) Safety and Soundness Firewalls Applicable to Subsidiaries of Banks.—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. SAFETY AND SOUNDNESS FIREWALLS APPLICABLE TO SUBSIDIARIES OF BANKS.

“(a) Limiting the Equity Investment of a Bank in a Subsidiary.—

“(1) Capital Deduction.—In determining whether an insured bank complies with applicable regulatory capital standards—

“(A) the appropriate Federal banking agency shall deduct from the assets and tangible equity of the bank the aggregate amount of the outstanding equity investments of the bank in financial subsidiaries of the bank; and

“(B) the assets and liabilities of such financial subsidiaries shall not be consolidated with those of the bank.

“(2) Investment Limitation.—An insured bank shall not, without the prior approval of the appropriate Federal banking agency, make any equity investment in a financial subsidiary of the bank if that investment would, when made, exceed the amount that the bank could pay as a dividend without obtaining prior regulatory approval.

“(b) Operational and Financial Safeguards for the Bank.—An insured bank that has a financial subsidiary shall maintain procedures for identifying and
managing any financial and operational risks posed by the financial subsidiary.

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

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

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

“(d) FINANCIAL SUBSIDIARY DEFINED.—For purposes of this section, the term ‘financial subsidiary’ has the same meaning as section 5136A(c)(2)(B) of the Revised Statutes of the United States.

“(e) REGULATIONS.—The appropriate Federal banking agencies shall jointly prescribe regulations implementing this section.”.

(e) LIMITING A BANK’s CREDIT EXPOSURE TO A FINANCIAL SUBSIDIARY TO THE AMOUNT OF PERMISSIBLE
Credit Exposure to an Affiliate.—Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d), the following new subsection:

“(e) Rules Relating to Banks With Financial Subsidiaries.—

“(1) Financial subsidiary defined.—For purposes of this section and section 23B, the term ‘financial subsidiary’ has the same meaning as section 5136A(c)(2)(B) of the revised statutes of the United States.

“(2) Application to transactions between a financial subsidiary of a bank and the bank.—For purposes of applying this section and section 23B to a transaction between a financial subsidiary of a bank and the bank (or between such financial subsidiary and any other subsidiary of the bank that is not a financial subsidiary), and notwithstanding subsection (b)(2) and section 23B(d)(1)—

“(A) the financial subsidiary of the bank—

“(i) shall be deemed to be an affiliate of the bank and of any other subsidiary of
the bank that is not a financial subsidiary;
and

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

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

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

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

“(B) CERTAIN AFFILIATES EXCLUDED.—
For purposes of this paragraph, the term ‘affili-
ate’ shall not include a bank, or a subsidiary of
a bank that is engaged exclusively in activities
permissible for a national bank to engage in di-
rectly or activities described in clause (ii) of
paragraph (1)(B).”.
SEC. 123. FUNCTIONAL REGULATION.

(a) PURPOSE.—The purpose of this section is to ensure that—

(1) securities activities conducted in a subsidiary of a bank are functionally regulated by the Securities and Exchange Commission to the same extent as if they were conducted in a nondepository subsidiary of a bank holding company; and

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

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

“SEC. 46. FUNCTIONAL REGULATION OF SECURITIES SUBSIDIARIES AND INSURANCE AGENCY SUBSIDIARIES OF INSURED DEPOSITORY INSTITUTIONS.

“(a) BROKER OR DEALER SUBSIDIARY.—A broker or dealer that is a subsidiary of an insured depository institution shall be subject to regulation under the Securities Ex-
change Act of 1934 in the same manner and to the same extent as a broker or dealer that—

“(1) is controlled by the same bank holding company as controls the insured depository institution; and

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

“(b) INSURANCE AGENCY SUBSIDIARY.—An insurance agency or brokerage that is a subsidiary of an insured depository institution shall be subject to regulation by a State insurance authority in the same manner and to the same extent as an insurance agency or brokerage that—

“(1) is controlled by the same bank holding company as controls the insured depository institution; and

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

“(c) DEFINITIONS.—For purposes of this section, the terms ‘broker’ and ‘dealer’ have the same meanings as in section 3 of the Securities Exchange Act of 1934.”.
Subtitle D—Review of Bank
Mergers and Acquisitions

SEC. 131. AMENDMENT TO THE BANK HOLDING COMPANY
ACT OF 1956 TO MODIFY NOTIFICATION AND
POST-APPROVAL WAITING PERIOD FOR SEC-
TION 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 Fed-
eral Trade Commission of such approval” before the pe-
riod at the end of the first sentence.

SEC. 132. INTERAGENCY DATA SHARING.
To the extent not prohibited by other law, the Com-
troller 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 Sys-
tem 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 Com-
pany 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. 133. 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 Amendment.—Section 7A(c)(7) of the Clayton Act (15 U.S.C. 18a(c)) 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) requires notice under section 4 of the Bank Holding Company Act of 1956; and (B) does not require approval under section 3 or 4 of the Bank Holding Company Act of 1956”.

SEC. 134. 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 compa-
nies, securities firms, and insurance companies in-
cluding acquisitions among the largest 20 percent of
firms and acquisitions within regions or other lim-
ited geographical areas.

Subtitle E—Direct Activities of
Banks

SEC. 141. AUTHORITY OF NATIONAL BANKS TO UNDER-
WRITE 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 follow-
ing new sentence: “In addition to the provisions in this
paragraph for dealing in, underwriting or purchasing secu-
rities, 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 re-
quirements of section 142(b)(1) of the Internal Revenue
Code of 1986) issued by or on behalf of any state or politi-
cal subdivision of a state, including any municipal cor-
porate instrumentality of 1 or more states, or any public
day or authority of any state or political subdivision
of a state, if the national banking association is well cap-
talized (as defined in section 38 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 ac-
count of others.
“(B) Exception for certain bank ac-
tivities.—A bank shall not be considered to be
a broker because the bank engages in any of
the following activities under the conditions de-
scribed:
“(i) Third party brokerage ar-
rangements.—The bank enters into a
contractual or other arrangement with a
broker or dealer registered under this title
under which the broker or dealer offers brokerage services on or off the premises of the bank if—

“(I) such broker or dealer is clearly identified as the person performing the brokerage services;

“(II) the broker or dealer performs brokerage services in an area that is clearly marked and, 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 contractual or other 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 contractual or other arrangement are in compliance with the
Federal securities laws before dis-
tribution;

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

“(VI) bank employees do not di-
rectly 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-regu-
latory organization, except that the
bank employees may receive com-
pensation for the referral of any cus-
tomer if the compensation is a nomi-
ral 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 in a customary custodian or
trustee capacity; and

“(IX) the bank, broker, or dealer
informs each customer that the bro-
kerage services are provided by the
broker or dealer and not by the bank
and that the securities are not depos-
its or other obligations of the bank,
are not guaranteed by the bank, and
are not insured by the Federal De-
posit Insurance Corporation.
“(ii) TRUST ACTIVITIES.—The bank effects transactions in a trustee capacity, or effects transactions in a fiduciary capacity in its trust department or other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards, and (in either case)—

“(I) is primarily compensated for such transactions 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, consistent with fiduciary principles and standards; and

“(II) does not publicly 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 part of its transfer agency activities, 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 subsidiaries, 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 primarily of administration fees, or flat or capped per order processing fees, or both.

“(II) Dividend reinvestment plans.—The bank effects transactions, as part of its transfer agency activities, 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 primarily of administration fees, or flat or capped per order processing fees, or both.

“(III) ISSUER PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of a plan or program 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 primarily 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 Modernization 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 bank deposit funds into any no-load, open-end management investment company registered under the Investment Company Act of 1940 that holds itself out as a money market fund.

“(vi) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate of the bank (as defined in section 2 of the Bank Holding Company Act of 1956) 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 the date that is 1 year after the date of enactment of the Financial Services Modernization Act of 1999, is not affiliated with a broker or dealer that has been registered for more than 1 year in accordance with this Act, and engages in dealing, market making, or underwriting activities, other than with respect to exempted securities; 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.

“(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) 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) BANKING PRODUCTS.—The bank effects transactions in traditional banking products, as defined in section 205(a) of the Financial Services Modernization Act of 1999.
“(x) **De minimis exception.**—The bank effects, other than in transactions referred to in clauses (i) through (ix), 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) NO EFFECT OF BANK EXEMPTIONS ON OTHER COMMISSION AUTHORITY.—The exception to being considered a broker for a bank engaged in activities described in subparagraphs (B) and (C) shall not affect the authority of the Commission under any other provision of this Act or any other securities law.

“(E) FIDUCIARY CAPACITY.—For purposes of subparagraph (B)(ii), the term ‘fiduciary capacity’ means—

“(i) in the capacity as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, 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 Modernization Act of 1999, subject to section 15(e); 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 ca-
pacity, but not as a part of a regular business.

“(C) Exception for certain bank ac-
tivities.—A bank shall not be considered to be
a dealer because the bank engages in any of the
following activities under the conditions de-
scribed:

“(i) Permissible securities trans-
actions.—The bank buys or sells—

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

“(II) exempted securities;

“(III) qualified Canadian govern-
ment obligations as defined in section
5136 of the Revised Statutes of the
United States, in conformity with sec-
tion 15C of this title and the rules
and regulations thereunder, or obliga-
tions of the North American Develop-
ment 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 otherwise, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations predominantly originated by the bank, or a syndicate of banks of which the bank is a member, or an affiliate of any such bank other than a broker or dealer.

“(iv) BANKING PRODUCTS.—The bank buys or sells traditional banking products,
as defined in section 205(a) of the Financial Services Modernization Act of 1999.

“(v) DERIVATIVE INSTRUMENTS.—
The bank issues, buys, or sells any derivative instrument to which the bank is a party—

“(I) 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;

“(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. DEFINITION AND TREATMENT OF BANKING PRODUCTS.

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

(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 or loan made 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 is sold—

(A) to qualified investors; or

(B) to other persons that—

(i) have the opportunity to review and assess any material information, including information regarding the borrower’s creditworthiness; and

(ii) 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; and

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

(A) foreign currencies, except options on foreign currencies that trade on a national securities exchange;
(B) interest rates, except interest rate derivative instruments that—

(i) are based on a security or 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; or

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

(i) 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);

(ii) provide for the delivery of one or more securities (other than government securities); or

(iii) trade on a national securities exchange.

(b) Amendment to the Securities Exchange Act of 1934.—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) Transactions Involving Hybrid Products.—

“(1) Commission authority.—

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

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

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

“(ii) the subject product is a security;

and

“(iii) imposing the registration re-
quirements of this section is necessary or
appropriate in the public interest and for
the protection of investors.
“(2) Objection to Commission regulation.—

“(A) Filing of petition for review.—

The Board, or any aggrieved party, may obtain review of any final regulation described in paragraph (1) in the United States Court of Appeals for the District of Columbia Circuit by filing in such court, not later than 60 days after the date of publication of the final regulation, a written petition requesting that the regulation be set aside.

“(B) Transmittal of petition and record.—A copy of a petition described in subparagraph (A) shall be transmitted as soon as possible by the Clerk of the Court to an officer or employee of the Commission designated for that purpose. Upon receipt of the petition, the Commission shall file with the court the regulation under review and any documents referred to therein, and any other relevant materials prescribed by the court.

“(C) Exclusive jurisdiction.—On the date of the filing of the petition under subparagraph (A), the court has jurisdiction, which becomes exclusive on the filing of the materials
set forth in subparagraph (B), to affirm and
enforce or to set aside the regulation at issue.

“(D) STANDARD OF REVIEW.—

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

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

“(II) is a security; and

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

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

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

“(II) the history, purpose, extent,
and appropriateness of the regulation
of the new product under the Federal securities laws; and

“(III) the history, purpose, extent, and appropriateness of the regulation of the new product under the Federal banking laws.

“(E) JUDICIAL STAY.—The filing of a petition by the Board or an aggrieved party pursuant to subparagraph (A) shall operate as a judicial stay, until the date on which the court makes a final determination under this paragraph, of—

“(i) any Commission requirement that a bank register as a broker or dealer under this section, because the bank engages in any transaction in, or buys or sells, the new product that is the subject of the petition; and

“(ii) any Commission action against a bank for a failure to comply with a requirement described in clause (i).

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

“(A) the term ‘Board’ means the Board of Governors of the Federal Reserve System; and
“(B) the term ‘new product’ means a product or instrument offered or provided by a bank that—

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

“(ii) is not a traditional banking product, as defined in paragraphs (1) through (6) of section 205(a) of the Financial Services Modernization Act of 1999.”.

(c) Classification Limited.—Classification of a particular product or instrument as a traditional banking product pursuant to this section or the amendments made by this section shall not be construed as finding or implying that such product or 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.

(d) No Limitation on Other Authority To Challenge.—Nothing in this section or the amendments made by this section shall affect the right or authority of the Board of Governors of the Federal Reserve System, any appropriate Federal banking agency, or any interested party under any other provision of law to object to or seek
judicial review as to whether a product or instrument is
or is not appropriately classified as a traditional banking
product under paragraphs (1) through (6) of section
205(a).

(e) Incorporated Definitions.—For purposes of
this section—

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

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

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

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

(5) the term “qualified investor” has the same
meaning as in section 3(a)(55) of the Securities Ex-
change Act of 1934, as amended by this Act.
SEC. 206. DERIVATIVE INSTRUMENT AND QUALIFIED INVESTOR DEFINED.

Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following new 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 a traditional banking product, as defined in section 205(a) of the Financial Services Modernization Act of 1999.

“(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 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(e)(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);

“(x) the government of any foreign country;
“(xi) any corporation, company, or partnership that owns and invests on a discretionary basis, not less than $10,000,000 in investments;

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

“(xiii) 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

“(xiv) any multinational or supranational entity or any agency or instrumentality thereof.

“(B) ADDITIONAL AUTHORITY.—The Commission may, by rule or order, define a ‘qualified investor’ as any other person, taking into consideration such factors as the financial sophistication of the person, net worth, and knowledge and experience in financial matters.”.

SEC. 207. GOVERNMENT SECURITIES DEFINED.

(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 section 15C as applied to a bank, a qualified Canadian government obligation as defined in section 5136 of the Revised Statutes.”.

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) SERVICES AS TRUSTEE OR CUSTODIAN.—
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 (e) 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 trans-
actions for, engaged in any principal trans-
actions with, or distributed shares for—

“(I) the investment company;

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

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

(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 per-
son of a person (other than a registered in-
vestment company) that, at any time dur-
ing the 6-month period preceding the date
of the determination of whether that per-
son or affiliated person is an interested
person, has loaned money or other prop-
erty 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,”.

(e) 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 regula-
tions, and issue orders, consistent with the protec-
tion of investors, prescribing the manner in which
the disclosure under this paragraph shall be pro-
vided.

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

SEC. 215. DEFINITION OF BROKER UNDER THE INVEST-
MENT 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 fol-
lows:

“(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 compa-

SEC. 216. DEFINITION OF DEALER UNDER THE INVEST-
MENT 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 fol-
lows:
“(11) 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. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINITION OF INVESTMENT ADVISER FOR BANKS THAT ADVISE INVESTMENT COMPANIES.

(a) INVESTMENT ADVISER.—Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is amended in subparagraph (A), by striking “investment company” and inserting “investment company, except that the term ‘investment adviser’ includes any bank or 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, any of 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 provision of law.
“(c) DEFINITION.—For purposes of this section, the term ‘appropriate Federal banking agency’ has 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”.


“(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 fidu-
ciary duty under State or Federal law solely by rea-
son of acting in accordance with clause (i), (ii), or
(iii) of paragraph (1)(B).”.

SEC. 223. 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. 224. 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 EFFI-
CIENCY, COMPETITION, AND CAPITAL FORMATION.—
 Whenever pursuant to this title the Commission is en-
gaged 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. 225. 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 (k); 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 sub-
chapter II of chapter 53, title 31,
United States Code (commonly re-
ferred to as the ‘Bank Secrecy Act’) 
and regulations thereunder.

“(ii) Restricted focus of exami-
nations.—The Commission shall limit the 
focus and scope of any examination of a 
supervised investment bank holding com-
pany 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 exami-
nations.—For purposes of this subpara-
graph, 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 IN-
VESTMENT BANK HOLDING COMPANIES.—The Com-
mmission 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 oper-
ations 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 regu-
lators with regard to all interpretations of, and
the enforcement of, applicable State insurance
laws relating to the activities, conduct, and op-
erations of insurance companies and insurance
agents.

“(6) DEFINITIONS.—For purposes of this sub-
section 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’, and ‘savings association’ have the same meanings as in section 2 of the Bank Holding Company Act of 1956;

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

“(E) the term ‘foreign bank’ has the same meaning as in section 1(b)(7) of the International Banking Act of 1978; and

“(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) 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 subparagraphs:

“(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—Studies

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

Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress regarding the efficacy, costs, and benefits of requiring that any depository institution that accepts federally insured deposits and that, directly or through a contractual or other arrangement with a broker, dealer, or agent, buys from, sells to, or effects transactions for retail investors in securities or consumers of insurance to inform such investors and consumers through the use of a logo or seal that the security or insurance is not insured by the Federal Deposit Insurance Corporation.
SEC. 242. STUDY OF LIMITATION ON FEES ASSOCIATED WITH ACQUIRING FINANCIAL PRODUCTS.

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

TITLE III—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 or entity shall provide insurance in a State as principal or agent unless such person or entity 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 sales activity of any person or entity 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, 1997, 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, 1997, 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, 1997, 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 guar-
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) AUTHORITY.—Notwithstanding any other provision of this Act or any other law, no national bank, and no subsidiary of a national bank, may engage in any activity involving the underwriting of title insurance, other than title insurance underwriting activities in which such national bank or subsidiary was actively and lawfully engaged before the date of the enactment of this Act.

(b) 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 any activity involving the underwriting of title insurance pursuant to subsection (a).
(c) **Insurance Subsidiary.**—In the case of a national bank which has a subsidiary which provides insurance as principal and has no affiliate which provides insurance as principal and is not a subsidiary, the national bank may not engage in any activity involving the underwriting of title insurance pursuant to subsection (a).

(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 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, 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 action 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 an action 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.

SEC. 307. 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 com-
pany, mutual holding company, or otherwise), to be-
come a bank 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 in-
sured 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.

TITLE IV—CUSTOMER SERVICE
AND EDUCATION

SEC. 401. CUSTOMER PROTECTION AND EDUCATION REGU-
LATIONS.

The Federal Deposit Insurance Act (12 U.S.C. 1811
et seq.) is amended by inserting after section 46 (as added
by section 123 of this Act) the following new section:

“SEC. 47. CUSTOMER SERVICE AND EDUCATION REGULA-
TIONS.

“(a) REGULATIONS REQUIRED.—

“(1) IN GENERAL.—The Federal banking agen-
cies shall prescribe and publish in final form, before
the end of the 1-year period beginning on the date
of enactment of the Financial Services Moderniza-
tion Act, customer protection regulations (which the
agencies jointly determine to be appropriate) that—

“(A) apply to retail sales practices, solici-
tations, advertising, or offers of any nondeposit
product by any insured depository institution or
any person who is engaged in such activities at
an office of the institution or on behalf of the
institute; and
“(B) are consistent with the requirements of this Act and provide such additional protections for customers 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 subsidiary of an insured depository institution, as deemed appropriate by the regulators referred to in paragraph (3), where such extension is determined to be necessary to ensure the customer 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.

“(4) Nondeposit product defined.—For purposes of this section, the term ‘nondeposit product’—

“(A) means any investment and insurance product which is not a deposit;

“(B) includes shares issued by a registered investment company; and
“(C) does not include—

“(i) any loan or any other extension of credit by an insured depository institution;

“(ii) any letter of credit;

“(iii) any trust services;

“(iv) any discount; or

“(v) any other instrument or insurance or investment product specifically excluded from the definition of such term by regulations prescribed jointly by the Federal banking agencies, to the extent necessary to carry out the purpose of this Act.

“(5) INSURANCE PRODUCT DEFINED.—For purposes of this section, 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.

“(b) SALES PRACTICES.—

“(1) ANTICOERCION RULES.—The regulations prescribed pursuant to subsection (a) shall include anticoercion rules applicable to the sale of non-deposit products which prohibit an insured depository institution from engaging in any practice that would lead a customer to believe an extension of
credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970, is conditional upon—

“(A) the purchase of a nondeposit product from the institution or any of its affiliates; or

“(B) an agreement by the customer not to obtain, or a prohibition on the customer from obtaining, a nondeposit product from an unaffiliated entity.

“(2) Suitability of product.—

“(A) In general.—The regulations prescribed pursuant to subsection (a) with respect to the sale of nondeposit products shall include standards to ensure that an investment product sold to a customer is suitable and any other nondeposit product is appropriate for the customer based on financial information disclosed by the customer.

“(B) Rules of fair practice.—In prescribing the standards under subparagraph (A) with respect to the sale of investments, the Federal banking agencies shall take into account the Rules of Fair Practice of the National Association of Securities Dealers.
“(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 a non-deposit 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 (iii), 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.

“(ii) Insurance Product.—In the case of an insurance policy which is sold by the depository institution, or any affiliate of the institution, as agent, the product is not an obligation of or guaranteed by the depository institution.

“(iii) Investment Risk.—In the case of an investment product, variable annuity, or other product which involves an invest-
ment 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 a nondeposit product from the institution in which the application for credit is pending or any of affiliate of the institution; or

“(II) an agreement by the customer not to obtain, or a prohibition on the customer from obtaining, a nondeposit 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’.
“(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 acknowledgments.

“(D) Customer acknowledgment.—A requirement that an insured depository institution shall require any person selling a non-deposit product at any office of, or on behalf of, the institution to obtain, at the time a customer receives the disclosures required under this paragraph or at the time of the initial purchase by the customer of such product, an acknowledgment by such customer of the receipt of the disclosure required under this paragraph 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 any subsidiary as appropriate, which could mislead any person or otherwise
cause a reasonable person to reach an erroneous be-
lief with respect to—

“(A) the uninsured nature of any non-
deposit product sold, or offered for sale, by the
institution or any subsidiary of the institution;
or

“(B) in the case of a nondeposit 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 regula-
tions prescribed pursuant to subsection (a) shall in-
clude such provisions as the Federal banking agen-
cies consider appropriate to ensure that the routine
acceptance of deposits is kept, to the extent prac-
ticable, physically segregated from nondeposit prod-
uct activity.

“(2) Requirements.—Regulations prescribed
pursuant to paragraph (1) shall include the follow-
ing requirements:

“(A) Separate Setting.—A clear delin-
eation of the setting in which, and the cir-
cumstances under which, transactions involving
nondeposit products should be conducted in a
location physically segregated from an area where retail deposits are routinely accepted.

“(B) Referrals.—Standards which permit any person accepting deposits from the public in an area where such transactions are routinely conducted in an insured depository institution to refer a customer who seeks to purchase any nondeposit 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 from permitting any person to sell or offer for sale any nondeposit 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) Customer Grievance Process.—The Federal banking agencies shall jointly establish a customer complaint mechanism, for receiving and expeditiously address-
ing customer complaints alleging a violation of regulations issued under this section, which mechanism 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 customers 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.

“(f) 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 commis-
sioner 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 nondeposit product by any insured depository 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, the Director of the Office of Thrift Supervision, 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.”. 