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1ST SESSION

S. 753

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

IN THE SENATE OF THE UNITED STATES

MARCH 25, 1999

Mr. DASCHLE (for himself, Mr. SARBANES, Mr. DODD, Mr. KERRY, Mr. BRYAN, Mr. JOHNSON, Mr. REED, Mr. SCHUMER, Mr. BAYH, and Mr. EDWARDS) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

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

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

3 **SECTION 1. SHORT TITLE; PURPOSES; TABLE OF CON-**
4 **TENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Financial Services Act of 1999”.

1 (b) PURPOSES.—The purposes of this Act are as fol-
2 lows:

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

6 (2) To ensure the continued safety and sound-
7 ness of depository institutions.

8 (3) To provide necessary and appropriate pro-
9 tections for investors and ensure fair and honest
10 markets in the delivery of financial services.

11 (4) To avoid duplicative, potentially conflicting,
12 and overly burdensome regulatory requirements
13 through the creation of a regulatory framework for
14 financial holding companies that respects the diver-
15 gent requirements of each of the component busi-
16 nesses of the holding company, and that is based
17 upon principles of strong functional regulation and
18 enhanced regulatory coordination.

19 (5) To reduce and, to the maximum extent
20 practicable, to eliminate the legal barriers preventing
21 affiliation among depository institutions, securities
22 firms, insurance companies, and other financial serv-
23 ice providers and to provide a prudential framework
24 for achieving that result.

1 (6) To enhance the availability of financial serv-
 2 ices to citizens of all economic circumstances and in
 3 all geographic areas.

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

6 (8) To ensure compliance by depository institu-
 7 tions with the provisions of the Community Rein-
 8 vestment Act of 1977 and enhance the ability of de-
 9 pository institutions to meet the capital and credit
 10 needs of all citizens and communities, including un-
 11 derserved communities and populations.

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

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

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

Subtitle A—Affiliations

- Sec. 101. Glass-Steagall Act reformed.
- Sec. 102. Activity restrictions applicable to bank holding companies which are not financial holding companies.
- Sec. 103. Financial holding companies.
- Sec. 104. Operation of State law.
- Sec. 105. Mutual bank holding companies authorized.
- Sec. 106. Prohibition on deposit production offices.
- Sec. 107. Clarification of branch closure requirements.
- Sec. 108. Amendments relating to limited purpose banks.
- Sec. 109. Reports on ongoing FTC study of consumer privacy issues.
- Sec. 110. GAO study of economic impact on community banks and other small financial institutions.

Subtitle B—Streamlining Supervision of Financial Holding Companies

- Sec. 111. Streamlining financial holding company supervision.
- Sec. 112. Elimination of application requirement for financial holding companies.
- Sec. 113. Authority of State insurance regulator and Securities and Exchange Commission.
- Sec. 114. Prudential safeguards.

- Sec. 115. Examination of investment companies.
- Sec. 116. Limitation on rulemaking, prudential, supervisory, and enforcement authority of the Board.
- Sec. 117. Interagency consultation.
- Sec. 118. Equivalent regulation and supervision.
- Sec. 119. Prohibition on FDIC assistance to affiliates and subsidiaries.

Subtitle C—Subsidiaries of National Banks

- Sec. 121. Subsidiaries of national banks authorized to engage in financial activities.
- Sec. 122. Subsidiaries of State banks.
- Sec. 123. Safety and soundness firewalls between banks and their financial subsidiaries.
- Sec. 124. Functional regulation.
- Sec. 125. Misrepresentations regarding depository institution liability for obligations of affiliates.
- Sec. 126. Repeal of stock loan limit in Federal Reserve Act.

Subtitle D—Wholesale Financial Holding Companies; Wholesale Financial Institutions

CHAPTER 1—WHOLESALE FINANCIAL HOLDING COMPANIES

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

CHAPTER 2—WHOLESALE FINANCIAL INSTITUTIONS

- Sec. 136. Wholesale financial institutions.

Subtitle E—Preservation of FTC Authority

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

Subtitle F—Applying the Principles of National Treatment and Equality of Competitive Opportunity to Foreign Banks and Foreign Financial Institutions

- Sec. 151. Applying the principles of national treatment and equality of competitive opportunity to foreign banks that are financial holding companies.
- Sec. 152. Applying the principles of national treatment and equality of competitive opportunity to foreign banks and foreign financial institutions that are wholesale financial institutions.
- Sec. 153. Representative offices.

Subtitle G—Federal Home Loan Bank System Modernization

- Sec. 161. Short title.
- Sec. 162. Definitions.
- Sec. 163. Savings association membership.
- Sec. 164. Advances to members; collateral.

- Sec. 165. Eligibility criteria.
- Sec. 166. Management of banks.
- Sec. 167. Resolution Funding Corporation.

Subtitle H—Direct Activities of Banks

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

Subtitle I—Deposit Insurance Funds

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

Subtitle J—Effective Date of Title

- Sec. 191. Effective date.

TITLE II—FUNCTIONAL REGULATION

Subtitle A—Brokers and Dealers

- Sec. 201. Definition of broker.
- Sec. 202. Definition of dealer.
- Sec. 203. Registration for sales of private securities offerings.
- Sec. 204. Sales practices and complaint procedures.
- Sec. 205. Information sharing.
- Sec. 206. Definition and treatment of banking products.
- Sec. 207. Derivative instrument and qualified investor defined.
- Sec. 208. Government securities defined.
- Sec. 209. Effective date.
- Sec. 210. Rule of construction.

Subtitle B—Bank Investment Company Activities

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

Subtitle C—Securities and Exchange Commission Supervision of Investment Bank Holding Companies

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

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Subtitle D—Studies

- Sec. 241. Study of methods to inform investors and consumers of uninsured products.
- Sec. 242. Study of limitation on fees associated with acquiring financial products.

TITLE III—INSURANCE

Subtitle A—State Regulation of Insurance

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

Subtitle B—National Association of Registered Agents and Brokers

- Sec. 321. State flexibility in multistate licensing reforms.
- Sec. 322. National Association of Registered Agents and Brokers.
- Sec. 323. Purpose.
- Sec. 324. Relationship to the Federal Government.
- Sec. 325. Membership.
- Sec. 326. Board of Directors.
- Sec. 327. Officers.
- Sec. 328. Bylaws, rules, and disciplinary action.
- Sec. 329. Assessments.
- Sec. 330. Functions of the NAIC.
- Sec. 331. Liability of the Association and the directors, officers, and employees of the Association.
- Sec. 332. Elimination of NAIC oversight.
- Sec. 333. Relationship to State law.
- Sec. 334. Coordination with other regulators.
- Sec. 335. Judicial review.
- Sec. 336. Definitions.

TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES

- Sec. 401. Prevention of creation of new savings and loan holding companies with commercial affiliates.
- Sec. 402. Optional conversion of Federal savings associations to national banks.
- Sec. 403. Retention of “Federal” in name of converted Federal savings association.

TITLE V—FINANCIAL INFORMATION ANTI-FRAUD

- Sec. 501. Financial information anti-fraud.
- Sec. 502. Report to Congress on financial privacy.

TITLE VI—MISCELLANEOUS

- Sec. 601. Grand jury proceedings.

Sec. 602. Sense of the Committee on Banking, Housing, and Urban Affairs of the Senate.

Sec. 603. Investments in Government sponsored enterprises.

Sec. 604. Repeal of savings bank provisions in the Bank Holding Company Act of 1956.

Sec. 605. Service of members of the Board of Governors of the Federal Reserve System.

Sec. 606. Provision of technical assistance to microenterprises.

1 **TITLE I—FACILITATING AFFILI-**
 2 **ATION AMONG SECURITIES**
 3 **FIRMS, INSURANCE COMPA-**
 4 **NIES, AND DEPOSITORY IN-**
 5 **STITUTIONS**

6 **Subtitle A—Affiliations**

7 **SEC. 101. GLASS-STEAGALL ACT REFORMED.**

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

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

13 **SEC. 102. ACTIVITY RESTRICTIONS APPLICABLE TO BANK**
 14 **HOLDING COMPANIES WHICH ARE NOT FI-**
 15 **NANCIAL HOLDING COMPANIES.**

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

19 “(8) shares of any company the activities of
 20 which had been determined by the Board by regula-
 21 tion under this paragraph as of the day before the

1 date of enactment of the Financial Services Act of
 2 1999, to be so closely related to banking as to be a
 3 proper incident thereto (subject to such terms and
 4 conditions contained in such regulation, unless modi-
 5 fied by the Board);”.

6 (b) CONFORMING CHANGES TO OTHER STATUTES.—

7 (1) AMENDMENT TO THE BANK HOLDING COM-
 8 PANY ACT AMENDMENTS OF 1970.—Section 105 of
 9 the Bank Holding Company Act Amendments of
 10 1970 (12 U.S.C. 1850) is amended by striking “, to
 11 engage directly or indirectly in a nonbanking activity
 12 pursuant to section 4 of such Act,”.

13 (2) AMENDMENT TO THE BANK SERVICE COM-
 14 PANY ACT.—Section 4(f) of the Bank Service Com-
 15 pany Act (12 U.S.C. 1864(f)) is amended by strik-
 16 ing the period and adding at the end the following:
 17 “as of the day before the date of enactment of the
 18 Financial Services Act of 1999.”.

19 **SEC. 103. FINANCIAL HOLDING COMPANIES.**

20 The Bank Holding Company Act of 1956 is amended
 21 by inserting after section 5 (12 U.S.C. 1844) the following
 22 new section:

23 **“SEC. 6. FINANCIAL HOLDING COMPANIES.**

24 “(a) FINANCIAL HOLDING COMPANY DEFINED.—
 25 For purposes of this section, the term ‘financial holding

1 company' means a bank holding company which meets the
2 requirements of subsection (b).

3 “(b) ELIGIBILITY REQUIREMENTS FOR FINANCIAL
4 HOLDING COMPANIES.—

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

10 “(A) All of the subsidiary depository insti-
11 tutions of the bank holding company are well
12 capitalized.

13 “(B) All of the subsidiary depository insti-
14 tutions of the bank holding company are well
15 managed.

16 “(C) All of the subsidiary depository insti-
17 tutions of the bank holding company have
18 achieved a rating of ‘satisfactory record of
19 meeting community credit needs’, or better, at
20 the most recent examination of each such insti-
21 tution under the Community Reinvestment Act
22 of 1977.

23 “(D) The company has filed with the
24 Board a declaration that the company elects to
25 be a financial holding company and certifying

1 that the company meets the requirements of
2 subparagraphs (A) through (C).

3 “(2) FOREIGN BANKS AND COMPANIES.—For
4 purposes of paragraph (1), the Board shall establish
5 and apply comparable capital and other operating
6 standards to a foreign bank that operates a branch
7 or agency or owns or controls a bank or commercial
8 lending company in the United States, and any com-
9 pany that owns or controls such foreign bank, giving
10 due regard to the principle of national treatment
11 and equality of competitive opportunity.

12 “(3) LIMITED EXCLUSIONS FROM COMMUNITY
13 NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DE-
14 POSITORY INSTITUTIONS.—

15 “(A) IN GENERAL.—If the requirements of
16 subparagraph (B) are met, any depository insti-
17 tution acquired by a bank holding company
18 during the 24-month period preceding the sub-
19 mission of a declaration under paragraph
20 (1)(D) and any depository institution acquired
21 after the submission of such declaration may be
22 excluded for purposes of paragraph (1)(C) until
23 the later of—

24 “(i) the end of the 24-month period
25 beginning on the date the acquisition of

1 the depository institution by such company
2 is consummated; or

3 “(ii) the date of completion of the
4 first examination of such depository insti-
5 tution under the Community Reinvestment
6 Act of 1977 which is conducted after the
7 date of the acquisition of the depository in-
8 stitution.

9 “(B) REQUIREMENTS.—The requirements
10 of this subparagraph are met with respect to
11 any bank holding company referred to in sub-
12 paragraph (A) if—

13 “(i) the bank holding company has
14 submitted an affirmative plan to the ap-
15 propriate Federal banking agency to take
16 such action as may be necessary in order
17 for such institution to achieve a rating of
18 ‘satisfactory record of meeting community
19 credit needs’, or better, at the next exam-
20 ination of the institution under the Com-
21 munity Reinvestment Act of 1977; and

22 “(ii) the plan has been approved by
23 such agency.

24 “(c) ENGAGING IN ACTIVITIES THAT ARE FINANCIAL
25 IN NATURE.—

1 “(1) FINANCIAL ACTIVITIES.—Notwithstanding
2 section 4(a), a financial holding company and a
3 wholesale financial holding company may engage in
4 any activity, and acquire and retain the shares of
5 any company engaged in any activity, that the
6 Board and the Secretary of the Treasury have joint-
7 ly determined, pursuant to paragraph (2) (by regula-
8 tion or order), to be financial in nature or incidental
9 to such financial activities.

10 “(2) FACTORS TO BE CONSIDERED.—In deter-
11 mining whether an activity is financial in nature or
12 incidental to financial activities, the Board and the
13 Secretary of the Treasury shall take into account—

14 “(A) the purposes of this Act and the Fi-
15 nancial Services Act of 1999;

16 “(B) changes or reasonably expected
17 changes in the marketplace in which bank hold-
18 ing companies compete;

19 “(C) changes or reasonably expected
20 changes in the technology for delivering finan-
21 cial services; and

22 “(D) whether such activity is necessary or
23 appropriate to allow bank holding companies
24 to—

1 “(i) compete effectively with any com-
2 pany seeking to provide financial services
3 in the United States;

4 “(ii) use any available or emerging
5 technological means, including any applica-
6 tion necessary to protect the security or ef-
7 ficacy of systems for the transmission of
8 data or financial transactions, in providing
9 financial services; and

10 “(iii) offer customers any available or
11 emerging technological means for using fi-
12 nancial services.

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

16 “(A) Lending, exchanging, transferring, in-
17 vesting for others, or safeguarding money or se-
18 curities.

19 “(B) Insuring, guaranteeing, or indem-
20 nifying against loss, harm, damage, illness, dis-
21 ability, or death, or providing and issuing annu-
22 ities, and acting as principal, agent, or broker
23 for purposes of the foregoing.

24 “(C) Providing financial, investment, or
25 economic advisory services, including advising

1 an investment company (as defined in section 3
2 of the Investment Company Act of 1940).

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

6 “(E) Underwriting, dealing in, or making
7 a market in securities.

8 “(F) Engaging in any activity that the
9 Board has determined, by order or regulation
10 that is in effect on the date of enactment of the
11 Financial Services Act of 1999, to be so closely
12 related to banking or managing or controlling
13 banks as to be a proper incident thereto (sub-
14 ject to the same terms and conditions contained
15 in such order or regulation, unless modified by
16 the Board).

17 “(G) Engaging, in the United States, in
18 any activity that—

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

21 “(ii) the Board has determined, under
22 regulations issued pursuant to section
23 4(c)(13) of this Act (as in effect on the
24 day before the date of enactment of the Fi-
25 nancial Services Act of 1999) to be usual

1 in connection with the transaction of bank-
2 ing or other financial operations abroad.

3 “(H) Directly or indirectly acquiring or
4 controlling, whether as principal, on behalf of 1
5 or more entities (including entities, other than
6 a depository institution, that the bank holding
7 company controls) or otherwise, shares, assets,
8 or ownership interests (including without limita-
9 tion debt or equity securities, partnership inter-
10 ests, trust certificates or other instruments rep-
11 resenting ownership) of a company or other en-
12 tity, whether or not constituting control of such
13 company or entity, engaged in any activity not
14 authorized pursuant to this section if—

15 “(i) the shares, assets, or ownership
16 interests are not acquired or held by a de-
17 pository institution;

18 “(ii) such shares, assets, or ownership
19 interests are acquired and held by a securi-
20 ties affiliate or an affiliate thereof as part
21 of a bona fide underwriting or merchant
22 banking activity, including investment ac-
23 tivities engaged in for the purpose of ap-
24 preciation and ultimate resale or disposi-
25 tion of the investment;

1 “(iii) such shares, assets, or owner-
2 ship interests are held only for such a pe-
3 riod of time as will permit the sale or dis-
4 position thereof on a reasonable basis con-
5 sistent with the nature of the activities de-
6 scribed in clause (ii); and

7 “(iv) during the period such shares,
8 assets, or ownership interests are held, the
9 bank holding company does not actively
10 participate in the day to day management
11 or operation of such company or entity, ex-
12 cept insofar as necessary to achieve the ob-
13 jectives of clause (ii).

14 “(I) Directly or indirectly acquiring or con-
15 trolling, whether as principal, on behalf of 1 or
16 more entities (including entities, other than a
17 depository institution or subsidiary of a deposi-
18 tory institution, that the bank holding company
19 controls) or otherwise, shares, assets, or owner-
20 ship interests (including without limitation debt
21 or equity securities, partnership interests, trust
22 certificates or other instruments representing
23 ownership) of a company or other entity, wheth-
24 er or not constituting control of such company

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

3 “(i) the shares, assets, or ownership
4 interests are not acquired or held by a de-
5 pository institution or a subsidiary of a de-
6 pository institution;

7 “(ii) such shares, assets, or ownership
8 interests are acquired and held by an in-
9 surance company that is predominantly en-
10 gaged in underwriting life, accident and
11 health, or property and casualty insurance
12 (other than credit-related insurance);

13 “(iii) such shares, assets, or owner-
14 ship interests represent an investment
15 made in the ordinary course of business of
16 such insurance company in accordance
17 with relevant State law governing such in-
18 vestments; and

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

1 achieve the objectives of clauses (ii) and
2 (iii).

3 “(4) ACTIONS REQUIRED.—

4 “(A) REGULATION OF MERCHANT BANK-
5 ING.—The Board may prescribe regulations and
6 issue interpretations to implement paragraph
7 (3)(H).

8 “(B) REGULATION OF OTHER ACTIVI-
9 TIES.—The Board and the Secretary of the
10 Treasury—

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

14 “(ii) shall jointly define, by regulation,
15 activities described in paragraph (5), to the
16 extent that they are consistent with the
17 purposes of this Act, as financial in nature
18 or incidental to activities that are financial
19 in nature.

20 “(5) ACTIVITIES DESCRIBED.—The activities
21 described in this paragraph are—

22 “(A) lending, exchanging, transferring, in-
23 vesting for others, or safeguarding financial as-
24 sets other than money or securities;

1 “(B) providing any device or other instru-
2 mentality for transferring money or other finan-
3 cial assets; and

4 “(C) arranging, effecting, or facilitating fi-
5 nancial transactions for the account of third
6 parties.

7 “(6) POST-CONSUMMATION NOTIFICATION.—

8 “(A) IN GENERAL.—A financial holding
9 company and a wholesale financial holding com-
10 pany that acquires any company, or commences
11 any activity, pursuant to this subsection shall
12 provide written notice to the Board describing
13 the activity commenced or conducted by the
14 company acquired no later than 30 calendar
15 days after commencing the activity or consum-
16 mating the acquisition.

17 “(B) APPROVAL NOT REQUIRED FOR CER-
18 TAIN FINANCIAL ACTIVITIES.—Except as pro-
19 vided in section 4(j) with regard to the acquisi-
20 tion of a savings association or in paragraph
21 (7) of this subsection, a financial holding com-
22 pany and a wholesale financial holding company
23 may commence any activity, or acquire any
24 company, pursuant to paragraph (3) or any
25 regulation prescribed or order issued under

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

3 “(7) NOTICE REQUIRED FOR LARGE COMBINA-
4 TIONS.—

5 “(A) IN GENERAL.—No financial holding
6 company or wholesale financial holding com-
7 pany shall directly or indirectly acquire, and no
8 company that becomes a financial holding com-
9 pany or a wholesale financial holding company
10 shall directly or indirectly acquire control of,
11 any company in the United States, including
12 through merger, consolidation, or other type of
13 business combination, that—

14 “(i) is engaged in activities permitted
15 under this subsection or subsection (g);
16 and

17 “(ii) has consolidated total assets in
18 excess of \$40,000,000,000,

19 unless such holding company has provided no-
20 tice to the Board, not later than 60 days prior
21 to such proposed acquisition or prior to becom-
22 ing a financial holding company or wholesale fi-
23 nancial holding company, and during that time
24 period, or such longer time period not exceeding
25 an additional 60 days, as established by the

1 Board, the Board has not issued a notice dis-
2 approving the proposed acquisition or retention.

3 “(B) FACTORS FOR CONSIDERATION.—In
4 reviewing any prior notice filed under this para-
5 graph, the Board shall take into
6 consideration—

7 “(i) whether the company is in com-
8 pliance with all applicable criteria set forth
9 in subsection (b) and the provisions of sub-
10 section (d);

11 “(ii) whether the proposed combina-
12 tion represents an undue aggregation of
13 resources;

14 “(iii) whether the proposed combina-
15 tion poses a risk to the deposit insurance
16 system;

17 “(iv) whether the proposed combina-
18 tion poses a risk to State insurance guar-
19 anty funds;

20 “(v) whether the proposed combina-
21 tion can reasonably be expected to be in
22 the best interests of depositors or policy-
23 holders of the respective entities; and

1 “(vi) whether the proposed trans-
2 action can reasonably be expected to
3 produce benefits to the public.

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

10 “(D) SOLICITATION OF VIEWS OF OTHER
11 SUPERVISORY AGENCIES.—

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

17 “(I) the appropriate Federal
18 banking agency of any bank involved;

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

23 “(III) the Secretary of the Treas-
24 ury, the Department of Justice, and
25 the Federal Trade Commission.

1 “(ii) TIMING.—The views and rec-
2 ommendations of any agency provided no-
3 tice under this paragraph shall be sub-
4 mitted to the Board not later than 30 cal-
5 endar days after the date on which notice
6 to the agency was given, unless the Board
7 determines that another shorter time pe-
8 riod is appropriate.

9 “(d) PROVISIONS APPLICABLE TO FINANCIAL HOLD-
10 ING COMPANIES THAT FAIL TO MEET REQUIREMENTS.—

11 “(1) IN GENERAL.—If a financial holding com-
12 pany is not in compliance with the requirements of
13 subparagraph (A), (B), (C), or (D) of subsection
14 (b)(1), the appropriate Federal banking agency of
15 the subsidiary depository institution shall notify the
16 Board which shall give notice of such finding to the
17 company.

18 “(2) AGREEMENT TO CORRECT CONDITIONS RE-
19 QUIRED.—

20 “(A) IN GENERAL.—Not later than 45
21 days after receipt by a financial holding com-
22 pany of a notice given under paragraph (1) (or
23 such additional period as the Board may per-
24 mit), the company and any relevant depository
25 institution shall execute an agreement accept-

1 able to the Board and the appropriate Federal
2 banking agency to comply with the require-
3 ments applicable to a financial holding com-
4 pany.

5 “(B) CERTAIN FAILURES TO COMPLY.—A
6 financial holding company shall not be required
7 to divest any company held, or terminate any
8 activity conducted pursuant to, subsection (c)
9 solely because of a failure to comply with sub-
10 section (b)(1)(C).

11 “(3) BOARD MAY IMPOSE LIMITATIONS.—Until
12 the conditions described in a notice to a financial
13 holding company under paragraph (1) are
14 corrected—

15 “(A) the Board may impose such limita-
16 tions on the conduct or activities of the com-
17 pany or any affiliate of the company (other
18 than a depository to institution or a subsidiary
19 of a depository institution) as the Board deter-
20 mines to be appropriate under the cir-
21 cumstances; and

22 “(B) the appropriate Federal banking
23 agency may impose such limitations on the con-
24 duct or activities of an affiliated depository in-
25 stitution or subsidiary of a depository institu-

1 tion as the appropriate Federal banking agency
2 determines to be appropriate under the cir-
3 cumstances.

4 “(4) FAILURE TO CORRECT.—If, after receiving
5 a notice under paragraph (1), a financial holding
6 company or a depository institution affiliate of such
7 company does not—

8 “(A) execute and implement an agreement
9 in accordance with paragraph (2);

10 “(B) comply with any limitations imposed
11 under paragraph (3);

12 “(C) in the case of a notice of failure to
13 comply with subsection (b)(1)(A), restore each
14 depository institution subsidiary to well capital-
15 ized status before the end of the 180-day period
16 beginning on the date such notice is received by
17 the company (or such other period permitted by
18 the Board); or

19 “(D) in the case of a notice of failure to
20 comply with subparagraph (B) or (C) of sub-
21 section (b)(1), restore compliance with any such
22 subparagraph on or before the date on which
23 the next examination of the depository institu-
24 tion subsidiary is completed or by the end of

1 such other period as the Board determines to
2 be appropriate,
3 the Board may require such company, under such
4 terms and conditions as may be imposed by the
5 Board and subject to such extension of time as may
6 be granted in the Board’s discretion, to divest con-
7 trol of any depository institution subsidiary or, at
8 the election of the financial holding company, in-
9 stead to cease to engage in any activity conducted by
10 such company or its subsidiaries pursuant to this
11 section.

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

15 “(e) SAFEGUARDS FOR BANK SUBSIDIARIES.—A fi-
16 nancial holding company shall assure that—

17 “(1) the procedures of the holding company for
18 identifying and managing financial and operational
19 risks within the company, and the subsidiaries of
20 such company, adequately protect the subsidiaries of
21 such company which are insured depository institu-
22 tions from such risks;

23 “(2) the holding company has reasonable poli-
24 cies and procedures to preserve the separate cor-
25 porate identity and limited liability of such company

1 and the subsidiaries of such company, for the pro-
2 tection of the company's subsidiary insured deposi-
3 tory institutions; and

4 “(3) the holding company complies with this
5 section.

6 “(f) AUTHORITY TO RETAIN LIMITED NON-
7 FINANCIAL ACTIVITIES AND AFFILIATIONS.—

8 “(1) IN GENERAL.—Notwithstanding section
9 4(a), a company that is not a bank holding company
10 or a foreign bank (as defined in section 1(b)(7) of
11 the International Banking Act of 1978) and becomes
12 a financial holding company after the date of enact-
13 ment of the Financial Services Act of 1999 may con-
14 tinue to engage in any activity and retain direct or
15 indirect ownership or control of shares of a company
16 engaged in any activity if—

17 “(A) the holding company lawfully was en-
18 gaged in the activity or held the shares of such
19 company on September 30, 1997;

20 “(B) the holding company is predomi-
21 nantly engaged in financial activities as defined
22 in paragraph (2); and

23 “(C) the company engaged in such activity
24 continues to engage only in the same activities
25 that such company conducted on September 30,

1 1997, and other activities permissible under
2 this Act.

3 “(2) **PREDOMINANTLY FINANCIAL.**—For pur-
4 poses of this subsection, a company is predominantly
5 engaged in financial activities if the annual gross
6 revenues derived by the holding company and all
7 subsidiaries of the holding company (excluding reve-
8 nues derived from subsidiary depository institu-
9 tions), on a consolidated basis, from engaging in ac-
10 tivities that are financial in nature or are incidental
11 to activities that are financial in nature under sub-
12 section (c) represent at least 85 percent of the con-
13 solidated annual gross revenues of the company.

14 “(3) **NO EXPANSION OF GRANDFATHERED COM-**
15 **MERCIAL ACTIVITIES THROUGH MERGER OR CON-**
16 **SOLIDATION.**—A financial holding company that en-
17 gages in activities or holds shares pursuant to this
18 subsection, or a subsidiary of such financial holding
19 company, may not acquire, in any merger, consolida-
20 tion, or other type of business combination, assets of
21 any other company which is engaged in any activity
22 which the Board has not determined to be financial
23 in nature or incidental to activities that are financial
24 in nature under subsection (c).

1 “(4) CONTINUING REVENUE LIMITATION ON
2 GRANDFATHERED COMMERCIAL ACTIVITIES.—Not-
3 withstanding any other provision of this subsection,
4 a financial holding company may continue to engage
5 in activities or hold shares in companies pursuant to
6 this subsection only to the extent that the aggregate
7 annual gross revenues derived from all such activi-
8 ties and all such companies does not exceed 15 per-
9 cent of the consolidated annual gross revenues of the
10 financial holding company (excluding revenues de-
11 rived from subsidiary depository institutions).

12 “(5) CROSS MARKETING RESTRICTIONS APPLI-
13 CABLE TO COMMERCIAL ACTIVITIES.—A depository
14 institution controlled by a financial holding company
15 shall not—

16 “(A) offer or market, directly or through
17 any arrangement, any product or service of a
18 company whose activities are conducted or
19 whose shares are owned or controlled by the fi-
20 nancial holding company pursuant to this sub-
21 section or subparagraph (H) or (I) of sub-
22 section (c)(3); or

23 “(B) permit any of its products or services
24 to be offered or marketed, directly or through

1 any arrangement, by or through any company
2 described in subparagraph (A).

3 “(6) TRANSACTIONS WITH NONFINANCIAL AF-
4 FILIATES.—An insured depository institution con-
5 trolled by a financial holding company or wholesale
6 financial holding company may not engage in a cov-
7 ered transaction (as defined by section 23A(b)(7) of
8 the Federal Reserve Act) with any affiliate con-
9 trolled by the company pursuant to section 10(c),
10 this subsection, or subparagraph (H) or (I) of sub-
11 section (c)(3).

12 “(7) SUNSET OF GRANDFATHER.—A financial
13 holding company engaged in any activity, or retain-
14 ing direct or indirect ownership or control of shares
15 of a company, pursuant to this subsection, shall ter-
16 minate such activity and divest ownership or control
17 of the shares of such company before the end of the
18 10-year period beginning on the date of enactment
19 of the Financial Services Act of 1999. The Board
20 may, upon application by a financial holding com-
21 pany, extend such 10-year period by a period not to
22 exceed an additional 5 years if such extension would
23 not be detrimental to the public interest.

24 “(g) DEVELOPING ACTIVITIES.—A financial holding
25 company and a wholesale financial holding company may

1 engage directly or indirectly, or acquire shares of any com-
2 pany engaged, in any activity that the Board has not de-
3 termined to be financial in nature or incidental to financial
4 activities under subsection (c) if—

5 “(1) the holding company reasonably concludes
6 that the activity is financial in nature or incidental
7 to financial activities;

8 “(2) the gross revenues from all activities con-
9 ducted under this subsection represent less than 5
10 percent of the consolidated gross revenues of the
11 holding company;

12 “(3) the aggregate total assets of all companies
13 the shares of which are held under this subsection
14 do not exceed 5 percent of the holding company’s
15 consolidated total assets;

16 “(4) the total capital invested in activities con-
17 ducted under this subsection represents less than 5
18 percent of the consolidated total capital of the hold-
19 ing company;

20 “(5) the Board has not determined that the ac-
21 tivity is not financial in nature or incidental to fi-
22 nancial activities under subsection (c);

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

1 “(7) the holding company provides written noti-
2 fication to the Board describing the activity com-
3 menced or conducted by the company acquired no
4 later than 10 business days after commencing the
5 activity or consummating the acquisition.

6 “(h) DEFINITIONS.—For purposes of this section, the
7 following definitions shall apply:

8 “(1) WELL CAPITALIZED.—The term ‘well cap-
9 italized’ has the same meaning as in section 38 of
10 the Federal Deposit Insurance Act. For purposes of
11 this section, the appropriate Federal banking agency
12 shall have exclusive jurisdiction to determine wheth-
13 er an depository institution is well capitalized.

14 “(2) WELL MANAGED.—

15 “(A) IN GENERAL.—The term ‘well man-
16 aged’ means—

17 “(i) in the case of an depository insti-
18 tution that has been examined, unless oth-
19 erwise determined in writing by the appro-
20 priate Federal banking agency, the
21 achievement of—

22 “(I) a composite rating of 1 or 2
23 under the Uniform Financial Institu-
24 tions Rating System (or an equivalent
25 rating under an equivalent rating sys-

1 tem) in connection with the most re-
 2 cent examination or subsequent review
 3 of the depository institution; and

4 “**(II)** at least a rating of 2 for
 5 management, if that rating is given;
 6 or

7 “(ii) in the case of an depository insti-
 8 tution that has not been examined, the ex-
 9 istence and use of such managerial re-
 10 sources as the appropriate Federal banking
 11 agency determines are satisfactory.

12 “(B) **EXISTING JURISDICTION PRE-**
 13 **SERVED.**—For purposes of this section, the ap-
 14 propriate Federal banking agency shall have ex-
 15 clusive jurisdiction to determine whether a de-
 16 pository institution is well managed.”.

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

18 (a) **AFFILIATIONS.**—

19 (1) **IN GENERAL.**—Except as provided in para-
 20 graph (2), no State may, by statute, regulation,
 21 order, interpretation, or other action, prevent or re-
 22 strict an insured depository institution or wholesale
 23 financial institution, or a subsidiary or affiliate
 24 thereof, from being affiliated directly or indirectly or
 25 associated with any person or entity, as authorized

1 or permitted by this Act or any other provision of
2 Federal law.

3 (2) INSURANCE.—With respect to affiliations
4 between insured depository institutions or wholesale
5 financial institutions, or any subsidiary or affiliate
6 thereof, and persons or entities engaged in the busi-
7 ness of insurance, paragraph (1) does not prohibit
8 any State from—

9 (A) requiring any person or entity that
10 proposes to acquire control of an entity that is
11 engaged in the business of insurance and domi-
12 ciled in that State (hereafter in this subpara-
13 graph referred to as the “insurer”) to furnish
14 to the insurance regulatory authority of that
15 State, not later than 60 days before the effec-
16 tive date of the proposed acquisition—

17 (i) the name and address of each per-
18 son by whom, or on whose behalf, the af-
19 filiation referred to in this subparagraph is
20 to be effected (hereafter in this subpara-
21 graph referred to as the “acquiring
22 party”);

23 (ii) if the acquiring party is an indi-
24 vidual, his or her principal occupation and
25 all offices and positions held during the 5

1 years preceding the date of notification,
2 and any conviction of crimes other than
3 minor traffic violations during the 10 years
4 preceding the date of notification;

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

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

13 (II) an informative description of
14 the business intended to be done by
15 the acquiring party and any sub-
16 sidiary thereof; and

17 (III) a list of all individuals who
18 are, or who have been selected to be-
19 come, directors or executive officers of
20 the acquiring party or who perform,
21 or will perform, functions appropriate
22 to such positions, including, for each
23 such individual, the information re-
24 quired by clause (ii);

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

13 (v) fully audited financial information
14 as to the earnings and financial condition
15 of each acquiring party for the 5 fiscal
16 years preceding the date of notification of
17 each such acquiring party, or for such less-
18 er period as such acquiring party and any
19 predecessors thereof shall have been in ex-
20 istence, and similar unaudited information
21 as of a date not earlier than 90 days be-
22 fore the date of notification, except that, in
23 the case of an acquiring party that is an
24 insurer actively engaged in the business of
25 insurance, the financial statements of such

1 insurer need not be audited, but such audit
2 may be required if the need therefor is de-
3 termined by the insurance regulatory au-
4 thority of the State;

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

11 (vii) the number of shares of any se-
12 curity of the insurer that each acquiring
13 party proposes to acquire, the terms of any
14 offer, request, invitation, agreement, or ac-
15 quisition, and a statement as to the meth-
16 od by which the fairness of the proposal
17 was arrived at;

18 (viii) the amount of each class of any
19 security of the insurer that is beneficially
20 owned or concerning which there is a right
21 to acquire beneficial ownership by each ac-
22 quiring party;

23 (ix) a full description of any contracts,
24 arrangements, or understandings with re-
25 spect to any security of the insurer in

1 which any acquiring party is involved, in-
2 cluding transfer of any of the securities,
3 joint ventures, loan or option arrange-
4 ments, puts or calls, guarantees of loans,
5 guarantees against loss or guarantees of
6 profits, division of losses or profits, or the
7 giving or withholding of proxies, and iden-
8 tification of the persons with whom such
9 contracts, arrangements, or under-
10 standings have been entered into;

11 (x) a description of the purchase of
12 any security of the insurer during the 12-
13 month period preceding the date of notifi-
14 cation by any acquiring party, including
15 the dates of purchase, names of the pur-
16 chasers, and consideration paid, or agreed
17 to be paid, therefor;

18 (xi) a description of any recommenda-
19 tions to purchase any security of the in-
20 surer made during the 12-month period
21 preceding the date of notification by any
22 acquiring party or by any person based
23 upon interviews or at the suggestion of
24 such acquiring party;

1 (xii) copies of all tender offers for, re-
2 quests or invitations for tenders of, ex-
3 change offers for and agreements to ac-
4 quire or exchange any securities of the in-
5 surer and, if distributed, of additional so-
6 liciting material relating thereto; and

7 (xiii) the terms of any agreement,
8 contract, or understanding made with any
9 broker-dealer as to solicitation of securities
10 of the insurer for tender and the amount
11 of any fees, commissions, or other com-
12 pensation to be paid to broker-dealers with
13 regard thereto;

14 (B) requiring an entity that is acquiring
15 control of an entity that is engaged in the busi-
16 ness of insurance and domiciled in that State to
17 maintain or restore the capital requirements of
18 that insurance entity to the level required under
19 the capital regulations of general applicability
20 in that State to avoid the requirement of pre-
21 paring and filing with the insurance regulatory
22 authority of that State a plan to increase the
23 capital of the entity, except that any determina-
24 tion by the State insurance regulatory authority
25 with respect to such requirement shall be made

1 not later than 60 days after the date of notifi-
2 cation under subparagraph (A);

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

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

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

15 (A) IN GENERAL.—Nothing in paragraph
16 (1) shall be construed as affecting State laws,
17 regulations, orders, interpretations, or other ac-
18 tions of general applicability relating to the gov-
19 ernance of corporations, partnerships, limited li-
20 ability companies or other business associations
21 incorporated or formed under the laws of that
22 State or domiciled in that State, or the applica-
23 bility of the antitrust laws of any State or any
24 State law that is similar to the antitrust laws.

1 (B) DEFINITION.—For purposes of this
2 paragraph, the term “antitrust laws” has the
3 same meaning as in subsection (a) of the first
4 section of the Clayton Act, and includes section
5 5 of the Federal Trade Commission Act to the
6 extent that such section 5 relates to unfair
7 methods of competition.

8 (b) ACTIVITIES.—

9 (1) IN GENERAL.—Except as provided in para-
10 graph (3), and except with respect to insurance
11 sales, solicitation, and cross marketing activities,
12 which shall be governed by paragraph (2), no State
13 may, by statute, regulation, order, interpretation, or
14 other action, prevent or restrict an insured deposi-
15 tory institution, wholesale financial institution, or
16 subsidiary or affiliate thereof from engaging directly
17 or indirectly, either by itself or in conjunction with
18 a subsidiary, affiliate, or any other entity or person,
19 in any activity authorized or permitted under this
20 Act.

21 (2) INSURANCE SALES.—

22 (A) IN GENERAL.—In accordance with the
23 legal standards for preemption set forth in the
24 decision of the Supreme Court of the United
25 States in Barnett Bank of Marion County N.A.

1 v. Nelson, 116 S. Ct. 1103 (1996), no State
2 may, by statute, regulation, order, interpreta-
3 tion, or other action, prevent or significantly
4 interfere with the ability of an insured depository
5 institution or wholesale financial institu-
6 tion, or a subsidiary or affiliate thereof, to en-
7 gage, directly or indirectly, either by itself or in
8 conjunction with a subsidiary, affiliate, or any
9 other party, in any insurance sales, solicitation,
10 or cross-marketing activity.

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

17 (i) Restrictions prohibiting the rejec-
18 tion of an insurance policy solely because
19 the policy has been issued or underwritten
20 by any person who is not associated with
21 such insured depository institution or
22 wholesale financial institution, or any sub-
23 sidiary or affiliate thereof, when such in-
24 surance is required in connection with a
25 loan or extension of credit.

1 (ii) Restrictions prohibiting a require-
2 ment for any debtor, insurer, or insurance
3 agent or broker to pay a separate charge
4 in connection with the handling of insur-
5 ance that is required in connection with a
6 loan or other extension of credit or the
7 provision of another traditional banking
8 product, unless such charge would be re-
9 quired when the insured depository institu-
10 tion or wholesale financial institution, or
11 any subsidiary or affiliate thereof, is the li-
12 censed insurance agent or broker providing
13 the insurance.

14 (iii) Restrictions prohibiting the use of
15 any advertisement or other insurance pro-
16 motional material by an insured depository
17 institution or wholesale financial institu-
18 tion, or any subsidiary or affiliate thereof,
19 that would cause a reasonable person to
20 believe mistakenly that—

21 (I) a State or the Federal Gov-
22 ernment is responsible for the insur-
23 ance sales activities of, or stands be-
24 hind the credit of, the institution, af-
25 filiate, or subsidiary; or

1 (II) a State, or the Federal Gov-
2 ernment guarantees any returns on
3 insurance products, or is a source of
4 payment on any insurance obligation
5 of or sold by the institution, affiliate,
6 or subsidiary.

7 (iv) Restrictions prohibiting the pay-
8 ment or receipt of any commission or bro-
9 kerage fee or other valuable consideration
10 for services as an insurance agent or
11 broker to or by any person, unless such
12 person holds a valid State license regard-
13 ing the applicable class of insurance at the
14 time at which the services are performed,
15 except that, in this clause, the term “serv-
16 ices as an insurance agent or broker” does
17 not include a referral by an unlicensed per-
18 son of a customer or potential customer to
19 a licensed insurance agent or broker that
20 does not include a discussion of specific in-
21 surance policy terms and conditions.

22 (v) Restrictions prohibiting any com-
23 pensation paid to or received by any indi-
24 vidual who is not licensed to sell insurance,
25 for the referral of a customer that seeks to

1 purchase, or seeks an opinion or advice on,
2 any insurance product to a person that
3 sells or provides opinions or advice on such
4 product, based on the purchase of insur-
5 ance by the customer.

6 (vi) Restrictions prohibiting the re-
7 lease of the insurance information of a cus-
8 tomer (defined as information concerning
9 the premiums, terms, and conditions of in-
10 surance coverage, including expiration
11 dates and rates, and insurance claims of a
12 customer contained in the records of the
13 insured depository institution or wholesale
14 financial institution, or a subsidiary or af-
15 filiate thereof) to any person or entity
16 other than an officer, director, employee,
17 agent, subsidiary, or affiliate of an insured
18 depository institution or a wholesale finan-
19 cial institution, for the purpose of soliciting
20 or selling insurance, without the express
21 consent of the customer, other than a pro-
22 vision that prohibits—

23 (I) a transfer of insurance infor-
24 mation to an unaffiliated insurance
25 company, agent, or broker in connec-

1 tion with transferring insurance in
2 force on existing insureds of the in-
3 sured depository institution or whole-
4 sale financial institution, or subsidiary
5 or affiliate thereof, or in connection
6 with a merger with or acquisition of
7 an unaffiliated insurance company,
8 agent, or broker; or

9 (II) the release of information as
10 otherwise authorized by State or Fed-
11 eral law.

12 (vii) Restrictions prohibiting the use
13 of health information obtained from the in-
14 surance records of a customer for any pur-
15 pose, other than for its activities as a li-
16 censed agent or broker, without the ex-
17 press consent of the customer.

18 (viii) Restrictions prohibiting the ex-
19 tension of credit or any product or service
20 that is equivalent to an extension of credit,
21 lease or sale of property of any kind, or
22 furnishing of any services, or fixing or
23 varying the consideration for any of the
24 foregoing, on the condition or requirement
25 that the customer obtain insurance from

1 the insured depository institution, whole-
2 sale financial institution, a subsidiary or
3 affiliate thereof, or a particular insurer,
4 agent, or broker, other than a prohibition
5 that would prevent any insured depository
6 institution or wholesale financial institu-
7 tion, or any subsidiary or affiliate
8 thereof—

9 (I) from engaging in any activity
10 that would not violate section 106 of
11 the Bank Holding Company Act
12 Amendments of 1970, as interpreted
13 by the Board of Governors of the Fed-
14 eral Reserve System; or

15 (II) from informing a customer
16 or prospective customer that insur-
17 ance is required in order to obtain a
18 loan or credit, that loan or credit ap-
19 proval is contingent upon the procure-
20 ment by the customer of acceptable
21 insurance, or that insurance is avail-
22 able from the insured depository insti-
23 tution or wholesale financial institu-
24 tion, or any subsidiary or affiliate
25 thereof.

1 (ix) Restrictions requiring, when an
2 application by a consumer for a loan or
3 other extension of credit from an insured
4 depository institution or wholesale financial
5 institution is pending, and insurance is of-
6 fered or sold to the consumer or is re-
7 quired in connection with the loan or ex-
8 tension of credit by the insured depository
9 institution or wholesale financial institu-
10 tion, or any subsidiary or affiliate thereof,
11 that a written disclosure be provided to the
12 consumer (or prospective customer) indi-
13 cating that his or her choice of an insur-
14 ance provider will not affect the credit de-
15 cision or credit terms in any way, except
16 that the insured depository institution or
17 wholesale financial institution may impose
18 reasonable requirements concerning the
19 creditworthiness of the insurance provider
20 and scope of coverage chosen.

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

1 (I) is not a deposit;

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

4 (III) is not guaranteed by the in-
5 sured depository institution or whole-
6 sale financial institution or, if appro-
7 priate, its subsidiaries or affiliates or
8 any person soliciting the purchase of
9 or selling insurance on the premises
10 thereof; and

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

14 (xi) Restrictions requiring that, when
15 a customer obtains insurance (other than
16 credit insurance or flood insurance) and
17 credit from an insured depository institu-
18 tion or wholesale financial institution, or
19 its subsidiaries or affiliates, or any person
20 soliciting the purchase of or selling insur-
21 ance on the premises thereof, the credit
22 and insurance transactions be completed
23 through separate documents.

24 (xii) Restrictions prohibiting, when a
25 customer obtains insurance (other than

1 credit insurance or flood insurance) and
2 credit from an insured depository institu-
3 tion or wholesale financial institution or its
4 subsidiaries or affiliates, or any person so-
5 liciting the purchase of or selling insurance
6 on the premises thereof, inclusion of the
7 expense of insurance premiums in the pri-
8 mary credit transaction without the ex-
9 press written consent of the customer.

10 (xiii) Restrictions requiring mainte-
11 nance of separate and distinct books and
12 records relating to insurance transactions,
13 including all files relating to and reflecting
14 consumer complaints, and requiring that
15 such insurance books and records be made
16 available to the appropriate State insur-
17 ance regulator for inspection upon reason-
18 able notice.

19 (C) LIMITATIONS.—

20 (i) OCC DEFERENCE.—Section 306(e)
21 does not apply with respect to any State
22 statute, regulation, order, interpretation,
23 or other action regarding insurance sales,
24 solicitation, or cross marketing activities
25 described in subparagraph (A) that was

1 issued, adopted, or enacted before March
2 4, 1999, and that is not described in sub-
3 paragraph (B).

4 (ii) NONDISCRIMINATION.—Subsection
5 (c) does not apply with respect to any
6 State statute, regulation, order, interpreta-
7 tion, or other action regarding insurance
8 sales, solicitation, or cross marketing ac-
9 tivities described in subparagraph (A) that
10 was issued, adopted, or enacted before
11 March 4, 1999, and that is not described
12 in subparagraph (B).

13 (iii) CONSTRUCTION.—Nothing in this
14 paragraph shall be construed to limit the
15 applicability of the decision of the Supreme
16 Court in Barnett Bank of Marion County
17 N.A. v. Nelson, 116 S. Ct. 1103 (1996)
18 with respect to a State statute, regulation,
19 order, interpretation, or other action that
20 is not described in subparagraph (B).

21 (iv) LIMITATION ON INFERENCES.—
22 Nothing in this paragraph shall be con-
23 strued to create any inference with respect
24 to any State statute, regulation, order, in-

1 terpretation, or other action that is not re-
2 ferred to or described in this paragraph.

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

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

12 (B) apply only to persons or entities that
13 are not insured depository institutions or whole-
14 sale financial institutions, but that are directly
15 engaged in the business of insurance (except
16 that they may apply to depository institutions
17 engaged in providing savings bank life insur-
18 ance as principal to the extent of regulating
19 such insurance);

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

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

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

5 (A) it does not relate to, and is not issued
6 and adopted, or enacted for the purpose of reg-
7 ulating, directly or indirectly, insurance sales,
8 solicitations, or cross marketing activities cov-
9 ered under paragraph (2);

10 (B) it does not relate to, and is not issued
11 and adopted, or enacted for the purpose of reg-
12 ulating, directly or indirectly, the business of in-
13 surance activities other than sales, solicitations,
14 or cross marketing activities, covered under
15 paragraph (3);

16 (C) it does not relate to securities inves-
17 tigations or enforcement actions referred to in
18 subsection (d); and

19 (D) it—

20 (i) does not distinguish by its terms
21 between insured depository institutions,
22 wholesale financial institutions, and sub-
23 sidiaries and affiliates thereof engaged in
24 the activity at issue and other persons or
25 entities engaged in the same activity in a

1 manner that is in any way adverse with re-
2 spect to the conduct of the activity by any
3 such insured depository institution, whole-
4 sale financial institution, or subsidiary or
5 affiliate thereof engaged in the activity at
6 issue;

7 (ii) as interpreted or applied, does not
8 have, and will not have, an impact on de-
9 pository institutions, wholesale financial in-
10 stitutions, or subsidiaries or affiliates
11 thereof engaged in the activity at issue, or
12 any person or entity affiliated therewith,
13 that is substantially more adverse than its
14 impact on other persons or entities en-
15 gaged in the same activity that are not in-
16 sured depository institutions, wholesale fi-
17 nancial institutions, or subsidiaries or af-
18 filiates thereof, or persons or entities affili-
19 ated therewith;

20 (iii) does not effectively prevent a de-
21 pository institution, wholesale financial in-
22 stitution, or subsidiary or affiliate thereof
23 from engaging in activities authorized or
24 permitted by this Act or any other provi-
25 sion of Federal law; and

1 (iv) does not conflict with the intent
2 of this Act generally to permit affiliations
3 that are authorized or permitted by Fed-
4 eral law.

5 (c) NONDISCRIMINATION.—Except as provided in any
6 restrictions described in subsection (b)(2)(B), no State
7 may, by statute, regulation, order, interpretation, or other
8 action, regulate the insurance activities authorized or per-
9 mitted under this Act or any other provision of Federal
10 law of an insured depository institution or wholesale finan-
11 cial institution, or subsidiary or affiliate thereof, to the
12 extent that such statute, regulation, order, interpretation,
13 or other action—

14 (1) distinguishes by its terms between insured
15 depository institutions or wholesale financial institu-
16 tions, or subsidiaries or affiliates thereof, and other
17 persons or entities engaged in such activities, in a
18 manner that is in any way adverse to any such in-
19 sured depository institution or wholesale financial in-
20 stitution, or subsidiary or affiliate thereof;

21 (2) as interpreted or applied, has or will have
22 an impact on depository institutions or wholesale fi-
23 nancial institutions, or subsidiaries or affiliates
24 thereof, that is substantially more adverse than its
25 impact on other persons or entities providing the

1 same products or services or engaged in the same
2 activities that are not insured depository institu-
3 tions, wholesale financial institutions, or subsidiaries
4 or affiliates thereof, or persons or entities affiliated
5 therewith;

6 (3) effectively prevents a depository institution
7 or wholesale financial institution, or subsidiary or af-
8 filiate thereof, from engaging in insurance activities
9 authorized or permitted by this Act or any other
10 provision of Federal law; or

11 (4) conflicts with the intent of this Act gen-
12 erally to permit affiliations that are authorized or
13 permitted by Federal law between insured depository
14 institutions or wholesale financial institutions, or
15 subsidiaries or affiliates thereof, and persons and en-
16 tities engaged in the business of insurance.

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

1 (e) DEFINITION.—For purposes of this section, the
2 term “State” means any State of the United States, the
3 District of Columbia, any territory of the United States,
4 Puerto Rico, Guam, American Samoa, the Trust Territory
5 of the Pacific Islands, the Virgin Islands, and the North-
6 ern Mariana Islands.

7 **SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHOR-**
8 **IZED.**

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

12 “(2) REGULATIONS.—A bank holding company
13 organized as a mutual holding company shall be reg-
14 ulated on terms, and shall be subject to limitations,
15 comparable to those applicable to any other bank
16 holding company.”.

17 **SEC. 106. PROHIBITION ON DEPOSIT PRODUCTION OF-**
18 **FICES.**

19 (a) IN GENERAL.—Section 109(d) of the Riegle-Neal
20 Interstate Banking and Branching Efficiency Act of 1994
21 (12 U.S.C. 1835a(d)) is amended—

22 (1) by inserting “, the Financial Services Act of
23 1999,” after “pursuant to this title”; and

24 (2) by inserting “or such Act” after “made by
25 this title”.

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

8 **SEC. 107. CLARIFICATION OF BRANCH CLOSURE REQUIRE-**
 9 **MENTS.**

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

15 **SEC. 108. AMENDMENTS RELATING TO LIMITED PURPOSE**
 16 **BANKS.**

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

19 (1) in paragraph (2)(A)(ii)—

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

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

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

1 “(XI) assets that are derived
2 from, or incidental to, consumer lend-
3 ing activities in which institutions de-
4 scribed in section 2(c)(2)(F) or sec-
5 tion 2(c)(2)(H) are permitted to en-
6 gage;”;

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

9 “(B) any bank subsidiary of such company
10 engages in any activity in which the bank was
11 not lawfully engaged as of March 5, 1987, un-
12 less the bank is well managed and well capital-
13 ized;

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

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

20 “(ii) engages in the business of mak-
21 ing commercial loans (and, for purposes of
22 this clause, loans made in the ordinary
23 course of a credit card operation shall not
24 be treated as commercial loans); or

1 “(D) after the date of enactment of the
2 Competitive Equality Amendments of 1987, any
3 bank subsidiary of such company permits any
4 overdraft (including any intraday overdraft), or
5 incurs any such overdraft in such bank’s ac-
6 count at a Federal reserve bank, on behalf of
7 an affiliate, other than an overdraft described
8 in paragraph (3).”;

9 (3) by striking paragraphs (3) and (4) and in-
10 serting the following new paragraphs:

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

14 “(A) such overdraft results from an inad-
15 vertent computer or accounting error that is be-
16 yond the control of both the bank and the affil-
17 iate;

18 “(B) such overdraft—

19 “(i) is permitted or incurred on behalf
20 of an affiliate which is monitored by, re-
21 ports to, and is recognized as a primary
22 dealer by the Federal Reserve Bank of
23 New York; and

24 “(ii) is fully secured, as required by
25 the Board, by bonds, notes, or other obli-

1 gations which are direct obligations of the
2 United States or on which the principal
3 and interest are fully guaranteed by the
4 United States or by securities and obliga-
5 tions eligible for settlement on the Federal
6 Reserve book entry system; or

7 “(C) such overdraft—

8 “(i) is permitted or incurred by or on
9 behalf of an affiliate that is engaged pre-
10 dominantly in activities that are financial
11 in nature, and is incurred solely in connec-
12 tion with an activity that is financial in na-
13 ture, as determined under section 6(c); and

14 “(ii) does not cause the bank to vio-
15 late any provision of section 23A or 23B of
16 the Federal Reserve Act, either directly, in
17 the case of a bank that is a member of the
18 Federal Reserve System, or by virtue of
19 section 18(j) of the Federal Deposit Insur-
20 ance Act, in the case of a bank that is not
21 a member of the Federal Reserve System.

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

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

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

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

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

20 **SEC. 109. REPORTS ON ONGOING FTC STUDY OF CON-**
21 **SUMER PRIVACY ISSUES.**

22 With respect to the ongoing multistage study being
23 conducted by the Federal Trade Commission on consumer
24 privacy issues, the Commission shall submit to the Con-
25 gress an interim report on the findings and conclusions

1 of the Commission, together with such recommendations
2 for legislative and administrative action as the Commis-
3 sion determines to be appropriate, at the conclusion of
4 each stage of such study and a final report at the conclu-
5 sion of the study.

6 **SEC. 110. GAO STUDY OF ECONOMIC IMPACT ON COMMU-**
7 **NITY BANKS AND OTHER SMALL FINANCIAL**
8 **INSTITUTIONS.**

9 (a) **STUDY REQUIRED.**—The Comptroller General of
10 the United States shall conduct a study of the projected
11 economic impact that the enactment of this Act will have
12 on financial institutions which have total assets of
13 \$100,000,000 or less.

14 (b) **REPORT TO THE CONGRESS.**—The Comptroller
15 General of the United States shall submit a report to the
16 Congress before the end of the 6-month period beginning
17 on the date of the date of enactment of this Act containing
18 the findings and conclusions of the Comptroller General
19 with regard to the study required under subsection (a) and
20 such recommendations for legislative or administrative ac-
21 tion as the Comptroller General may determine to be ap-
22 propriate.

1 **Subtitle B—Streamlining Super-**
 2 **vision of Financial Holding**
 3 **Companies**

4 **SEC. 111. STREAMLINING FINANCIAL HOLDING COMPANY**
 5 **SUPERVISION.**

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

8 “(c) REPORTS AND EXAMINATIONS.—

9 “(1) REPORTS.—

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

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

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

23 “(B) USE OF EXISTING REPORTS.—

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

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

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

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

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

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

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

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

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

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

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

9 “(2) EXAMINATIONS.—

10 “(A) EXAMINATION AUTHORITY.—

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

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

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

1 material risk to an affiliated deposi-
2 tory institution, or

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

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

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

23 “(ii) inform the Board of—

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

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

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

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

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

16 “(i) the bank holding company; and

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

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

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

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

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

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

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

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

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

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

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

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

10 “(3) CAPITAL.—

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

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

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

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

9 “(C) LIMITATIONS ON INDIRECT AC-
10 TION.—In developing, establishing, or assessing
11 holding company capital or capital adequacy
12 rules, guidelines, standards, or requirements for
13 purposes of this paragraph, the Board shall not
14 take into account the activities, operations, or
15 investments of an affiliated investment company
16 registered under the Investment Company Act
17 of 1940, if the investment company is not—

18 “(i) a bank holding company; or

19 “(ii) controlled by a bank holding
20 company by reason of ownership by the
21 bank holding company (including through
22 all of its affiliates) of 25 percent or more
23 of the shares of the investment company,
24 where the shares owned by the bank hold-

1 ing company have a market value equal to
2 more than \$1,000,000.

3 “(4) TRANSFER OF BOARD AUTHORITY TO AP-
4 PROPRIATE FEDERAL BANKING AGENCY.—

5 “(A) IN GENERAL.—In the case of any
6 bank holding company which is not significantly
7 engaged in nonbanking activities, the Board, in
8 consultation with the appropriate Federal bank-
9 ing agency, may designate the appropriate Fed-
10 eral banking agency of the lead insured deposi-
11 tory institution subsidiary of such holding com-
12 pany as the appropriate Federal banking agen-
13 cy for the bank holding company.

14 “(B) AUTHORITY TRANSFERRED.—An
15 agency designated by the Board under subpara-
16 graph (A) shall have the same authority as the
17 Board under this Act to—

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

22 “(ii) approve or disapprove applica-
23 tions or transactions under section 3;

1 “(iii) take actions and impose pen-
2 alties under subsections (e) and (f) of sec-
3 tion 5 and section 8; and

4 “(iv) take actions regarding the hold-
5 ing company, any affiliate of the holding
6 company (other than a depository institu-
7 tion), or any institution-affiliated party of
8 such company or affiliate under the Fed-
9 eral Deposit Insurance Act and any other
10 statute which the Board may designate.

11 “(C) AGENCY ORDERS.—Section 9 of this
12 Act and section 105 of the Bank Holding Com-
13 pany Act Amendments of 1970, shall apply to
14 orders issued by an agency designated under
15 subparagraph (A) in the same manner such sec-
16 tions apply to orders issued by the Board.

17 “(5) FUNCTIONAL REGULATION OF SECURITIES
18 AND INSURANCE ACTIVITIES.—The Board shall defer
19 to—

20 “(A) the Securities and Exchange Commis-
21 sion with regard to all interpretations of, and
22 the enforcement of, applicable Federal securi-
23 ties laws (and rules, regulations, orders, and
24 other directives issued thereunder) relating to
25 the activities, conduct, and operations of reg-

1 istered brokers, dealers, investment advisers,
2 and investment companies;

3 “(B) the relevant State securities authori-
4 ties with regard to all interpretations of, and
5 the enforcement of, applicable State securities
6 laws (and rules, regulations, orders, and other
7 directives issued thereunder) relating to the ac-
8 tivities, conduct, and operations of registered
9 brokers, dealers, and investment advisers; and

10 “(C) the relevant State insurance authori-
11 ties with regard to all interpretations of, and
12 the enforcement of, applicable State insurance
13 laws (and rules, regulations, orders, and other
14 directives issued thereunder) relating to the ac-
15 tivities, conduct, and operations of insurance
16 companies and insurance agents.”.

17 **SEC. 112. ELIMINATION OF APPLICATION REQUIREMENT**
18 **FOR FINANCIAL HOLDING COMPANIES.**

19 (a) PREVENTION OF DUPLICATIVE FILINGS.—Sec-
20 tion 5(a) of the Bank Holding Company Act of 1956 (12
21 U.S.C. 1844(a)) is amended by adding the following new
22 sentence at the end: “A declaration filed in accordance
23 with section 6(b)(1)(D) shall satisfy the requirements of
24 this subsection with regard to the registration of a bank

1 holding company but not any requirement to file an appli-
2 cation to acquire a bank pursuant to section 3.”.

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

6 (1) by striking “Financial Institutions Super-
7 visory Act of 1966, order” and inserting “Financial
8 Institutions Supervisory Act of 1966, at the election
9 of the bank holding company—

10 “(A) order”; and

11 (2) by striking “shareholders of the bank hold-
12 ing company. Such distribution” and inserting
13 “shareholders of the bank holding company; or

14 “(B) order the bank holding company, after due
15 notice and opportunity for hearing, and after con-
16 sultation with the primary supervisor for the bank,
17 which shall be the Comptroller of the Currency in
18 the case of a national bank, and the Federal Deposit
19 Insurance Corporation and the appropriate State su-
20 pervisor in the case of an insured nonmember bank,
21 to terminate (within 120 days or such longer period
22 as the Board may direct) the ownership or control
23 of any such bank by such company.

24 “The distribution referred to in subparagraph (A)”.

1 **SEC. 113. AUTHORITY OF STATE INSURANCE REGULATOR**
2 **AND SECURITIES AND EXCHANGE COMMIS-**
3 **SION.**

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

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

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

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

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

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

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

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

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

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

1 gard to a bank holding company or affiliate referred
 2 to in that paragraph, the Board may order the bank
 3 holding company to divest the insured depository in-
 4 stitution not later than 180 days after receiving the
 5 notice, or such longer period as the Board deter-
 6 mines consistent with the safe and sound operation
 7 of the insured depository institution.

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

19 **SEC. 114. PRUDENTIAL SAFEGUARDS.**

20 Section 5 of the Bank Holding Company Act of 1956
 21 (12 U.S.C. 1844) is amended by inserting after subsection
 22 (g) (as added by section 113 of this subtitle) the following
 23 new subsection:

24 “(h) PRUDENTIAL SAFEGUARDS.—

1 “(1) IN GENERAL.—The Board and the appro-
2 priate Federal banking agency may, jointly, by regu-
3 lation or order, impose, modify, or eliminate restric-
4 tions or requirements on relationships or trans-
5 actions between a depository institution subsidiary of
6 a bank holding company and any affiliate of such
7 depository institution which the Board and the ap-
8 propriate Federal banking agency jointly find is con-
9 sistent with the public interest, the purposes of this
10 Act, the Financial Services Act of 1999, the Federal
11 Reserve Act, and other Federal law applicable to de-
12 pository institution subsidiaries of bank holding
13 companies and the standards in paragraph (2).

14 “(2) STANDARDS.—The Board and the appro-
15 priate Federal banking agency may exercise joint au-
16 thority under paragraph (1) if they find that such
17 action would—

18 “(A) avoid any significant risk to the safe-
19 ty and soundness of depository institutions or
20 any Federal deposit insurance fund;

21 “(B) enhance the financial stability of
22 bank holding companies;

23 “(C) avoid conflicts of interest or other
24 abuses;

1 “(D) enhance the privacy of customers of
2 depository institutions; or

3 “(E) promote the application of national
4 treatment and equality of competitive oppor-
5 tunity between nonbank affiliates owned or con-
6 trolled by domestic bank holding companies and
7 nonbank affiliates owned or controlled by for-
8 eign banks operating in the United States.

9 “(3) REVIEW.—The appropriate Federal bank-
10 ing agency shall regularly—

11 “(A) review all restrictions or requirements
12 established pursuant to paragraph (1) to deter-
13 mine whether there is a continuing need for any
14 such restriction or requirement to carry out the
15 purposes of the Act, including any purpose de-
16 scribed in paragraph (2); and

17 “(B) propose the modification or elimi-
18 nation of any restriction or requirement that it
19 finds is no longer required for such purposes.

20 “(4) FOREIGN BANKS.—The Board may, by
21 regulation or order, impose restrictions or require-
22 ments on relationships or transactions between a
23 foreign bank and any affiliate in the United States
24 of such foreign bank that the Board finds are con-
25 sistent with the public interest, the purposes of this

1 Act, the Financial Services Act of 1999, the Federal
2 Reserve Act, and other Federal law applicable to for-
3 eign banks and their affiliates in the United States,
4 and the standards in paragraphs (2) and (3).”.

5 **SEC. 115. EXAMINATION OF INVESTMENT COMPANIES.**

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

7 (1) **IN GENERAL.**—Except as provided in para-
8 graph (3), the Commission shall be the sole Federal
9 agency with authority to inspect and examine any
10 registered investment company that is not a bank
11 holding company or a savings and loan holding com-
12 pany.

13 (2) **PROHIBITION ON BANKING AGENCIES.**—Ex-
14 cept as provided in paragraph (3), a Federal bank-
15 ing agency may not inspect or examine any reg-
16 istered investment company that is not a bank hold-
17 ing company or a savings and loan holding company.

18 (3) **CERTAIN EXAMINATIONS AUTHORIZED.**—
19 Nothing in this subsection prevents the Federal De-
20 posit Insurance Corporation, if the Corporation finds
21 it necessary to determine the condition of an insured
22 depository institution for insurance purposes, from
23 examining an affiliate of any insured depository in-
24 stitution, pursuant to its authority under section
25 10(b)(4) of the Federal Deposit Insurance Act, as

1 may be necessary to disclose fully the relationship
2 between the depository institution and the affiliate,
3 and the effect of such relationship on the depository
4 institution.

5 (b) EXAMINATION RESULTS AND OTHER INFORMA-
6 TION.—The Commission shall provide to any Federal
7 banking agency, upon request, the results of any examina-
8 tion, reports, records, or other information with respect
9 to any registered investment company to the extent nec-
10 essary for the agency to carry out its statutory responsibil-
11 ities.

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

14 (1) BANK HOLDING COMPANY.—The term
15 “bank holding company” has the same meaning as
16 in section 2 of the Bank Holding Company Act of
17 1956.

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

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

23 (4) REGISTERED INVESTMENT COMPANY.—The
24 term “registered investment company” means an in-

1 investment company which is registered with the Com-
 2 mission under the Investment Company Act of 1940.

3 (5) SAVINGS AND LOAN HOLDING COMPANY.—

4 The term “savings and loan holding company” has
 5 the same meaning as in section 10(a)(1)(D) of the
 6 Home Owners’ Loan Act.

7 **SEC. 116. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-**
 8 **PERVISORY, AND ENFORCEMENT AUTHORITY**
 9 **OF THE BOARD.**

10 The Bank Holding Company Act of 1956 (12 U.S.C.
 11 1841 et seq.) is amended by inserting after section 10 the
 12 following new section:

13 **“SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-**
 14 **PERVISORY, AND ENFORCEMENT AUTHORITY**
 15 **OF THE BOARD.**

16 “(a) LIMITATION ON DIRECT ACTION.—

17 “(1) IN GENERAL.—The Board may not pre-
 18 scribe regulations, issue or seek entry of orders, im-
 19 pose restraints, restrictions, guidelines, require-
 20 ments, safeguards, or standards, or otherwise take
 21 any action under or pursuant to any provision of
 22 this Act or section 8 of the Federal Deposit Insur-
 23 ance Act against or with respect to a regulated sub-
 24 sidiary of a bank holding company unless the action
 25 is necessary to prevent or redress an unsafe or un-

1 sound practice or breach of fiduciary duty by such
2 subsidiary that poses a material risk to—

3 “(A) the financial safety, soundness, or
4 stability of an affiliated depository institution;
5 or

6 “(B) the domestic or international pay-
7 ment system.

8 “(2) CRITERIA FOR BOARD ACTION.—The
9 Board shall not take action otherwise permitted
10 under paragraph (1) unless the Board finds that it
11 is not reasonably possible to effectively protect
12 against the material risk at issue through action di-
13 rected at or against the affiliated depository institu-
14 tion or against depository institutions generally.

15 “(b) LIMITATION ON INDIRECT ACTION.—The Board
16 may not prescribe regulations, issue or seek entry of or-
17 ders, impose restraints, restrictions, guidelines, require-
18 ments, safeguards, or standards, or otherwise take any ac-
19 tion under or pursuant to any provision of this Act or sec-
20 tion 8 of the Federal Deposit Insurance Act against or
21 with respect to a financial holding company or a wholesale
22 financial holding company where the purpose or effect of
23 doing so would be to take action indirectly against or with
24 respect to a regulated subsidiary that may not be taken

1 directly against or with respect to such subsidiary in ac-
2 cordance with subsection (a).

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

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

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

15 “(2) a registered investment adviser, properly
16 registered by or on behalf of either the Securities
17 and Exchange Commission or any State, with re-
18 spect to the investment advisory activities of such in-
19 vestment adviser and activities incidental to such in-
20 vestment advisory activities;

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

23 “(4) an insurance company or an insurance
24 agency subject to supervision by a State insurance
25 commission, agency, or similar authority; or

1 “(5) an entity subject to regulation by the Com-
2 modity Futures Trading Commission, with respect
3 to the commodities activities of such entity and ac-
4 tivities incidental to such commodities activities.”.

5 **SEC. 117. INTERAGENCY CONSULTATION.**

6 (a) PURPOSE.—It is the intention of Congress that
7 the Board of Governors of the Federal Reserve System,
8 as the umbrella supervisor for financial holding compa-
9 nies, and the State insurance regulators, as the functional
10 regulators of companies engaged in insurance activities,
11 coordinate efforts to supervise companies that control both
12 a depository institution and a company engaged in insur-
13 ance activities regulated under State law. In particular,
14 Congress believes that the Board and the State insurance
15 regulators should share, on a confidential basis, informa-
16 tion relevant to the supervision of companies that control
17 both a depository institution and a company engaged in
18 insurance activities, including information regarding the
19 financial health of the consolidated organization and infor-
20 mation regarding transactions and relationships between
21 insurance companies and affiliated depository institutions.
22 The appropriate Federal banking agencies for depository
23 institutions should also share, on a confidential basis, in-
24 formation with the relevant State insurance regulators re-
25 garding transactions and relationships between depository

1 institutions and affiliated companies engaged in insurance
2 activities. The purpose of this section is to encourage this
3 coordination and confidential sharing of information, and
4 to thereby improve both the efficiency and the quality of
5 the supervision of financial holding companies and their
6 affiliated depository institutions and companies engaged
7 in insurance activities.

8 (b) EXAMINATION RESULTS AND OTHER INFORMA-
9 TION.—

10 (1) INFORMATION OF THE BOARD.—Upon the
11 request of the appropriate insurance regulator of
12 any State, the Board may provide any information
13 of the Board regarding the financial condition, risk
14 management policies, and operations of any financial
15 holding company that controls a company that is en-
16 gaged in insurance activities and is regulated by
17 such State insurance regulator, and regarding any
18 transaction or relationship between such an insur-
19 ance company and any affiliated depository institu-
20 tion. The Board may provide any other information
21 to the appropriate State insurance regulator that the
22 Board believes is necessary or appropriate to permit
23 the State insurance regulator to administer and en-
24 force applicable State insurance laws.

1 (2) BANKING AGENCY INFORMATION.—Upon
2 the request of the appropriate insurance regulator of
3 any State, the appropriate Federal banking agency
4 may provide any information of the agency regard-
5 ing any transaction or relationship between a deposi-
6 tory institution supervised by such Federal banking
7 agency and any affiliated company that is engaged
8 in insurance activities regulated by such State insur-
9 ance regulator. The appropriate Federal banking
10 agency may provide any other information to the ap-
11 propriate State insurance regulator that the agency
12 believes is necessary or appropriate to permit the
13 State insurance regulator to administer and enforce
14 applicable State insurance laws.

15 (3) STATE INSURANCE REGULATOR INFORMA-
16 TION.—Upon the request of the Board or the appro-
17 priate Federal banking agency, a State insurance
18 regulator may provide any examination or other re-
19 ports, records, or other information to which such
20 insurance regulator may have access with respect to
21 a company which—

22 (A) is engaged in insurance activities and
23 regulated by such insurance regulator; and

1 (B) is an affiliate of an insured depository
2 institution, wholesale financial institution, or fi-
3 nancial holding company.

4 (c) CONSULTATION.—Before making any determina-
5 tion relating to the initial affiliation of, or the continuing
6 affiliation of, an insured depository institution, wholesale
7 financial institution, or financial holding company with a
8 company engaged in insurance activities, the appropriate
9 Federal banking agency shall consult with the appropriate
10 State insurance regulator of such company and take the
11 views of such insurance regulator into account in making
12 such determination.

13 (d) EFFECT ON OTHER AUTHORITY.—Nothing in
14 this section shall limit in any respect the authority of the
15 appropriate Federal banking agency with respect to an in-
16 sured depository institution, wholesale financial institu-
17 tion, or bank holding company or any affiliate thereof
18 under any provision of law.

19 (e) CONFIDENTIALITY AND PRIVILEGE.—

20 (1) CONFIDENTIALITY.—The appropriate Fed-
21 eral banking agency shall not provide any informa-
22 tion or material that is entitled to confidential treat-
23 ment under applicable Federal banking agency regu-
24 lations, or other applicable law, to a State insurance
25 regulator unless such regulator agrees to maintain

1 the information or material in confidence and to
2 take all reasonable steps to oppose any effort to se-
3 cure disclosure of the information or material by the
4 regulator. The appropriate Federal banking agency
5 shall treat as confidential any information or mate-
6 rial obtained from a State insurance regulator that
7 is entitled to confidential treatment under applicable
8 State regulations, or other applicable law, and take
9 all reasonable steps to oppose any effort to secure
10 disclosure of the information or material by the Fed-
11 eral banking agency.

12 (2) PRIVILEGE.—The provision pursuant to this
13 section of information or material by a Federal
14 banking agency or State insurance regulator shall
15 not constitute a waiver of, or otherwise affect, any
16 privilege to which the information or material is oth-
17 erwise subject.

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

20 (1) APPROPRIATE FEDERAL BANKING AGENCY;
21 INSURED DEPOSITORY INSTITUTION.—The terms
22 “appropriate Federal banking agency” and “insured
23 depository institution” have the same meanings as
24 in section 3 of the Federal Deposit Insurance Act.

1 (2) BOARD; FINANCIAL HOLDING COMPANY;
2 AND WHOLESALE FINANCIAL INSTITUTION.—The
3 terms “Board”, “financial holding company”, and
4 “wholesale financial institution” have the same
5 meanings as in section 2 of the Bank Holding Com-
6 pany Act of 1956.

7 **SEC. 118. EQUIVALENT REGULATION AND SUPERVISION.**

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

10 (1) section 5(c) of the Bank Holding Company
11 Act of 1956 (as amended by this Act) that limit the
12 authority of the Board of Governors of the Federal
13 Reserve System to require reports from, to make ex-
14 aminations of, or to impose capital requirements on
15 bank holding companies and their nonbank subsidi-
16 aries; and

17 (2) section 10A of the Bank Holding Company
18 Act of 1956 (as added by this Act) that limit what-
19 ever authority the Board might otherwise have to
20 take direct or indirect action with respect to bank
21 holding companies and their nonbank subsidiaries,
22 shall also limit whatever authority that the Federal De-
23 posit Insurance Corporation might otherwise have under
24 any statute to require reports, make examinations, impose
25 capital requirements or take any other direct or indirect

1 action with respect to bank holding companies and their
2 nonbank subsidiaries (including nonbank subsidiaries of
3 depository institutions), subject to the same standards and
4 requirements as are applicable to the Board under such
5 provisions.

6 (b) CERTAIN EXAMINATIONS AUTHORIZED.—Noth-
7 ing in this section shall prevent the Federal Deposit Insur-
8 ance Corporation, if the Corporation finds it necessary to
9 determine the condition of an insured depository institu-
10 tion for insurance purposes, from examining an affiliate
11 of any insured depository institution, pursuant to its au-
12 thority under section 10(b)(4) of the Federal Deposit In-
13 surance Act, as may be necessary to disclose fully the rela-
14 tionship between the depository institution and the affil-
15 iate, and the effect of such relationship on the depository
16 institution.

17 **SEC. 119. PROHIBITION ON FDIC ASSISTANCE TO AFFILI-**
18 **ATES AND SUBSIDIARIES.**

19 Section 11(a)(4)(B) of the Federal Deposit Insurance
20 Act (12 U.S.C. 1821(a)(4)(B)) is amended by striking “to
21 benefit any shareholder of” and inserting “to benefit any
22 shareholder, affiliate (other than an insured depository in-
23 stitution that receives assistance in accordance with the
24 provisions of this Act), or subsidiary of”.

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

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

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

8 (1) by redesignating section 5136A (12 U.S.C.
 9 25a) as section 5136C; and

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

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

13 “(a) ACTIVITIES PERMISSIBLE.—

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

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

18 “(B) engage in any activity that is author-
 19 ized under the Bank Service Company Act, sec-
 20 tion 25 or 25A of the Federal Reserve Act, or
 21 any other Federal statute that expressly author-
 22 izes national banks to own or control subsidi-
 23 aries; and

24 “(C) engage in any activity that is permis-
 25 sible for a bank holding company under any

1 provision of section 6(c) of the Bank Holding
2 Company Act of 1956, other than—

3 “(i) paragraph (3)(B) of that section
4 (relating to insurance activities), insofar as
5 that paragraph (3)(B) permits a bank
6 holding company to engage as principal in
7 insuring, guaranteeing, or indemnifying
8 against loss, harm, damage, illness, dis-
9 ability, or death, or in providing or issuing
10 annuities; and

11 “(ii) paragraph (3)(I) of that section
12 (relating to insurance company invest-
13 ments).

14 “(2) ACTIVITY LIMITATIONS.—In addition to
15 any other limitation imposed on the activity of sub-
16 sidiaries of national banks, a subsidiary of a na-
17 tional bank may not, pursuant to paragraph (1)—

18 “(A) engage as principal in insuring, guar-
19 anteeing, or indemnifying against loss, harm,
20 damage, illness, disability, or death (other than
21 in connection with credit-related insurance) or
22 in providing or issuing annuities; or

23 “(B) engage in real estate investment or
24 development activities,

1 (except to the extent that a Federal statute ex-
2 pressly authorizes a national bank to engage directly
3 in such an activity).

4 “(3) SIZE FACTOR WITH REGARD TO FREE-
5 STANDING NATIONAL BANKS.—A national bank
6 which has total assets of \$10,000,000,000 or more
7 may not control a subsidiary engaged in activities
8 pursuant to paragraph (1) or (2) unless such na-
9 tional bank is a subsidiary of a bank holding com-
10 pany.

11 “(b) REQUIREMENTS APPLICABLE TO NATIONAL
12 BANKS WITH FINANCIAL SUBSIDIARIES.—

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

16 “(A) the national bank is well capitalized,
17 is well managed, and achieved the rating de-
18 scribed in section 6(b)(1)(C) of the Bank Hold-
19 ing Company Act of 1956, during the most re-
20 cent examination of the bank by the Comp-
21 troller of the Currency;

22 “(B) each insured depository institution
23 affiliate of the national bank is well capitalized,
24 is well managed, and achieved the rating de-
25 scribed in section 6(b)(1)(C) of the Bank Hold-

1 ing Company Act of 1956, during the most re-
2 cent examination of the institution by the ap-
3 propriate Federal banking agency;

4 “(C) the national bank and each of the
5 subsidiary depository institutions of the same
6 bank holding company have achieved a rating of
7 ‘satisfactory record of meeting community cred-
8 it needs’, or better, at the most recent examina-
9 tion of each such institution under the Commu-
10 nity Reinvestment Act of 1977; and

11 “(D) the national bank has received the
12 approval of the Comptroller of the Currency by
13 regulation or order.

14 “(2) CORRECTIVE PROCEDURE.—

15 “(A) IN GENERAL.—If a national bank
16 that controls a financial subsidiary, or any in-
17 sured depository institution affiliated with such
18 national bank, fails to meet the requirements of
19 paragraph (1), the Comptroller shall give writ-
20 ten notice to the national bank to that effect,
21 describing the conditions giving rise to the no-
22 tice.

23 “(B) AGREEMENT TO CORRECT CONDI-
24 TIONS REQUIRED.—

1 “(i) CONTENT OF AGREEMENT.—Not
2 later than 45 days after the date on which
3 the national bank receives a notice under
4 subparagraph (A) (or such additional pe-
5 riod of time as the Comptroller may per-
6 mit), the national bank or its insured de-
7 pository institution affiliate failing to meet
8 the requirements of paragraph (1) shall
9 provide a plan to the appropriate Federal
10 banking agency for such institution to cor-
11 rect the conditions described in the notice.

12 “(ii) COMPTROLLER MAY IMPOSE LIM-
13 ITATIONS.—Until the conditions giving rise
14 to the notice referred to in clause (i) are
15 corrected, the Comptroller may (notwith-
16 standing any other provision of law) im-
17 pose such limitations on the conduct of the
18 business of the national bank or the finan-
19 cial subsidiary of the national bank as the
20 Comptroller determines to be appropriate
21 under the circumstances.

22 “(iii) CERTAIN FAILURES TO COM-
23 PLY.—A national bank shall not be re-
24 quired to divest any financial subsidiary
25 held, or terminate any activity conducted

1 pursuant to, subsection (a) solely because
2 of a failure to comply with subsection
3 (b)(1)(D).

4 “(C) FAILURE TO CORRECT.—If the condi-
5 tions described in the notice under subpara-
6 graph (A) are not corrected before the end of
7 the 180-day period beginning on the date on
8 which the bank receives the notice, the Comp-
9 troller may (notwithstanding any other provi-
10 sion of law) require, under such terms and con-
11 ditions as the Comptroller may impose—

12 “(i) that the national bank divest con-
13 trol of each financial subsidiary engaged in
14 an activity that is not permissible for the
15 bank to engage in directly; or

16 “(ii) that each financial subsidiary of
17 the national bank cease any activity that is
18 not permissible for the bank to engage in
19 directly.

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

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

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

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

4 and

5 “(B) is engaged in any financial activity
6 that is not otherwise permissible under sub-
7 paragraph (A) or (B) of subsection (a)(1) of
8 this section.

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

12 “(4) WELL CAPITALIZED.—The term ‘well cap-
13 italized’ has the same meaning as in section 38 of
14 the Federal Deposit Insurance Act. For purposes of
15 this section, the appropriate Federal banking agency
16 shall have exclusive jurisdiction to determine wheth-
17 er an insured depository institution is well capital-
18 ized.

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

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

24 “(i) a composite rating of 1 or 2
25 under the Uniform Financial Institutions

1 Rating System (or an equivalent rating
 2 under an equivalent rating system) in con-
 3 nection with the most recent examination
 4 or subsequent review of the insured deposi-
 5 tory institution; and

6 “(ii) at least a rating of 2 for man-
 7 agement, if that rating is given; or

8 “(B) in the case of an insured depository
 9 institution that has not been examined, the ex-
 10 istence and use of managerial resources that
 11 the appropriate Federal banking agency deter-
 12 mines are satisfactory.”.

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

16 (1) by redesignating the item relating to section
 17 5136A as section 5136C; and

18 (2) by inserting after the item relating to sec-
 19 tion 5136 the following new item:

“5136A. Subsidiaries of national banks.”.

20 **SEC. 122. SUBSIDIARIES OF STATE BANKS.**

21 (a) SUBSIDIARIES OF STATE BANKS AUTHORIZED
 22 TO ENGAGE IN FINANCIAL ACTIVITIES.—Section 24(d) of
 23 the Federal Deposit Insurance Act (12 U.S.C. 1831a(d))
 24 is amended by adding at the end the following new para-
 25 graphs:

1 “(4) CONDITIONS ON CERTAIN ACTIVITIES.—

2 “(A) IN GENERAL.—No subsidiary of a
3 State bank shall engage as principal in an ac-
4 tivity that is not described in subparagraph (A)
5 or (B) of section 5136A(a)(1) of the Revised
6 Statutes of the United States unless the State
7 bank is in compliance with the requirements of
8 subsection (b) of that section 5136A and re-
9 ceives the approval of the appropriate Federal
10 banking agency.

11 “(B) APPLICATION OF SECTION 5136A OF
12 REVISED STATUTES.—For purposes of applying
13 section 5136A of the Revised Statutes of the
14 United States to the activities of a subsidiary of
15 a State bank under this paragraph—

16 “(i) all references in that section to a
17 national bank shall be deemed to be ref-
18 erences to a State bank;

19 “(ii) all references in that section to
20 the Comptroller of the Currency shall be
21 deemed to be references to the appropriate
22 Federal banking agency with respect to
23 such State bank; and

24 “(iii) all references to regulations and
25 orders of the Comptroller shall be deemed

1 to be references to regulations and orders
2 of the appropriate Federal banking agency.

3 “(C) NOTIFICATION OF NONCOMPLI-
4 ANCE.—The Board of Governors of the Federal
5 Reserve System, the Corporation, the Comp-
6 troller of the Currency, and the Office of Thrift
7 Supervision shall establish procedures for noti-
8 fying the appropriate Federal banking agency if
9 a national bank, State bank, or savings associa-
10 tion that is affiliated with a State bank under
11 this paragraph fails to meet the requirements
12 described in subparagraph (A).”.

13 (b) FINANCIAL SUBSIDIARIES OF STATE MEMBER
14 BANKS.—The 20th undesignated paragraph of section 9
15 of the Federal Reserve Act (12 U.S.C. 335) is amended
16 by adding at the end the following new sentence: “To the
17 extent permitted under State law, a State member bank
18 may acquire, establish, or retain a financial subsidiary (as
19 defined in section 5136A(c) of the Revised Statutes of the
20 United States), except that all references in subsection (b)
21 of that section 5136A to the Comptroller of the Currency,
22 the Comptroller, or regulations or orders of the Comp-
23 troller, shall be deemed to be references to the Board or
24 regulations or orders of the Board.”.

1 **SEC. 123. SAFETY AND SOUNDNESS FIREWALLS BETWEEN**
2 **BANKS AND THEIR FINANCIAL SUBSIDIARIES.**

3 (a) PURPOSES.—The purposes of this section are—

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

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

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

16 (A) the bank paid a dividend in the same
17 dollar amount to a bank holding company hav-
18 ing control of the bank; and

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

24 (b) SAFETY AND SOUNDNESS FIREWALLS APPLICA-
25 BLE TO SUBSIDIARIES OF BANKS.—The Federal Deposit

1 Insurance Act (12 U.S.C. 1811 et seq.) is amended by
2 adding at the end the following new section:

3 **“SEC. 45. SAFETY AND SOUNDNESS FIRE WALLS APPLICA-**
4 **BLE TO SUBSIDIARIES OF BANKS.**

5 “(a) LIMITING THE EQUITY INVESTMENT OF A BANK
6 IN A SUBSIDIARY.—

7 “(1) CAPITAL DEDUCTION.—In determining
8 whether an insured bank complies with applicable
9 regulatory capital standards, the appropriate Fed-
10 eral banking agency shall deduct from assets and
11 tangible equity of the bank the aggregate amount of
12 the outstanding equity investments of the bank in
13 the financial subsidiaries of the bank, and the assets
14 and liabilities of such financial subsidiaries shall not
15 be consolidated with those of the bank.

16 “(2) INVESTMENT LIMITATION.—An insured
17 bank may not, without the prior approval of the ap-
18 propriate Federal banking agency, purchase or make
19 an investment in the equity securities of a financial
20 subsidiary that would, at the time of such purchase
21 or investment, exceed the amount that the bank
22 could pay as a dividend without obtaining prior reg-
23 ulatory approval.

24 “(b) OPERATIONAL AND FINANCIAL SAFEGUARDS
25 FOR THE BANK.—An insured bank that has a financial

1 subsidiary shall maintain procedures for identifying and
2 managing financial and operational risks posed by the fi-
3 nancial subsidiary.

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

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

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

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

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

24 (c) LIMITING THE CREDIT EXPOSURE OF A BANK TO
25 A FINANCIAL SUBSIDIARY TO THE AMOUNT OF PERMIS-

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

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

6 (2) by inserting after subsection (d), the fol-
7 lowing new subsection:

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

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

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

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

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

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

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

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

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

19 “(B) CERTAIN AFFILIATES EXCLUDED.—
20 For purposes of this paragraph and notwith-
21 standing paragraph (4), the term ‘affiliate’
22 shall not include a bank, or a subsidiary of a
23 bank that is engaged exclusively in activities
24 permissible for a national bank to engage in di-
25 rectly or activities referred to in section

1 5136A(a)(1)(B) of the Revised Statutes of the
2 United States.”.

3 **SEC. 124. FUNCTIONAL REGULATION.**

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

6 (1) securities activities conducted in a sub-
7 sidiary of a bank are functionally regulated by the
8 Securities and Exchange Commission to the same
9 extent as if they were conducted in a nonbank sub-
10 sidiary of a financial holding company; and

11 (2) insurance agency and brokerage activities
12 conducted in a subsidiary of a bank are functionally
13 regulated by a State insurance authority to the same
14 extent as if they were conducted in a nonbank sub-
15 sidiary of a financial holding company.

16 (b) FUNCTIONAL REGULATION OF FINANCIAL SUB-
17 SIDIARIES.—The Federal Deposit Insurance Act (12
18 U.S.C. 1811 et seq.) is amended by adding at the end
19 the following new section:

20 **“SEC. 46. FUNCTIONAL REGULATION OF SECURITIES AND**
21 **INSURANCE AGENCY SUBSIDIARIES OF IN-**
22 **SURED DEPOSITORY INSTITUTIONS.**

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

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

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

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

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

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

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

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

1 **SEC. 125. MISREPRESENTATIONS REGARDING DEPOSITORY**
2 **INSTITUTION LIABILITY FOR OBLIGATIONS**
3 **OF AFFILIATES.**

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

7 **“§ 1008. Misrepresentations regarding financial insti-**
8 **tution liability for obligations of affiliates**

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

15 “(b) CRIMINAL PENALTY.—Whoever violates sub-
16 section (a) shall be fined under title, imprisoned for not
17 more than 1 year, or both.

18 “(c) INSTITUTION-AFFILIATED PARTY DEFINED.—
19 For purposes of this section, the term ‘institution-affili-
20 ated party’ with respect to a subsidiary or affiliate has
21 the same meaning as in section 3 of the Federal Deposit
22 Insurance Act, except that references to an insured depository
23 institution shall be deemed to be references to a sub-
24 sidiary or affiliate of an insured depository institution.

25 “(d) OTHER DEFINITIONS.—For purposes of this
26 section, the terms ‘affiliate’, ‘insured depository institu-

tion’, and ‘subsidiary’ have same meanings as in section 3 of the Federal Deposit Insurance Act.”.

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

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

SEC. 126. REPEAL OF STOCK LOAN LIMIT IN FEDERAL RESERVE ACT.

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

Subtitle D—Wholesale Financial Holding Companies; Wholesale Financial Institutions

CHAPTER 1—WHOLESALE FINANCIAL HOLDING COMPANIES

SEC. 131. WHOLESALE FINANCIAL HOLDING COMPANIES ESTABLISHED.

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

“SEC. 10. WHOLESALE FINANCIAL HOLDING COMPANIES.

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

1 “(1) WHOLESALE FINANCIAL HOLDING COM-
2 PANY DEFINED.—The term ‘wholesale financial
3 holding company’ means any company that—

4 “(A) is registered as a bank holding com-
5 pany;

6 “(B) is predominantly engaged in financial
7 activities as defined in section 6(g)(2);

8 “(C) controls 1 or more wholesale financial
9 institutions;

10 “(D) does not control—

11 “(i) a bank other than a wholesale fi-
12 nancial institution;

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

16 “(iii) a savings association; and

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

20 “(2) SAVINGS ASSOCIATION TRANSITION PE-
21 RIOD.—Notwithstanding paragraph (1)(D)(iii), the
22 Board may permit a company that controls a sav-
23 ings association and that otherwise meets the re-
24 quirements of paragraph (1) to become supervised
25 under paragraph (1), if the company divests control

1 of any such savings association within such period,
2 not to exceed 5 years after becoming supervised
3 under paragraph (1), as permitted by the Board.

4 “(b) SUPERVISION BY THE BOARD.—

5 “(1) IN GENERAL.—The provisions of this sec-
6 tion shall govern the reporting, examination, and
7 capital requirements of wholesale financial holding
8 companies.

9 “(2) REPORTS.—

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

15 “(i) the company’s or subsidiary’s ac-
16 tivities, financial condition, policies, sys-
17 tems for monitoring and controlling finan-
18 cial and operational risks, and transactions
19 with depository institution subsidiaries of
20 the holding company; and

21 “(ii) the extent to which the company
22 or subsidiary has complied with the provi-
23 sions of this Act and regulations prescribed
24 and orders issued under this Act.

25 “(B) USE OF EXISTING REPORTS.—

1 “(i) IN GENERAL.—The Board shall,
2 to the fullest extent possible, accept re-
3 ports in fulfillment of the Board’s report-
4 ing requirements under this paragraph
5 that the wholesale financial holding com-
6 pany or any subsidiary of such company
7 has provided or been required to provide to
8 other Federal and State supervisors or to
9 appropriate self-regulatory organizations.

10 “(ii) AVAILABILITY.—A wholesale fi-
11 nancial holding company or a subsidiary of
12 such company shall provide to the Board,
13 at the request of the Board, a report re-
14 ferred to in clause (i).

15 “(C) EXEMPTIONS FROM REPORTING RE-
16 QUIREMENTS.—

17 “(i) IN GENERAL.—The Board may,
18 by regulation or order, exempt any com-
19 pany or class of companies, under such
20 terms and conditions and for such periods
21 as the Board shall provide in such regula-
22 tion or order, from the provisions of this
23 paragraph and any regulation prescribed
24 under this paragraph.

1 “(ii) CRITERIA FOR CONSIDER-
2 ATION.—In making any determination
3 under clause (i) with regard to any exemp-
4 tion under such clause, the Board shall
5 consider, among such other factors as the
6 Board may determine to be appropriate,
7 the following factors:

8 “(I) Whether information of the
9 type required under this paragraph is
10 available from a supervisory agency
11 (as defined in section 1101(7) of the
12 Right to Financial Privacy Act of
13 1978) or a foreign regulatory author-
14 ity of a similar type.

15 “(II) The primary business of the
16 company.

17 “(III) The nature and extent of
18 the domestic and foreign regulation of
19 the activities of the company.

20 “(3) EXAMINATIONS.—

21 “(A) LIMITED USE OF EXAMINATION AU-
22 THORITY.—The Board may make examinations
23 of each wholesale financial holding company
24 and each subsidiary of such company in order
25 to—

1 “(i) inform the Board regarding the
2 nature of the operations and financial con-
3 dition of the wholesale financial holding
4 company and its subsidiaries;

5 “(ii) inform the Board regarding—

6 “(I) the financial and operational
7 risks within the wholesale financial
8 holding company system that may af-
9 fect any depository institution owned
10 by such holding company; and

11 “(II) the systems of the holding
12 company and its subsidiaries for mon-
13 itoring and controlling those risks;
14 and

15 “(iii) monitor compliance with the
16 provisions of this Act and those governing
17 transactions and relationships between any
18 depository institution controlled by the
19 wholesale financial holding company and
20 any of the company’s other subsidiaries.

21 “(B) RESTRICTED FOCUS OF EXAMINA-
22 TIONS.—The Board shall, to the fullest extent
23 possible, limit the focus and scope of any exam-
24 ination of a wholesale financial holding com-
25 pany under this paragraph to—

1 “(i) the holding company; and

2 “(ii) any subsidiary (other than an in-
3 sured depository institution subsidiary) of
4 the holding company that, because of the
5 size, condition, or activities of the sub-
6 sidiary, the nature or size of transactions
7 between such subsidiary and any affiliated
8 depository institution, or the centralization
9 of functions within the holding company
10 system, could have a materially adverse ef-
11 fect on the safety and soundness of any de-
12 pository institution affiliate of the holding
13 company.

14 “(C) DEFERENCE TO BANK EXAMINA-
15 TIONS.—The Board shall, to the fullest extent
16 possible, use the reports of examination of de-
17 pository institutions made by the Comptroller of
18 the Currency, the Federal Deposit Insurance
19 Corporation, the Director of the Office of Thrift
20 Supervision or the appropriate State depository
21 institution supervisory authority for the pur-
22 poses of this section.

23 “(D) DEFERENCE TO OTHER EXAMINA-
24 TIONS.—The Board shall, to the fullest extent
25 possible, address the circumstances which might

1 otherwise permit or require an examination by
2 the Board by forgoing an examination and by
3 instead reviewing the reports of examination
4 made of—

5 “(i) any registered broker or dealer or
6 any registered investment adviser by or on
7 behalf of the Commission; and

8 “(ii) any licensed insurance company
9 by or on behalf of any State government
10 insurance agency responsible for the super-
11 vision of the insurance company.

12 “(E) CONFIDENTIALITY OF REPORTED IN-
13 FORMATION.—

14 “(i) IN GENERAL.—Notwithstanding
15 any other provision of law, the Board shall
16 not be compelled to disclose any nonpublic
17 information required to be reported under
18 this paragraph, or any information sup-
19 plied to the Board by any domestic or for-
20 eign regulatory agency, that relates to the
21 financial or operational condition of any
22 wholesale financial holding company or any
23 subsidiary of such company.

24 “(ii) COMPLIANCE WITH REQUESTS
25 FOR INFORMATION.—No provision of this

1 subparagraph shall be construed as author-
2 izing the Board to withhold information
3 from the Congress, or preventing the
4 Board from complying with a request for
5 information from any other Federal de-
6 partment or agency for purposes within the
7 scope of such department's or agency's ju-
8 risdiction, or from complying with any
9 order of a court of competent jurisdiction
10 in an action brought by the United States
11 or the Board.

12 “(iii) COORDINATION WITH OTHER
13 LAW.—For purposes of section 552 of title
14 5, United States Code, this subparagraph
15 shall be considered to be a statute de-
16 scribed in subsection (b)(3)(B) of such sec-
17 tion.

18 “(iv) DESIGNATION OF CONFIDENTIAL
19 INFORMATION.—In prescribing regulations
20 to carry out the requirements of this sub-
21 section, the Board shall designate informa-
22 tion described in or obtained pursuant to
23 this paragraph as confidential information.

24 “(F) COSTS.—The cost of any examination
25 conducted by the Board under this section may

1 be assessed against, and made payable by, the
2 wholesale financial holding company.

3 “(4) CAPITAL ADEQUACY GUIDELINES.—

4 “(A) CAPITAL ADEQUACY PROVISIONS.—

5 Subject to the requirements of, and solely in ac-
6 cordance with, the terms of this paragraph, the
7 Board may adopt capital adequacy rules or
8 guidelines for wholesale financial holding com-
9 panies.

10 “(B) METHOD OF CALCULATION.—In de-
11 veloping rules or guidelines under this para-
12 graph, the following provisions shall apply:

13 “(i) FOCUS ON DOUBLE LEVERAGE.—

14 The Board shall focus on the use by whole-
15 sale financial holding companies of debt
16 and other liabilities to fund capital invest-
17 ments in subsidiaries.

18 “(ii) NO UNWEIGHTED CAPITAL
19 RATIO.—The Board shall not, by regula-
20 tion, guideline, order, or otherwise, impose
21 under this section a capital ratio that is
22 not based on appropriate risk-weighting
23 considerations.

24 “(iii) NO CAPITAL REQUIREMENT ON
25 REGULATED ENTITIES.—The Board shall

1 not, by regulation, guideline, order or oth-
2 erwise, prescribe or impose any capital or
3 capital adequacy rules, standards, guide-
4 lines, or requirements upon any subsidiary
5 that—

6 “(I) is not a depository institu-
7 tion; and

8 “(II) is in compliance with appli-
9 cable capital requirements of another
10 Federal regulatory authority (includ-
11 ing the Securities and Exchange Com-
12 mission) or State insurance authority.

13 “(iv) CERTAIN SUBSIDIARIES.—The
14 Board shall not, by regulation, guideline,
15 order or otherwise, prescribe or impose any
16 capital or capital adequacy rules, stand-
17 ards, guidelines, or requirements upon any
18 subsidiary that is not a depository institu-
19 tion and that is registered as an invest-
20 ment adviser under the Investment Advis-
21 ers Act of 1940, except that this clause
22 shall not be construed as preventing the
23 Board from imposing capital or capital
24 adequacy rules, guidelines, standards, or
25 requirements with respect to activities of a

1 registered investment adviser other than
2 investment advisory activities or activities
3 incidental to investment advisory activities.

4 “(v) LIMITATIONS ON INDIRECT AC-
5 TION.—In developing, establishing, or as-
6 sessing holding company capital or capital
7 adequacy rules, guidelines, standards, or
8 requirements for purposes of this para-
9 graph, the Board shall not take into ac-
10 count the activities, operations, or invest-
11 ments of an affiliated investment company
12 registered under the Investment Company
13 Act of 1940, if the investment company is
14 not—

15 “(I) a bank holding company; or

16 “(II) controlled by a bank hold-
17 ing company by reason of ownership
18 by the bank holding company (includ-
19 ing through all of its affiliates) of 25
20 percent or more of the shares of the
21 investment company, where the shares
22 owned by the bank holding company
23 have a market value equal to more
24 than \$1,000,000.

1 “(vi) APPROPRIATE EXCLUSIONS.—

2 The Board shall take full account of—

3 “(I) the capital requirements
4 made applicable to any subsidiary that
5 is not a depository institution by an-
6 other Federal regulatory authority or
7 State insurance authority; and

8 “(II) industry norms for capital-
9 ization of a company’s unregulated
10 subsidiaries and activities.

11 “(vii) INTERNAL RISK MANAGEMENT
12 MODELS.—The Board may incorporate in-
13 ternal risk management models of whole-
14 sale financial holding companies into its
15 capital adequacy guidelines or rules and
16 may take account of the extent to which
17 resources of a subsidiary depository insti-
18 tution may be used to service the debt or
19 other liabilities of the wholesale financial
20 holding company.

21 “(c) NONFINANCIAL ACTIVITIES AND INVEST-
22 MENTS.—

23 “(1) GRANDFATHERED ACTIVITIES.—

24 “(A) IN GENERAL.—Notwithstanding sec-
25 tion 4(a), a company that becomes a wholesale

1 financial holding company may continue to en-
2 gage, directly or indirectly, in any activity and
3 may retain ownership and control of shares of
4 a company engaged in any activity if—

5 “(i) on the date of enactment of the
6 Financial Services Act of 1999, such
7 wholesale financial holding company was
8 lawfully engaged in that nonfinancial activ-
9 ity, held the shares of such company, or
10 had entered into a contract to acquire
11 shares of any company engaged in such ac-
12 tivity; and

13 “(ii) the company engaged in such ac-
14 tivity continues to engage only in the same
15 activities that such company conducted on
16 the date of enactment of the Financial
17 Services Act of 1999, and other activities
18 permissible under this Act.

19 “(B) NO EXPANSION OF GRANDFATHERED
20 COMMERCIAL ACTIVITIES THROUGH MERGER OR
21 CONSOLIDATION.—A wholesale financial holding
22 company that engages in activities or holds
23 shares pursuant to this paragraph, or a sub-
24 sidiary of such wholesale financial holding com-
25 pany, may not acquire, in any merger, consoli-

1 dation, or other type of business combination,
2 assets of any other company which is engaged
3 in any activity which the Board has not deter-
4 mined to be financial in nature or incidental to
5 activities that are financial in nature under sec-
6 tion 6(c).

7 “(C) LIMITATION TO SINGLE EXEMP-
8 TION.—No company that engages in any activ-
9 ity or controls any shares under subsection (f)
10 of section 6 may engage in any activity or own
11 any shares pursuant to this paragraph.

12 “(2) COMMODITIES.—

13 “(A) IN GENERAL.—Notwithstanding sec-
14 tion 4(a), a wholesale financial holding company
15 which was predominately engaged as of Janu-
16 ary 1, 1997, in financial activities in the United
17 States (or any successor to any such company)
18 may engage in, or directly or indirectly own or
19 control shares of a company engaged in, activi-
20 ties related to the trading, sale, or investment
21 in commodities and underlying physical prop-
22 erties that were not permissible for bank hold-
23 ing companies to conduct in the United States
24 as of January 1, 1997, if such wholesale finan-
25 cial holding company, or any subsidiary of such

1 holding company, was engaged directly, indi-
2 rectly, or through any such company in any of
3 such activities as of January 1, 1997, in the
4 United States.

5 “(B) LIMITATION.—The attributed aggre-
6 gate consolidated assets of a wholesale financial
7 holding company held under the authority
8 granted under this paragraph and not otherwise
9 permitted to be held by all wholesale financial
10 holding companies under this section may not
11 exceed 5 percent of the total consolidated assets
12 of the wholesale financial holding company, ex-
13 cept that the Board may increase such percent-
14 age of total consolidated assets by such
15 amounts and under such circumstances as the
16 Board considers appropriate, consistent with
17 the purposes of this Act.

18 “(3) CROSS MARKETING RESTRICTIONS.—A
19 wholesale financial holding company shall not
20 permit—

21 “(A) any company whose shares it owns or
22 controls pursuant to paragraph (1) or (2) to
23 offer or market any product or service of an af-
24 filiated wholesale financial institution; or

1 “(B) any affiliated wholesale financial in-
2 stitution to offer or market any product or serv-
3 ice of any company whose shares are owned or
4 controlled by such wholesale financial holding
5 company pursuant to such paragraphs.

6 “(d) QUALIFICATION OF FOREIGN BANK AS WHOLE-
7 SALE FINANCIAL HOLDING COMPANY.—

8 “(1) IN GENERAL.—Any foreign bank, or any
9 company that owns or controls a foreign bank, that
10 operates a branch, agency, or commercial lending
11 company in the United States, including a foreign
12 bank or company that owns or controls a wholesale
13 financial institution, may request a determination
14 from the Board that such bank or company be treat-
15 ed as a wholesale financial holding company (other
16 than for purposes of subsection (c)), subject to such
17 conditions as the Board deems appropriate, giving
18 due regard to the principle of national treatment
19 and equality of competitive opportunity and the re-
20 quirements imposed on domestic banks and compa-
21 nies.

22 “(2) CONDITIONS FOR TREATMENT AS A
23 WHOLESALE FINANCIAL HOLDING COMPANY.—A for-
24 eign bank and a company that owns or controls a
25 foreign bank may not be treated as a wholesale fi-

1 nancial holding company unless the bank and com-
2 pany meet and continue to meet the following cri-
3 teria:

4 “(A) NO INSURED DEPOSITS.—No deposits
5 held directly by a foreign bank or through an
6 affiliate (other than an institution described in
7 subparagraph (D) or (F) of section 2(c)(2)) are
8 insured under the Federal Deposit Insurance
9 Act.

10 “(B) CAPITAL STANDARDS.—The foreign
11 bank meets risk-based capital standards com-
12 parable to the capital standards required for a
13 wholesale financial institution, giving due re-
14 gard to the principle of national treatment and
15 equality of competitive opportunity.

16 “(C) TRANSACTION WITH AFFILIATES.—
17 Transactions between a branch, agency, or com-
18 mercial lending company subsidiary of the for-
19 eign bank in the United States, and any securi-
20 ties affiliate or company in which the foreign
21 bank (or any company that owns or controls
22 such foreign bank) has invested and which en-
23 gages in any activity authorized only as a result
24 of the application of subsection (c) or (g) of
25 section 6, comply with the provisions of sections

1 23A and 23B of the Federal Reserve Act in the
2 same manner and to the same extent as such
3 transactions would be required to comply with
4 such sections if the foreign bank were a mem-
5 ber bank.

6 “(3) TREATMENT AS A WHOLESALE FINANCIAL
7 INSTITUTION.—Any foreign bank which is, or is af-
8 filiated with a company which is, treated as a whole-
9 sale financial holding company under this subsection
10 shall be treated as a wholesale financial institution
11 for purposes of paragraphs (1)(C) and (3) of section
12 9B(e) of the Federal Reserve Act, and any such for-
13 eign bank or company shall be subject to paragraphs
14 (3), (4), and (5) of section 9B(d) of the Federal Re-
15 serve Act, except that the Board may adopt such
16 modifications, conditions, or exemptions as the
17 Board deems appropriate, giving due regard to the
18 principle of national treatment and equality of com-
19 petitive opportunity.

20 “(4) SUPERVISION OF FOREIGN BANK WHICH
21 MAINTAINS NO BANKING PRESENCE OTHER THAN
22 CONTROL OF A WHOLESALE FINANCIAL INSTITU-
23 TION.—A foreign bank that owns or controls a
24 wholesale financial institution but does not operate
25 a branch, agency, or commercial lending company in

1 the United States (and any company that owns or
2 controls such foreign bank) may request a deter-
3 mination from the Board that such bank or com-
4 pany be treated as a wholesale financial holding
5 company, except that such bank or company shall be
6 subject to the restrictions of paragraphs (2)(A) and
7 (3) of this subsection.

8 “(5) NO EFFECT ON OTHER PROVISIONS.—This
9 section shall not be construed as limiting the author-
10 ity of the Board under the International Banking
11 Act of 1978 with respect to the regulation, super-
12 vision, or examination of foreign banks and their of-
13 fices and affiliates in the United States.”.

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

17 “(24) ENFORCEMENT AUTHORITY OVER UNIN-
18 SURED STATE MEMBER BANKS.—Section 3(u) of the
19 Federal Deposit Insurance Act, subsections (j) and
20 (k) of section 7 of such Act, and subsections (b)
21 through (n), (s), (u), and (v) of section 8 of such
22 Act shall apply to an uninsured State member bank
23 in the same manner and to the same extent such
24 provisions apply to an insured State member bank
25 and any reference in any such provision to ‘insured

1 depository institution’ shall be deemed to be a ref-
2 erence to ‘uninsured State member bank’ for pur-
3 poses of this paragraph.”.

4 **SEC. 132. AUTHORIZATION TO RELEASE REPORTS.**

5 (a) FEDERAL RESERVE ACT.—The last sentence of
6 the eighth undesignated paragraph of section 9 of the
7 Federal Reserve Act (12 U.S.C. 326) is amended to read
8 as follows: “The Board of Governors of the Federal Re-
9 serve System, at its discretion, may furnish reports of ex-
10 amination or other confidential supervisory information
11 concerning State member banks or any other entities ex-
12 amined under any other authority of the Board to any
13 Federal or State authorities with supervisory or regulatory
14 authority over the examined entity, to officers, directors,
15 or receivers of the examined entity, and to any other per-
16 son that the Board determines to be proper.”.

17 (b) COMMODITY FUTURES TRADING COMMISSION.—
18 The Right to Financial Privacy Act of 1978 (12 U.S.C.
19 3401 et seq.) is amended—

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

21 (A) by redesignating subparagraphs (G)
22 and (H) as subparagraphs (H) and (I), respec-
23 tively; and

24 (B) by inserting after subparagraph (F)
25 the following new subparagraph:

1 “(G) the Commodity Futures Trading
2 Commission; or”;

3 (2) in section 1112(e) (12 U.S.C. 3412(e)), by
4 striking “and the Securities and Exchange Commis-
5 sion” and inserting “, the Securities and Exchange
6 Commission, and the Commodity Futures Trading
7 Commission”.

8 **SEC. 133. CONFORMING AMENDMENTS.**

9 (a) **BANK HOLDING COMPANY ACT OF 1956.**—

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

14 “(p) **WHOLESALE FINANCIAL INSTITUTION.**—The
15 term ‘wholesale financial institution’ means a wholesale fi-
16 nancial institution subject to section 9B of the Federal
17 Reserve Act.

18 “(q) **COMMISSION.**—The term ‘Commission’ means
19 the Securities and Exchange Commission.

20 “(r) **DEPOSITORY INSTITUTION.**—The term ‘deposi-
21 tory institution’—

22 “(1) has the same meaning as in section 3 of
23 the Federal Deposit Insurance Act; and

24 “(2) includes a wholesale financial institution.”.

1 (2) DEFINITION OF BANK INCLUDES WHOLE-
2 SALE FINANCIAL INSTITUTION.—Section 2(e)(1) of
3 the Bank Holding Company Act of 1956 (12 U.S.C.
4 1841(e)(1)) is amended by adding at the end the fol-
5 lowing new subparagraph:

6 “(C) A wholesale financial institution.”.

7 (3) INCORPORATED DEFINITIONS.—Section
8 2(n) of the Bank Holding Company Act of 1956 (12
9 U.S.C. 1841(n)) is amended by inserting “‘insured
10 bank’,” after “‘in danger of default’,”.

11 (4) EXCEPTION TO DEPOSIT INSURANCE RE-
12 QUIREMENT.—Section 3(e) of the Bank Holding
13 Company Act of 1956 (12 U.S.C. 1842(e)) is
14 amended by adding at the end the following: “This
15 subsection shall not apply to a wholesale financial
16 institution.”.

17 (b) FEDERAL DEPOSIT INSURANCE ACT.—Section
18 3(q)(2)(A) of the Federal Deposit Insurance Act (12
19 U.S.C. 1813(q)(2)(A)) is amended to read as follows:

20 “(A) any State member insured bank (ex-
21 cept a District bank) and any wholesale finan-
22 cial institution as authorized pursuant to sec-
23 tion 9B of the Federal Reserve Act;”.

1 **CHAPTER 2—WHOLESALE FINANCIAL**
 2 **INSTITUTIONS**

3 **SEC. 136. WHOLESALE FINANCIAL INSTITUTIONS.**

4 (a) NATIONAL WHOLESALE FINANCIAL INSTITU-
 5 TIONS.—

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

11 **“SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITU-**
 12 **TIONS.**

13 “(a) AUTHORIZATION OF THE COMPTROLLER RE-
 14 QUIRED.—A national bank may apply to the Comptroller
 15 on such forms and in accordance with such regulations
 16 as the Comptroller may prescribe, for permission to oper-
 17 ate as a national wholesale financial institution.

18 “(b) REGULATION.—A national wholesale financial
 19 institution may exercise, in accordance with such institu-
 20 tion’s articles of incorporation and regulations issued by
 21 the Comptroller, all the powers and privileges of a national
 22 bank formed in accordance with section 5133 of the Re-
 23 vised Statutes of the United States, subject to section 9B
 24 of the Federal Reserve Act and the limitations and restric-
 25 tions contained therein.

1 “(c) COMMUNITY REINVESTMENT ACT OF 1977.—A
 2 national wholesale financial institution shall be subject to
 3 the Community Reinvestment Act of 1977, only if the
 4 wholesale financial institution has an affiliate that is an
 5 insured depository institution or that operates an insured
 6 branch, as those terms are defined in section 3 of the Fed-
 7 eral Deposit Insurance Act.”.

8 (2) CLERICAL AMENDMENT.—The table of sec-
 9 tions for chapter one of title LXII of the Revised
 10 Statutes of the United States is amended by insert-
 11 ing after the item relating to section 5136A (as
 12 added by section 121(d) of this title) the following
 13 new item:

“5136B. National wholesale financial institutions.”.

14 (b) STATE WHOLESALE FINANCIAL INSTITUTIONS.—
 15 The Federal Reserve Act (12 U.S.C. 221 et seq.) is
 16 amended by inserting after section 9A the following new
 17 section:

18 **“SEC. 9B. WHOLESALE FINANCIAL INSTITUTIONS.**

19 “(a) APPLICATION FOR MEMBERSHIP AS WHOLE-
 20 SALE FINANCIAL INSTITUTION.—

21 “(1) APPLICATION REQUIRED.—

22 “(A) IN GENERAL.—Any bank may apply
 23 to the Board of Governors of the Federal Re-
 24 serve System to become a wholesale financial
 25 institution and, as a wholesale financial institu-

1 tion, to subscribe to the stock of the Federal re-
2 serve bank organized within the district where
3 the applying bank is located.

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

8 “(2) INSURANCE TERMINATION.—No bank the
9 deposits of which are insured under the Federal De-
10 posit Insurance Act may become a wholesale finan-
11 cial institution unless it has met all requirements
12 under that Act for voluntary termination of deposit
13 insurance.

14 “(b) GENERAL REQUIREMENTS APPLICABLE TO
15 WHOLESALE FINANCIAL INSTITUTIONS.—

16 “(1) FEDERAL RESERVE ACT.—Except as oth-
17 erwise provided in this section, wholesale financial
18 institutions shall be member banks and shall be sub-
19 ject to the provisions of this Act that apply to mem-
20 ber banks to the same extent and in the same man-
21 ner as State member insured banks, except that a
22 wholesale financial institution may terminate mem-
23 bership under this Act only with the prior written
24 approval of the Board and on terms and conditions

1 that the Board determines are appropriate to carry
2 out the purposes of this Act.

3 “(2) PROMPT CORRECTIVE ACTION.—A whole-
4 sale financial institution shall be deemed to be an in-
5 sured depository institution for purposes of section
6 38 of the Federal Deposit Insurance Act except
7 that—

8 “(A) the relevant capital levels and capital
9 measures for each capital category shall be the
10 levels specified by the Board for wholesale fi-
11 nancial institutions; and

12 “(B) all references to the appropriate Fed-
13 eral banking agency or to the Corporation in
14 that section shall be deemed to be references to
15 the Board.

16 “(3) ENFORCEMENT AUTHORITY.—Subsections
17 (j) and (k) of section 7, subsections (b) through (n),
18 (s), and (v) of section 8, and section 19 of the Fed-
19 eral Deposit Insurance Act shall apply to a wholesale
20 financial institution in the same manner and to the
21 same extent as such provisions apply to State mem-
22 ber insured banks and any reference in such sections
23 to an insured depository institution shall be deemed
24 to include a reference to a wholesale financial insti-
25 tution.

1 “(4) CERTAIN OTHER STATUTES APPLICA-
2 BLE.—A wholesale financial institution shall be
3 deemed to be a banking institution, and the Board
4 shall be the appropriate Federal banking agency for
5 such bank and all such bank’s affiliates, for pur-
6 poses of the International Lending Supervision Act.

7 “(5) BANK MERGER ACT.—A wholesale finan-
8 cial institution shall be subject to sections 18(c) and
9 44 of the Federal Deposit Insurance Act in the same
10 manner and to the same extent the wholesale finan-
11 cial institution would be subject to such sections if
12 the institution were a State member insured bank.

13 “(6) BRANCHING.—Notwithstanding any other
14 provision of law, a wholesale financial institution
15 may establish and operate a branch at any location
16 on such terms and conditions as established by the
17 Board and, in the case of a State-chartered whole-
18 sale financial institution, with the approval of the
19 Board, and, in the case of a national bank wholesale
20 financial institution, with the approval of the Comp-
21 troller of the Currency.

22 “(7) ACTIVITIES OF OUT-OF-STATE BRANCHES
23 OF WHOLESALE FINANCIAL INSTITUTIONS.—

24 “(A) GENERAL.—A State-chartered whole-
25 sale financial institution shall be deemed to be

1 a State bank and an insured State bank for
2 purposes of paragraphs (1), (2), and (3) of sec-
3 tion 24(j) of the Federal Deposit Insurance
4 Act, and a national wholesale financial institu-
5 tion shall be deemed to be a national bank for
6 purposes of section 5155(f) of the Revised Stat-
7 utes of the United States.

8 “(B) DEFINITIONS.—The following defini-
9 tions shall apply solely for purposes of applying
10 paragraph (1):

11 “(i) HOME STATE.—The term ‘home
12 State’ means—

13 “(I) with respect to a national
14 wholesale financial institution, the
15 State in which the main office of the
16 institution is located; and

17 “(II) with respect to a State-
18 chartered wholesale financial institu-
19 tion, the State by which the institu-
20 tion is chartered.

21 “(ii) HOST STATE.—The term ‘host
22 State’ means a State, other than the home
23 State of the wholesale financial institution,
24 in which the institution maintains, or seeks
25 to establish and maintain, a branch.

1 “(iii) OUT-OF-STATE BANK.—The
2 term ‘out-of-State bank’ means, with re-
3 spect to any State, a wholesale financial
4 institution whose home State is another
5 State.

6 “(8) DISCRIMINATION REGARDING INTEREST
7 RATES.—Section 27 of the Federal Deposit Insur-
8 ance Act shall apply to State-chartered wholesale fi-
9 nancial institutions in the same manner and to the
10 same extent as such provisions apply to State mem-
11 ber insured banks and any reference in such section
12 to a State-chartered insured depository institution
13 shall be deemed to include a reference to a State-
14 chartered wholesale financial institution.

15 “(9) PREEMPTION OF STATE LAWS REQUIRING
16 DEPOSIT INSURANCE FOR WHOLESALE FINANCIAL
17 INSTITUTIONS.—The appropriate State banking au-
18 thority may grant a charter to a wholesale financial
19 institution notwithstanding any State constitution or
20 statute requiring that the institution obtain insur-
21 ance of its deposits and any such State constitution
22 or statute is hereby preempted solely for purposes of
23 this paragraph.

24 “(10) PARITY FOR WHOLESALE FINANCIAL IN-
25 STITUTIONS.—A State bank that is a wholesale fi-

1 nancial institution under this section shall have all
 2 of the rights, powers, privileges, and immunities (in-
 3 cluding those derived from status as a federally
 4 chartered institution) of and as if it were a national
 5 bank, subject to such terms and conditions as estab-
 6 lished by the Board.

7 “(11) COMMUNITY REINVESTMENT ACT OF
 8 1977.—A State wholesale financial institution shall
 9 be subject to the Community Reinvestment Act of
 10 1977, only if the wholesale financial institution has
 11 an affiliate that is an insured depository institution
 12 or that operates an insured branch, as those terms
 13 are defined in section 3 of the Federal Deposit In-
 14 surance Act.

15 “(c) SPECIFIC REQUIREMENTS APPLICABLE TO
 16 WHOLESALE FINANCIAL INSTITUTIONS.—

17 “(1) LIMITATIONS ON DEPOSITS.—

18 “(A) MINIMUM AMOUNT.—

19 “(i) IN GENERAL.—No wholesale fi-
 20 nancial institution may receive initial de-
 21 posits of \$100,000 or less, other than on
 22 an incidental and occasional basis.

23 “(ii) LIMITATION ON DEPOSITS OF
 24 LESS THAN \$100,000.—No wholesale finan-
 25 cial institution may receive initial deposits

1 of \$100,000 or less if such deposits con-
2 stitute more than 5 percent of the institu-
3 tion's total deposits.

4 “(B) NO DEPOSIT INSURANCE.—Except as
5 otherwise provided in section 8A(f) of the Fed-
6 eral Deposit Insurance Act, no deposits held by
7 a wholesale financial institution shall be insured
8 deposits under the Federal Deposit Insurance
9 Act.

10 “(C) ADVERTISING AND DISCLOSURE.—
11 The Board shall prescribe regulations per-
12 taining to advertising and disclosure by whole-
13 sale financial institutions to ensure that each
14 depositor is notified that deposits at the whole-
15 sale financial institution are not federally in-
16 sured or otherwise guaranteed by the United
17 States Government.

18 “(2) MINIMUM CAPITAL LEVELS APPLICABLE
19 TO WHOLESALE FINANCIAL INSTITUTIONS.—The
20 Board shall, by regulation, adopt capital require-
21 ments for wholesale financial institutions—

22 “(A) to account for the status of wholesale
23 financial institutions as institutions that accept
24 deposits that are not insured under the Federal
25 Deposit Insurance Act; and

1 “(B) to provide for the safe and sound op-
2 eration of the wholesale financial institution
3 without undue risk to creditors or other per-
4 sons, including Federal reserve banks, engaged
5 in transactions with the bank.

6 “(3) ADDITIONAL REQUIREMENTS APPLICABLE
7 TO WHOLESale FINANCIAL INSTITUTIONS.—In addi-
8 tion to any requirement otherwise applicable to State
9 member insured banks or applicable, under this sec-
10 tion, to wholesale financial institutions, the Board
11 may impose, by regulation or order, upon wholesale
12 financial institutions—

13 “(A) limitations on transactions, direct or
14 indirect, with affiliates to prevent—

15 “(i) the transfer of risk to the deposit
16 insurance funds; or

17 “(ii) an affiliate from gaining access
18 to, or the benefits of, credit from a Federal
19 reserve bank, including overdrafts at a
20 Federal reserve bank;

21 “(B) special clearing balance requirements;
22 and

23 “(C) any additional requirements that the
24 Board determines to be appropriate or nec-
25 essary to—

1 “(i) promote the safety and soundness
2 of the wholesale financial institution or any
3 insured depository institution affiliate of
4 the wholesale financial institution;

5 “(ii) prevent the transfer of risk to
6 the deposit insurance funds; or

7 “(iii) protect creditors and other per-
8 sons, including Federal reserve banks, en-
9 gaged in transactions with the wholesale fi-
10 nancial institution.

11 “(4) EXEMPTIONS FOR WHOLESAL FINANCIAL
12 INSTITUTIONS.—The Board may, by regulation or
13 order, exempt any wholesale financial institution
14 from any provision applicable to a member bank
15 that is not a wholesale financial institution, if the
16 Board finds that such exemption is not inconsistent
17 with—

18 “(A) the promotion of the safety and
19 soundness of the wholesale financial institution
20 or any insured depository institution affiliate of
21 the wholesale financial institution;

22 “(B) the protection of the deposit insur-
23 ance funds; and

24 “(C) the protection of creditors and other
25 persons, including Federal reserve banks, en-

1 gaged in transactions with the wholesale finan-
2 cial institution.

3 “(5) LIMITATION ON TRANSACTIONS BETWEEN
4 A WHOLESALE FINANCIAL INSTITUTION AND AN IN-
5 SURED BANK.—For purposes of section 23A(d)(1) of
6 the Federal Reserve Act, a wholesale financial insti-
7 tution that is affiliated with an insured bank shall
8 not be a bank.

9 “(6) NO EFFECT ON OTHER PROVISIONS.—This
10 section shall not be construed as limiting the
11 Board’s authority over member banks under any
12 other provision of law, or to create any obligation for
13 any Federal reserve bank to make, increase, renew,
14 or extend any advance or discount under this Act to
15 any member bank or other depository institution.

16 “(d) CAPITAL AND MANAGERIAL REQUIREMENTS.—

17 “(1) IN GENERAL.—A wholesale financial insti-
18 tution shall be well capitalized and well managed.

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

24 “(3) AGREEMENT TO RESTORE INSTITUTION.—
25 Not later than 45 days after the date of receipt of

1 a notice under paragraph (2) (or such additional pe-
2 riod not to exceed 90 days as the Board may per-
3 mit), the company shall execute an agreement ac-
4 ceptable to the Board to restore the wholesale finan-
5 cial institution to compliance with all of the require-
6 ments of paragraph (1).

7 “(4) LIMITATIONS UNTIL INSTITUTION RE-
8 STORED.—Until the wholesale financial institution is
9 restored to compliance with all of the requirements
10 of paragraph (1), the Board may impose such limi-
11 tations on the conduct or activities of the company
12 or any affiliate of the company as the Board deter-
13 mines to be appropriate under the circumstances.

14 “(5) FAILURE TO RESTORE.—If the company
15 does not execute and implement an agreement in ac-
16 cordance with paragraph (3), comply with any limi-
17 tation imposed under paragraph (4), restore the
18 wholesale financial institution to well capitalized sta-
19 tus not later than 180 days after the date of receipt
20 by the company of the notice described in paragraph
21 (2), or restore the wholesale financial institution to
22 well managed status within such period as the Board
23 may permit, the company shall, under such terms
24 and conditions as may be imposed by the Board and
25 subject to such extension of time as may be granted

1 in the Board's discretion, divest control of its sub-
2 sidiary depository institutions.

3 “(6) WELL MANAGED DEFINED.—For purposes
4 of this subsection, the term ‘well managed’ has the
5 same meaning as in section 2 of the Bank Holding
6 Company Act of 1956.

7 “(e) RESOLUTION OF WHOLESALE FINANCIAL INSTI-
8 TUTIONS.—

9 “(1) CONSERVATORSHIP OR RECEIVERSHIP.—

10 “(A) APPOINTMENT.—The Board may ap-
11 point a conservator or receiver for a wholesale
12 financial institution to the same extent and in
13 the same manner as the Comptroller of the
14 Currency may appoint a conservator or receiver
15 for a national bank.

16 “(B) POWERS.—The conservator or re-
17 ceiver for a wholesale financial institution shall
18 exercise the same powers, functions, and duties,
19 subject to the same limitations, as a conser-
20 vator or receiver for a national bank.

21 “(2) BOARD AUTHORITY.—The Board shall
22 have the same authority with respect to any conser-
23 vator or receiver appointed for a wholesale financial
24 institution under paragraph (1), and the wholesale
25 financial institution for which it has been appointed,

1 as the Comptroller of the Currency has with respect
2 to a conservator or receiver for a national bank and
3 the national bank for which the conservator or re-
4 ceiver has been appointed.

5 “(3) BANKRUPTCY PROCEEDINGS.—The Comp-
6 troller of the Currency (in the case of a national
7 wholesale financial institution) and the Board may
8 direct the conservator or receiver of a wholesale fi-
9 nancial institution to file a petition pursuant to title
10 11, United States Code, in which case, title 11,
11 United States Code, shall apply to the wholesale fi-
12 nancial institution in lieu of otherwise applicable
13 Federal or State insolvency law.

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

17 (c) VOLUNTARY TERMINATION OF INSURED STATUS
18 BY CERTAIN INSTITUTIONS.—

19 (1) SECTION 8 DESIGNATIONS.—Section 8(a) of
20 the Federal Deposit Insurance Act (12 U.S.C.
21 1818(a)) is amended—

22 (A) by striking paragraph (1); and

23 (B) by redesignating paragraphs (2)
24 through (10) as paragraphs (1) through (9), re-
25 spectively.

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

5 **“SEC. 8A. VOLUNTARY TERMINATION OF STATUS AS IN-**
6 **SURED DEPOSITORY INSTITUTION.**

7 “(a) IN GENERAL.—Except as provided in subsection
8 (b), an insured State bank or a national bank may volun-
9 tarily terminate such bank’s status as an insured deposi-
10 tory institution in accordance with regulations of the Cor-
11 poration if—

12 “(1) the bank provides written notice of the
13 bank’s intent to terminate such insured status—

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

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

21 “(2) either—

22 “(A) the deposit insurance fund of which
23 such bank is a member equals or exceeds the
24 fund’s designated reserve ratio as of the date
25 the bank provides a written notice under para-

1 graph (1) and the Corporation determines that
2 the fund will equal or exceed the applicable des-
3 ignated reserve ratio for the 2 semiannual as-
4 sessment periods immediately following such
5 date; or

6 “(B) the Corporation and the Board of
7 Governors of the Federal Reserve System ap-
8 proved the termination of the bank’s insured
9 status and the bank pays an exit fee in accord-
10 ance with subsection (e).

11 “(b) EXCEPTION.—Subsection (a) shall not apply
12 with respect to—

13 “(1) an insured savings association; or

14 “(2) an insured branch that is required to be
15 insured under subsection (a) or (b) of section 6 of
16 the International Banking Act of 1978.

17 “(c) ELIGIBILITY FOR INSURANCE TERMINATED.—

18 Any bank that voluntarily elects to terminate the bank’s
19 insured status under subsection (a) shall not be eligible
20 for insurance on any deposits or any assistance authorized
21 under this Act after the period specified in subsection
22 (f)(1).

23 “(d) INSTITUTION MUST BECOME WHOLESALE FI-
24 NANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING
25 ACTIVITIES.—Any depository institution which voluntarily

1 terminates such institution's status as an insured deposi-
2 tory institution under this section may not, upon termi-
3 nation of insurance, accept any deposits unless the institu-
4 tion is a wholesale financial institution subject to section
5 9B of the Federal Reserve Act.

6 “(e) EXIT FEES.—

7 “(1) IN GENERAL.—Any bank that voluntarily
8 terminates such bank's status as an insured deposi-
9 tory institution under this section shall pay an exit
10 fee in an amount that the Corporation determines is
11 sufficient to account for the institution's pro rata
12 share of the amount (if any) which would be re-
13 quired to restore the relevant deposit insurance fund
14 to the fund's designated reserve ratio as of the date
15 the bank provides a written notice under subsection
16 (a)(1).

17 “(2) PROCEDURES.—The Corporation shall pre-
18 scribe, by regulation, procedures for assessing any
19 exit fee under this subsection.

20 “(f) TEMPORARY INSURANCE OF DEPOSITS INSURED
21 AS OF TERMINATION.—

22 “(1) TRANSITION PERIOD.—The insured depos-
23 its of each depositor in a State bank or a national
24 bank on the effective date of the voluntary termi-
25 nation of the bank's insured status, less all subse-

1 quent withdrawals from any deposits of such deposi-
2 tor, shall continue to be insured for a period of not
3 less than 6 months and not more than 2 years, as
4 determined by the Corporation. During such period,
5 no additions to any such deposits, and no new de-
6 posits in the depository institution made after the ef-
7 fective date of such termination shall be insured by
8 the Corporation.

9 “(2) TEMPORARY ASSESSMENTS; OBLIGATIONS
10 AND DUTIES.—During the period specified in para-
11 graph (1) with respect to any bank, the bank shall
12 continue to pay assessments under section 7 as if
13 the bank were an insured depository institution. The
14 bank shall, in all other respects, be subject to the
15 authority of the Corporation and the duties and obli-
16 gations of an insured depository institution under
17 this Act during such period, and in the event that
18 the bank is closed due to an inability to meet the de-
19 mands of the bank’s depositors during such period,
20 the Corporation shall have the same powers and
21 rights with respect to such bank as in the case of
22 an insured depository institution.

23 “(g) ADVERTISEMENTS.—

24 “(1) IN GENERAL.—A bank that voluntarily
25 terminates the bank’s insured status under this sec-

1 tion shall not advertise or hold itself out as having
2 insured deposits, except that the bank may advertise
3 the temporary insurance of deposits under sub-
4 section (f) if, in connection with any such advertise-
5 ment, the advertisement also states with equal prom-
6 inence that additions to deposits and new deposits
7 made after the effective date of the termination are
8 not insured.

9 “(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS,
10 AND SECURITIES.—Any certificate of deposit or
11 other obligation or security issued by a State bank
12 or a national bank after the effective date of the vol-
13 untary termination of the bank’s insured status
14 under this section shall be accompanied by a con-
15 spicuous, prominently displayed notice that such cer-
16 tificate of deposit or other obligation or security is
17 not insured under this Act.

18 “(h) NOTICE REQUIREMENTS.—

19 “(1) NOTICE TO THE CORPORATION.—The no-
20 tice required under subsection (a)(1)(A) shall be in
21 such form as the Corporation may require.

22 “(2) NOTICE TO DEPOSITORS.—The notice re-
23 quired under subsection (a)(1)(B) shall be—

24 “(A) sent to each depositor’s last address
25 of record with the bank; and

1 “(B) in such manner and form as the Cor-
2 poration finds to be necessary and appropriate
3 for the protection of depositors.”.

4 (3) DEFINITION.—Section 19(b)(1)(A)(i) of the
5 Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)) is
6 amended by inserting “, or any wholesale financial
7 institution subject to section 9B of this Act” after
8 “such Act”.

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

11 (1) BANKRUPTCY CODE DEBTORS.—Section
12 109(b)(2) of title 11, United States Code, is amend-
13 ed by striking “; or” and inserting the following: “,
14 except that—

15 “(A) a wholesale financial institution es-
16 tablished under section 5136B of the Revised
17 Statutes of the United States or section 9B of
18 the Federal Reserve Act may be a debtor if a
19 petition is filed at the direction of the Comp-
20 troller of the Currency (in the case of a whole-
21 sale financial institution established under sec-
22 tion 5136B of the Revised Statutes of the
23 United States) or the Board of Governors of
24 the Federal Reserve System (in the case of any
25 wholesale financial institution); and

1 “(B) a corporation organized under section
2 25A of the Federal Reserve Act may be a debt-
3 or if a petition is filed at the direction of the
4 Board of Governors of the Federal Reserve Sys-
5 tem; or”.

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

9 “(d) Only a railroad and a person that may be a debt-
10 or under chapter 7 of this title, except that a stockbroker,
11 a wholesale financial institution established under section
12 5136B of the Revised Statutes of the United States or
13 section 9B of the Federal Reserve Act, a corporation orga-
14 nized under section 25A of the Federal Reserve Act, or
15 a commodity broker, may be a debtor under chapter 11
16 of this title.”.

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

20 “(22) ‘financial institution’ means a person that
21 is a commercial or savings bank, industrial savings
22 bank, savings and loan association, trust company,
23 wholesale financial institution established under sec-
24 tion 5136B of the Revised Statutes of the United
25 States or section 9B of the Federal Reserve Act, or

1 corporation organized under section 25A of the Fed-
2 eral Reserve Act and, when any such person is act-
3 ing as agent or custodian for a customer in connec-
4 tion with a securities contract, as defined in section
5 741 of this title, such customer.”.

6 (4) SUBCHAPTER V OF CHAPTER 7.—

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

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

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

14 “(e) Subchapter V of chapter 7 of this title applies
15 only in a case under such chapter concerning the liquida-
16 tion of a wholesale financial institution established under
17 section 5136B of the Revised Statutes of the United
18 States or section 9B of the Federal Reserve Act, or a cor-
19 poration organized under section 25A of the Federal Re-
20 serve Act.”.

21 (B) WHOLESALE BANK LIQUIDATION.—

22 Chapter 7 of title 11, United States Code, is
23 amended by adding at the end the following:

1 “SUBCHAPTER V—WHOLESALE BANK
2 LIQUIDATION

3 **“§ 781. Definitions for subchapter**

4 “In this subchapter—

5 “(1) the term ‘Board’ means the Board of Gov-
6 ernors of the Federal Reserve System;

7 “(2) the term ‘depository institution’ has the
8 same meaning as in section 3 of the Federal Deposit
9 Insurance Act, and includes any wholesale bank;

10 “(3) the term ‘national wholesale financial insti-
11 tution’ means a wholesale financial institution estab-
12 lished under section 5136B of the Revised Statutes
13 of the United States; and

14 “(4) the term ‘wholesale bank’ means a na-
15 tional wholesale financial institution, a wholesale fi-
16 nancial institution established under section 9B of
17 the Federal Reserve Act, or a corporation organized
18 under section 25A of the Federal Reserve Act.

19 **“§ 782. Selection of trustee**

20 “Notwithstanding any other provision of this title,
21 the conservator or receiver who files the petition shall be
22 the trustee under this chapter, unless the Comptroller of
23 the Currency (in the case of a national wholesale financial
24 institution for which it appointed the conservator or re-
25 ceiver) or the Board (in the case of any wholesale bank

1 for which it appointed the conservator or receiver) des-
2 ignates an alternative trustee. The Comptroller of the Cur-
3 rency or the Board (as applicable) may designate a suc-
4 cessor trustee, if required.

5 **“§ 783. Additional powers of trustee**

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

8 “(1) to sell the wholesale bank to a depository
9 institution or consortium of depository institutions
10 (which consortium may agree on the allocation of
11 the wholesale bank among the consortium);

12 “(2) to merge the wholesale bank with a deposi-
13 tory institution;

14 “(3) to transfer contracts to the same extent as
15 could a receiver for a depository institution under
16 paragraphs (9) and (10) of section 11(e) of the Fed-
17 eral Deposit Insurance Act;

18 “(4) to transfer assets or liabilities to a deposi-
19 tory institution;

20 “(5) to distribute property not of the estate, in-
21 cluding distributions to customers that are man-
22 dated by subchapters III and IV of this chapter; or

23 “(6) to transfer assets and liabilities to a bridge
24 bank as provided in paragraphs (1), (3)(A), (5), (6),
25 and (9) through (13), and subparagraphs (A)

1 through (H) and (K) of paragraph (4) of section
2 11(n) of the Federal Deposit Insurance Act, except
3 that—

4 “(A) the bridge bank shall be treated as a
5 wholesale bank for the purpose of this sub-
6 section; and

7 “(B) any references in any such provision
8 of law to the Federal Deposit Insurance Cor-
9 poration shall be construed to be references to
10 the appointing agency and that references to
11 deposit insurance shall be omitted.

12 “(b) Any reference in this section to transfers of li-
13 abilities includes a ratable transfer of liabilities within a
14 priority class.

15 **“§ 784. Right to be heard**

16 “The Comptroller of the Currency (in the case of a
17 national wholesale financial institution), the Board (in the
18 case of any wholesale bank), or a Federal Reserve bank
19 (in the case of a wholesale bank that is a member of that
20 bank) may raise and may appear and be heard on any
21 issue in a case under this subchapter.

22 **“§ 785. Expedited transfers**

23 “The trustee may make a transfer pursuant to sec-
24 tion 783 without prior judicial approval, if the Comptroller
25 of the Currency (in the case of a national wholesale finan-

1 cial institution for which it appointed the conservator or
 2 receiver) or the Board (in the case of any wholesale bank
 3 for which it appointed the conservator or receiver) deter-
 4 mines that the transfer would be necessary to avert serious
 5 adverse effects on economic conditions or financial sta-
 6 bility.”.

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

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

11 (e) RESOLUTION OF EDGE CORPORATIONS.—Section
 12 25A(16) of the Federal Reserve Act (12 U.S.C. 624(16))
 13 is amended to read as follows:

14 “(16) APPOINTMENT OF RECEIVER OR CONSER-
 15 VATOR.—

16 “(A) IN GENERAL.—The Board may ap-
 17 point a conservator or receiver for a corporation
 18 organized under the provisions of this section to
 19 the same extent and in the same manner as the
 20 Comptroller of the Currency may appoint a con-
 21 servator or receiver for a national bank, and the
 22 conservator or receiver for such corporation
 23 shall exercise the same powers, functions, and

1 duties, subject to the same limitations, as a
2 conservator or receiver for a national bank.

3 “(B) EQUIVALENT AUTHORITY.—The
4 Board shall have the same authority with re-
5 spect to any conservator or receiver appointed
6 for a corporation organized under the provisions
7 of this section under this paragraph and any
8 such corporation as the Comptroller of the Cur-
9 rency has with respect to a conservator or re-
10 ceiver of a national bank and the national bank
11 for which a conservator or receiver has been ap-
12 pointed.

13 “(C) TITLE 11 PETITIONS.—The Board
14 may direct the conservator or receiver of a cor-
15 poration organized under the provisions of this
16 section to file a petition pursuant to title 11,
17 United States Code, in which case, title 11,
18 United States Code, shall apply to the corpora-
19 tion in lieu of otherwise applicable Federal or
20 State insolvency law.”.

1 **Subtitle E—Preservation of FTC**
2 **Authority**

3 **SEC. 141. AMENDMENT TO THE BANK HOLDING COMPANY**
4 **ACT OF 1956 TO MODIFY NOTIFICATION AND**
5 **POST-APPROVAL WAITING PERIOD FOR SEC-**
6 **TION 3 TRANSACTIONS.**

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

13 **SEC. 142. INTERAGENCY DATA SHARING.**

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

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

3 **SEC. 143. CLARIFICATION OF STATUS OF SUBSIDIARIES**
4 **AND AFFILIATES.**

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

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

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

1 of the transaction (A) requires notice under section 6 of
2 the Bank Holding Company Act of 1956; and (B) does
3 not require approval under section 3 or 4 of the Bank
4 Holding Company Act of 1956”.

5 **SEC. 144. ANNUAL GAO REPORT.**

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

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

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

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

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

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

9 **Subtitle F—Applying the Principles**
 10 **of National Treatment and**
 11 **Equality of Competitive Oppor-**
 12 **tunity to Foreign Banks and**
 13 **Foreign Financial Institutions**

14 **SEC. 151. APPLYING THE PRINCIPLES OF NATIONAL TREAT-**
 15 **MENT AND EQUALITY OF COMPETITIVE OP-**
 16 **PORTUNITY TO FOREIGN BANKS THAT ARE**
 17 **FINANCIAL HOLDING COMPANIES.**

18 Section 8(c) of the International Banking Act of
 19 1978 (12 U.S.C. 3106(c)) is amended by adding at the
 20 end the following new paragraph:

21 “(3) TERMINATION OF GRANDFATHERED
 22 RIGHTS.—

23 “(A) IN GENERAL.—If any foreign bank or
 24 foreign company files a declaration under sec-
 25 tion 6(b)(1)(D) of the Bank Holding Company

1 Act of 1956, or receives a determination under
2 section 10(d)(1) of the Bank Holding Company
3 Act of 1956, any authority conferred by this
4 subsection on any foreign bank or company to
5 engage in any activity which the Board has de-
6 termined to be permissible for financial holding
7 companies under section 6 of such Act shall ter-
8minate immediately.

9 “(B) RESTRICTIONS AND REQUIREMENTS
10 AUTHORIZED.—If a foreign bank or company
11 that engages, directly or through an affiliate
12 pursuant to paragraph (1), in an activity which
13 the Board has determined to be permissible for
14 financial holding companies under section 6 of
15 the Bank Holding Company Act of 1956 has
16 not filed a declaration with the Board of its sta-
17 tus as a financial holding company under such
18 section or received a determination under sec-
19 tion 10(d)(1) by the end of the 2-year period
20 beginning on the date of enactment of the Fi-
21 nancial Services Act of 1999, the Board, giving
22 due regard to the principle of national treat-
23 ment and equality of competitive opportunity,
24 may impose such restrictions and requirements
25 on the conduct of such activities by such foreign

1 bank or company as are comparable to those
 2 imposed on a financial holding company orga-
 3 nized under the laws of the United States, in-
 4 cluding a requirement to conduct such activities
 5 in compliance with any prudential safeguards
 6 established under section 5(h) of the Bank
 7 Holding Company Act of 1956.”.

8 **SEC. 152. APPLYING THE PRINCIPLES OF NATIONAL TREAT-**
 9 **MENT AND EQUALITY OF COMPETITIVE OP-**
 10 **PORTUNITY TO FOREIGN BANKS AND FOR-**
 11 **EIGN FINANCIAL INSTITUTIONS THAT ARE**
 12 **WHOLESALE FINANCIAL INSTITUTIONS.**

13 Section 8A of the Federal Deposit Insurance Act (as
 14 added by section 136(c)(2) of this Act) is amended by add-
 15 ing at the end the following new subsection:

16 “(i) VOLUNTARY TERMINATION OF DEPOSIT INSUR-
 17 ANCE.—The provisions on voluntary termination of insur-
 18 ance in this section shall apply to an insured branch of
 19 a foreign bank (including a Federal branch) in the same
 20 manner and to the same extent as they apply to an insured
 21 State bank or a national bank.”.

22 **SEC. 153. REPRESENTATIVE OFFICES.**

23 (a) DEFINITION OF “REPRESENTATIVE OFFICE”.—
 24 Section 1(b)(15) of the International Banking Act of 1978
 25 (12 U.S.C. 3101(15)) is amended by striking “State agen-

1 cy, or subsidiary of a foreign bank” and inserting “or
2 State agency”.

3 (b) EXAMINATIONS.—Section 10(c) of the Inter-
4 national Banking Act of 1978 (12 U.S.C. 3107(c)) is
5 amended by adding at the end the following: “The Board
6 may also make examinations of any affiliate of a foreign
7 bank conducting business in any State if the Board deems
8 it necessary to determine and enforce compliance with this
9 Act, the Bank Holding Company Act of 1956 (12 U.S.C.
10 1841 et seq.), or other applicable Federal banking law.”.

11 **Subtitle G—Federal Home Loan** 12 **Bank System Modernization**

13 **SEC. 161. SHORT TITLE.**

14 This subtitle may be cited as the “Federal Home
15 Loan Bank System Modernization Act of 1999”.

16 **SEC. 162. DEFINITIONS.**

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

19 (1) in paragraph (1), by striking “term ‘Board’
20 means” and inserting “terms ‘Finance Board’ and
21 ‘Board’ mean”;

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

24 “(3) STATE.—The term ‘State’, in addition to
25 the States of the United States, includes the District

1 of Columbia, Guam, Puerto Rico, the United States
2 Virgin Islands, American Samoa, and the Common-
3 wealth of the Northern Mariana Islands.”; and

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

6 “(13) COMMUNITY FINANCIAL INSTITUTION.—

7 “(A) IN GENERAL.—The term ‘community
8 financial institution’ means a member—

9 “(i) the deposits of which are insured
10 under the Federal Deposit Insurance Act;
11 and

12 “(ii) that has, as of the date of the
13 transaction at issue, less than
14 \$500,000,000 in average total assets,
15 based on an average of total assets over
16 the 3 years preceding that date.

17 “(B) ADJUSTMENTS.—The \$500,000,000
18 limit referred to in subparagraph (A)(ii) shall
19 be adjusted annually by the Finance Board,
20 based on the annual percentage increase, if any,
21 in the Consumer Price Index for all urban con-
22 sumers, as published by the Department of
23 Labor.”.

1 **SEC. 163. SAVINGS ASSOCIATION MEMBERSHIP.**

2 (a) FEDERAL HOME LOAN BANK MEMBERSHIP.—
3 Section 5(f) of the Home Owners' Loan Act (12 U.S.C.
4 1464(f)) is amended to read as follows:

5 “(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—
6 On and after January 1, 1999, a Federal savings associa-
7 tion may become a member of the Federal Home Loan
8 Bank System, and shall qualify for such membership in
9 the manner provided by the Federal Home Loan Bank
10 Act.”.

11 (b) WITHDRAWAL.—Section 6(e) of the Federal
12 Home Loan Bank Act (12 U.S.C. 1426(e)) is amended
13 by striking “Any member other than a Federal savings
14 and loan association may withdraw” and inserting “Any
15 member may withdraw”.

16 **SEC. 164. ADVANCES TO MEMBERS; COLLATERAL.**

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

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

22 (2) by striking “(a) Each” and inserting the
23 following:

24 “(a) IN GENERAL.—

25 “(1) ALL ADVANCES.—Each”;

1 (3) by striking the second sentence and insert-
2 ing the following:

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

5 “(A) providing funds to any member for
6 residential housing finance; and

7 “(B) providing funds to any community fi-
8 nancial institution for small businesses, agricul-
9 tural, rural development, or low-income commu-
10 nity development lending.”;

11 (4) by striking “A Bank” and inserting the fol-
12 lowing:

13 “(3) COLLATERAL.—A Bank”;

14 (5) in paragraph (3) (as so designated by para-
15 graph (4) of this subsection)—

16 (A) in subparagraph (C) (as so redesign-
17 ated by paragraph (1) of this subsection) by
18 striking “Deposits” and inserting “Cash or de-
19 posits”;

20 (B) in subparagraph (D) (as so redesign-
21 ated by paragraph (1) of this subsection), by
22 striking the second sentence; and

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

1 “(E) Secured loans for small business, ag-
2 riculture, rural development, or low-income
3 community development, or securities rep-
4 resenting a whole interest in such secured
5 loans, in the case of any community financial
6 institution.”;

7 (6) in paragraph (5)—

8 (A) in the second sentence, by striking
9 “and the Board”;

10 (B) in the third sentence, by striking
11 “Board” and inserting “Federal home loan
12 bank”; and

13 (C) by striking “(5) Paragraphs (1)
14 through (4)” and inserting the following:

15 “(4) ADDITIONAL BANK AUTHORITY.—Subpara-
16 graphs (A) through (E) of paragraph (3)”;

17 (7) by adding at the end the following:

18 “(5) REVIEW OF CERTAIN COLLATERAL STAND-
19 ARDS.—The Board may review the collateral stand-
20 ards applicable to each Federal home loan bank for
21 the classes of collateral described in subparagraphs
22 (D) and (E) of paragraph (3), and may, if necessary
23 for safety and soundness purposes, require an in-
24 crease in the collateral standards for any or all of
25 those classes of collateral.

1 “(6) DEFINITIONS.—For purposes of this sub-
2 section, the terms ‘small business’, ‘agriculture’,
3 ‘rural development’, and ‘low-income community de-
4 velopment’ shall have the meanings given those
5 terms by rule or regulation of the Finance Board.”.

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

9 **“SEC. 10. ADVANCES TO MEMBERS.”.**

10 (c) CONFORMING AMENDMENTS RELATING TO MEM-
11 BERS WHICH ARE NOT QUALIFIED THRIFT LENDERS.—
12 Section 10(e)(1) of the Federal Home Loan Bank Act (12
13 U.S.C. 1430(e)(1)) is amended in the second sentence, by
14 inserting before the period “or, in the case of any commu-
15 nity financial institution, for the purposes described in
16 subsection (a)(2)”.

17 **SEC. 165. ELIGIBILITY CRITERIA.**

18 Section 4(a) of the Federal Home Loan Bank Act
19 (12 U.S.C. 1424(a)) is amended—

20 (1) in paragraph (2)(A), by inserting, “(other
21 than a community financial institution)” after “in-
22 stitution”; and

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

1 “(3) LIMITED EXEMPTION FOR COMMUNITY FI-
 2 NANCIAL INSTITUTIONS.—A community financial in-
 3 stitution that otherwise meets the requirements of
 4 paragraph (2) may become a member without regard
 5 to the percentage of its total assets that is rep-
 6 resented by residential mortgage loans, as described
 7 in subparagraph (A) of paragraph (2).”.

8 **SEC. 166. MANAGEMENT OF BANKS.**

9 (a) BOARD OF DIRECTORS.—Section 7(d) of the Fed-
 10 eral Home Loan Bank Act (12 U.S.C. 1427(d)) is
 11 amended—

12 (1) by striking “(d) The term” and inserting
 13 the following:

14 “(d) TERMS OF OFFICE.—The term”; and

15 (2) by striking “shall be two years”.

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

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

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

25 (1) in subsection (a)—

1 (A) by striking “, but, except” and all that
2 follows through “ten years”;

3 (B) by striking “, subject to the approval
4 of the Board” each place that term appears;

5 (C) by striking “and, by its Board of direc-
6 tors,” and all that follows through “agent of
7 such bank,” and inserting “and, by the board
8 of directors of the bank, to prescribe, amend,
9 and repeal by-laws governing the manner in
10 which its affairs may be administered, con-
11 sistent with applicable laws and regulations, as
12 administered by the Finance Board. No officer,
13 employee, attorney, or agent of a Federal home
14 loan bank”; and

15 (D) by striking “Board of directors” each
16 place that term appears and inserting “board of
17 directors”; and

18 (2) in subsection (b), by striking “loans banks”
19 and inserting “loan banks”.

20 (e) POWERS AND DUTIES OF FEDERAL HOUSING FI-
21 NANCE BOARD.—

22 (1) ISSUANCE OF NOTICES OF VIOLATIONS.—
23 Section 2B(a) of the Federal Home Loan Bank Act
24 (12 U.S.C. 1422b(a)) is amended by adding at the
25 end the following new paragraphs:

1 “(5) To issue and serve a notice of charges
2 upon a Federal home loan bank or upon any execu-
3 tive officer or director of a Federal home loan bank
4 if, in the determination of the Finance Board, the
5 bank, executive officer, or director is engaging or
6 has engaged in, or the Finance Board has reason-
7 able cause to believe that the bank, executive officer,
8 or director is about to engage in, any conduct that
9 violates any provision of this Act or any law, order,
10 rule, or regulation or any condition imposed in writ-
11 ing by the Finance Board in connection with the
12 granting of any application or other request by the
13 bank, or any written agreement entered into by the
14 bank with the agency, in accordance with the proce-
15 dures provided in section 1371(c) of the Federal
16 Housing Enterprises Financial Safety and Sound-
17 ness Act of 1992. Such authority includes the same
18 authority to take affirmative action to correct condi-
19 tions resulting from violations or practices or to
20 limit activities of a bank or any executive officer or
21 director of a bank as appropriate Federal banking
22 agencies have to take with respect to insured deposi-
23 tory institutions under paragraphs (6) and (7) of
24 section 8(b) of the Federal Deposit Insurance Act,
25 and to have all other powers, rights, and duties to

1 enforce this Act with respect to the Federal home
2 loan banks and their executive officers and directors
3 as the Office of Federal Housing Enterprise Over-
4 sight has to enforce the Federal Housing Enter-
5 prises Financial Safety and Soundness Act of 1992,
6 the Federal National Mortgage Association Charter
7 Act, or the Federal Home Loan Mortgage Corpora-
8 tion Act with respect to the Federal housing enter-
9 prises under the Federal Housing Enterprises Fi-
10 nancial Safety and Soundness Act of 1992.

11 “(6) To address any insufficiencies in capital
12 levels resulting from the application of section 5(f)
13 of the Home Owners’ Loan Act.

14 “(7) To sue and be sued, by and through its
15 own attorneys.”.

16 (2) TECHNICAL AMENDMENT.—Section 111 of
17 Public Law 93–495 (12 U.S.C. 250) is amended by
18 inserting “Federal Housing Finance Board,” after
19 “Director of the Office of Thrift Supervision,”.

20 (f) ELIGIBILITY TO SECURE ADVANCES.—

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

24 (A) in the second sentence, by striking
25 “with the approval of the Board”; and

1 (B) in the third sentence, by striking “,
2 subject to the approval of the Board,”.

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

6 (A) in subsection (c)—

7 (i) in the first sentence, by striking
8 “Board” and inserting “Federal home loan
9 bank”; and

10 (ii) in the second sentence, by striking
11 “held by” and all that follows before the
12 period;

13 (B) in subsection (d)—

14 (i) in the first sentence, by striking
15 “and the approval of the Board”; and

16 (ii) by striking “Subject to the ap-
17 proval of the Board, any” and inserting
18 “Any”; and

19 (C) in subsection (j)(1)—

20 (i) by striking “to subsidize the inter-
21 est rate on advances” and inserting “to
22 provide subsidies, including subsidized in-
23 terest rates on advances”;

24 (ii) by striking “Pursuant” and in-
25 serting the following:

1 “(A) ESTABLISHMENT.—Pursuant”; and
2 (iii) by adding at the end the fol-
3 lowing new subparagraph:

4 “(B) NONDELEGATION OF APPROVAL AU-
5 THORITY.—Subject to such regulations as the
6 Finance Board may prescribe, the board of di-
7 rectors of each Federal home loan bank may
8 approve or disapprove requests from members
9 for Affordable Housing Program subsidies, and
10 may not delegate such authority.”.

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

13 (1) in the third sentence—

14 (A) by striking “net earnings” and insert-
15 ing “previously retained earnings or current net
16 earnings”; and

17 (B) by striking “, and then only with the
18 approval of the Federal Housing Finance
19 Board”; and

20 (2) by striking the fourth sentence.

21 (h) SECTION 18.—Section 18(b) of the Federal Home
22 Loan Bank Act (12 U.S.C. 1438(b)) is amended by strik-
23 ing paragraph (4).

1 **SEC. 167. RESOLUTION FUNDING CORPORATION.**

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

5 “(C) PAYMENTS BY FEDERAL HOME LOAN
6 BANKS.—

7 “(i) IN GENERAL.—To the extent that
8 the amounts available pursuant to sub-
9 paragraphs (A) and (B) are insufficient to
10 cover the amount of interest payments,
11 each Federal home loan bank shall pay to
12 the Funding Corporation in each calendar
13 year, 20.75 percent of the net earnings of
14 that bank (after deducting expenses relat-
15 ing to section 10(j) and operating ex-
16 penses).

17 “(ii) ANNUAL DETERMINATION.—The
18 Board annually shall determine the extent
19 to which the value of the aggregate
20 amounts paid by the Federal home loan
21 banks exceeds or falls short of the value of
22 an annuity of \$300,000,000 per year that
23 commences on the issuance date and ends
24 on the final scheduled maturity date of the
25 obligations, and shall select appropriate

1 present value factors for making such de-
2 terminations.

3 “(iii) PAYMENT TERM ALTER-
4 ATIONS.—The Board shall extend or short-
5 en the term of the payment obligations of
6 a Federal home loan bank under this sub-
7 paragraph as necessary to ensure that the
8 value of all payments made by the banks
9 is equivalent to the value of an annuity re-
10 ferred to in clause (ii).

11 “(iv) TERM BEYOND MATURITY.—If
12 the Board extends the term of payments
13 beyond the final scheduled maturity date
14 for the obligations, each Federal home loan
15 bank shall continue to pay 20.75 percent
16 of its net earnings (after deducting ex-
17 penses relating to section 10(j) and oper-
18 ating expenses) to the Treasury of the
19 United States until the value of all such
20 payments by the Federal home loan banks
21 is equivalent to the value of an annuity re-
22 ferred to in clause (ii). In the final year in
23 which the Federal home loan banks are re-
24 quired to make any payment to the Treas-
25 ury under this subparagraph, if the dollar

1 amount represented by 20.75 percent of
 2 the net earnings of the Federal home loan
 3 banks exceeds the remaining obligation of
 4 the banks to the Treasury, the Finance
 5 Board shall reduce the percentage pro rata
 6 to a level sufficient to pay the remaining
 7 obligation.”.

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

14 **Subtitle H—Direct Activities of**
 15 **Banks**

16 **SEC. 181. AUTHORITY OF NATIONAL BANKS TO UNDER-**
 17 **WRITE CERTAIN MUNICIPAL BONDS.**

18 The paragraph designated the Seventh of section
 19 5136 of the Revised Statutes of the United States (12
 20 U.S.C. 24(7)) is amended by adding at the end the fol-
 21 lowing new sentence: “In addition to the provisions in this
 22 paragraph for dealing in, underwriting or purchasing secu-
 23 rities, the limitations and restrictions contained in this
 24 paragraph as to dealing in, underwriting, and purchasing
 25 investment securities for the national bank’s own account

1 shall not apply to obligations (including limited obligation
 2 bonds, revenue bonds, and obligations that satisfy the re-
 3 quirements of section 142(b)(1) of the Internal Revenue
 4 Code of 1986) issued by or on behalf of any state or polit-
 5 ical subdivision of a state, including any municipal cor-
 6 porate instrumentality of 1 or more states, or any public
 7 agency or authority of any state or political subdivision
 8 of a state, if the national banking association is well cap-
 9 italized (as defined in section 38 of the Federal Deposit
 10 Insurance Act).”.

11 **Subtitle I—Deposit Insurance** 12 **Funds**

13 **SEC. 186. STUDY OF SAFETY AND SOUNDNESS OF FUNDS.**

14 (a) **STUDY REQUIRED.**—The Board of Directors of
 15 the Federal Deposit Insurance Corporation shall conduct
 16 a study of the following issues with regard to the Bank
 17 Insurance Fund and the Savings Association Insurance
 18 Fund:

19 (1) **SAFETY AND SOUNDNESS.**—The safety and
 20 soundness of the funds and the adequacy of the re-
 21 serve requirements applicable to the funds in light
 22 of—

23 (A) the size of the insured depository insti-
 24 tutions which are resulting from mergers and
 25 consolidations since the effective date of the

1 Riegle-Neal Interstate Banking and Branching
2 Efficiency Act of 1994; and

3 (B) the affiliation of insured depository in-
4 stitutions with other financial institutions pur-
5 suant to this Act and the amendments made by
6 this Act.

7 (2) CONCENTRATION LEVELS.—The concentra-
8 tion levels of the funds, taking into account the
9 number of members of each fund and the geographic
10 distribution of such members, and the extent to
11 which either fund is exposed to higher risks due to
12 a regional concentration of members or an insuffi-
13 cient membership base relative to the size of member
14 institutions.

15 (3) MERGER ISSUES.—Issues relating to the
16 planned merger of the funds, including the cost of
17 merging the funds and the manner in which such
18 costs will be distributed among the members of the
19 respective funds.

20 (b) REPORT REQUIRED.—

21 (1) IN GENERAL.—Before the end of the 9-
22 month period beginning on the date of enactment of
23 this Act, the Board of Directors of the Federal De-
24 posit Insurance Corporation shall submit a report to

1 the Congress on the study conducted pursuant to
2 subsection (a).

3 (2) CONTENTS OF REPORT.—The report shall
4 include—

5 (A) detailed findings of the Board of Di-
6 rectors with regard to the issues described in
7 subsection (a);

8 (B) a description of the plans developed by
9 the Board of Directors for merging the Bank
10 Insurance Fund and the Savings Association
11 Insurance Fund, including an estimate of the
12 amount of the cost of such merger which would
13 be borne by Savings Association Insurance
14 Fund members; and

15 (C) such recommendations for legislative
16 and administrative action as the Board of Di-
17 rectors determines to be necessary or appro-
18 priate to preserve the safety and soundness of
19 the deposit insurance funds, reduce the risks to
20 such funds, provide for an efficient merger of
21 such funds, and for other purposes.

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

24 (1) INSURED DEPOSITORY INSTITUTION.—The
25 term “insured depository institution” has the same

1 meaning as in section 3(c) of the Federal Deposit
2 Insurance Act.

3 (2) BIF AND SAIF MEMBERS.—The terms
4 “Bank Insurance Fund member” and “Savings As-
5 sociation Insurance Fund member” have the same
6 meanings as in section 7(l) of the Federal Deposit
7 Insurance Act.

8 **SEC. 187. ELIMINATION OF SAIF AND DIF SPECIAL RE-**
9 **SERVES.**

10 (a) SAIF SPECIAL RESERVES.—Section 11(a)(6) of
11 the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6))
12 is amended by striking subparagraph (L).

13 (b) DIF SPECIAL RESERVES.—Section 2704 of the
14 Deposit Insurance Funds Act of 1996 (12 U.S.C. 1821
15 note) is amended—

16 (1) by striking subsection (b); and

17 (2) in subsection (d)—

18 (A) by striking paragraph (4);

19 (B) in paragraph (6)(C)(i), by striking
20 “(6) and (7)” and inserting “(5), (6), and (7)”;

21 and

22 (C) in paragraph (6)(C), by striking clause
23 (ii) and inserting the following:

24 “(ii) by redesignating paragraph (8)
25 as paragraph (5).”.

1 **Subtitle J—Effective Date of Title**

2 **SEC. 191. EFFECTIVE DATE.**

3 Except with regard to any subtitle or other provision
 4 of this title for which a specific effective date is provided,
 5 this title and the amendments made by this title shall take
 6 effect at the end of the 270-day period beginning on the
 7 date of enactment of this Act.

8 **TITLE II—FUNCTIONAL** 9 **REGULATION**

10 **Subtitle A—Brokers and Dealers**

11 **SEC. 201. DEFINITION OF BROKER.**

12 Section 3(a)(4) of the Securities Exchange Act of
 13 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

14 “(4) BROKER.—

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

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

24 “(i) THIRD PARTY BROKERAGE AR-
 25 RANGEMENTS.—The bank enters into a

1 contractual or other arrangement with a
2 broker or dealer registered under this title
3 under which the broker or dealer offers
4 brokerage services on or off the premises
5 of the bank if—

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

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

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

23 “(IV) any materials used by the
24 bank to advertise or promote generally
25 the availability of brokerage services

1 under the contractual or other ar-
2 rangement are in compliance with the
3 Federal securities laws before dis-
4 tribution;

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

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

1 latory organization, except that the
2 bank employees may receive com-
3 pensation for the referral of any cus-
4 tomer if the compensation is a nomi-
5 nal one-time cash fee of a fixed dollar
6 amount and the payment of the fee is
7 not contingent on whether the referral
8 results in a transaction;

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

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

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

1 are not insured by the Federal De-
2 posit Insurance Corporation.

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

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

24 “(II) does not publicly solicit bro-
25 kerage business, other than by adver-

1 tising that it effects transactions in
2 securities in conjunction with adver-
3 tising its other trust activities.

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

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

9 “(II) exempted securities;

10 “(III) qualified Canadian govern-
11 ment obligations as defined in section
12 5136 of the Revised Statutes, in con-
13 formity with section 15C of this title
14 and the rules and regulations there-
15 under, or obligations of the North
16 American Development Bank; or

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

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

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

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

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

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

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

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

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

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

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

1 in connection with the plan or
2 program;

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

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

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

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

1 Commission as of the date of en-
2 actment of the Financial Services
3 Act of 1999; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 “(ix) BANKING PRODUCTS.—The bank
21 effects transactions in traditional banking
22 products, as defined in section 206(a) of
23 the Financial Services Act of 1999.

24 “(x) DE MINIMIS EXCEPTION.—The
25 bank effects, other than in transactions re-

1 ferred to in clauses (i) through (ix), not
2 more than 500 transactions in securities in
3 any calendar year, and such transactions
4 are not effected by an employee of the
5 bank who is also an employee of a broker
6 or dealer.

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

15 “(i) the bank directs such trade to a
16 registered broker dealer for execution;

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

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

23 “(II) is not in contravention of
24 fiduciary principles established under
25 applicable Federal or State law; or

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

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

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

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

22 “(ii) in any capacity in which the
23 bank possesses investment discretion on
24 behalf of another; or

25 “(iii) in any other similar capacity.

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

4 “(i) was, immediately prior to the en-
5 actment of the Financial Services Act of
6 1999, subject to section 15(e); and

7 “(ii) is subject to such restrictions
8 and requirements as the Commission con-
9 siders appropriate.”.

10 **SEC. 202. DEFINITION OF DEALER.**

11 Section 3(a)(5) of the Securities Exchange Act of
12 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

13 “(5) DEALER.—

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

18 “(B) EXCEPTION FOR PERSON NOT EN-
19 GAGED IN THE BUSINESS OF DEALING.—The
20 term ‘dealer’ does not include a person that
21 buys or sells securities for such person’s own
22 account, either individually or in a fiduciary ca-
23 pacity, but not as a part of a regular business.

24 “(C) EXCEPTION FOR CERTAIN BANK AC-
25 TIVITIES.—A bank shall not be considered to be

1 a dealer because the bank engages in any of
2 the following activities under the conditions de-
3 scribed:

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

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

8 “(II) exempted securities;

9 “(III) qualified Canadian govern-
10 ment obligations as defined in section
11 5136 of the Revised Statutes of the
12 United States, in conformity with sec-
13 tion 15C of this title and the rules
14 and regulations thereunder, or obliga-
15 tions of the North American Develop-
16 ment Bank; or

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

24 “(ii) INVESTMENT, TRUSTEE, AND FI-
25 DUCIARY TRANSACTIONS.—The bank buys

1 or sells securities for investment
2 purposes—

3 “(I) for the bank; or

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

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

18 “(iv) BANKING PRODUCTS.—The bank
19 buys or sells traditional banking products,
20 as defined in section 206(a) of the Finan-
21 cial Services Act of 1999.

22 “(v) DERIVATIVE INSTRUMENTS.—
23 The bank issues, buys, or sells any deriva-
24 tive instrument to which the bank is a
25 party—

1 “(I) to or from a qualified inves-
2 tor, except that if the instrument pro-
3 vides for the delivery of one or more
4 securities (other than a derivative in-
5 strument or government security), the
6 transaction shall be effected with or
7 through a registered broker or dealer;
8 “(II) to or from other persons,
9 except that if the derivative instru-
10 ment provides for the delivery of one
11 or more securities (other than a deriv-
12 ative instrument or government secu-
13 rity), or is a security (other than a
14 government security), the transaction
15 shall be effected with or through a
16 registered broker or dealer; or
17 “(III) to or from any person if
18 the instrument is neither a security
19 nor provides for the delivery of one or
20 more securities (other than a deriva-
21 tive instrument).”.

1 **SEC. 203. REGISTRATION FOR SALES OF PRIVATE SECURI-**
2 **TIES OFFERINGS.**

3 Section 15A of the Securities Exchange Act of 1934
4 (15 U.S.C. 78o-3) is amended by inserting after sub-
5 section (i) the following new subsection:

6 “(j) REGISTRATION FOR SALES OF PRIVATE SECURI-
7 TIES OFFERINGS.—A registered securities association
8 shall create a limited qualification category for any associ-
9 ated person of a member who effects sales as part of a
10 primary offering of securities not involving a public offer-
11 ing, pursuant to section 3(b), 4(2), or 4(6) of the Securi-
12 ties Act of 1933 and the rules and regulations thereunder,
13 and shall deem qualified in such limited qualification cat-
14 egory, without testing, any bank employee who, in the 6-
15 month period preceding the date of enactment of the Fi-
16 nancial Services Act of 1999, engaged in effecting such
17 sales.”.

18 **SEC. 204. SALES PRACTICES AND COMPLAINT PROCE-**
19 **DURES.**

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

23 “(s) SALES PRACTICES AND COMPLAINT PROCE-
24 DURES WITH RESPECT TO BANK SECURITIES ACTIVI-
25 TIES.—

1 “(1) REGULATIONS REQUIRED.—Each Federal
2 banking agency shall prescribe and publish in final
3 form, not later than 6 months after the date of en-
4 actment of the Financial Services Act of 1999, regu-
5 lations which apply to retail transactions, solicita-
6 tions, advertising, or offers of any security by any
7 insured depository institution or any affiliate thereof
8 other than a registered broker or dealer or an indi-
9 vidual acting on behalf of such a broker or dealer
10 who is an associated person of such broker or dealer.
11 Such regulations shall include—

12 “(A) requirements that sales practices
13 comply with just and equitable principles of
14 trade that are substantially similar to the Rules
15 of Fair Practice of the National Association of
16 Securities Dealers; and

17 “(B) requirements prohibiting (i) condi-
18 tioning an extension of credit on the purchase
19 or sale of a security; and (ii) any conduct lead-
20 ing a customer to believe that an extension of
21 credit is conditioned upon the purchase or sale
22 of a security.

23 “(2) PROCEDURES REQUIRED.—The appro-
24 priate Federal banking agencies shall jointly estab-
25 lish procedures and facilities for receiving and expe-

1 ditiously processing complaints against any bank or
2 employee of a bank arising in connection with the
3 purchase or sale of a security by a customer, includ-
4 ing a complaint alleging a violation of the regula-
5 tions prescribed under paragraph (1), but excluding
6 a complaint involving an individual acting on behalf
7 of such a broker or dealer who is an associated per-
8 son of such broker or dealer. The use of any such
9 procedures and facilities by such a customer shall be
10 at the election of the customer. Such procedures
11 shall include provisions to refer a complaint alleging
12 fraud to the Securities and Exchange Commission
13 and appropriate State securities commissions.

14 “(3) REQUIRED ACTIONS.—The actions re-
15 quired by the Federal banking agencies under para-
16 graph (2) shall include the following:

17 “(A) establishing a group, unit, or bureau
18 within each such agency to receive such com-
19 plaints;

20 “(B) developing and establishing proce-
21 dures for investigating, and permitting cus-
22 tomers to investigate, such complaints;

23 “(C) developing and establishing proce-
24 dures for informing customers of the rights

1 they may have in connection with such com-
2 plaints;

3 “(D) developing and establishing proce-
4 dures that allow customers a period of at least
5 6 years to make complaints and that do not re-
6 quire customers to pay the costs of the pro-
7 ceeding; and

8 “(E) developing and establishing proce-
9 dures for resolving such complaints, including
10 procedures for the recovery of losses to the ex-
11 tent appropriate.

12 “(4) CONSULTATION AND JOINT REGULA-
13 TIONS.—The Federal banking agencies shall consult
14 with each other and prescribe joint regulations pur-
15 suant to paragraphs (1) and (2), after consultation
16 with the Securities and Exchange Commission.

17 “(5) PROCEDURES IN ADDITION TO OTHER
18 REMEDIES.—The procedures and remedies provided
19 under this subsection shall be in addition to, and not
20 in lieu of, any other remedies available under law.

21 “(6) DEFINITION.—As used in this
22 subsection—

23 “(A) the term ‘security’ has the same
24 meaning as in section 3(a)(10) of the Securities
25 Exchange Act of 1934;

1 “(B) the term ‘registered broker or dealer’
2 has the same meaning as in section 3(a)(48) of
3 the Securities Exchange Act of 1934; and

4 “(C) the term ‘associated person’ has the
5 same meaning as in section 3(a)(18) of the Se-
6 curities Exchange Act of 1934.”.

7 **SEC. 205. INFORMATION SHARING.**

8 Section 18 of the Federal Deposit Insurance Act is
9 amended by adding at the end the following new sub-
10 section:

11 “(t) RECORDKEEPING REQUIREMENTS.—

12 “(1) REQUIREMENTS.—Each appropriate Fed-
13 eral banking agency, after consultation with and
14 consideration of the views of the Commission, shall
15 establish recordkeeping requirements for banks rely-
16 ing on exceptions contained in paragraphs (4) and
17 (5) of section 3(a) of the Securities Exchange Act of
18 1934. Such recordkeeping requirements shall be suf-
19 ficient to demonstrate compliance with the terms of
20 such exceptions and be designed to facilitate compli-
21 ance with such exceptions. Each appropriate Federal
22 banking agency shall make any such information
23 available to the Commission upon request.

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

4 **SEC. 206. DEFINITION AND TREATMENT OF BANKING PROD-**
5 **UCTS.**

6 (a) DEFINITION OF TRADITIONAL BANKING PROD-
7 UCT.—For purposes of paragraphs (4) and (5) of section
8 3(a) of the Securities Exchange Act of 1934 (15 U.S.C.
9 78c(a) (4), (5)), the term “traditional banking product”
10 means—

11 (1) a deposit account, savings account, certifi-
12 cate of deposit, or other deposit instrument issued
13 by a bank;

14 (2) a banker’s acceptance;

15 (3) a letter of credit issued or loan made by a
16 bank;

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

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

22 (A) to qualified investors; or

23 (B) to other persons that—

24 (i) have the opportunity to review and
25 assess any material information, including

1 information regarding the borrower's cred-
2 itworthiness; and

3 (ii) based on such factors as financial
4 sophistication, net worth, and knowledge
5 and experience in financial matters, have
6 the capability to evaluate the information
7 available, as determined under generally
8 applicable banking standards or guidelines;
9 and

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

12 (A) foreign currencies, except options on
13 foreign currencies that trade on a national se-
14 curities exchange;

15 (B) interest rates, except interest rate de-
16 rivative instruments that—

17 (i) are based on a security or a group
18 or index of securities (other than govern-
19 ment securities or a group or index of gov-
20 ernment securities);

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

24 (iii) trade on a national securities ex-
25 change; and

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

4 (i) are securities or that are based on
5 a group or index of securities (other than
6 government securities or a group or index
7 of government securities);

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

11 (iii) trade on a national securities ex-
12 change.

13 (b) AMENDMENT TO THE SECURITIES EXCHANGE
14 ACT OF 1934.—Section 15 of the Securities Exchange Act
15 of 1934 (15 U.S.C. 78o) is amended by adding at the end
16 the following new subsection:

17 “(i) TRANSACTIONS INVOLVING HYBRID PROD-
18 UCTS.—

19 “(1) COMMISSION AUTHORITY.—

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

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

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

9 “(ii) the subject product is a security;
10 and

11 “(iii) imposing the registration re-
12 quirements of this section is necessary or
13 appropriate in the public interest and for
14 the protection of investors.

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

17 “(A) FILING OF PETITION FOR REVIEW.—
18 The Board, or any aggrieved party, may obtain
19 review of any final regulation described in para-
20 graph (1) in the United States Court of Ap-
21 peals for the District of Columbia Circuit by fil-
22 ing in such court, not later than 60 days after
23 the date of publication of the final regulation,
24 a written petition requesting that the regulation
25 be set aside.

1 “(B) TRANSMITTAL OF PETITION AND
2 RECORD.—A copy of a petition described in
3 subparagraph (A) shall be transmitted as soon
4 as possible by the Clerk of the Court to an offi-
5 cer or employee of the Commission designated
6 for that purpose. Upon receipt of the petition,
7 the Commission shall file with the court the
8 regulation under review and any documents re-
9 ferred to therein, and any other relevant mate-
10 rials prescribed by the court.

11 “(C) EXCLUSIVE JURISDICTION.—On the
12 date of the filing of the petition under subpara-
13 graph (A), the court has jurisdiction, which be-
14 comes exclusive on the filing of the materials
15 set forth in subparagraph (B), to affirm and
16 enforce or to set aside the regulation at issue.

17 “(D) STANDARD OF REVIEW.—

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

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

1 “(II) is a security; and

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

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

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

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

17 “(III) the history, purpose, ex-
18 tent, and appropriateness of the regu-
19 lation of the new product under the
20 Federal banking laws.

21 “(E) JUDICIAL STAY.—The filing of a peti-
22 tion by the Board or an aggrieved party pursu-
23 ant to subparagraph (A) shall operate as a judi-
24 cial stay, until the date on which the court

1 makes a final determination under this para-
2 graph, of—

3 “(i) any Commission requirement that
4 a bank register as a broker or dealer under
5 this section, because the bank engages in
6 any transaction in, or buys or sells, the
7 new product that is the subject of the peti-
8 tion; and

9 “(ii) any Commission action against a
10 bank for a failure to comply with a re-
11 quirement described in clause (i).

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

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

16 “(B) the term ‘new product’ means a prod-
17 uct or instrument offered or provided by a bank
18 that—

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

23 “(ii) is not a traditional banking prod-
24 uct, as defined in paragraphs (1) through

1 (6) of section 206(a) of the Financial Serv-
2 ices Act of 1999.”.

3 (c) CLASSIFICATION LIMITED.—Classification of a
4 particular product or instrument as a traditional banking
5 product pursuant to this section or the amendments made
6 by this section shall not be construed as finding or imply-
7 ing that such product or instrument is or is not a security
8 for any purpose under the securities laws, or is or is not
9 an account, agreement, contract, or transaction for any
10 purpose under the Commodity Exchange Act.

11 (d) NO LIMITATION ON OTHER AUTHORITY TO
12 CHALLENGE.—Nothing in this section or the amendments
13 made by this section shall affect the right or authority
14 of the Board of Governors of the Federal Reserve System,
15 any appropriate Federal banking agency, or any interested
16 party under any other provision of law to object to or seek
17 judicial review as to whether a product or instrument is
18 or is not appropriately classified as a traditional banking
19 product under paragraphs (1) through (6) of section
20 206(a).

21 (e) INCORPORATED DEFINITIONS.—For purposes of
22 this section—

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

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

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

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

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

15 **SEC. 207. DERIVATIVE INSTRUMENT AND QUALIFIED IN-**
16 **VESTOR DEFINED.**

17 Section 3(a) of the Securities Exchange Act of 1934
18 (15 U.S.C. 78c(a)) is amended by adding at the end the
19 following new paragraphs:

20 “(54) DERIVATIVE INSTRUMENT.—

21 “(A) DEFINITION.—The term ‘derivative
22 instrument’ means any individually negotiated
23 contract, agreement, warrant, note, or option
24 that is based, in whole or in part, on the value
25 of, any interest in, or any quantitative measure

1 or the occurrence of any event relating to, one
2 or more commodities, securities, currencies, in-
3 terest or other rates, indices, or other assets,
4 but does not include a traditional banking prod-
5 uct, as defined in section 206(a) of the Finan-
6 cial Services Act of 1999.

7 “(B) CLASSIFICATION LIMITED.—Classi-
8 fication of a particular contract as a derivative
9 instrument pursuant to this paragraph shall not
10 be construed as finding or implying that such
11 instrument is or is not a security for any pur-
12 pose under the securities laws, or is or is not
13 an account, agreement, contract, or transaction
14 for any purpose under the Commodity Ex-
15 change Act.

16 “(55) QUALIFIED INVESTOR.—

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

19 “(i) any investment company reg-
20 istered with the Commission under section
21 8 of the Investment Company Act of 1940;

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

1 “(iii) any bank (as defined in para-
2 graph (6) of this subsection), savings asso-
3 ciation (as defined in section 3(b) of the
4 Federal Deposit Insurance Act), broker,
5 dealer, insurance company (as defined in
6 section 2(a)(13) of the Securities Act of
7 1933), or business development company
8 (as defined in section 2(a)(48) of the In-
9 vestment Company Act of 1940);

10 “(iv) any small business investment
11 company licensed by the United States
12 Small Business Administration under sec-
13 tion 301(e) or (d) of the Small Business
14 Investment Act of 1958;

15 “(v) any State sponsored employee
16 benefit plan, or any other employee benefit
17 plan, within the meaning of the Employee
18 Retirement Income Security Act of 1974,
19 other than an individual retirement ac-
20 count, if the investment decisions are made
21 by a plan fiduciary, as defined in section
22 3(21) of that Act, which is either a bank,
23 savings and loan association, insurance
24 company, or registered investment adviser;

1 “(vi) any trust whose purchases of se-
2 curities are directed by a person described
3 in clauses (i) through (v) of this subpara-
4 graph;

5 “(vii) any market intermediary ex-
6 empt under section 3(c)(2) of the Invest-
7 ment Company Act of 1940;

8 “(viii) any associated person of a
9 broker or dealer other than a natural per-
10 son;

11 “(ix) any foreign bank (as defined in
12 section 1(b)(7) of the International Bank-
13 ing Act of 1978);

14 “(x) the government of any foreign
15 country;

16 “(xi) any corporation, company, or
17 partnership that owns and invests on a dis-
18 cretionary basis, not less than \$10,000,000
19 in investments;

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

23 “(xiii) any government or political
24 subdivision, agency, or instrumentality of a
25 government who owns and invests on a dis-

1 cretionary basis not less than \$50,000,000
2 in investments; or

3 “(xiv) any multinational or supra-
4 national entity or any agency or instru-
5 mentality thereof.

6 “(B) ADDITIONAL AUTHORITY.—The Com-
7 mission may, by rule or order, define a ‘quali-
8 fied investor’ as any other person, taking into
9 consideration such factors as the financial so-
10 phistication of the person, net worth, and
11 knowledge and experience in financial mat-
12 ters.”.

13 **SEC. 208. GOVERNMENT SECURITIES DEFINED.**

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

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

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

20 (3) by adding at the end the following new sub-
21 paragraph:

22 “(E) for purposes of section 15C as ap-
23 plied to a bank, a qualified Canadian govern-
24 ment obligation as defined in section 5136 of
25 the Revised Statutes.”.

1 **SEC. 209. EFFECTIVE DATE.**

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

4 **SEC. 210. RULE OF CONSTRUCTION.**

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

8 **Subtitle B—Bank Investment**
9 **Company Activities**

10 **SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY**
11 **AFFILIATED BANK.**

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

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

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

19 “(f) **CUSTODY OF SECURITIES.**—

20 “(1) Every registered”;

21 (3) by redesignating the second, third, fourth,
22 and fifth sentences of such subsection as paragraphs
23 (2) through (5), respectively, and indenting the left
24 margin of such paragraphs appropriately; and

25 (4) by adding at the end the following new
26 paragraph:

1 “(6) SERVICES AS TRUSTEE OR CUSTODIAN.—
2 The Commission may adopt rules and regulations,
3 and issue orders, consistent with the protection of
4 investors, prescribing the conditions under which a
5 bank, or an affiliated person of a bank, either of
6 which is an affiliated person, promoter, organizer, or
7 sponsor of, or principal underwriter for, a registered
8 management company may serve as custodian of
9 that registered management company.”.

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

13 (1) by redesignating subsections (b) through (e)
14 as subsections (c) through (f), respectively; and

15 (2) by inserting after subsection (a) the fol-
16 lowing new subsection:

17 “(b) The Commission may adopt rules and regula-
18 tions, and issue orders, consistent with the protection of
19 investors, prescribing the conditions under which a bank,
20 or an affiliated person of a bank, either of which is an
21 affiliated person of a principal underwriter for, or deposi-
22 tor of, a registered unit investment trust, may serve as
23 trustee or custodian under subsection (a)(1).”.

1 (c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a)
2 of the Investment Company Act of 1940 (15 U.S.C. 80a–
3 35(a)) is amended—

4 (1) in paragraph (1), by striking “or” at the
5 end;

6 (2) in paragraph (2), by striking the period at
7 the end and inserting “; or”; and

8 (3) by inserting after paragraph (2) the fol-
9 lowing:

10 “(3) as custodian.”.

11 **SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COM-**
12 **PANY.**

13 Section 17(a) of the Investment Company Act of
14 1940 (15 U.S.C. 80a–17(a)) is amended—

15 (1) by striking “or” at the end of paragraph
16 (2);

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

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

21 “(4) to loan money or other property to such
22 registered company, or to any company controlled by
23 such registered company, in contravention of such
24 rules, regulations, or orders as the Commission may

1 prescribe or issue consistent with the protection of
2 investors.”.

3 **SEC. 213. INDEPENDENT DIRECTORS.**

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

7 (1) by striking clause (v) and inserting the fol-
8 lowing new clause:

9 “(v) any person or any affiliated per-
10 son of a person (other than a registered in-
11 vestment company) that, at any time dur-
12 ing the 6-month period preceding the date
13 of the determination of whether that per-
14 son or affiliated person is an interested
15 person, has executed any portfolio trans-
16 actions for, engaged in any principal trans-
17 actions with, or distributed shares for—

18 “(I) the investment company;

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

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

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

6 and

7 (3) by inserting after clause (v) the following
8 new clause:

9 “(vi) any person or any affiliated per-
10 son of a person (other than a registered in-
11 vestment company) that, at any time dur-
12 ing the 6-month period preceding the date
13 of the determination of whether that per-
14 son or affiliated person is an interested
15 person, has loaned money or other prop-
16 erty to—

17 “(I) the investment company;

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

1 “(III) any account for which the
2 investment company’s investment ad-
3 viser has borrowing authority,”.

4 (b) CONFORMING AMENDMENT.—Section
5 2(a)(19)(B) of the Investment Company Act of 1940 (15
6 U.S.C. 80a-2(a)(19)(B)) is amended—

7 (1) by striking clause (v) and inserting the fol-
8 lowing new clause:

9 “(v) any person or any affiliated per-
10 son of a person (other than a registered in-
11 vestment company) that, at any time dur-
12 ing the 6-month period preceding the date
13 of the determination of whether that per-
14 son or affiliated person is an interested
15 person, has executed any portfolio trans-
16 actions for, engaged in any principal trans-
17 actions with, or distributed shares for—

18 “(I) any investment company for
19 which the investment adviser or prin-
20 cipal underwriter serves as such;

21 “(II) any investment company
22 holding itself out to investors, for pur-
23 poses of investment or investor serv-
24 ices, as a company related to any in-
25 vestment company for which the in-

1 investment adviser or principal under-
2 writer serves as such; or

3 “(III) any account over which the
4 investment adviser has brokerage
5 placement discretion,”;

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

7 and

8 (3) by inserting after clause (v) the following
9 new clause:

10 “(vi) any person or any affiliated per-
11 son of a person (other than a registered in-
12 vestment company) that, at any time dur-
13 ing the 6-month period preceding the date
14 of the determination of whether that per-
15 son or affiliated person is an interested
16 person, has loaned money or other prop-
17 erty to—

18 “(I) any investment company for
19 which the investment adviser or prin-
20 cipal underwriter serves as such;

21 “(II) any investment company
22 holding itself out to investors, for pur-
23 poses of investment or investor serv-
24 ices, as a company related to any in-
25 vestment company for which the in-

1 investment adviser or principal under-
2 writer serves as such; or

3 “(III) any account for which the
4 investment adviser has borrowing au-
5 thority,”.

6 (c) AFFILIATION OF DIRECTORS.—Section 10(c) of
7 the Investment Company Act of 1940 (15 U.S.C. 80a-
8 10(c)) is amended by striking “bank, except” and insert-
9 ing “bank (together with its affiliates and subsidiaries) or
10 any one bank holding company (together with its affiliates
11 and subsidiaries) (as such terms are defined in section 2
12 of the Bank Holding Company Act of 1956), except”.

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

16 **SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

17 Section 35(a) of the Investment Company Act of
18 1940 (15 U.S.C. 80a-34(a)) is amended to read as fol-
19 lows:

20 “(a) MISREPRESENTATION OF GUARANTEES.—

21 “(1) IN GENERAL.—It shall be unlawful for any
22 person, issuing or selling any security of which a
23 registered investment company is the issuer, to rep-
24 resent or imply in any manner whatsoever that such
25 security or company—

1 “(A) has been guaranteed, sponsored, rec-
2 ommended, or approved by the United States,
3 or any agency, instrumentality or officer of the
4 United States;

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

7 “(C) is guaranteed by or is otherwise an
8 obligation of any bank or insured depository in-
9 stitution.

10 “(2) DISCLOSURES.—Any person issuing or
11 selling the securities of a registered investment com-
12 pany that is advised by, or sold through, a bank
13 shall prominently disclose that an investment in the
14 company is not insured by the Federal Deposit In-
15 surance Corporation or any other government agen-
16 cy. The Commission may adopt rules and regula-
17 tions, and issue orders, consistent with the protec-
18 tion of investors, prescribing the manner in which
19 the disclosure under this paragraph shall be pro-
20 vided.

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

1 **SEC. 215. DEFINITION OF BROKER UNDER THE INVEST-**
2 **MENT COMPANY ACT OF 1940.**

3 Section 2(a)(6) of the Investment Company Act of
4 1940 (15 U.S.C. 80a-2(a)(6)) is amended to read as fol-
5 lows:

6 “(6) The term ‘broker’ has the same meaning
7 as in section 3 of the Securities Exchange Act of
8 1934, except that such term does not include any
9 person solely by reason of the fact that such person
10 is an underwriter for one or more investment compa-
11 nies.”.

12 **SEC. 216. DEFINITION OF DEALER UNDER THE INVEST-**
13 **MENT COMPANY ACT OF 1940.**

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

17 “(11) The term ‘dealer’ has the same meaning
18 as in section 3 of the Securities Exchange Act of
19 1934, but does not include an insurance company or
20 investment company.”.

21 **SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINI-**
22 **TION OF INVESTMENT ADVISER FOR BANKS**
23 **THAT ADVISE INVESTMENT COMPANIES.**

24 (a) INVESTMENT ADVISER.—Section 202(a)(11) of
25 the Investment Advisers Act of 1940 (15 U.S.C. 80b-
26 2(a)(11)) is amended in subparagraph (A), by striking

1 “investment company” and inserting “investment com-
2 pany, except that the term ‘investment adviser’ includes
3 any bank or bank holding company to the extent that such
4 bank or bank holding company serves or acts as an invest-
5 ment adviser to a registered investment company, but if,
6 in the case of a bank, such services or actions are per-
7 formed through a separately identifiable department or di-
8 vision, the department or division, and not the bank itself,
9 shall be deemed to be the investment adviser”.

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

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

16 “(A) that is under the direct supervision of
17 an officer or officers designated by the board of
18 directors of the bank as responsible for the day-
19 to-day conduct of the bank’s investment adviser
20 activities for one or more investment companies,
21 including the supervision of all bank employees
22 engaged in the performance of such activities;
23 and

24 “(B) for which all of the records relating
25 to its investment adviser activities are sepa-

1 rately maintained in or extractable from such
2 unit’s own facilities or the facilities of the bank,
3 and such records are so maintained or other-
4 wise accessible as to permit independent exam-
5 ination and enforcement by the Commission of
6 this Act or the Investment Company Act of
7 1940 and rules and regulations promulgated
8 under this Act or the Investment Company Act
9 of 1940.”.

10 **SEC. 218. DEFINITION OF BROKER UNDER THE INVEST-**
11 **MENT ADVISERS ACT OF 1940.**

12 Section 202(a)(3) of the Investment Advisers Act of
13 1940 (15 U.S.C. 80b-2(a)(3)) is amended to read as fol-
14 lows:

15 “(3) The term ‘broker’ has the same meaning
16 as in section 3 of the Securities Exchange Act of
17 1934.”.

18 **SEC. 219. DEFINITION OF DEALER UNDER THE INVEST-**
19 **MENT ADVISERS ACT OF 1940.**

20 Section 202(a)(7) of the Investment Advisers Act of
21 1940 (15 U.S.C. 80b-2(a)(7)) is amended to read as fol-
22 lows:

23 “(7) The term ‘dealer’ has the same meaning as
24 in section 3 of the Securities Exchange Act of 1934,

1 but does not include an insurance company or in-
2 vestment company.”.

3 **SEC. 220. INTERAGENCY CONSULTATION.**

4 The Investment Advisers Act of 1940 (15 U.S.C.
5 80b–1 et seq.) is amended by inserting after section 210
6 the following new section:

7 **“SEC. 210A. CONSULTATION.**

8 “(a) EXAMINATION RESULTS AND OTHER INFORMA-
9 TION.—

10 “(1) The appropriate Federal banking agency
11 shall provide the Commission upon request the re-
12 sults of any examination, reports, records, or other
13 information to which such agency may have access
14 with respect to the investment advisory activities—

15 “(A) of any—

16 “(i) bank holding company;

17 “(ii) bank; or

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

21 “(B) in the case of a bank holding com-
22 pany or bank that has a subsidiary or a sepa-
23 rately identifiable department or division reg-
24 istered under that section, of such bank or bank
25 holding company.

1 “(2) The Commission shall provide to the ap-
2 propriate Federal banking agency upon request the
3 results of any examination, reports, records, or other
4 information with respect to the investment advisory
5 activities of any bank holding company, bank, or
6 separately identifiable department or division of a
7 bank, any of which is registered under section 203
8 of this title.

9 “(b) EFFECT ON OTHER AUTHORITY.—Nothing in
10 this section shall limit in any respect the authority of the
11 appropriate Federal banking agency with respect to such
12 bank holding company, bank, or department or division
13 under any provision of law.

14 “(c) DEFINITION.—For purposes of this section, the
15 term ‘appropriate Federal banking agency’ has the same
16 meaning as in section 3 of the Federal Deposit Insurance
17 Act.”.

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

19 (a) SECURITIES ACT OF 1933.—Section 3(a)(2) of
20 the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is
21 amended by striking “or any interest or participation in
22 any common trust fund or similar fund maintained by a
23 bank exclusively for the collective investment and reinvest-
24 ment of assets contributed thereto by such bank in its ca-
25 pacity as trustee, executor, administrator, or guardian”

1 and inserting “or any interest or participation in any com-
2 mon trust fund or similar fund that is excluded from the
3 definition of the term ‘investment company’ under section
4 3(c)(3) of the Investment Company Act of 1940”.

5 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
6 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934
7 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as fol-
8 lows:

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

14 (c) INVESTMENT COMPANY ACT OF 1940.—Section
15 3(c)(3) of the Investment Company Act of 1940 (15
16 U.S.C. 80a-3(c)(3)) is amended by inserting before the
17 period the following: “, if—

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

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

25 “(i) advertised; or

1 “(ii) offered for sale to the general
2 public; and

3 “(C) fees and expenses charged by such
4 fund are not in contravention of fiduciary prin-
5 ciples established under applicable Federal or
6 State law”.

7 **SEC. 222. INVESTMENT ADVISERS PROHIBITED FROM HAV-**
8 **ING CONTROLLING INTEREST IN REG-**
9 **ISTERED INVESTMENT COMPANY.**

10 Section 15 of the Investment Company Act of 1940
11 (15 U.S.C. 80a-15) is amended by adding at the end the
12 following new subsection:

13 “(g) CONTROLLING INTEREST IN INVESTMENT COM-
14 PANY PROHIBITED.—

15 “(1) IN GENERAL.—If an investment adviser to
16 a registered investment company, or an affiliated
17 person of that investment adviser, holds a control-
18 ling interest in that registered investment company
19 in a trustee or fiduciary capacity, such person
20 shall—

21 “(A) if it holds the shares in a trustee or
22 fiduciary capacity with respect to any employee
23 benefit plan subject to the Employee Retirement
24 Income Security Act of 1974, transfer the
25 power to vote the shares of the investment com-

1 pany through to another person acting in a fi-
2 duciary capacity with respect to the plan who is
3 not an affiliated person of that investment ad-
4 viser or any affiliated person thereof; or

5 “(B) if it holds the shares in a trustee or
6 fiduciary capacity with respect to any person or
7 entity other than an employee benefit plan sub-
8 ject to the Employee Retirement Income Secu-
9 rity Act of 1974—

10 “(i) transfer the power to vote the
11 shares of the investment company through
12 to—

13 “(I) the beneficial owners of the
14 shares;

15 “(II) another person acting in a
16 fiduciary capacity who is not an affili-
17 ated person of that investment adviser
18 or any affiliated person thereof; or

19 “(III) any person authorized to
20 receive statements and information
21 with respect to the trust who is not an
22 affiliated person of that investment
23 adviser or any affiliated person there-
24 of;

1 “(ii) vote the shares of the investment
2 company held by it in the same proportion
3 as shares held by all other shareholders of
4 the investment company; or

5 “(iii) vote the shares of the invest-
6 ment company as otherwise permitted
7 under such rules, regulations, or orders as
8 the Commission may prescribe or issue
9 consistent with the protection of investors.

10 “(2) EXEMPTION.—Paragraph (1) shall not
11 apply to any investment adviser to a registered in-
12 vestment company, or any affiliated person of that
13 investment adviser, that holds shares of the invest-
14 ment company in a trustee or fiduciary capacity if
15 that registered investment company consists solely of
16 assets held in such capacities.

17 “(3) SAFE HARBOR.—No investment adviser to
18 a registered investment company or any affiliated
19 person of such investment adviser shall be deemed to
20 have acted unlawfully or to have breached a fidu-
21 ciary duty under State or Federal law solely by rea-
22 son of acting in accordance with clause (i), (ii), or
23 (iii) of paragraph (1)(B).

24 “(4) CHURCH PLAN EXEMPTION.—Paragraph
25 (1) does not apply to any investment adviser to a

1 registered investment company, or an affiliated per-
2 son of that investment adviser, holding shares in
3 such a capacity, if such investment adviser or such
4 affiliated person is an organization described in sec-
5 tion 414(e)(3)(A) of the Internal Revenue Code of
6 1986.”.

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

8 Section 2(a)(5) of the Investment Company Act of
9 1940 (15 U.S.C. 80a-2(a)(5)) is amended by striking
10 “(A) a banking institution organized under the laws of the
11 United States” and inserting “(A) a depository institution
12 (as defined in section 3 of the Federal Deposit Insurance
13 Act) or a branch or agency of a foreign bank (as such
14 terms are defined in section 1(b) of the International
15 Banking Act of 1978)”.

16 **SEC. 224. CONFORMING AMENDMENT.**

17 Section 202 of the Investment Advisers Act of 1940
18 (15 U.S.C. 80b-2) is amended by adding at the end the
19 following new subsection:

20 “(c) CONSIDERATION OF PROMOTION OF EFFI-
21 CIENCY, COMPETITION, AND CAPITAL FORMATION.—

22 Whenever pursuant to this title the Commission is en-
23 gaged in rulemaking and is required to consider or deter-
24 mine whether an action is necessary or appropriate in the
25 public interest, the Commission shall also consider, in ad-

1 dition to the protection of investors, whether the action
 2 will promote efficiency, competition, and capital forma-
 3 tion.”.

4 **SEC. 225. EFFECTIVE DATE.**

5 This subtitle shall take effect 90 days after the date
 6 of enactment of this Act.

7 **Subtitle C—Securities and Ex-**
 8 **change Commission Supervision**
 9 **of Investment Bank Holding**
 10 **Companies**

11 **SEC. 231. SUPERVISION OF INVESTMENT BANK HOLDING**
 12 **COMPANIES BY THE SECURITIES AND EX-**
 13 **CHANGE COMMISSION.**

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

16 (1) by redesignating subsection (i) as subsection
 17 (l); and

18 (2) by inserting after subsection (h) the fol-
 19 lowing new subsections:

20 “(i) INVESTMENT BANK HOLDING COMPANIES.—

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

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

1 “(i) an affiliate of a wholesale finan-
2 cial institution, an insured bank (other
3 than an institution described in subpara-
4 graph (D), (F), or (G) of section 2(c)(2),
5 or held under section 4(f), of the Bank
6 Holding Company Act of 1956), or a sav-
7 ings association;

8 “(ii) a foreign bank, foreign company,
9 or company that is described in section
10 8(a) of the International Banking Act of
11 1978; or

12 “(iii) a foreign bank that controls, di-
13 rectly or indirectly, a corporation chartered
14 under section 25A of the Federal Reserve
15 Act,

16 may elect to become supervised by filing with
17 the Commission a notice of intention to become
18 supervised, pursuant to subparagraph (B) of
19 this paragraph. Any investment bank holding
20 company filing such a notice shall be supervised
21 in accordance with this section and comply with
22 the rules promulgated by the Commission appli-
23 cable to supervised investment bank holding
24 companies.

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

20 “(2) ELECTION NOT TO BE SUPERVISED BY
21 THE COMMISSION AS AN INVESTMENT BANK HOLD-
22 ING COMPANY.—

23 “(A) VOLUNTARY WITHDRAWAL.—A su-
24 pervised investment bank holding company that
25 is supervised pursuant to paragraph (1) may,

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

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

1 promulgated by the Commission under this sec-
2 tion.

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

5 “(A) RECORDKEEPING AND REPORTING.—

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

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

22 “(II) the extent to which the
23 company or affiliate has complied with
24 the provisions of this Act and regula-

1 tions prescribed and orders issued
2 under this Act.

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

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

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

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

23 “(IV) reports concerning the ex-
24 tent to which the company or affiliate
25 has complied with the provisions of

1 this title and any regulations pre-
2 scribed and orders issued under this
3 title.

4 “(B) USE OF EXISTING REPORTS.—

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

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

18 “(C) EXAMINATION AUTHORITY.—

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

24 “(I) inform the Commission
25 regarding—

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

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

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

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

1 chapter II of chapter 53, title 31,
2 United States Code (commonly re-
3 ferred to as the ‘Bank Secrecy Act’)
4 and regulations thereunder.

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

10 “(I) the company; and

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

22 “(iii) DEFERENCE TO OTHER EXAMI-
23 NATIONS.—For purposes of this subpara-
24 graph, the Commission shall, to the fullest
25 extent possible, use the reports of examina-

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

8 “(4) HOLDING COMPANY CAPITAL.—

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

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

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

23 “(ii) NO UNWEIGHTED CAPITAL
24 RATIO.—The Commission shall not impose
25 under this section a capital ratio that is

1 not based on appropriate risk-weighting
2 considerations.

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

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

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

22 “(5) FUNCTIONAL REGULATION OF BANKING
23 AND INSURANCE ACTIVITIES OF SUPERVISED IN-
24 VESTMENT BANK HOLDING COMPANIES.—The Com-
25 mission shall defer to—

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

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

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

17 “(A) the term ‘investment bank holding
18 company’ means—

19 “(i) any person other than a natural
20 person that owns or controls one or more
21 brokers or dealers; and

22 “(ii) the associated persons of the in-
23 vestment bank holding company;

24 “(B) the term ‘supervised investment bank
25 holding company’ means any investment bank

1 holding company that is supervised by the Com-
2 mission pursuant to this subsection;

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

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

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

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

21 “(j) COMMISSION BACKUP AUTHORITY.—

22 “(1) AUTHORITY.—The Commission may make
23 inspections of any wholesale financial holding com-
24 pany that—

1 “(A) controls a wholesale financial institu-
2 tion;

3 “(B) is not a foreign bank; and

4 “(C) does not control an insured bank
5 (other than an institution permitted under sub-
6 paragraph (D), (F), or (G) of section 2(c)(2),
7 or held under section 4(f), of the Bank Holding
8 Company Act of 1956) or a savings association,
9 and any affiliate of such company, for the purpose
10 of monitoring and enforcing compliance by the
11 wholesale financial holding company with the Fed-
12 eral securities laws.

13 “(2) LIMITATION.—The Commission shall limit
14 the focus and scope of any inspection under para-
15 graph (1) to those transactions, policies, procedures,
16 or records that are reasonably necessary to monitor
17 and enforce compliance by the wholesale financial
18 holding company or any affiliate with the Federal
19 securities laws.

20 “(3) DEFERENCE TO EXAMINATIONS.—To the
21 fullest extent possible, the Commission shall use, for
22 the purposes of this subsection, the reports of
23 examinations—

24 “(A) made by the Board of Governors of
25 the Federal Reserve System of any wholesale fi-

1 nancial holding company that is supervised by
2 the Board;

3 “(B) made by or on behalf of any State
4 regulatory agency responsible for the super-
5 vision of an insurance company of any licensed
6 insurance company; and

7 “(C) made by any Federal or State bank-
8 ing agency of any bank or institution described
9 in subparagraph (D), (F), or (G) of section
10 2(c)(2), or held under section 4(f), of the Bank
11 Holding Company Act of 1956.

12 “(4) NOTICE.—To the fullest extent possible,
13 the Commission shall notify the appropriate regu-
14 latory agency prior to conducting an inspection of a
15 wholesale financial institution or institution de-
16 scribed in subparagraph (D), (F), or (G) of section
17 2(c)(2), or held under section 4(f), of the Bank
18 Holding Company Act of 1956.

19 “(k) AUTHORITY TO LIMIT DISCLOSURE OF INFOR-
20 MATION.—Notwithstanding any other provision of law, the
21 Commission shall not be compelled to disclose any infor-
22 mation required to be reported under subsection (h) or
23 (i) or any information supplied to the Commission by any
24 domestic or foreign regulatory agency that relates to the
25 financial or operational condition of any associated person

1 of a broker or dealer, investment bank holding company,
2 or any affiliate of an investment bank holding company.
3 Nothing in this subsection shall authorize the Commission
4 to withhold information from Congress, or prevent the
5 Commission from complying with a request for informa-
6 tion from any other Federal department or agency or any
7 self-regulatory organization requesting the information for
8 purposes within the scope of its jurisdiction, or complying
9 with an order of a court of the United States in an action
10 brought by the United States or the Commission. For pur-
11 poses of section 552 of title 5, United States Code, this
12 subsection shall be considered a statute described in sub-
13 section (b)(3)(B) of such section 552. In prescribing regu-
14 lations to carry out the requirements of this subsection,
15 the Commission shall designate information described in
16 or obtained pursuant to subparagraphs (A), (B), and (C)
17 of subsection (i)(5) as confidential information for pur-
18 poses of section 24(b)(2) of this title.”.

19 (b) CONFORMING AMENDMENTS.—

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

23 “(H) When used with respect to an institu-
24 tion described in subparagraph (D), (F), or (G)

1 of section 2(c)(2), or held under section 4(f),
2 of the Bank Holding Company Act of 1956—

3 “(i) the Comptroller of the Currency,
4 in the case of a national bank or a bank
5 in the District of Columbia examined by
6 the Comptroller of the Currency;

7 “(ii) the Board of Governors of the
8 Federal Reserve System, in the case of a
9 State member bank of the Federal Reserve
10 System or any corporation chartered under
11 section 25A of the Federal Reserve Act;

12 “(iii) the Federal Deposit Insurance
13 Corporation, in the case of any other bank
14 the deposits of which are insured in ac-
15 cordance with the Federal Deposit Insur-
16 ance Act; or

17 “(iv) the Commission in the case of all
18 other such institutions.”

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

22 (A) by striking “this title” and inserting
23 “law”; and

24 (B) by inserting “, examination reports”
25 after “financial records”.

Subtitle D—Studies

1
2 **SEC. 241. STUDY OF METHODS TO INFORM INVESTORS AND**
3 **CONSUMERS OF UNINSURED PRODUCTS.**

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

16 **SEC. 242. STUDY OF LIMITATION ON FEES ASSOCIATED**
17 **WITH ACQUIRING FINANCIAL PRODUCTS.**

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

1 **TITLE III—INSURANCE**
2 **Subtitle A—State Regulation of**
3 **Insurance**

4 **SEC. 301. STATE REGULATION OF THE BUSINESS OF INSUR-**
5 **ANCE.**

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

11 **SEC. 302. MANDATORY INSURANCE LICENSING REQUIRE-**
12 **MENTS.**

13 No person or entity shall provide insurance in a State
14 as principal or agent unless such person or entity is li-
15 censed as required by the appropriate insurance regulator
16 of such State in accordance with the relevant State insur-
17 ance law, subject to section 104.

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

19 The insurance sales activity of any person or entity
20 shall be functionally regulated by the States, subject to
21 section 104.

22 **SEC. 304. INSURANCE UNDERWRITING IN NATIONAL**
23 **BANKS.**

24 (a) IN GENERAL.—Except as provided in section 305,
25 a national bank and the subsidiaries of a national bank

1 may not provide insurance in a State as principal except
2 that this prohibition shall not apply to authorized prod-
3 ucts.

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

6 (1) as of January 1, 1997, the Comptroller of
7 the Currency had determined in writing that na-
8 tional banks may provide such product as principal,
9 or national banks were in fact lawfully providing
10 such product as principal;

11 (2) no court of relevant jurisdiction had, by
12 final judgment, overturned a determination of the
13 Comptroller of the Currency that national banks
14 may provide such product as principal; and

15 (3) the product is not title insurance, or an an-
16 nuity contract the income of which is subject to tax
17 treatment under section 72 of the Internal Revenue
18 Code of 1986.

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

21 (1) any product regulated as insurance as of
22 January 1, 1997, in accordance with the relevant
23 State insurance law, in the State in which the prod-
24 uct is provided;

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

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

19 (B) is not a product or service of a bank
20 that is—

21 (i) a deposit product;

22 (ii) a loan, discount, letter of credit,
23 or other extension of credit;

24 (iii) a trust or other fiduciary service;

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

5 (v) a financial guaranty, except that
6 this subparagraph (B) shall not apply to a
7 product that includes an insurance compo-
8 nent such that if the product is offered or
9 proposed to be offered by the bank as
10 principal—

11 (I) it would be treated as a life
12 insurance contract under section 7702
13 of the Internal Revenue Code of 1986;
14 or

15 (II) in the event that the product
16 is not a letter of credit or other simi-
17 lar extension of credit, a qualified fi-
18 nancial contract, or a financial guar-
19 anty, it would qualify for treatment
20 for losses incurred with respect to
21 such product under section 832(b)(5)
22 of the Internal Revenue Code of 1986,
23 if the bank were subject to tax as an
24 insurance company under section 831
25 of that Code; or

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

4 **SEC. 305. TITLE INSURANCE ACTIVITIES OF NATIONAL**
5 **BANKS AND THEIR AFFILIATES.**

6 (a) **AUTHORITY.**—Notwithstanding any other provi-
7 sion of this Act or any other law, no national bank, and
8 no subsidiary of a national bank, may engage in any activ-
9 ity involving the underwriting of title insurance, other
10 than title insurance underwriting activities in which such
11 national bank or subsidiary was actively and lawfully en-
12 gaged before the date of enactment of this Act.

13 (b) **INSURANCE AFFILIATE.**—In the case of a na-
14 tional bank which has an affiliate which provides insur-
15 ance as principal and is not a subsidiary of the bank, the
16 national bank and any subsidiary of the national bank
17 may not engage in any activity involving the underwriting
18 of title insurance pursuant to subsection (a).

19 (c) **INSURANCE SUBSIDIARY.**—In the case of a na-
20 tional bank which has a subsidiary which provides insur-
21 ance as principal and has no affiliate which provides insur-
22 ance as principal and is not a subsidiary, the national
23 bank may not engage in any activity involving the under-
24 writing of title insurance pursuant to subsection (a).

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

5 **SEC. 306. EXPEDITED AND EQUALIZED DISPUTE RESOLU-**
6 **TION FOR FEDERAL REGULATORS.**

7 (a) FILING IN COURT OF APPEALS.—In the case of
8 a regulatory conflict between a State insurance regulator
9 and a Federal regulator as to whether any product is or
10 is not insurance, as defined in section 304(c), or whether
11 a State statute, regulation, order, or interpretation re-
12 garding any insurance sales or solicitation activity is prop-
13 erly treated as preempted under Federal law, either regu-
14 lator may seek expedited judicial review of such deter-
15 mination by the United States Court of Appeals for the
16 circuit in which the State is located or in the United
17 States Court of Appeals for the District of Columbia Cir-
18 cuit by filing a petition for review in such court.

19 (b) EXPEDITED REVIEW.—The United States Court
20 of Appeals in which a petition for review is filed in accord-
21 ance with subsection (a) shall complete all action on such
22 petition, including rendering a judgment, before the end
23 of the 60-day period beginning on the date on which such
24 petition is filed, unless all parties to such proceeding agree
25 to any extension of such period.

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

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

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

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

18 (e) STANDARD OF REVIEW.—The court shall decide
19 an action filed under this section based on its review on
20 the merits of all questions presented under State and Fed-
21 eral law, including the nature of the product or activity
22 and the history and purpose of its regulation under State
23 and Federal law, without unequal deference.

1 **SEC. 307. CONSUMER PROTECTION REGULATIONS.**

2 The Federal Deposit Insurance Act (12 U.S.C. 1811
3 et seq.) is amended by adding at the end the following
4 new section:

5 **“SEC. 45. CONSUMER PROTECTION REGULATIONS.**

6 “(a) REGULATIONS REQUIRED.—

7 “(1) IN GENERAL.—The Federal banking agen-
8 cies shall prescribe and publish in final form, before
9 the end of the 1-year period beginning on the date
10 of enactment of the Financial Services Act of 1999,
11 consumer protection regulations (which the agencies
12 jointly determine to be appropriate) that—

13 “(A) apply to retail sales practices, solici-
14 tations, advertising, or offers of any insurance
15 product by any insured depository institution or
16 wholesale financial institution or any person
17 who is engaged in such activities at an office of
18 the institution or on behalf of the institution;
19 and

20 “(B) are consistent with the requirements
21 of this Act and provide such additional protec-
22 tions for consumers to whom such sales, solici-
23 tations, advertising, or offers are directed as
24 the agency determines to be appropriate.

25 “(2) APPLICABILITY TO SUBSIDIARIES.—The
26 regulations prescribed pursuant to paragraph (1)

1 shall extend such protections to any subsidiaries of
2 an insured depository institution, as deemed appro-
3 priate by the regulators referred to in paragraph (3),
4 where such extension is determined to be necessary
5 to ensure the consumer protections provided by this
6 section.

7 “(3) CONSULTATION AND JOINT REGULA-
8 TIONS.—The Federal banking agencies shall consult
9 with each other and prescribe joint regulations pur-
10 suant to paragraph (1), after consultation with the
11 State insurance regulators, as appropriate.

12 “(b) SALES PRACTICES.—The regulations prescribed
13 pursuant to subsection (a) shall include anticoercion rules
14 applicable to the sale of insurance products which prohibit
15 an insured depository institution from engaging in any
16 practice that would lead a consumer to believe an exten-
17 sion of credit, in violation of section 106(b) of the Bank
18 Holding Company Act Amendments of 1970, is condi-
19 tional upon—

20 “(1) the purchase of an insurance product from
21 the institution or any of its affiliates or subsidiaries;
22 or

23 “(2) an agreement by the consumer not to ob-
24 tain, or a prohibition on the consumer from obtain-

1 ing, an insurance product from an unaffiliated enti-
2 ty.

3 “(c) DISCLOSURES AND ADVERTISING.—The regula-
4 tions prescribed pursuant to subsection (a) shall include
5 the following provisions relating to disclosures and adver-
6 tising in connection with the initial purchase of an insur-
7 ance product:

8 “(1) DISCLOSURES.—

9 “(A) IN GENERAL.—Requirements that the
10 following disclosures be made orally and in writ-
11 ing before the completion of the initial sale and,
12 in the case of clause (iii), at the time of applica-
13 tion for an extension of credit:

14 “(i) UNINSURED STATUS.—As appro-
15 priate, the product is not insured by the
16 Federal Deposit Insurance Corporation,
17 the United States Government, or the in-
18 sured depository institution.

19 “(ii) INVESTMENT RISK.—In the case
20 of a variable annuity or other insurance
21 product which involves an investment risk,
22 that there is an investment risk associated
23 with the product, including possible loss of
24 value.

1 “(iii) COERCION.—The approval of an
2 extension of credit may not be conditioned
3 on—

4 “(I) the purchase of an insurance
5 product from the institution in which
6 the application for credit is pending or
7 any of its affiliates or subsidiaries; or

8 “(II) an agreement by the con-
9 sumer not to obtain, or a prohibition
10 on the consumer from obtaining, an
11 insurance product from an unaffili-
12 ated entity.

13 “(B) MAKING DISCLOSURE READILY UN-
14 DERSTANDABLE.—Regulations prescribed under
15 subparagraph (A) shall encourage the use of
16 disclosure that is conspicuous, simple, direct,
17 and readily understandable, such as the fol-
18 lowing:

19 “(i) ‘NOT FDIC-INSURED’.

20 “(ii) ‘NOT GUARANTEED BY THE
21 BANK’.

22 “(iii) ‘MAY GO DOWN IN VALUE’.

23 “(C) ADJUSTMENTS FOR ALTERNATIVE
24 METHODS OF PURCHASE.—In prescribing the
25 requirements under subparagraphs (A) and

1 (D), necessary adjustments shall be made for
2 purchase in person, by telephone, or by elec-
3 tronic media to provide for the most appro-
4 priate and complete form of disclosure and ac-
5 knowledgments.

6 “(D) CONSUMER ACKNOWLEDGMENT.—A
7 requirement that an insured depository institu-
8 tion shall require any person selling an insur-
9 ance product at any office of, or on behalf of,
10 the institution to obtain, at the time a con-
11 sumer receives the disclosures required under
12 this paragraph or at the time of the initial pur-
13 chase by the consumer of such product, an ac-
14 knowledgment by such consumer of the receipt
15 of the disclosure required under this paragraph
16 with respect to such product.

17 “(2) PROHIBITION ON MISREPRESENTA-
18 TIONS.—A prohibition on any practice, or any adver-
19 tising, at any office of, or on behalf of, the insured
20 depository institution, or any subsidiary as appro-
21 priate, which could mislead any person or otherwise
22 cause a reasonable person to reach an erroneous be-
23 lief with respect to—

1 “(A) the uninsured nature of any insur-
2 ance product sold, or offered for sale, by the in-
3 stitution or any subsidiary of the institution; or

4 “(B) in the case of a variable annuity or
5 other insurance product that involves an invest-
6 ment risk, the investment risk associated with
7 any such product.

8 “(d) SEPARATION OF BANKING AND NONBANKING
9 ACTIVITIES.—

10 “(1) REGULATIONS REQUIRED.—The regula-
11 tions prescribed pursuant to subsection (a) shall in-
12 clude such provisions as the Federal banking agen-
13 cies consider appropriate to ensure that the routine
14 acceptance of deposits is kept, to the extent prac-
15 ticable, physically segregated from insurance product
16 activity.

17 “(2) REQUIREMENTS.—Regulations prescribed
18 pursuant to paragraph (1) shall include the fol-
19 lowing requirements:

20 “(A) SEPARATE SETTING.—A clear delin-
21 eation of the setting in which, and the cir-
22 cumstances under which, transactions involving
23 insurance products should be conducted in a lo-
24 cation physically segregated from an area where
25 retail deposits are routinely accepted.

1 “(B) REFERRALS.—Standards which per-
2 mit any person accepting deposits from the
3 public in an area where such transactions are
4 routinely conducted in an insured depository in-
5 stitution to refer a customer who seeks to pur-
6 chase any insurance product to a qualified per-
7 son who sells such product, only if the person
8 making the referral receives no more than a
9 one-time nominal fee of a fixed dollar amount
10 for each referral that does not depend on
11 whether the referral results in a transaction.

12 “(C) QUALIFICATION AND LICENSING RE-
13 QUIREMENTS.—Standards prohibiting any in-
14 sured depository institution from permitting
15 any person to sell or offer for sale any insur-
16 ance product in any part of any office of the in-
17 stitution, or on behalf of the institution, unless
18 such person is appropriately qualified and li-
19 censed.

20 “(e) DOMESTIC VIOLENCE DISCRIMINATION PROHI-
21 BITION.—

22 “(1) IN GENERAL.—In the case of an applicant
23 for, or an insured under, any insurance product de-
24 scribed in paragraph (2), the status of the applicant
25 or insured as a victim of domestic violence, or as a

1 provider of services to victims of domestic violence,
2 shall not be considered as a criterion in any decision
3 with regard to insurance underwriting, pricing, re-
4 newal, or scope of coverage of insurance policies, or
5 payment of insurance claims, except as required or
6 expressly permitted under State law.

7 “(2) SCOPE OF APPLICATION.—The prohibition
8 contained in paragraph (1) shall apply to any insur-
9 ance product which is sold or offered for sale, as
10 principal, agent, or broker, by any insured deposi-
11 tory institution or any person who is engaged in
12 such activities at an office of the institution or on
13 behalf of the institution.

14 “(3) SENSE OF THE CONGRESS.—It is the sense
15 of the Congress that, by the end of the 30-month pe-
16 riod beginning on the date of enactment of the Fi-
17 nancial Services Act of 1999, the States should
18 enact prohibitions against discrimination with re-
19 spect to insurance products that are at least as
20 strict as the prohibitions contained in paragraph (1).

21 “(4) DOMESTIC VIOLENCE DEFINED.—For pur-
22 poses of this subsection, the term ‘domestic violence’
23 means the occurrence of 1 or more of the following
24 acts by a current or former family member, house-
25 hold member, intimate partner, or caretaker:

1 “(A) Attempting to cause or causing or
2 threatening another person with physical harm,
3 severe emotional distress, psychological trauma,
4 rape, or sexual assault.

5 “(B) Engaging in a course of conduct or
6 repeatedly committing acts toward another per-
7 son, including following the person without
8 proper authority, under circumstances that
9 place the person in reasonable fear of bodily in-
10 jury or physical harm.

11 “(C) Subjecting another person to false
12 imprisonment.

13 “(D) Attempting to cause or causing dam-
14 age to property so as to intimidate or attempt
15 to control the behavior of another person.

16 “(f) CONSUMER GRIEVANCE PROCESS.—The Federal
17 banking agencies shall jointly establish a consumer com-
18 plaint mechanism, for receiving and expeditiously address-
19 ing consumer complaints alleging a violation of regulations
20 issued under this section, which mechanism shall—

21 “(1) establish a group within each regulatory
22 agency to receive such complaints;

23 “(2) develop procedures for investigating such
24 complaints;

1 “(3) develop procedures for informing con-
2 sumers of rights they may have in connection with
3 such complaints; and

4 “(4) develop procedures for addressing concerns
5 raised by such complaints, as appropriate, including
6 procedures for the recovery of losses to the extent
7 appropriate.

8 “(g) EFFECT ON OTHER AUTHORITY.—

9 “(1) IN GENERAL.—No provision of this section
10 shall be construed as granting, limiting, or otherwise
11 affecting—

12 “(A) any authority of the Securities and
13 Exchange Commission, any self-regulatory or-
14 ganization, the Municipal Securities Rule-
15 making Board, or the Secretary of the Treasury
16 under any Federal securities law; or

17 “(B) except as provided in paragraph (2),
18 any authority of any State insurance commis-
19 sioner or other State authority under any State
20 law.

21 “(2) COORDINATION WITH STATE LAW.—

22 “(A) IN GENERAL.—Except as provided in
23 subparagraph (B), regulations prescribed by a
24 Federal banking agency under this section shall
25 not apply to retail sales, solicitations, adver-

1 tising, or offers of any insurance product by
2 any insured depository institution or wholesale
3 financial institution or to any person who is en-
4 gaged in such activities at an office of such in-
5 stitution or on behalf of the institution, in a
6 State where the State has in effect statutes,
7 regulations, orders, or interpretations, that are
8 inconsistent with or contrary to the regulations
9 prescribed by the Federal banking agencies.

10 “(B) PREEMPTION.—If, with respect to
11 any provision of the regulations prescribed
12 under this section, the Board of Governors of
13 the Federal Reserve System, the Comptroller of
14 the Currency, and the Board of Directors of the
15 Federal Deposit Insurance Corporation deter-
16 mine jointly that the protection afforded by
17 such provision for consumers is greater than
18 the protection provided by a comparable provi-
19 sion of the statutes, regulations, orders, or in-
20 terpretations referred to in subparagraph (A) of
21 any State, such provision of the regulations pre-
22 scribed under this section shall supersede the
23 comparable provision of such State statute, reg-
24 ulation, order, or interpretation.

1 “(h) INSURANCE PRODUCT DEFINED.—For purposes
2 of this section, the term ‘insurance product’ includes an
3 annuity contract the income of which is subject to tax
4 treatment under section 72 of the Internal Revenue Code
5 of 1986.”.

6 **SEC. 308. CERTAIN STATE AFFILIATION LAWS PREEMPTED**
7 **FOR INSURANCE COMPANIES AND AFFILI-**
8 **ATES.**

9 Except as provided in section 104(a)(2), no State
10 may, by law, regulation, order, interpretation, or
11 otherwise—

12 (1) prevent or significantly interfere with the
13 ability of any insurer, or any affiliate of an insurer
14 (whether such affiliate is organized as a stock com-
15 pany, mutual holding company, or otherwise), to be-
16 come a financial holding company or to acquire con-
17 trol of an insured depository institution;

18 (2) limit the amount of an insurer’s assets that
19 may be invested in the voting securities of an in-
20 sured depository institution (or any company which
21 controls such institution), except that the laws of an
22 insurer’s State of domicile may limit the amount of
23 such investment to an amount that is not less than
24 5 percent of the insurer’s admitted assets; or

1 (3) prevent, significantly interfere with, or have
 2 the authority to review, approve, or disapprove a
 3 plan of reorganization by which an insurer proposes
 4 to reorganize from mutual form to become a stock
 5 insurer (whether as a direct or indirect subsidiary of
 6 a mutual holding company or otherwise) unless such
 7 State is the State of domicile of the insurer.

8 **SEC. 309. PUBLICATION OF PREEMPTION OF STATE LAWS.**

9 Section 5244 of the Revised Statutes of the United
 10 States (12 U.S.C. 43) is amended—

11 (1) by inserting “or Federal savings associa-
 12 tion” after “national bank” each place that term ap-
 13 pears; and

14 (2) in subsection (c)(3)(B)(i), by inserting “or
 15 savings associations” after “banks”.

16 **Subtitle B—National Association of**
 17 **Registered Agents and Brokers**

18 **SEC. 321. STATE FLEXIBILITY IN MULTISTATE LICENSING**

19 **REFORMS.**

20 (a) **IN GENERAL.**—The provisions of this subtitle
 21 shall take effect unless, not later than 3 years after the
 22 date of enactment of this Act, at least a majority of the
 23 States—

24 (1) have enacted uniform laws and regulations
 25 governing the licensure of individuals and entities

1 authorized to sell and solicit the purchase of insur-
2 ance within the State; or

3 (2) have enacted reciprocity laws and regula-
4 tions governing the licensure of nonresident individ-
5 uals and entities authorized to sell and solicit insur-
6 ance within those States.

7 (b) UNIFORMITY REQUIRED.—States shall be deemed
8 to have established the uniformity necessary to satisfy
9 subsection (a)(1) if the States—

10 (1) establish uniform criteria regarding the in-
11 tegrity, personal qualifications, education, training,
12 and experience of licensed insurance producers, in-
13 cluding the qualification and training of sales per-
14 sonnel in ascertaining the appropriateness of a par-
15 ticular insurance product for a prospective customer;

16 (2) establish uniform continuing education re-
17 quirements for licensed insurance producers;

18 (3) establish uniform ethics course require-
19 ments for licensed insurance producers in conjunc-
20 tion with the continuing education requirements
21 under paragraph (2);

22 (4) establish uniform criteria to ensure that an
23 insurance product, including any annuity contract,
24 sold to a consumer is suitable and appropriate for

1 the consumer based on financial information dis-
2 closed by the consumer; and

3 (5) do not impose any requirement upon any in-
4 surance producer to be licensed or otherwise quali-
5 fied to do business as a nonresident that has the ef-
6 fect of limiting or conditioning that producer's ac-
7 tivities because of its residence or place of oper-
8 ations, except that counter-signature requirements
9 imposed on nonresident producers shall not be
10 deemed to have the effect of limiting or conditioning
11 a producer's activities because of its residence or
12 place of operations under this section.

13 (c) RECIPROCITY REQUIRED.—States shall be
14 deemed to have established the reciprocity required to sat-
15 isfy subsection (a)(2) if the following conditions are met:

16 (1) ADMINISTRATIVE LICENSING PROCE-
17 DURES.—At least a majority of the States permit a
18 producer that has a resident license for selling or so-
19 liciting the purchase of insurance in its home State
20 to receive a license to sell or solicit the purchase of
21 insurance in such majority of States as a non-
22 resident to the same extent that such producer is
23 permitted to sell or solicit the purchase of insurance
24 in its State, if the producer's home State also
25 awards such licenses on such a reciprocal basis,

1 without satisfying any additional requirements other
2 than submitting—

3 (A) a request for licensure;

4 (B) the application for licensure that the
5 producer submitted to its home State;

6 (C) proof that the producer is licensed and
7 in good standing in its home State; and

8 (D) the payment of any requisite fee to the
9 appropriate authority.

10 (2) CONTINUING EDUCATION REQUIRE-
11 MENTS.—A majority of the States accept an insur-
12 ance producer's satisfaction of its home State's con-
13 tinuing education requirements for licensed insur-
14 ance producers to satisfy the States' own continuing
15 education requirements if the producer's home State
16 also recognizes the satisfaction of continuing edu-
17 cation requirements on such a reciprocal basis.

18 (3) NO LIMITING NONRESIDENT REQUIRE-
19 MENTS.—A majority of the States do not impose
20 any requirement upon any insurance producer to be
21 licensed or otherwise qualified to do business as a
22 nonresident that has the effect of limiting or condi-
23 tioning that producer's activities because of its resi-
24 dence or place of operations, except that
25 countersignature requirements imposed on non-

1 resident producers shall not be deemed to have the
2 effect of limiting or conditioning a producer's activi-
3 ties because of its residence or place of operations
4 under this section.

5 (4) RECIPROCAL RECIPROCITY.—Each of the
6 States that satisfies paragraphs (1), (2), and (3)
7 grants reciprocity to residents of all of the other
8 States that satisfy such paragraphs.

9 (d) DETERMINATION.—

10 (1) NAIC DETERMINATION.—At the end of the
11 3-year period beginning on the date of enactment of
12 this Act, the National Association of Insurance Com-
13 missioners shall determine, in consultation with the
14 insurance commissioners or chief insurance regu-
15 latory officials of the States, whether the uniformity
16 or reciprocity required by subsections (b) and (c)
17 has been achieved.

18 (2) JUDICIAL REVIEW.—The appropriate
19 United States district court shall have exclusive ju-
20 risdiction over any challenge to the National Asso-
21 ciation of Insurance Commissioners' determination
22 under this section and such court shall apply the
23 standards set forth in section 706 of title 5, United
24 States Code, when reviewing any such challenge.

1 (e) CONTINUED APPLICATION.—If, at any time, the
2 uniformity or reciprocity required by subsections (b) and
3 (c) no longer exists, the provisions of this subtitle shall
4 take effect 2 years after the date on which such uniformity
5 or reciprocity ceases to exist, unless the uniformity or reci-
6 procity required by those provisions is satisfied before the
7 expiration of that 2-year period.

8 (f) SAVINGS PROVISION.—No provision of this sec-
9 tion shall be construed as requiring that any law, regula-
10 tion, provision, or action of any State which purports to
11 regulate insurance producers, including any such law, reg-
12 ulation, provision, or action which purports to regulate un-
13 fair trade practices or establish consumer protections, in-
14 cluding countersignature laws, be altered or amended in
15 order to satisfy the uniformity or reciprocity required by
16 subsections (b) and (c), unless any such law, regulation,
17 provision, or action is inconsistent with a specific require-
18 ment of any such subsection and then only to the extent
19 of such inconsistency.

20 (g) UNIFORM LICENSING.—Nothing in this section
21 shall be construed to require any State to adopt new or
22 additional licensing requirements to achieve the uniformity
23 necessary to satisfy subsection (a)(1).

1 **SEC. 322. NATIONAL ASSOCIATION OF REGISTERED**
2 **AGENTS AND BROKERS.**

3 (a) **ESTABLISHMENT.**—There is established the Na-
4 tional Association of Registered Agents and Brokers
5 (hereafter in this subtitle referred to as the “Associa-
6 tion”).

7 (b) **STATUS.**—The Association shall—

8 (1) be a nonprofit corporation;

9 (2) have succession until dissolved by an Act of
10 Congress;

11 (3) not be an agent or instrumentality of the
12 United States Government; and

13 (4) except as otherwise provided in this Act, be
14 subject to, and have all the powers conferred upon
15 a nonprofit corporation by the District of Columbia
16 Nonprofit Corporation Act (D.C. Code, sec. 29y-
17 1001 et seq.).

18 **SEC. 323. PURPOSE.**

19 The purpose of the Association shall be to provide
20 a mechanism through which uniform licensing, appoint-
21 ment, continuing education, and other insurance producer
22 sales qualification requirements and conditions can be
23 adopted and applied on a multistate basis, while pre-
24 serving the right of States to license, supervise, and dis-
25 cipline insurance producers and to prescribe and enforce

1 laws and regulations with regard to insurance-related con-
2 sumer protection and unfair trade practices.

3 **SEC. 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT.**

4 The Association shall be subject to the supervision
5 and oversight of the National Association of Insurance
6 Commissioners (hereafter in this subtitle referred to as the
7 “NAIC”).

8 **SEC. 325. MEMBERSHIP.**

9 (a) ELIGIBILITY.—

10 (1) IN GENERAL.—Any State-licensed insurance
11 producer shall be eligible to become a member in the
12 Association.

13 (2) INELIGIBILITY FOR SUSPENSION OR REV-
14 OCATION OF LICENSE.—Notwithstanding paragraph
15 (1), a State-licensed insurance producer shall not be
16 eligible to become a member if a State insurance
17 regulator has suspended or revoked such producer’s
18 license in that State during the 3-year period pre-
19 ceding the date on which such producer applies for
20 membership.

21 (3) RESUMPTION OF ELIGIBILITY.—Paragraph
22 (2) shall cease to apply to any insurance producer
23 if—

1 (A) the State insurance regulator renews
2 the license of such producer in the State in
3 which the license was suspended or revoked; or

4 (B) the suspension or revocation is subse-
5 quently overturned.

6 (b) AUTHORITY TO ESTABLISH MEMBERSHIP CRI-
7 TERIA.—The Association shall have the authority to estab-
8 lish membership criteria that—

9 (1) bear a reasonable relationship to the pur-
10 poses for which the Association was established; and

11 (2) do not unfairly limit the access of smaller
12 agencies to the Association membership.

13 (c) ESTABLISHMENT OF CLASSES AND CAT-
14 EGORIES.—

15 (1) CLASSES OF MEMBERSHIP.—The Associa-
16 tion may establish separate classes of membership,
17 with separate criteria, if the Association reasonably
18 determines that performance of different duties re-
19 quires different levels of education, training, or expe-
20 rience.

21 (2) CATEGORIES.—The Association may estab-
22 lish separate categories of membership for individ-
23 uals and for other persons. The establishment of any
24 such categories of membership shall be based either
25 on the types of licensing categories that exist under

1 State laws or on the aggregate amount of business
2 handled by an insurance producer. No special cat-
3 egories of membership, and no distinct membership
4 criteria, shall be established for members which are
5 insured depository institutions or wholesale financial
6 institutions or for their employees, agents, or affili-
7 ates.

8 (d) MEMBERSHIP CRITERIA.—

9 (1) IN GENERAL.—The Association may estab-
10 lish criteria for membership which shall include
11 standards for integrity, personal qualifications, edu-
12 cation, training, and experience.

13 (2) MINIMUM STANDARD.—In establishing cri-
14 teria under paragraph (1), the Association shall con-
15 sider the highest levels of insurance producer quali-
16 fications established under the licensing laws of the
17 States.

18 (e) EFFECT OF MEMBERSHIP.—Membership in the
19 Association shall entitle the member to licensure in each
20 State for which the member pays the requisite fees, includ-
21 ing licensing fees and, where applicable, bonding require-
22 ments, set by such State.

23 (f) ANNUAL RENEWAL.—Membership in the Associa-
24 tion shall be renewed on an annual basis.

1 (g) CONTINUING EDUCATION.—The Association shall
2 establish, as a condition of membership, continuing edu-
3 cation requirements which shall be comparable to or great-
4 er than the continuing education requirements under the
5 licensing laws of a majority of the States.

6 (h) SUSPENSION AND REVOCATION.—The Associa-
7 tion may—

8 (1) inspect and examine the records and offices
9 of the members of the Association to determine com-
10 pliance with the criteria for membership established
11 by the Association; and

12 (2) suspend or revoke the membership of an in-
13 surance producer if—

14 (A) the producer fails to meet the applica-
15 ble membership criteria of the Association; or

16 (B) the producer has been subject to dis-
17 ciplinary action pursuant to a final adjudicatory
18 proceeding under the jurisdiction of a State in-
19 surance regulator, and the Association con-
20 cludes that retention of membership in the As-
21 sociation would not be in the public interest.

22 (i) OFFICE OF CONSUMER COMPLAINTS.—

23 (1) IN GENERAL.—The Association shall estab-
24 lish an office of consumer complaints that shall—

1 (A) receive and investigate complaints
2 from both consumers and State insurance regu-
3 lators related to members of the Association;
4 and

5 (B) recommend to the Association any dis-
6 ciplinary actions that the office considers appro-
7 priate, to the extent that any such rec-
8 ommendation is not inconsistent with State law.

9 (2) RECORDS AND REFERRALS.—The office of
10 consumer complaints of the Association shall—

11 (A) maintain records of all complaints re-
12 ceived in accordance with paragraph (1) and
13 make such records available to the NAIC and
14 to each State insurance regulator for the State
15 of residence of the consumer who filed the com-
16 plaint; and

17 (B) refer, when appropriate, any such com-
18 plaint to any appropriate State insurance regu-
19 lator.

20 (3) TELEPHONE AND OTHER ACCESS.—The of-
21 fice of consumer complaints shall maintain a toll-free
22 telephone number for the purpose of this subsection
23 and, as practicable, other alternative means of com-
24 munication with consumers, such as an Internet
25 home page.

1 **SEC. 326. BOARD OF DIRECTORS.**

2 (a) ESTABLISHMENT.—There is established the
3 board of directors of the Association (hereafter in this sub-
4 title referred to as the “Board”) for the purpose of gov-
5 erning and supervising the activities of the Association
6 and the members of the Association.

7 (b) POWERS.—The Board shall have such powers and
8 authority as may be specified in the bylaws of the Associa-
9 tion.

10 (c) COMPOSITION.—

11 (1) MEMBERS.—The Board shall be composed
12 of 7 members appointed by the NAIC.

13 (2) REQUIREMENT.—At least 4 of the members
14 of the Board shall have significant experience with
15 the regulation of commercial lines of insurance in at
16 least 1 of the 20 States in which the greatest total
17 dollar amount of commercial-lines insurance is
18 placed in the United States.

19 (3) INITIAL BOARD MEMBERSHIP.—

20 (A) IN GENERAL.—If, by the end of the 2-
21 year period beginning on the date of enactment
22 of this Act, the NAIC has not appointed the
23 initial 7 members of the Board of the Associa-
24 tion, the initial Board shall consist of the 7
25 State insurance regulators of the 7 States with
26 the greatest total dollar amount of commercial-

1 lines insurance in place as of the end of such
2 period.

3 (B) ALTERNATE COMPOSITION.—If any of
4 the State insurance regulators described in sub-
5 paragraph (A) declines to serve on the Board,
6 the State insurance regulator with the next
7 greatest total dollar amount of commercial-lines
8 insurance in place, as determined by the NAIC
9 as of the end of such period, shall serve as a
10 member of the Board.

11 (C) INOPERABILITY.—If fewer than 7
12 State insurance regulators accept appointment
13 to the Board, the Association shall be estab-
14 lished without NAIC oversight pursuant to sec-
15 tion 332.

16 (d) TERMS.—The term of each director shall, after
17 the initial appointment of the members of the Board, be
18 for 3 years, with $\frac{1}{3}$ of the directors to be appointed each
19 year.

20 (e) BOARD VACANCIES.—A vacancy on the Board
21 shall be filled in the same manner as the original appoint-
22 ment of the initial Board for the remainder of the term
23 of the vacating member.

1 (f) MEETINGS.—The Board shall meet at the call of
2 the chairperson, or as otherwise provided by the bylaws
3 of the Association.

4 **SEC. 327. OFFICERS.**

5 (a) IN GENERAL.—

6 (1) POSITIONS.—The officers of the Association
7 shall consist of a chairperson and a vice chairperson
8 of the Board, a president, secretary, and treasurer
9 of the Association, and such other officers and as-
10 sistant officers as may be deemed necessary.

11 (2) MANNER OF SELECTION.—Each officer of
12 the Board and the Association shall be elected or ap-
13 pointed at such time and in such manner and for
14 such terms not exceeding 3 years as may be pre-
15 scribed in the bylaws of the Association.

16 (b) CRITERIA FOR CHAIRPERSON.—Only individuals
17 who are members of the NAIC shall be eligible to serve
18 as the chairperson of the board of directors.

19 **SEC. 328. BYLAWS, RULES, AND DISCIPLINARY ACTION.**

20 (a) ADOPTION AND AMENDMENT OF BYLAWS.—

21 (1) COPY REQUIRED TO BE FILED WITH THE
22 NAIC.—The board of directors of the Association
23 shall file with the NAIC a copy of the proposed by-
24 laws or any proposed amendment to the bylaws, ac-

1 accompanied by a concise general statement of the
2 basis and purpose of such proposal.

3 (2) EFFECTIVE DATE.—Except as provided in
4 paragraph (3), any proposed bylaw or proposed
5 amendment shall take effect—

6 (A) 30 days after the date of the filing of
7 a copy with the NAIC;

8 (B) upon such later date as the Associa-
9 tion may designate; or

10 (C) upon such earlier date as the NAIC
11 may determine.

12 (3) DISAPPROVAL BY THE NAIC.—Notwith-
13 standing paragraph (2), a proposed bylaw or amend-
14 ment shall not take effect if, after public notice and
15 opportunity to participate in a public hearing—

16 (A) the NAIC disapproves such proposal as
17 being contrary to the public interest or contrary
18 to the purposes of this subtitle and provides no-
19 tice to the Association setting forth the reasons
20 for such disapproval; or

21 (B) the NAIC finds that such proposal in-
22 volves a matter of such significant public inter-
23 est that public comment should be obtained, in
24 which case it may, after notifying the Associa-
25 tion in writing of such finding, require that the

1 procedures set forth in subsection (b) be fol-
2 lowed with respect to such proposal, in the
3 same manner as if such proposed bylaw change
4 were a proposed rule change within the mean-
5 ing of such subsection.

6 (b) ADOPTION AND AMENDMENT OF RULES.—

7 (1) FILING PROPOSED REGULATIONS WITH THE
8 NAIC.—

9 (A) IN GENERAL.—The board of directors
10 of the Association shall file with the NAIC a
11 copy of any proposed rule or any proposed
12 amendment to a rule of the Association which
13 shall be accompanied by a concise general state-
14 ment of the basis and purpose of such proposal.

15 (B) OTHER RULES AND AMENDMENTS IN-
16 EFFECTIVE.—No proposed rule or amendment
17 shall take effect unless approved by the NAIC
18 or otherwise permitted in accordance with this
19 paragraph.

20 (2) INITIAL CONSIDERATION BY THE NAIC.—

21 Not later than 35 days after the date of publication
22 of notice of filing of a proposal, or before the end
23 of such longer period not to exceed 90 days as the
24 NAIC may designate after such date, if the NAIC
25 finds such longer period to be appropriate and sets

1 forth its reasons for so finding, or as to which the
2 Association consents, the NAIC shall—

3 (A) by order approve such proposed rule or
4 amendment; or

5 (B) institute proceedings to determine
6 whether such proposed rule or amendment
7 should be modified or disapproved.

8 (3) NAIC PROCEEDINGS.—

9 (A) IN GENERAL.—Proceedings instituted
10 by the NAIC with respect to a proposed rule or
11 amendment pursuant to paragraph (2) shall—

12 (i) include notice of the grounds for
13 disapproval under consideration;

14 (ii) provide opportunity for hearing;

15 and

16 (iii) be concluded not later than 180
17 days after the date of the Association's fil-
18 ing of such proposed rule or amendment.

19 (B) DISPOSITION OF PROPOSAL.—At the
20 conclusion of any proceeding under subpara-
21 graph (A), the NAIC shall, by order, approve or
22 disapprove the proposed rule or amendment.

23 (C) EXTENSION OF TIME FOR CONSIDER-
24 ATION.—The NAIC may extend the time for

1 concluding any proceeding under subparagraph

2 (A) for—

3 (i) not more than 60 days if the
4 NAIC finds good cause for such extension
5 and sets forth its reasons for so finding; or

6 (ii) for such longer period as to which
7 the Association consents.

8 (4) STANDARDS FOR REVIEW.—

9 (A) GROUNDS FOR APPROVAL.—The NAIC
10 shall approve a proposed rule or amendment if
11 the NAIC finds that the rule or amendment is
12 in the public interest and is consistent with the
13 purposes of this Act.

14 (B) APPROVAL BEFORE END OF NOTICE
15 PERIOD.—The NAIC shall not approve any pro-
16 posed rule before the end of the 30-day period
17 beginning on the date on which the Association
18 files proposed rules or amendments in accord-
19 ance with paragraph (1), unless the NAIC finds
20 good cause for so doing and sets forth the rea-
21 sons for so finding.

22 (5) ALTERNATE PROCEDURE.—

23 (A) IN GENERAL.—Notwithstanding any
24 provision of this subsection other than subpara-
25 graph (B), a proposed rule or amendment relat-

1 ing to the administration or organization of the
2 Association shall take effect—

3 (i) upon the date of filing with the
4 NAIC, if such proposed rule or amendment
5 is designated by the Association as relating
6 solely to matters which the NAIC, con-
7 sistent with the public interest and the
8 purposes of this subsection, determines by
9 rule do not require the procedures set forth
10 in this paragraph; or

11 (ii) upon such date as the NAIC shall
12 for good cause determine.

13 (B) ABROGATION BY THE NAIC.—

14 (i) IN GENERAL.—At any time within
15 60 days after the date of filing of any pro-
16 posed rule or amendment under subpara-
17 graph (A)(i) or clause (ii) of this subpara-
18 graph, the NAIC may repeal such rule or
19 amendment and require that the rule or
20 amendment be refiled and reviewed in ac-
21 cordance with this paragraph, if the NAIC
22 finds that such action is necessary or ap-
23 propriate in the public interest, for the
24 protection of insurance producers or policy-

1 holders, or otherwise in furtherance of the
2 purposes of this subtitle.

3 (ii) EFFECT OF RECONSIDERATION BY
4 THE NAIC.—Any action of the NAIC pur-
5 suant to clause (i) shall—

6 (I) not affect the validity or force
7 of a rule change during the period
8 such rule or amendment was in effect;
9 and

10 (II) not be considered to be a
11 final action.

12 (c) ACTION REQUIRED BY THE NAIC.—The NAIC
13 may, in accordance with such rules as the NAIC deter-
14 mines to be necessary or appropriate to the public interest
15 or to carry out the purposes of this subtitle, require the
16 Association to adopt, amend, or repeal any bylaw, rule or
17 amendment of the Association, whenever adopted.

18 (d) DISCIPLINARY ACTION BY THE ASSOCIATION.—

19 (1) SPECIFICATION OF CHARGES.—In any pro-
20 ceeding to determine whether membership shall be
21 denied, suspended, revoked, or not renewed (here-
22 after in this section referred to as a “disciplinary ac-
23 tion”), the Association shall bring specific charges,
24 notify such member of such charges, give the mem-

1 ber an opportunity to defend against the charges,
2 and keep a record.

3 (2) SUPPORTING STATEMENT.—A determina-
4 tion to take disciplinary action shall be supported by
5 a statement setting forth—

6 (A) any act or practice in which such
7 member has been found to have been engaged;

8 (B) the specific provision of this subtitle,
9 the rules or regulations under this subtitle, or
10 the rules of the Association which any such act
11 or practice is deemed to violate; and

12 (C) the sanction imposed and the reason
13 for such sanction.

14 (e) NAIC REVIEW OF DISCIPLINARY ACTION.—

15 (1) NOTICE TO THE NAIC.—If the Association
16 orders any disciplinary action, the Association shall
17 promptly notify the NAIC of such action.

18 (2) REVIEW BY THE NAIC.—Any disciplinary
19 action taken by the Association shall be subject to
20 review by the NAIC—

21 (A) on the NAIC's own motion; or

22 (B) upon application by any person ag-
23 grieved by such action if such application is
24 filed with the NAIC not more than 30 days
25 after the later of—

- 1 (i) the date the notice was filed with
2 the NAIC pursuant to paragraph (1); or
3 (ii) the date the notice of the discipli-
4 nary action was received by such aggrieved
5 person.

6 (f) EFFECT OF REVIEW.—The filing of an applica-
7 tion to the NAIC for review of a disciplinary action, or
8 the institution of review by the NAIC on the NAIC's own
9 motion, shall not operate as a stay of disciplinary action
10 unless the NAIC otherwise orders.

11 (g) SCOPE OF REVIEW.—

12 (1) IN GENERAL.—In any proceeding to review
13 such action, after notice and the opportunity for
14 hearing, the NAIC shall—

15 (A) determine whether the action should be
16 taken;

17 (B) affirm, modify, or rescind the discipli-
18 nary sanction; or

19 (C) remand to the Association for further
20 proceedings.

21 (2) DISMISSAL OF REVIEW.—The NAIC may
22 dismiss a proceeding to review disciplinary action if
23 the NAIC finds that—

24 (A) the specific grounds on which the ac-
25 tion is based exist in fact;

1 (B) the action is in accordance with appli-
2 cable rules and regulations; and

3 (C) such rules and regulations are, and
4 were, applied in a manner consistent with the
5 purposes of this subtitle.

6 **SEC. 329. ASSESSMENTS.**

7 (a) **INSURANCE PRODUCERS SUBJECT TO ASSESS-**
8 **MENT.**—The Association may establish such application
9 and membership fees as the Association finds necessary
10 to cover the costs of its operations, including fees made
11 reimbursable to the NAIC under subsection (b), except
12 that, in setting such fees, the Association may not dis-
13 criminate against smaller insurance producers.

14 (b) **NAIC ASSESSMENTS.**—The NAIC may assess the
15 Association for any costs that the NAIC incurs under this
16 subtitle.

17 **SEC. 330. FUNCTIONS OF THE NAIC.**

18 (a) **ADMINISTRATIVE PROCEDURE.**—Determinations
19 of the NAIC, for purposes of making rules pursuant to
20 section 328, shall be made after appropriate notice and
21 opportunity for a hearing and for submission of views of
22 interested persons.

23 (b) **EXAMINATIONS AND REPORTS.**—

24 (1) **EXAMINATIONS.**—The NAIC may make
25 such examinations and inspections of the Association

1 and require the Association to furnish to the NAIC
2 such reports and records or copies thereof as the
3 NAIC may consider necessary or appropriate in the
4 public interest or to effectuate the purposes of this
5 subtitle.

6 (2) REPORT BY ASSOCIATION.—As soon as
7 practicable after the close of each fiscal year, the As-
8 sociation shall submit to the NAIC a written report
9 regarding the conduct of its business, and the exer-
10 cise of the other rights and powers granted by this
11 subtitle, during such fiscal year. Such report shall
12 include financial statements setting forth the finan-
13 cial position of the Association at the end of such
14 fiscal year and the results of its operations (includ-
15 ing the source and application of its funds) for such
16 fiscal year. The NAIC shall transmit such report to
17 the President and the Congress with such comment
18 thereon as the NAIC determines to be appropriate.

19 **SEC. 331. LIABILITY OF THE ASSOCIATION AND THE DIREC-**
20 **TORS, OFFICERS, AND EMPLOYEES OF THE**
21 **ASSOCIATION.**

22 (a) IN GENERAL.—The Association shall not be
23 deemed to be an insurer or insurance producer within the
24 meaning of any State law, rule, regulation, or order regu-
25 lating or taxing insurers, insurance producers, or other en-

1 tities engaged in the business of insurance, including pro-
2 visions imposing premium taxes, regulating insurer sol-
3 vency or financial condition, establishing guaranty funds
4 and levying assessments, or requiring claims settlement
5 practices.

6 (b) LIABILITY OF THE ASSOCIATION, ITS DIREC-
7 TORS, OFFICERS, AND EMPLOYEES.—Neither the Associa-
8 tion nor any of its directors, officers, or employees shall
9 have any liability to any person for any action taken or
10 omitted in good faith under or in connection with any mat-
11 ter subject to this subtitle.

12 **SEC. 332. ELIMINATION OF NAIC OVERSIGHT.**

13 (a) IN GENERAL.—The Association shall be estab-
14 lished without NAIC oversight and the provisions set forth
15 in section 324, subsections (a), (b), (c), and (e) of section
16 328, and sections 329(b) and 330 of this subtitle shall
17 cease to be effective if, at the end of the 2-year period
18 beginning on the date on which the provisions of this sub-
19 title take effect pursuant to section 321—

20 (1) at least a majority of the States rep-
21 resenting at least 50 percent of the total United
22 States commercial-lines insurance premiums have
23 not satisfied the uniformity or reciprocity require-
24 ments of subsections (a), (b), and (c) of section 321;
25 and

1 (2) the NAIC has not approved the Associa-
2 tion's bylaws as required by section 328 or is unable
3 to operate or supervise the Association, or the Asso-
4 ciation is not conducting its activities as required
5 under this Act.

6 (b) BOARD APPOINTMENTS.—If the repeals required
7 by subsection (a) are implemented, the following shall
8 apply:

9 (1) GENERAL APPOINTMENT POWER.—The
10 President, with the advice and consent of the Sen-
11 ate, shall appoint the members of the Association's
12 Board established under section 326 from lists of
13 candidates recommended to the President by the
14 National Association of Insurance Commissioners.

15 (2) PROCEDURES FOR OBTAINING NATIONAL
16 ASSOCIATION OF INSURANCE COMMISSIONERS AP-
17 POINTMENT RECOMMENDATIONS.—

18 (A) INITIAL DETERMINATION AND REC-
19 COMMENDATIONS.—After the date on which the
20 provisions of subsection (a) take effect, the
21 NAIC shall, not later than 60 days thereafter,
22 provide a list of recommended candidates to the
23 President. If the NAIC fails to provide a list by
24 that date, or if any list that is provided does
25 not include at least 14 recommended candidates

1 or comply with the requirements of section
2 326(c), the President shall, with the advice and
3 consent of the Senate, make the requisite ap-
4 pointments without considering the views of the
5 NAIC.

6 (B) SUBSEQUENT APPOINTMENTS.—After
7 the initial appointments, the NAIC shall pro-
8 vide a list of at least 6 recommended candidates
9 for the Board to the President by January 15
10 of each subsequent year. If the NAIC fails to
11 provide a list by that date, or if any list that
12 is provided does not include at least 6 rec-
13 ommended candidates or comply with the re-
14 quirements of section 326(c), the President,
15 with the advice and consent of the Senate, shall
16 make the requisite appointments without con-
17 sidering the views of the NAIC.

18 (C) PRESIDENTIAL OVERSIGHT.—

19 (i) REMOVAL.—If the President deter-
20 mines that the Association is not acting in
21 the interests of the public, the President
22 may remove the entire existing Board for
23 the remainder of the term to which the
24 members of the Board were appointed and
25 appoint, with the advice and consent of the

1 Senate, new members to fill the vacancies
2 on the Board for the remainder of such
3 terms.

4 (ii) SUSPENSION OF RULES OR AC-
5 TIONS.—The President, or a person des-
6 ignated by the President for such purpose,
7 may suspend the effectiveness of any rule,
8 or prohibit any action, of the Association
9 which the President or the designee deter-
10 mines is contrary to the public interest.

11 (c) ANNUAL REPORT.—As soon as practicable after
12 the close of each fiscal year, the Association shall submit
13 to the President and to the Congress a written report rel-
14 ative to the conduct of its business, and the exercise of
15 the other rights and powers granted by this subtitle, dur-
16 ing such fiscal year. Such report shall include financial
17 statements setting forth the financial position of the Asso-
18 ciation at the end of such fiscal year and the results of
19 its operations (including the source and application of its
20 funds) for such fiscal year.

21 **SEC. 333. RELATIONSHIP TO STATE LAW.**

22 (a) PREEMPTION OF STATE LAWS.—State laws, reg-
23 ulations, provisions, or other actions purporting to regu-
24 late insurance producers shall be preempted as provided
25 in subsection (b).

1 (b) PROHIBITED ACTIONS.—No State shall—

2 (1) impede the activities of, take any action
3 against, or apply any provision of law or regulation
4 to, any insurance producer because that insurance
5 producer or any affiliate plans to become, has ap-
6 plied to become, or is a member of the Association;

7 (2) impose any requirement upon a member of
8 the Association that it pay different fees to be li-
9 censed or otherwise qualified to do business in that
10 State, including bonding requirements, based on its
11 residency;

12 (3) impose any licensing, appointment, integ-
13 rity, personal or corporate qualifications, education,
14 training, experience, residency, or continuing edu-
15 cation requirement upon a member of the Associa-
16 tion that is different from the criteria for member-
17 ship in the Association or renewal of such member-
18 ship, except that counter-signature requirements im-
19 posed on nonresident producers shall not be deemed
20 to have the effect of limiting or conditioning a pro-
21 ducer's activities because of its residence or place of
22 operations under this section; or

23 (4) implement the procedures of such State's
24 system of licensing or renewing the licenses of insur-

1 ance producers in a manner different from the au-
2 thority of the Association under section 325.

3 (c) SAVINGS PROVISION.—Except as provided in sub-
4 sections (a) and (b), no provision of this section shall be
5 construed as altering or affecting the continuing effective-
6 ness of any law, regulation, provision, or other action of
7 any State which purports to regulate insurance producers,
8 including any such law, regulation, provision, or action
9 which purports to regulate unfair trade practices or estab-
10 lish consumer protections, including countersignature
11 laws.

12 **SEC. 334. COORDINATION WITH OTHER REGULATORS.**

13 (a) COORDINATION WITH STATE INSURANCE REGU-
14 LATORS.—The Association shall have the authority to—

15 (1) issue uniform insurance producer applica-
16 tions and renewal applications that may be used to
17 apply for the issuance or removal of State licenses,
18 while preserving the ability of each State to impose
19 such conditions on the issuance or renewal of a li-
20 cense as are consistent with section 333;

21 (2) establish a central clearinghouse through
22 which members of the Association may apply for the
23 issuance or renewal of licenses in multiple States;
24 and

1 (3) establish or utilize a national database for
2 the collection of regulatory information concerning
3 the activities of insurance producers.

4 (b) COORDINATION WITH THE NATIONAL ASSOCIA-
5 TION OF SECURITIES DEALERS.—The Association shall
6 coordinate with the National Association of Securities
7 Dealers in order to ease any administrative burdens that
8 fall on persons that are members of both associations, con-
9 sistent with the purposes of this subtitle and the Federal
10 securities laws.

11 **SEC. 335. JUDICIAL REVIEW.**

12 (a) JURISDICTION.—The appropriate United States
13 district court shall have exclusive jurisdiction over litiga-
14 tion involving the Association, including disputes between
15 the Association and its members that arise under this sub-
16 title. Suits brought in State court involving the Associa-
17 tion shall be deemed to have arisen under Federal law and
18 therefore be subject to jurisdiction in the appropriate
19 United States district court.

20 (b) EXHAUSTION OF REMEDIES.—An aggrieved per-
21 son shall be required to exhaust all available administra-
22 tive remedies before the Association and the NAIC before
23 it may seek judicial review of an Association decision.

24 (c) STANDARDS OF REVIEW.—The standards set
25 forth in section 553 of title 5, United States Code, shall

1 be applied whenever a rule or bylaw of the Association is
2 under judicial review, and the standards set forth in sec-
3 tion 554 of title 5, United States Code, shall be applied
4 whenever a disciplinary action of the Association is judi-
5 cially reviewed.

6 **SEC. 336. DEFINITIONS.**

7 For purposes of this subtitle, the following definitions
8 shall apply:

9 (1) HOME STATE.—The term “home State”
10 means the State in which the insurance producer
11 maintains its principal place of residence and is li-
12 censed to act as an insurance producer.

13 (2) INSURANCE.—The term “insurance” means
14 any product, other than title insurance, defined or
15 regulated as insurance by the appropriate State in-
16 surance regulatory authority.

17 (3) INSURANCE PRODUCER.—The term “insur-
18 ance producer” means any insurance agent or
19 broker, surplus lines broker, insurance consultant,
20 limited insurance representative, and any other per-
21 son that solicits, negotiates, effects, procures, deliv-
22 ers, renews, continues or binds policies of insurance
23 or offers advice, counsel, opinions or services related
24 to insurance.

1 (4) STATE.—The term “State” includes any
2 State, the District of Columbia, American Samoa,
3 Guam, Puerto Rico, and the United States Virgin
4 Islands.

5 (5) STATE LAW.—The term “State law” in-
6 cludes all laws, decisions, rules, regulations, or other
7 State action having the effect of law, of any State.
8 A law of the United States applicable only to the
9 District of Columbia shall be treated as a State law
10 rather than a law of the United States.

11 **TITLE IV—UNITARY SAVINGS**
12 **AND LOAN HOLDING COMPA-**
13 **NIES**

14 **SEC. 401. PREVENTION OF CREATION OF NEW S&L HOLD-**
15 **ING COMPANIES WITH COMMERCIAL AFFILI-**
16 **ATES.**

17 (a) IN GENERAL.—Section 10(c) of the Home Own-
18 ers’ Loan Act (12 U.S.C. 1467a(c)) is amended by adding
19 at the end the following new paragraph:

20 “(9) PREVENTION OF NEW AFFILIATIONS BE-
21 TWEEN S&L HOLDING COMPANIES AND COMMERCIAL
22 FIRMS.—

23 “(A) IN GENERAL.—Notwithstanding para-
24 graph (3), no company may directly or indi-
25 rectly, including through any merger, consolida-

1 tion, or other type of business combination, ac-
2 quire control of a savings association after
3 March 4, 1999, unless the company is engaged,
4 directly or indirectly (including through a sub-
5 sidiary other than a savings association), only
6 in activities that are permitted—

7 “(i) under paragraph (1)(C) or (2); or

8 “(ii) for financial holding companies
9 under section 6(c) of the Bank Holding
10 Company Act of 1956.

11 “(B) PREVENTION OF NEW COMMERCIAL
12 AFFILIATIONS.—Notwithstanding paragraph
13 (3), no savings and loan holding company may
14 engage directly or indirectly (including through
15 a subsidiary other than a savings association)
16 in any activity other than as described in
17 clauses (i) and (ii) of subparagraph (A).

18 “(C) PRESERVATION OF AUTHORITY OF
19 EXISTING UNITARY S&L HOLDING COMPA-
20 NIES.—Subparagraphs (A) and (B) do not
21 apply with respect to any company that was a
22 savings and loan holding company on March 4,
23 1999, or that becomes a savings and loan hold-
24 ing company pursuant to an application pend-

1 ing before the Office of Thrift Supervision on or
2 before that date, and that—

3 “(i) meets and continues to meet the
4 requirements of paragraph (3); and

5 “(ii) continues to control not fewer
6 than 1 savings association that it con-
7 trolled on March 4, 1999, or that it ac-
8 quired pursuant to an application pending
9 before the Office of Thrift Supervision on
10 or before that date, or the successor to
11 such savings association.

12 “(D) CORPORATE REORGANIZATIONS PER-
13 MITTED.—This paragraph does not prevent a
14 transaction that—

15 “(i) involves solely a company under
16 common control with a savings and loan
17 holding company from acquiring, directly
18 or indirectly, control of the savings and
19 loan holding company or any savings asso-
20 ciation that is already a subsidiary of the
21 savings and loan holding company; or

22 “(ii) involves solely a merger, consoli-
23 dation, or other type of business combina-
24 tion as a result of which a company under
25 common control with the savings and loan

1 holding company acquires, directly or indi-
2 rectly, control of the savings and loan hold-
3 ing company or any savings association
4 that is already a subsidiary of the savings
5 and loan holding company.

6 “(E) AUTHORITY TO PREVENT EVA-
7 SIONS.—The Director may issue interpreta-
8 tions, regulations, or orders that the Director
9 determines necessary to administer and carry
10 out the purpose and prevent evasions of this
11 paragraph, including a determination that, not-
12 withstanding the form of a transaction, the
13 transaction would in substance result in a com-
14 pany acquiring control of a savings association.

15 “(F) PRESERVATION OF AUTHORITY FOR
16 FAMILY TRUSTS.—Subparagraphs (A) and (B)
17 do not apply with respect to any trust that be-
18 comes a savings and loan holding company with
19 respect to a savings association, if—

20 “(i) not less than 85 percent of the
21 beneficial ownership interests in the trust
22 are continuously owned, directly or indi-
23 rectly, by or for the benefit of members of
24 the same family, or their spouses, who are
25 lineal descendants of common ancestors

1 “(5) CONVERSION TO A NATIONAL BANK.—Not-
 2 withstanding any other provision of law, any Federal
 3 savings association chartered and in operation before
 4 the date of enactment of the Financial Services Act
 5 of 1999, with branches in 1 or more States, may
 6 convert, with the approval of the Comptroller of the
 7 Currency, into 1 or more national banks, each of
 8 which may encompass one or more of the branches
 9 of the Federal savings association in 1 or more
 10 States, but only if the resulting national bank or
 11 banks will meet any and all financial, management,
 12 and capital requirements applicable to a national
 13 bank.”.

14 **SEC. 403. RETENTION OF “FEDERAL” IN NAME OF CON-**
 15 **VERTED FEDERAL SAVINGS ASSOCIATION.**

16 Section 2 of the Act entitled “An Act to enable na-
 17 tional banking associations to increase their capital stock
 18 and to change their names or locations”, approved May
 19 1, 1886 (12 U.S.C. 30), is amended by adding at the end
 20 the following new subsection:

21 “(d) RETENTION OF ‘FEDERAL’ IN NAME OF CON-
 22 VERTED FEDERAL SAVINGS ASSOCIATION.—

23 “(1) IN GENERAL.—Notwithstanding subsection
 24 (a) or any other provision of law, any depository in-
 25 stitution the charter of which is converted from that

1 of a Federal savings association to a national bank
 2 or a State bank after the date of enactment of the
 3 Financial Services Act of 1999 may retain the term
 4 ‘Federal’ in the name of such institution if such de-
 5 pository institution remains an insured depository
 6 institution.

7 “(2) DEFINITIONS.—For purposes of this sub-
 8 section, the terms ‘depository institution’, ‘insured
 9 depository institution’, ‘national bank’, and ‘State
 10 bank’ have the same meanings as in section 3 of the
 11 Federal Deposit Insurance Act.”.

12 **TITLE V—FINANCIAL** 13 **INFORMATION ANTI-FRAUD**

14 **SEC. 501. FINANCIAL INFORMATION ANTI-FRAUD.**

15 The Consumer Credit Protection Act (15 U.S.C.
 16 1601 et seq.) is amended by adding at the end the fol-
 17 lowing:

18 **“TITLE X—FINANCIAL INFORMA-** 19 **TION PRIVACY PROTECTION**

20 **“SEC. 1001. SHORT TITLE; TABLE OF CONTENTS.**

21 “(a) SHORT TITLE.—This title may be cited as the
 22 ‘Financial Information Anti-Fraud Act of 1999’.

23 “(b) TABLE OF CONTENTS.—The table of contents
 24 for this title is as follows:

“TITLE X—FINANCIAL INFORMATION PRIVACY PROTECTION

“Sec. 1001. Short title; table of contents.

“Sec. 1002. Definitions.

“Sec. 1003. Privacy protection for customer information of financial institutions.

“Sec. 1004. Administrative enforcement.

“Sec. 1005. Civil liability.

“Sec. 1006. Criminal penalty.

“Sec. 1007. Relation to State laws.

“Sec. 1008. Agency guidance.

1 **“SEC. 1002. DEFINITIONS.**

2 “For purposes of this title, the following definitions
3 shall apply:

4 “(1) CUSTOMER.—The term ‘customer’ means,
5 with respect to a financial institution, any person (or
6 authorized representative of a person) to whom the
7 financial institution provides a product or service,
8 including that of acting as a fiduciary.

9 “(2) CUSTOMER INFORMATION OF A FINANCIAL
10 INSTITUTION.—The term ‘customer information of a
11 financial institution’ means any information main-
12 tained by a financial institution which is derived
13 from the relationship between the financial institu-
14 tion and a customer of the financial institution and
15 is identified with the customer.

16 “(3) DOCUMENT.—The term ‘document’ means
17 any information in any form.

18 “(4) FINANCIAL INSTITUTION.—

19 “(A) IN GENERAL.—The term ‘financial
20 institution’ means any institution engaged in
21 the business of providing financial services to

1 customers who maintain a credit, deposit, trust,
2 or other financial account or relationship with
3 the institution.

4 “(B) CERTAIN FINANCIAL INSTITUTIONS
5 SPECIFICALLY INCLUDED.—The term ‘financial
6 institution’ includes any depository institution
7 (as defined in section 19(b)(1)(A) of the Fed-
8 eral Reserve Act), any loan or finance company,
9 any credit card issuer or operator of a credit
10 card system, and any consumer reporting agen-
11 cy that compiles and maintains files on con-
12 sumers on a nationwide basis (as defined in sec-
13 tion 603(p)).

14 “(C) FURTHER DEFINITION BY REGULA-
15 TION.—The Board of Governors of the Federal
16 Reserve System may prescribe regulations fur-
17 ther defining the term ‘financial institution’, in
18 accordance with subparagraph (A), for purposes
19 of this title.

20 **“SEC. 1003. PRIVACY PROTECTION FOR CUSTOMER INFOR-**
21 **MATION OF FINANCIAL INSTITUTIONS.**

22 “(a) PROHIBITION ON OBTAINING CUSTOMER INFOR-
23 MATION BY FALSE PRETENSES.—It shall be a violation
24 of this title for any person to obtain or attempt to obtain,
25 or cause to be disclosed or attempt to cause to be disclosed

1 to any person, customer information of a financial institu-
2 tion relating to another person—

3 “(1) by knowingly making a false, fictitious, or
4 fraudulent statement or representation to an officer,
5 employee, or agent of a financial institution with the
6 intent to deceive the officer, employee, or agent into
7 relying on that statement or representation for pur-
8 poses of releasing the customer information;

9 “(2) by knowingly making a false, fictitious, or
10 fraudulent statement or representation to a cus-
11 tomer of a financial institution with the intent to de-
12 ceive the customer into relying on that statement or
13 representation for purposes of releasing the cus-
14 tomer information or authorizing the release of such
15 information; or

16 “(3) by knowingly providing any document to
17 an officer, employee, or agent of a financial institu-
18 tion, knowing that the document is forged, counter-
19 feit, lost, or stolen, was fraudulently obtained, or
20 contains a false, fictitious, or fraudulent statement
21 or representation, if the document is provided with
22 the intent to deceive the officer, employee, or agent
23 into relying on that document for purposes of releas-
24 ing the customer information.

1 “(b) PROHIBITION ON SOLICITATION OF A PERSON
2 TO OBTAIN CUSTOMER INFORMATION FROM FINANCIAL
3 INSTITUTION UNDER FALSE PRETENSES.—It shall be a
4 violation of this title to request a person to obtain cus-
5 tomer information of a financial institution, knowing or
6 consciously avoiding knowing that the person will obtain,
7 or attempt to obtain, the information from the institution
8 in any manner described in subsection (a).

9 “(c) NONAPPLICABILITY TO LAW ENFORCEMENT
10 AGENCIES.—No provision of this section shall be con-
11 strued so as to prevent any action by a law enforcement
12 agency, or any officer, employee, or agent of such agency,
13 to obtain customer information of a financial institution
14 in connection with the performance of the official duties
15 of the agency.

16 “(d) NONAPPLICABILITY TO FINANCIAL INSTITU-
17 TIONS IN CERTAIN CASES.—No provision of this section
18 shall be construed to prevent any financial institution, or
19 any officer, employee, or agent of a financial institution,
20 from obtaining customer information of such financial in-
21 stitution in the course of—

22 “(1) testing the security procedures or systems
23 of such institution for maintaining the confiden-
24 tiality of customer information;

1 “(2) investigating allegations of misconduct or
2 negligence on the part of any officer, employee, or
3 agent of the financial institution; or

4 “(3) recovering customer information of the fi-
5 nancial institution which was obtained or received by
6 another person in any manner described in sub-
7 section (a) or (b).

8 “(e) NONAPPLICABILITY TO CERTAIN TYPES OF
9 CUSTOMER INFORMATION OF FINANCIAL INSTITU-
10 TIONS.—No provision of this section shall be construed to
11 prevent any person from obtaining customer information
12 of a financial institution that otherwise is available as a
13 public record filed pursuant to the securities laws (as de-
14 fined in section 3(a)(47) of the Securities Exchange Act
15 of 1934).

16 **“SEC. 1004. ADMINISTRATIVE ENFORCEMENT.**

17 “(a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
18 SION.—Except as provided in subsection (b), compliance
19 with this title shall be enforced by the Federal Trade Com-
20 mission in the same manner and with the same power and
21 authority as the Commission has under the Fair Debt Col-
22 lection Practices Act to enforce compliance with that title.

23 “(b) ENFORCEMENT BY OTHER AGENCIES IN CER-
24 TAIN CASES.—

1 “(1) IN GENERAL.—Compliance with this title
2 shall be enforced under—

3 “(A) section 8 of the Federal Deposit In-
4 surance Act, in the case of—

5 “(i) national banks, and Federal
6 branches and Federal agencies of foreign
7 banks, by the Office of the Comptroller of
8 the Currency;

9 “(ii) member banks of the Federal
10 Reserve System (other than national
11 banks), branches and agencies of foreign
12 banks (other than Federal branches, Fed-
13 eral agencies, and insured State branches
14 of foreign banks), commercial lending com-
15 panies owned or controlled by foreign
16 banks, and organizations operating under
17 section 25 or 25A of the Federal Reserve
18 Act, by the Board;

19 “(iii) banks insured by the Federal
20 Deposit Insurance Corporation (other than
21 members of the Federal Reserve System
22 and national nonmember banks) and in-
23 sured State branches of foreign banks, by
24 the Board of Directors of the Federal De-
25 posit Insurance Corporation; and

1 “(iv) savings associations the deposits
2 of which are insured by the Federal De-
3 posit Insurance Corporation, by the Direc-
4 tor of the Office of Thrift Supervision; and

5 “(B) the Federal Credit Union Act, by the
6 Administrator of the National Credit Union Ad-
7 ministration with respect to any Federal credit
8 union.

9 “(2) VIOLATIONS OF THIS TITLE TREATED AS
10 VIOLATIONS OF OTHER LAWS.—For the purpose of
11 the exercise by any agency referred to in paragraph
12 (1) of its powers under any Act referred to in that
13 paragraph, a violation of this title shall be deemed
14 to be a violation of a requirement imposed under
15 that Act. In addition to its powers under any provi-
16 sion of law specifically referred to in paragraph (1),
17 each of the agencies referred to in that paragraph
18 may exercise, for the purpose of enforcing compli-
19 ance with this title, any other authority conferred on
20 such agency by law.

21 “(c) STATE ACTION FOR VIOLATIONS.—

22 “(1) AUTHORITY OF STATES.—In addition to
23 such other remedies as are provided under State
24 law, if the chief law enforcement officer of a State,
25 or an official or agency designated by a State, has

1 reason to believe that any person has violated or is
2 violating this title, the State—

3 “(A) may bring an action to enjoin such
4 violation in any appropriate United States dis-
5 trict court or in any other court of competent
6 jurisdiction;

7 “(B) may bring an action on behalf of the
8 residents of the State to recover damages of not
9 more than \$1,000 for each violation; and

10 “(C) in the case of any successful action
11 under subparagraph (A) or (B), shall be award-
12 ed the costs of the action and reasonable attor-
13 ney fees as determined by the court.

14 “(2) RIGHTS OF FEDERAL REGULATORS.—

15 “(A) PRIOR NOTICE.—The State shall
16 serve prior written notice of any action under
17 paragraph (1) upon the Federal Trade Commis-
18 sion and, in the case of an action which involves
19 a financial institution described in section
20 1004(b)(1), the agency referred to in such sec-
21 tion with respect to such institution and provide
22 the Federal Trade Commission and any such
23 agency with a copy of its complaint, except in
24 any case in which such prior notice is not fea-

1 sible, in which case the State shall serve such
2 notice immediately upon instituting such action.

3 “(B) RIGHT TO INTERVENE.—The Federal
4 Trade Commission or an agency described in
5 subsection (b) shall have the right—

6 “(i) to intervene in an action under
7 paragraph (1);

8 “(ii) upon so intervening, to be heard
9 on all matters arising therein;

10 “(iii) to remove the action to the ap-
11 propriate United States district court; and

12 “(iv) to file petitions for appeal.

13 “(3) INVESTIGATORY POWERS.—For purposes
14 of bringing any action under this subsection, no pro-
15 vision of this subsection shall be construed as pre-
16 venting the chief law enforcement officer, or an offi-
17 cial or agency designated by a State, from exercising
18 the powers conferred on the chief law enforcement
19 officer or such official by the laws of such State to
20 conduct investigations or to administer oaths or af-
21 firmations or to compel the attendance of witnesses
22 or the production of documentary and other evi-
23 dence.

24 “(4) LIMITATION ON STATE ACTION WHILE
25 FEDERAL ACTION PENDING.—If the Federal Trade

1 Commission or any agency described in subsection
2 (b) has instituted a civil action for a violation of this
3 title, no State may, during the pendency of such ac-
4 tion, bring an action under this section against any
5 defendant named in the complaint of the Federal
6 Trade Commission or such agency for any violation
7 of this title that is alleged in that complaint.

8 **“SEC. 1005. CIVIL LIABILITY.**

9 “Any person, other than a financial institution, who
10 fails to comply with any provision of this title with respect
11 to any financial institution or any customer information
12 of a financial institution shall be liable to such financial
13 institution or the customer to whom such information re-
14 lates in an amount equal to the sum of the amounts deter-
15 mined under each of the following paragraphs:

16 “(1) ACTUAL DAMAGES.—The greater of—

17 “(A) the amount of any actual damage
18 sustained by the financial institution or cus-
19 tomer as a result of such failure; or

20 “(B) any amount received by the person
21 who failed to comply with this title, including
22 an amount equal to the value of any nonmone-
23 tary consideration, as a result of the action
24 which constitutes such failure.

1 “(2) ADDITIONAL DAMAGES.—Such additional
2 amount as the court may allow.

3 “(3) ATTORNEYS’ FEES.—In the case of any
4 successful action to enforce any liability under para-
5 graph (1) or (2), the costs of the action, together
6 with reasonable attorneys’ fees.

7 **“SEC. 1006. CRIMINAL PENALTY.**

8 “(a) IN GENERAL.—Whoever violates, or attempts to
9 violate, section 1003 shall be fined in accordance with title
10 18, United States Code, or imprisoned for not more than
11 5 years, or both.

12 “(b) ENHANCED PENALTY FOR AGGRAVATED
13 CASES.—Whoever violates, or attempts to violate, section
14 1003 while violating another law of the United States or
15 as part of a pattern of any illegal activity involving more
16 than \$100,000 in a 12-month period shall be fined twice
17 the amount provided in subsection (b)(3) or (c)(3) (as the
18 case may be) of section 3571 of title 18, United States
19 Code, imprisoned for not more than 10 years, or both.

20 **“SEC. 1007. RELATION TO STATE LAWS.**

21 “(a) IN GENERAL.—This title shall not be construed
22 as superseding, altering, or affecting the statutes, regula-
23 tions, orders, or interpretations in effect in any State, ex-
24 cept to the extent that such statutes, regulations, orders,

1 or interpretations are inconsistent with the provisions of
2 this title, and then only to the extent of the inconsistency.

3 “(b) **GREATER PROTECTION UNDER STATE LAW.**—

4 For purposes of this section, a State statute, regulation,
5 order, or interpretation is not inconsistent with the provi-
6 sions of this title if the protection such statute, regulation,
7 order, or interpretation affords any person is greater than
8 the protection provided under this title.

9 **“SEC. 1008. AGENCY GUIDANCE.**

10 “In furtherance of the objectives of this title, each
11 Federal banking agency (as defined in section 3(z) of the
12 Federal Deposit Insurance Act) shall issue advisories to
13 depository institutions under the jurisdiction of the agen-
14 cy, in order to assist such depository institutions in deter-
15 ring and detecting activities proscribed under section
16 1003.”.

17 **SEC. 502. REPORT TO CONGRESS ON FINANCIAL PRIVACY.**

18 Not later than 18 months after the date of enactment
19 of this Act, the Comptroller General of the United States,
20 in consultation with the Federal Trade Commission, the
21 Federal banking agencies, and other appropriate Federal
22 law enforcement agencies, shall submit to the Congress a
23 report on—

24 (1) the efficacy and adequacy of the remedies
25 provided in the amendments made by section 501 in

1 addressing attempts to obtain financial information
2 by fraudulent means or by false pretenses; and

3 (2) any recommendations for additional legisla-
4 tive or regulatory action to address threats to the
5 privacy of financial information created by attempts
6 to obtain information by fraudulent means or false
7 pretenses.

8 **TITLE VI—MISCELLANEOUS**

9 **SEC. 601. GRAND JURY PROCEEDINGS.**

10 Section 3322(b) of title 18, United States Code, is
11 amended—

12 (1) in paragraph (1), by inserting “Federal or
13 State” before “financial institution”; and

14 (2) in paragraph (2), by inserting “at any time
15 during or after the completion of the investigation of
16 the grand jury,” before “upon”.

17 **SEC. 602. SENSE OF THE COMMITTEE ON BANKING, HOUS-** 18 **ING, AND URBAN AFFAIRS OF THE SENATE.**

19 (a) FINDINGS.—The Committee on Banking, Hous-
20 ing, and Urban Affairs of the Senate finds that—

21 (1) financial modernization legislation should
22 benefit small institutions as well as large institu-
23 tions;

24 (2) the Congress made the subchapter S elec-
25 tion of the Internal Revenue Code of 1986, available

1 to banks in 1996, reflecting a desire by the Congress
2 to reduce the tax burden on community banks;

3 (3) large numbers of community banks have
4 elected or expressed interest in the subchapter S
5 election; and

6 (4) the Committee on Banking, Housing, and
7 Urban Affairs of the Senate recognizes that some
8 obstacles remain for community banks wishing to
9 make the subchapter S election.

10 (b) SENSE OF THE COMMITTEE.—It is the sense of
11 the Committee on Banking, Housing, and Urban Affairs
12 of the Senate that—

13 (1) the small business tax provisions of the In-
14 ternal Revenue Code of 1986, should be more widely
15 available to community banks;

16 (2) legislation should be passed to amend the
17 Internal Revenue Code of 1986, to—

18 (A) increase the allowed number of S cor-
19 poration shareholders;

20 (B) permit S corporation stock to be held
21 in individual retirement accounts;

22 (C) clarify that interest on investments
23 held for safety, soundness, and liquidity pur-
24 poses should not be considered to be passive in-
25 come;

1 (D) provide that bank director stock is not
2 treated as a disqualifying second class of stock
3 for S corporations; and

4 (E) improve the tax treatment of bad debt
5 and interest deductions; and

6 (3) the legislation described in paragraph (2)
7 should be adopted by the Congress in conjunction
8 with any financial modernization legislation.

9 **SEC. 603. INVESTMENTS IN GOVERNMENT SPONSORED EN-**
10 **TERPRISES.**

11 Section 18(s) of the Federal Deposit Insurance Act
12 (12 U.S.C. 1828(s)) is amended—

13 (1) by redesignating paragraph (4) as para-
14 graph (6); and

15 (2) by inserting after paragraph (3) the fol-
16 lowing:

17 “(4) CERTAIN INVESTMENTS.—Paragraph (1)
18 shall not apply with respect to investments lawfully
19 made before April 11, 1996, by a depository institu-
20 tion in any Government sponsored enterprise.

21 “(5) STUDENT LOANS.—

22 “(A) IN GENERAL.—This subsection does
23 not apply to any arrangement between a Hold-
24 ing Company (or any subsidiary of the Holding
25 Company other than the Student Loan Mar-

1 keting Association, hereafter in this paragraph
2 referred to as the ‘Association’) and a deposi-
3 tory institution, if the Secretary approves the
4 affiliation and determines that—

5 “(i) the reorganization of the Associa-
6 tion in accordance with section 440 of the
7 Higher Education Act of 1965 (20 U.S.C.
8 1087–3), will not be adversely affected by
9 the arrangement;

10 “(ii) the dissolution of the Association
11 pursuant to such reorganization will occur
12 before the end of the 2-year period begin-
13 ning on the date on which such arrange-
14 ment is consummated, or on such earlier
15 date as the Secretary determines to be ap-
16 propriate, except that the Secretary may
17 extend such period for not more than 1
18 year at a time (not to exceed 2 years, in
19 the aggregate) if the Secretary determines
20 that such extension is in the public interest
21 and is appropriate to achieve an orderly re-
22 organization of the Association or to pre-
23 vent market disruptions in connection with
24 such reorganization;

1 “(iii) the Association will not purchase
2 or extend credit to, or guarantee or provide
3 credit enhancement to, any obligation of
4 the depository institution;

5 “(iv) the operations of the Association
6 will be separate from the operations of the
7 depository institution; and

8 “(v) until the dissolution date (as that
9 term is defined in section 440(i)(2) of the
10 Higher Education Act of 1965) has oc-
11 curred, such depository institution will not
12 use the trade name or service mark ‘Sallie
13 Mae’ in connection with any product or
14 service it offers, if the appropriate Federal
15 banking agency for the depository institu-
16 tion determines that—

17 “(I) the depository institution is
18 the only institution offering such
19 product or service using the Sallie
20 Mae name; and

21 “(II) the use of such name would
22 result in the depository institution
23 having an unfair competitive advan-
24 tage over other depository institutions.

1 “(B) TERMS AND CONDITIONS.—In ap-
2 proving any arrangement referred to in sub-
3 paragraph (A), the Secretary may impose any
4 terms and conditions on the arrangement that
5 the Secretary considers appropriate,
6 including—

7 “(i) imposing additional restrictions
8 on the issuance of debt obligations by the
9 Association; or

10 “(ii) restricting the use of proceeds
11 from the issuance of such debt.

12 “(C) ADDITIONAL LIMITATIONS.—In the
13 event that the Holding Company (or any sub-
14 sidiary of the Holding Company) enters into
15 such an arrangement, the value of the invest-
16 ment portfolio of the Association shall not at
17 any time exceed the lesser of—

18 “(i) the value of such portfolio on the
19 date of enactment of the Financial Services
20 Act of 1999; or

21 “(ii) the value of such portfolio on the
22 date on which such an arrangement is con-
23 summated.

24 “(D) ENFORCEMENT.—The terms and
25 conditions imposed under subparagraph (B)

1 may be enforced by the Secretary in accordance
2 with section 440 of the Higher Education Act
3 of 1965.

4 “(E) DEFINITIONS.—For purposes of this
5 paragraph, the following definition shall apply:

6 “(i) ASSOCIATION; HOLDING COM-
7 PANY.—Notwithstanding any provision in
8 section 3, the terms ‘Association’ and
9 ‘Holding Company’ have the same mean-
10 ings as in section 440(i) of the Higher
11 Education Act of 1965.

12 “(ii) INVESTMENT PORTFOLIO.—The
13 term ‘investment portfolio’ means all in-
14 vestments shown on the consolidated
15 balance sheet of the Association, other
16 than—

17 “(I) any instruments or assets
18 described in section 439(d) of the
19 Higher Education Act of 1965 (20
20 U.S.C. 1087–2(d));

21 “(II) any direct non-callable obli-
22 gations of the United States, or any
23 agency thereof, for which the full faith
24 and credit of the United States is
25 pledged; or

1 “(III) cash or cash equivalents.

2 “(iii) SECRETARY.—The term ‘Sec-
3 retary’ means the Secretary of the Treas-
4 ury.”.

5 **SEC. 604. REPEAL OF SAVINGS BANK PROVISIONS IN THE**
6 **BANK HOLDING COMPANY ACT OF 1956.**

7 Section 3(f) of the Bank Holding Company Act of
8 1956 (12 U.S.C. 1842(f)) is amended to read as follows:

9 “(f) [Reserved].”.

10 **SEC. 605. SERVICE OF MEMBERS OF THE BOARD OF GOV-**
11 **ERNORS OF THE FEDERAL RESERVE SYSTEM.**

12 Notwithstanding the first undesignated paragraph of
13 section 10 of the Federal Reserve Act, the vice chairman
14 of the Board of Governors of the Federal Reserve System
15 may serve as a member of the District of Columbia Finan-
16 cial Responsibility and Management Assistance Authority
17 established by section 101 of the District of Columbia Fi-
18 nancial Responsibility and Management Assistance Act of
19 1995.

20 **SEC. 606. PROVISION OF TECHNICAL ASSISTANCE TO**
21 **MICROENTERPRISES.**

22 (a) IN GENERAL.—Title I of the Riegle Community
23 Development and Regulatory Improvement Act of 1994
24 (12 U.S.C. 4701 et seq.) is amended by adding at the end
25 the following new subtitle:

1 **“Subtitle C—Microenterprise Tech-**
2 **nical Assistance and Capacity**
3 **Building Program**

4 **“SEC. 171. SHORT TITLE.**

5 “This subtitle may be cited as the ‘Program for In-
6 vestment in Microentrepreneurs Act of 1999’, also re-
7 ferred to as the ‘PRIME Act’.

8 **“SEC. 172. DEFINITIONS.**

9 “For purposes of this subtitle—

10 “(1) the term ‘Administrator’ has the same
11 meaning as in section 103;

12 “(2) the term ‘capacity building services’ means
13 services provided to an organization that is, or is in
14 the process of becoming a microenterprise develop-
15 ment organization or program, for the purpose of
16 enhancing its ability to provide training and services
17 to disadvantaged entrepreneurs;

18 “(3) the term ‘collaborative’ means 2 or more
19 nonprofit entities that agree to act jointly as a quali-
20 fied organization under this subtitle;

21 “(4) the term ‘disadvantaged entrepreneur’
22 means a microentrepreneur that is—

23 “(A) a low-income person;

24 “(B) a very low-income person; or

1 “(C) an entrepreneur that lacks adequate
2 access to capital or other resources essential for
3 business success, or is economically disadvan-
4 taged, as determined by the Administrator;

5 “(5) the term ‘Fund’ has the same meaning as
6 in section 103;

7 “(6) the term ‘Indian tribe’ has the same mean-
8 ing as in section 103;

9 “(7) the term ‘intermediary’ means a private,
10 nonprofit entity that seeks to serve microenterprise
11 development organizations and programs as author-
12 ized under section 175;

13 “(8) the term ‘low-income person’ has the same
14 meaning as in section 103;

15 “(9) the term ‘microentrepreneur’ means the
16 owner or developer of a microenterprise;

17 “(10) the term ‘microenterprise’ means a sole
18 proprietorship, partnership, or corporation that—

19 “(A) has fewer than 5 employees; and

20 “(B) generally lacks access to conventional
21 loans, equity, or other banking services;

22 “(11) the term ‘microenterprise development or-
23 ganization or program’ means a nonprofit entity, or
24 a program administered by such an entity, including
25 community development corporations or other non-

1 profit development organizations and social service
2 organizations, that provides services to disadvan-
3 tagged entrepreneurs or prospective entrepreneurs;

4 “(12) the term ‘training and technical assist-
5 ance’ means services and support provided to dis-
6 advantaged entrepreneurs or prospective entre-
7 preneurs, such as assistance for the purpose of en-
8 hancing business planning, marketing, management,
9 financial management skills, and assistance for the
10 purpose of accessing financial services; and

11 “(13) the term ‘very low-income person’ means
12 having an income, adjusted for family size, of not
13 more than 150 percent of the poverty line (as de-
14 fined in section 673(2) of the Community Services
15 Block Grant Act (42 U.S.C. 9902(2), including any
16 revision required by that section).

17 **“SEC. 173. ESTABLISHMENT OF PROGRAM.**

18 “The Administrator shall establish a microenterprise
19 technical assistance and capacity building grant program
20 to provide assistance from the Fund in the form of grants
21 to qualified organizations in accordance with this subtitle.

22 **“SEC. 174. USES OF ASSISTANCE.**

23 “A qualified organization shall use grants made
24 under this subtitle—

1 “(1) to provide training and technical assist-
2 ance to disadvantaged entrepreneurs;

3 “(2) to provide training and capacity building
4 services to microenterprise development organiza-
5 tions and programs and groups of such organiza-
6 tions to assist such organizations and programs in
7 developing microenterprise training and services;

8 “(3) to aid in researching and developing the
9 best practices in the field of microenterprise and
10 technical assistance programs for disadvantaged en-
11 trepreneurs; and

12 “(4) for such other activities as the Adminis-
13 trator determines are consistent with the purposes of
14 this subtitle.

15 **“SEC. 175. QUALIFIED ORGANIZATIONS.**

16 “For purposes of eligibility for assistance under this
17 subtitle, a qualified organization shall be—

18 “(1) a nonprofit microenterprise development
19 organization or program (or a group or collaborative
20 thereof) that has a demonstrated record of delivering
21 microenterprise services to disadvantaged entre-
22 preneurs;

23 “(2) an intermediary;

24 “(3) a microenterprise development organiza-
25 tion or program that is accountable to a local com-

1 munity, working in conjunction with a State or local
2 government or Indian tribe; or

3 “(4) an Indian tribe acting on its own, if the
4 Indian tribe can certify that no private organization
5 or program referred to in this paragraph exists with-
6 in its jurisdiction.

7 **“SEC. 176. ALLOCATION OF ASSISTANCE; SUBGRANTS.**

8 “(a) ALLOCATION OF ASSISTANCE.—

9 “(1) IN GENERAL.—The Administrator shall al-
10 locate assistance from the Fund under this subtitle
11 to ensure that—

12 “(A) activities described in section 174(1)
13 are funded using not less than 75 percent of
14 amounts made available for such assistance;
15 and

16 “(B) activities described in section 174(2)
17 are funded using not less than 15 percent of
18 amounts made available for such assistance.

19 “(2) LIMIT ON INDIVIDUAL ASSISTANCE.—No
20 single organization or entity may receive more than
21 10 percent of the total funds appropriated under
22 this subtitle in a single fiscal year.

23 “(b) TARGETED ASSISTANCE.—The Administrator
24 shall ensure that not less than 50 percent of the grants
25 made under this subtitle are used to benefit very low-in-

1 come persons, including those residing on Indian reserva-
2 tions.

3 “(c) SUBGRANTS AUTHORIZED.—

4 “(1) IN GENERAL.—A qualified organization re-
5 ceiving assistance under this subtitle may provide
6 grants using that assistance to qualified small and
7 emerging microenterprise organizations and pro-
8 grams, subject to such rules and regulations as the
9 Administrator determines to be appropriate.

10 “(2) LIMIT ON ADMINISTRATIVE EXPENSES.—

11 Not more than 7.5 percent of assistance received by
12 a qualified organization under this subtitle may be
13 used for administrative expenses in connection with
14 the making of subgrants under paragraph (1).

15 “(d) DIVERSITY.—In making grants under this sub-
16 title, the Administrator shall ensure that grant recipients
17 include both large and small microenterprise organiza-
18 tions, serving urban, rural, and Indian tribal communities
19 and racially and ethnically diverse populations.

20 **“SEC. 177. MATCHING REQUIREMENTS.**

21 “(a) IN GENERAL.—Financial assistance under this
22 subtitle shall be matched with funds from sources other
23 than the Federal Government on the basis of not less than
24 50 percent of each dollar provided by the Fund.

1 “(b) SOURCES OF MATCHING FUNDS.—Fees, grants,
2 gifts, funds from loan sources, and in-kind resources of
3 a grant recipient from public or private sources may be
4 used to comply with the matching requirement in sub-
5 section (a).

6 “(c) EXCEPTION.—

7 “(1) IN GENERAL.—In the case of an applicant
8 for assistance under this subtitle with severe con-
9 straints on available sources of matching funds, the
10 Administrator may reduce or eliminate the matching
11 requirements of subsection (a).

12 “(2) LIMITATION.—Not more than 10 percent
13 of the total funds made available from the Fund in
14 any fiscal year to carry out this subtitle may be ex-
15 cepted from the matching requirements of subsection
16 (a), as authorized by paragraph (1) of this sub-
17 section.

18 **“SEC. 178. APPLICATIONS FOR ASSISTANCE.**

19 “An application for assistance under this subtitle
20 shall be submitted in such form and in accordance with
21 such procedures as the Fund shall establish.

22 **“SEC. 179. RECORDKEEPING.**

23 “‘The requirements of section 115 shall apply to a
24 qualified organization receiving assistance from the Fund
25 under this subtitle as if it were a community development

1 financial institution receiving assistance from the Fund
2 under subtitle A.

3 **“SEC. 180. AUTHORIZATION.**

4 “In addition to funds otherwise authorized to be ap-
5 propriated to the Fund to carry out this title, there are
6 authorized to be appropriated to the Fund to carry out
7 this subtitle—

8 “(1) \$15,000,000 for fiscal year 2000;

9 “(2) \$25,000,000 for fiscal year 2001;

10 “(3) \$30,000,000 for fiscal year 2002; and

11 “(4) \$35,000,000 for fiscal year 2003.

12 **“SEC. 181. IMPLEMENTATION.**

13 “The Administrator shall, by regulation, establish
14 such requirements as may be necessary to carry out this
15 subtitle.”.

16 (b) ADMINISTRATIVE EXPENSES.—Section
17 121(a)(2)(A) of the Riegle Community Development and
18 Regulatory Improvement Act of 1994 (12 U.S.C.
19 4718(a)(2)(A)) is amended—

20 (1) by striking “\$5,550,000” and inserting
21 “\$6,100,000”; and

22 (2) in the first sentence, by inserting before the
23 period “, including costs and expenses associated
24 with carrying out subtitle C”.

1 (c) CONFORMING AMENDMENTS.—Section 104(d) of
2 the Riegle Community Development and Regulatory Im-
3 provement Act of 1994 (12 U.S.C. 4703(d)) is amended—

4 (1) in paragraph (2)—

5 (A) by striking “15” and inserting “17”;

6 and

7 (B) in subparagraph (G)—

8 (i) by striking “9” and inserting
9 “11”;

10 (ii) by redesignating clauses (iv) and

11 (v) as clauses (v) and (vi), respectively;

12 and

13 (iii) by inserting after clause (iii) the
14 following:

15 “(iv) 2 individuals who have expertise
16 in microenterprises and microenterprise de-
17 velopment;” and

18 (2) in paragraph (4), in the first sentence, by

19 inserting before the period “and subtitle C”.

○