

105TH CONGRESS  
1ST SESSION

# H. R. 268

To enhance competition in the financial services sector and merge the  
commercial bank and savings association charters.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Mrs. ROUKEMA (for herself and Mr. VENTO) introduced the following bill;  
which was referred to the Committee on Banking and Financial Services,  
and in addition to the Committee on Commerce, for a period to be subse-  
quently determined by the Speaker, in each case for consideration of such  
provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To enhance competition in the financial services sector and  
merge the commercial bank and savings association charters.

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

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

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

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

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

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## TITLE I—FINANCIAL SERVICES HOLDING COMPANY ACT

Sec. 101. Short title.

## Subtitle A—General Provisions

- Sec. 102. Definitions.
- Sec. 103. Changes in control of depository institutions.
- Sec. 104. Affiliate transactions.
- Sec. 105. Capital requirements.
- Sec. 106. Interstate acquisitions of insured banks.
- Sec. 107. Differential treatment prohibition; laws inconsistent with this Act.
- Sec. 108. Insider lending provisions.
- Sec. 109. Reports, examination and enforcement.
- Sec. 110. Divestiture.
- Sec. 111. Criminal penalties.
- Sec. 112. Civil enforcement, cease-and-desist orders, civil money penalties, removal, and prohibition authority.
- Sec. 113. Judicial review.
- Sec. 114. National Financial Services Committee.

## Subtitle B—Securities Activities of Financial Services Holding Companies

- Sec. 121. Limitation on securities activities of depository institutions affiliated with securities affiliates.
- Sec. 122. Safeguards relating to securities affiliates.
- Sec. 123. Joint standards relating to retail sales of certain nondeposit investment products.

## Subtitle C—Insurance and Real Estate Development Activities of Financial Services Holding Companies

- Sec. 131. Limitation on insurance underwriting and real estate development activities of depository institutions.
- Sec. 132. Acquisition of preexisting insurance agency by bank holding companies.
- Sec. 133. Existing contracts.

## Subtitle D—Redomestication of Mutual Life Insurers

- Sec. 141. Redomestication of mutual life insurers.

## TITLE II—CONFORMING AMENDMENTS TO OTHER LAWS FOR FINANCIAL SERVICES HOLDING COMPANIES

- Sec. 201. Exemption of financial services holding companies from the Bank Holding Company Act of 1956.
- Sec. 202. Amendment to the Federal Reserve Act.
- Sec. 203. Amendments to the Banking Act of 1933.
- Sec. 204. Amendments to the Federal Deposit Insurance Act.
- Sec. 205. Amendment to the Community Reinvestment Act.
- Sec. 206. Amendment to the Federal Power Act.
- Sec. 207. Amendment to the Right to Financial Privacy Act.
- Sec. 208. Amendments to the International Banking Act.
- Sec. 209. Amendment concerning national banks.

## TITLE III—FUNCTIONAL REGULATION AMENDMENTS TO SECURITIES LAWS FOR FINANCIAL SERVICES HOLDING COMPANIES

### Subtitle A—Broker Dealer Provisions

- Sec. 301. Definition of broker.
- Sec. 302. Definition of dealer.
- Sec. 303. Power to exempt from the definitions of broker and dealer.
- Sec. 304. Margin requirements.

### Subtitle B—Investment Company Provisions

- Sec. 311. Custody of investment company assets by affiliated bank.
- Sec. 312. Lending to an affiliated investment company.
- Sec. 313. Independent directors.
- Sec. 314. Additional SEC disclosure authority.
- Sec. 315. Definition of broker under the Investment Company Act of 1940.
- Sec. 316. Definition of dealer under the Investment Company Act of 1940.
- Sec. 317. Removal of the exclusion from the definition of investment adviser for banks that advise investment companies.
- Sec. 318. Definition of broker under the Investment Advisors Act of 1940.
- Sec. 319. Definition of dealer under the Investment Advisors Act of 1940.
- Sec. 320. Interagency consultation.
- Sec. 321. Treatment of bank common trust funds.
- Sec. 322. Investment advisers prohibited from having controlling interest in registered investment company.
- Sec. 323. Conforming change in definition.
- Sec. 324. Effective date.

## TITLE IV—WHOLESALE FINANCIAL INSTITUTIONS OWNED BY FINANCIAL SERVICES HOLDING COMPANIES

- Sec. 401. National wholesale financial institutions.
- Sec. 402. State member wholesale financial institutions.
- Sec. 403. Amendments to the Federal Deposit Insurance Act.

## TITLE V—MERGER OF BANK AND THRIFT CHARTERS, REGULATORS, AND INSURANCE FUNDS

### Subtitle A—Conversion of Thrift Charters

- Sec. 501. Short title.
- Sec. 502. Termination of Federal savings associations; treatment of State savings associations as banks for purposes of Federal banking law.
- Sec. 503. Treatment of certain activities and affiliations of bank holding companies resulting from this Act.
- Sec. 504. Transition provisions for activities of savings associations which convert into or become treated as banks.
- Sec. 505. Registration of bank holding companies resulting from conversions of savings associations to banks or treatment of savings associations as banks.
- Sec. 506. Additional transition provisions and special rules.
- Sec. 507. Technical and conforming amendments.
- Sec. 508. References to savings associations and state banks in federal law.
- Sec. 509. Repeal of Home Owners' Loan Act.
- Sec. 510. Definitions.

### Subtitle B—Elimination of Office of Thrift Supervision

- Sec. 511. Office of Thrift Supervision abolished.

Sec. 512. Determination of transferred functions and employees.

Sec. 513. Savings provisions.

Sec. 514. Cost of funds indexes.

Sec. 515. References in federal law to director of the Office of Thrift Supervision.

Sec. 516. Reconfiguration of board of directors of FDIC as a result of removal of director of the Office of Thrift Supervision.

#### Subtitle C—Merger of BIF and SAIF

Sec. 521. Amendment to Economic Growth and Paperwork Reduction Act of 1996.

#### TITLE VI—NATIONAL MARKET FUNDED LENDING INSTITUTIONS

Sec. 601. National market funded lending institutions.

#### TITLE VII—EFFECTIVE DATE

Sec. 701. Effective date.

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

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

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

7 (2) restrictions on ownership of depository insti-  
 8 tutions and affiliations with other business organiza-  
 9 tions and restrictions and burdens on ownership of  
 10 other financial institutions by insurance companies  
 11 interfere with their ability to attract and retain cap-  
 12 ital and managerial resources;

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

1 (4) the thrift charter has become obsolete;

2 (5) market demand and safety and soundness  
3 considerations warrant the creation of a new charter  
4 for uninsured wholesale financial institutions; and

5 (6) current laws inhibit the ability of domestic  
6 financial markets and intermediaries to respond to  
7 the serious competitive challenges presented by for-  
8 eign intermediaries and the globalization of markets.

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

14 (1) establishing an alternative and comprehen-  
15 sive legislative framework for the creation and regu-  
16 lation of financial services holding companies;

17 (2) enhancing the capital adequacy of commer-  
18 cial banks, brokers and dealers, insurance compa-  
19 nies, and other financial companies by eliminating  
20 prohibitions on common ownership and affiliation  
21 within a financial services holding company;

22 (3) permitting affiliates to engage in regulated  
23 activities subject to functional and equal regulation  
24 by the appropriate Federal or State regulator;

1           (4) insulating and protecting insured depository  
 2           institutions through enhanced capital requirements,  
 3           expanded restrictions on relationships with affiliates,  
 4           broader examination and enforcement authority, and  
 5           increased civil and criminal penalties;

6           (5) permitting the efficient marketing and dis-  
 7           tribution of financial services to consumers subject  
 8           to safeguards against coercive tie-ins and other un-  
 9           fair and abusive practices;

10          (6) establishing the National Financial Services  
 11          Committee to oversee the evolution and supervision  
 12          of the financial services industry and to report to the  
 13          Congress;

14          (7) eliminating the thrift charter and requiring  
 15          thrifts to convert to banks, subject to appropriate  
 16          transition provisions;

17          (8) merging the bank and thrift insurance  
 18          funds; and

19          (9) creating new State and Federal charters for  
 20          uninsured wholesale financial institutions.

21       **TITLE I—FINANCIAL SERVICES HOLDING**  
 22                               **COMPANY ACT**

23       **SEC. 101. SHORT TITLE.**

24          This title may be cited as the “Financial Services  
 25       Holding Company Act”.

1                   **Subtitle A—General Provisions**

2   **SEC. 102. DEFINITIONS.**

3           For purposes of this Act, the following definitions  
4   apply.

5           (a) **FINANCIAL SERVICES HOLDING COMPANY.**—The  
6   term “financial services holding company” means a com-  
7   pany that—

8                   (1) has filed with the National Financial Serv-  
9           ices Committee a notice stating such company’s in-  
10          tent to comply with the requirements of this Act and  
11          has not withdrawn such notice;

12                   (2) controls, acquires control of, or operates a  
13          depository institution; and

14                   (3) is predominantly a financial company.

15          (b) **COMPANY.**—The term “company” means any cor-  
16   poration, partnership, business, trust, association, or simi-  
17   lar organization, or any other trust unless by its terms  
18   it must terminate within 25 years or not later than 21  
19   years and 10 months after the death of individuals living  
20   on the effective date of the trust, but shall not include  
21   any corporation the majority of the shares of which are  
22   owned by the United States or by any State.

23          (c) **BANK HOLDING COMPANY.**—The term “bank  
24   holding company” has the same meaning as in section  
25   2(a) of the Bank Holding Company Act of 1956.

1       (d) CONTROL.—Except as provided in section  
2 107(e)(2), the term “control” means, directly or indi-  
3 rectly, owns or has the power to vote 25 percent or more  
4 of any class of voting securities of a company, or has the  
5 power to elect a majority of the directors of a company,  
6 except that—

7           (1) no company shall be deemed to control or  
8 to have acquired control of any other company by  
9 virtue of its ownership of the voting securities of  
10 such other company—

11           (A) acquired or held in an agency, trust, or  
12 other fiduciary capacity, unless the company  
13 has sole discretionary authority to exercise vot-  
14 ing rights with respect thereto;

15           (B) acquired or held in connection with or  
16 incidental to the underwriting of securities if  
17 such securities are held only for such period of  
18 time as will permit the sale thereof on a reason-  
19 able basis; or

20           (C) acquired in securing or collecting a  
21 debt previously contracted in good faith, until 2  
22 years after the date of acquisition or for such  
23 additional period of time as the appropriate  
24 Federal banking agency may permit; and



1           (2) no company formed for the sole purpose of  
2       participating in a proxy solicitation shall be deemed  
3       to be in control of a company by virtue of its acqui-  
4       sition of voting rights with respect to shares of such  
5       company acquired in the course of such solicitation.

6       (e) AFFILIATE.—Except as provided in section  
7       107(e)(1), the term “affiliate” of a company means any  
8       other company which controls, is controlled by, or is under  
9       common control with such company.

10       (f) SUBSIDIARY.—The term “subsidiary” has the  
11       same meaning as in section 2(d) of the Bank Holding  
12       Company Act of 1956.

13       (g) DEPOSITORY INSTITUTION AND INSURED DEPOS-  
14       ITORY INSTITUTION.—

15           (1) IN GENERAL.—The terms “depository insti-  
16       tution” and “insured depository institution” have  
17       the same meanings as in section 3 of the Federal  
18       Deposit Insurance Act, except that the term “depos-  
19       itory institution” also means—

20           (A) any wholesale financial institution; and

21           (B) any branch, agency, or commercial  
22       lending company operated in the United States  
23       by a foreign bank.

24       (2) EXCEPTION RELATED TO FOREIGN  
25       BANKS.—Notwithstanding paragraph (1)(B), the

1 National Financial Services Committee may, for  
2 purposes of any section or provision of this Act, ex-  
3 empt from the definition of “depository institution”  
4 any branch, agency, or commercial lending company  
5 operated in the United States by a foreign bank as  
6 the Committee deems appropriate, provided that  
7 such exemption is—

8 (A) issued by regulation, and

9 (B) consistent with the principles of na-  
10 tional treatment and equality of competitive op-  
11 portunity.

12 (h) LEAD DEPOSITORY INSTITUTION.—The term  
13 “lead depository institution” means the largest depository  
14 institution controlled by the financial services holding  
15 company, based on a comparison of the average total as-  
16 sets controlled by each depository institution during the  
17 previous 12-month period.

18 (i) WHOLESALE FINANCIAL INSTITUTION.—The  
19 term “wholesale financial institution” means a national  
20 wholesale financial institution described in section 5136B  
21 of the Revised Statutes of the United States or a State  
22 member wholesale financial institution described in section  
23 9B of the Federal Reserve Act.

24 (j) FOREIGN BANK TERMS.—

1           (1) IN GENERAL.—The terms “agency”,  
2           “branch”, “foreign bank”, and “commercial lending  
3           company” have the same meaning as in section 1(b)  
4           of the International Banking Act.

5           (2) COMMERCIAL LENDING COMPANY OPER-  
6           ATED BY A FOREIGN BANK.—The term “commercial  
7           lending company operated by a foreign bank” means  
8           a commercial lending company controlled by a for-  
9           eign bank.

10          (3) BRANCH OR AGENCY OPERATED BY A FOR-  
11          EIGN BANK.—A branch or agency operated by a for-  
12          eign bank shall be deemed to be controlled by that  
13          foreign bank.

14          (k) DOMESTIC BRANCH.—The term “domestic  
15          branch” has the same meaning as in section 3(o) of the  
16          Federal Deposit Insurance Act;

17          (l) PREDOMINANTLY A FINANCIAL COMPANY.

18               (1) IN GENERAL.—The term “predominantly a  
19               financial company” with respect to any company  
20               means a company at least 75 percent of the business  
21               (in the United States) of which is derived from—

22                       (A) financial service institutions controlled  
23                       by such company; or

24                       (B) financial activities engaged in by such  
25                       company or any of its affiliates.

1           (2) QUALIFIED BANK HOLDING COMPANY AL-  
2       TERNATIVE.—As an alternative to paragraph (1),  
3       the term “predominantly a financial company”  
4       means any company which would satisfy all the re-  
5       quirements of section 4(k) of the Bank Holding  
6       Company Act of 1956 if such company had elected  
7       to be a bank holding company rather than a finan-  
8       cial services holding company.

9           (3) FOREIGN BANK ALTERNATIVE.—As an al-  
10      ternative to paragraph (1), a foreign bank, and any  
11      company of which a foreign bank is a subsidiary, is  
12      “predominantly a financial company” if—

13           (A) all of the business of such foreign bank  
14           and any such company (including the business  
15           of direct and indirect subsidiaries of the foreign  
16           bank) in the United States is derived from—

17                   (i) financial services institutions con-  
18                   trolled or operated by such foreign bank;

19                   (ii) financial activities engaged in by  
20                   such foreign bank or any of its affiliates;

21                   (iii) companies that, with respect to  
22                   that foreign bank, would meet the stand-  
23                   ard for investment under sections 2(h)(2)  
24                   or 4(c)(9) of the Bank Holding Company

1 Act of 1956 as if that foreign bank were  
2 subject to that Act; or

3 (iv) activities that, with respect to  
4 that foreign bank, would be permissible  
5 under section 4(c)(9) of the Bank Holding  
6 Company Act of 1956 if that foreign bank  
7 were subject to that Act; and

8 (B) the amount of banking business con-  
9 ducted outside the United States by such for-  
10 eign bank and such company of which that for-  
11 eign bank is a subsidiary satisfies the standard  
12 described in section 2(h)(2) of the Bank Hold-  
13 ing Company Act of 1956.

14 (4) RECIPROCAL NATIONAL TREATMENT.—

15 (A) IN GENERAL.—A foreign bank that op-  
16 erates a branch, agency or commercial lending  
17 company in the United States, and any com-  
18 pany that owns or controls such a foreign bank,  
19 shall be eligible for the treatment afforded  
20 under paragraph (1) and section 122(m) only if  
21 the home country of such foreign bank or com-  
22 pany accords to the United States banks the  
23 same competitive opportunities in banking as  
24 such country accords to domestic banks of such  
25 country.

1 (B) COORDINATION WITH NAFTA.—Sub-  
2 paragraph (A) shall not apply in derogation of  
3 any obligation under the North American Free  
4 Trade Agreement.

5 (C) HOME COUNTRY DEFINED.—For pur-  
6 poses of subparagraph (A), the term “home  
7 country” means, with respect to any foreign  
8 bank or company referred to in subparagraph  
9 (A), the country under the laws of which the  
10 foreign bank or company is organized.

11 (5) INTERPRETIVE AUTHORITY.—The National  
12 Financial Services Committee shall issue regulations  
13 describing the method for calculating compliance  
14 with the standard described in paragraphs (1) and  
15 (2), taking into account such factors as revenues  
16 and assets, including assets under management.

17 (6) IMPLEMENTATION AND AUTHORITY.—The  
18 appropriate Federal banking agency of the lead de-  
19 pository institution of a financial services holding  
20 company shall implement and enforce the regula-  
21 tions prescribed pursuant to paragraph (4) with re-  
22 spect to such holding company.

23 (m) FINANCIAL SERVICES INSTITUTION.—The term  
24 “financial services institution” means—

25 (1) A depository institution;

1           (2) A broker or dealer (as defined in section 3  
2 of the Securities Exchange Act of 1934);

3           (3) A futures commission merchant (as defined  
4 in section 1(a)(12) of the Commodity Exchange  
5 Act);

6           (4) An investment company (as defined in sec-  
7 tion 3 of the Investment Company Act of 1940);

8           (5) An investment adviser (as defined in section  
9 202(a)(11) of the Investment Act of 1940);

10          (6) An insurance company organized or licensed  
11 under the law of any State, including a company  
12 that only incurs liabilities under annuity contracts,  
13 the income on which is tax deferred under Section  
14 72 of the Internal Revenue Code of 1986;

15          (7) A trust company organized under the laws  
16 of the United States or the laws of any State; or

17          (8) A national market funded lending institu-  
18 tion organized pursuant to section 5158 of the Re-  
19 vised Statutes of the United States, as added by sec-  
20 tion 601 of the Depository Institution Affiliation and  
21 Thrift Charter Conversion Act;

22          (9) Any other type of company that is “engaged  
23 in the business of providing financial services”, as  
24 determined by the National Financial Services Com-  
25 mittee by rule, regulation, or order.

1       (n) FINANCIAL ACTIVITIES.—The term “financial ac-  
2   tivities” means any of the following—

3           (1) receiving money subject to a deposit or  
4       other repayment obligation;

5           (2) lending, exchanging, transferring or safe-  
6       guarding money or other financial assets;

7           (3) providing any device or other instrumental-  
8       ity for the transfer of money or other financial as-  
9       sets;

10          (4) insuring, guaranteeing or indemnifying  
11       against loss, harm, damage, illness, disability or  
12       death;

13          (5) providing financial, investment or economic  
14       advisory or information services, including advising  
15       an investment company (as defined in section 3 of  
16       the Investment Company Act of 1940);

17          (6) directly or indirectly acquiring or control-  
18       ling, whether as principal, on behalf of 1 or more en-  
19       tities (including entities, other than a depository in-  
20       stitution or subsidiary of a depository institution,  
21       that the financial services holding company con-  
22       trols), or otherwise, shares, assets, or ownership in-  
23       terests (including without limitation debt or equity  
24       securities, partnership interests, trust certificates, or



1 other instruments representing ownership) of a com-  
2 pany or other entity, whether or not constituting  
3 control of such company or entity, engaged in any  
4 activity if—

5 (A) the shares, assets, or ownership inter-  
6 ests are not acquired or held by a depository in-  
7 stitution or a subsidiary of a depository institu-  
8 tion;

9 (B) such shares, assets, or ownership in-  
10 terests are acquired and held as part of a bona  
11 fide underwriting, investment banking, or insur-  
12 ance company investment activity, which in-  
13 cludes investment activities engaged in for the  
14 purpose of appreciation and ultimate resale or  
15 other disposition of the investment, and such  
16 shares, assets, or ownership interest are held  
17 for such a period of time as will permit the sale  
18 or disposition thereof on a reasonable basis con-  
19 sistent with the nature of such activities; and

20 (C) during the period such shares, assets,  
21 or ownership interests are held, the financial  
22 services holding company does not actively man-  
23 age or operate the company or entity except in-  
24 sofar as necessary to achieve the objectives of  
25 subparagraph (B);

1           (7) arranging, effecting or facilitating financial  
2 transactions for the account of third parties;

3           (8) underwriting, dealing in or making a mar-  
4 ket in securities;

5           (9) engaging in any activity that is permissible  
6 for a bank holding company pursuant to section  
7 4(c)(8) of the Bank Holding Company Act of 1956  
8 by rule, order or regulation;

9           (10) engaging in any activity (in the United  
10 States) that is—

11               (A) permissible for a bank holding com-  
12 pany to engage in outside the United States,  
13 and

14               (B) considered a financial activity or bank-  
15 ing or financial operation, pursuant to section  
16 4(c)(13) of the Bank Holding Company Act of  
17 1956 or any rule, order, or regulation issued  
18 thereunder;

19           (11) owning shares of any company that would  
20 be permissible for a bank holding company to own  
21 pursuant to sections 4(c)(6) and 4(c)(7) of the Bank  
22 Holding Company Act of 1956;

23           (12) engaging in the functional equivalent of  
24 any of the foregoing; or

1           (13) engaging in any activity that the National  
2       Financial Services Committee determines by rule,  
3       order, or regulation to be financial in nature or inci-  
4       dental to such financial activities, taking into ac-  
5       count—

6           (A) changes or reasonably expected  
7       changes in the marketplace in which financial  
8       services holding company compete;

9           (B) changes or reasonably expected  
10      changes in the technology by which financial  
11      services are delivered; or

12          (C) whether such activity is necessary or  
13      appropriate to—

14           (i) allow a financial services holding  
15      company and its affiliates to compete effec-  
16      tively against any company seeking to pro-  
17      vide financial services in the United States;

18           (ii) use any available or emerging  
19      technological means to provide financial  
20      services; or

21           (iii) offer customers any available or  
22      emerging technological means for using fi-  
23      nancial services.

24      (o) APPROPRIATE FEDERAL BANKING AGENCY.—

25   The term “appropriate Federal banking agency” has the

1 same meaning as in section 3 of the Federal Deposit In-  
2 surance Act.

3 (p) STATE.—The term “State” has the same mean-  
4 ing as in section 3 of the Federal Deposit Insurance Act.

5 (q) CAPITAL TERMS.—

6 (1) IN GENERAL.—The terms “adequately cap-  
7 italized” and “well capitalized” have the same mean-  
8 ings as in—

9 (A) section 38(b)(1) of the Federal Deposit  
10 Insurance Act with respect to an insured depos-  
11 itory institution;

12 (B) section 9B(c)(2)(B) of the Federal Re-  
13 serve Act with respect to a State member  
14 wholesale financial institution; and

15 (C) section 5136(B)(e) of the Revised  
16 Statutes of the United States with respect to a  
17 national wholesale financial institution.

18 (2) FOREIGN BANK CAPITAL.—With respect to  
19 a branch, agency, or commercial lending company  
20 operated in the United States by a foreign bank, the  
21 terms “adequately capitalized” and “well capital-  
22 ized” shall be defined and established by the Na-  
23 tional Financial Services Committee for purposes of  
24 this Act, provided that such capital standards—

1 (A) are comparable to the capital stand-  
2 ards that apply to other depository institutions  
3 for purposes of this Act; and

4 (B) give due regard to the principle of na-  
5 tional treatment and equality of competitive op-  
6 portunity.

7 (r) SECURITIES AFFILIATE.—The term “securities  
8 affiliate” means a company that—

9 (1) is an affiliate of a financial services holding  
10 company, other than a depository institution; and

11 (2) underwrites or deals in any security; and

12 (3) is (or is required to be) registered under the  
13 Securities Exchange Act of 1934 as a broker or  
14 dealer,

15 but does not include a company that underwrites or deals  
16 exclusively in securities that are expressly authorized by  
17 section 5136 of the Revised Statutes of the United States  
18 as permissible for a national bank to underwrite or deal  
19 in.

20 **SEC. 103. CHANGES IN CONTROL OF DEPOSITORY INSTITU-**  
21 **TIONS.**

22 No financial services holding company acting directly  
23 or indirectly, or through or in concert with one or more  
24 other persons, all acquire control of a depository institu-  
25 tion, bank holding company, or financial services holding

1 company not controlled by such company on the date it  
2 became a financial services holding company, if such ac-  
3 quisition and control occurs through a purchase, assign-  
4 ment, transfer, pledge, or other deposition of voting stock  
5 of such depository institution, bank holding company, or  
6 financial services holding company, unless the financial  
7 services holding company has complied with the require-  
8 ments of section 7(j) of the Federal Deposit Insurance  
9 Act. Any failure to comply with the preceding require-  
10 ments shall subject the relevant financial services holding  
11 company to the penalties and other procedures provided  
12 in sections 109 through 112, in addition to otherwise ap-  
13 plicable penalties.

14 **SEC. 104. AFFILIATE TRANSACTIONS.**

15 (a) APPLICABILITY OF SECTIONS 23A AND 23B OF  
16 THE FEDERAL RESERVE ACT.—

17 (1) IN GENERAL.—The provisions of sections  
18 23A and 23B of the Federal Reserve Act shall be  
19 applicable to every depository institution controlled  
20 by a financial services holding company in the same  
21 manner and to the same extent as if such depository  
22 institution were a member bank; and for this pur-  
23 pose, any company which would be an affiliate of a  
24 depository institution for purposes of such sections  
25 23A and 23B if such depository institution were a

1 member bank shall be deemed to be an affiliate of  
2 such depository institution.

3 (2) APPLICABILITY TO FOREIGN BANKS.—A de-  
4 pository institution that is a branch, agency or com-  
5 mercial lending company operated in the United  
6 States by a foreign bank that is a financial services  
7 holding company shall be deemed to satisfy the re-  
8 quirements of paragraph (1) if all of the trans-  
9 actions between the depository institution and any of  
10 the following companies affiliated with the deposi-  
11 tory institution comply with the provisions of Sec-  
12 tions 23A and 23B of the Federal Reserve Act in  
13 the same manner and to the same extent as if the  
14 foreign bank were a member bank—

15 (A) a securities affiliate; and

16 (B) any company that is neither a finan-  
17 cial services institution nor primarily engaged  
18 in financial activities, other than, with respect  
19 to a foreign bank that qualifies as “predomi-  
20 nantly a financial company” under section  
21 102(l)(2) rather than section 102(l)(1), an affil-  
22 iate that is held and operated in compliance  
23 with the standards of sections 2(h)(2) and  
24 2(h)(4) of the Bank Holding Company Act of

1           1956 that would apply if the foreign bank were  
2           subject to that Act.

3           (b) ADDITIONAL LIMITATIONS ON AFFILIATE TRANS-  
4 ACTIONS.—

5           (1) IN GENERAL.—The appropriate Federal  
6           banking agency may, upon a finding of probable  
7           harm that cannot adequately be prevented by less  
8           burdensome rules and regulations, adopt such rules  
9           and regulations, consistent with the purposes of this  
10          Act, as may be necessary in order to prevent a de-  
11          pository institution that is controlled or operated by  
12          a financial services holding company from engaging  
13          in unsafe or unsound practices that involve the fi-  
14          nancial services holding company or any of its affili-  
15          ates including, without limitation, unsafe or unsound  
16          practices that involve covered transactions, as de-  
17          fined in section 23A of the Federal Reserve Act, and  
18          any transactions described in section 23B(a)(2) of  
19          the Federal Reserve Act.

20          (2) REGULATORY ACTIVITY.—Any rule or regu-  
21          lation adopted pursuant to paragraph (1) shall be  
22          adopted in accordance with section 553 of title 5,  
23          United States Code, except that the appropriate  
24          Federal banking agency shall give interested persons



1 an opportunity for oral presentations of data, views,  
2 and arguments, in addition to written submissions.

3 (3) APPLICATION TO PRIOR APPROVED TRANS-  
4 ACTIONS.—Any transaction that was approved by an  
5 appropriate Federal banking agency before the date  
6 of enactment of this Act shall be exempt from any  
7 rules or regulations adopted pursuant to paragraph  
8 (1).

9 (c) EXCEPTIONS.—With the concurrence of the Na-  
10 tional Financial Services Committee, the appropriate Fed-  
11 eral banking agency may, by rule, regulation or order, ex-  
12 empt any depository institution that is controlled by a fi-  
13 nancial services holding company or class of such institu-  
14 tions, or any transaction or class of transactions (includ-  
15 ing transactions with affiliates that are neither located nor  
16 doing business in the United States) from any require-  
17 ment under subsection (b)(1) or section 23A or 23B of  
18 the Federal Reserve Act, notwithstanding the provisions  
19 of any other law, rule, regulation or order, if the appro-  
20 priate Federal banking agency deems such an exemption  
21 to be reasonable and not inconsistent with the purposes  
22 of this Act and in the public interest.

23 (d) SAFEGUARDS RELATING TO NONFINANCIAL AF-  
24 FILIATES.—

1           (1) IN GENERAL.—Except as permitted pursu-  
2           ant to regulations issued by the National Financial  
3           Services Committee, no depository institution con-  
4           trolled by a financial services holding company shall  
5           directly or indirectly extend credit, or issue or enter  
6           into a standby letter of credit, indemnity, guarantee,  
7           insurance, or other similar facility to or for the ben-  
8           efit of any affiliate that is neither a financial serv-  
9           ices institution nor primarily engaged in financial  
10          activities.

11          (2) EXCEPTION FOR CERTAIN FOREIGN  
12          BANKS.—A depository institution that is a branch,  
13          agency, or commercial lending company operated or  
14          controlled by a foreign bank that—

15                (A) is a financial services holding com-  
16                pany; and

17                (B) qualifies as “predominantly a financial  
18                company” under section 102(l)(2) rather than  
19                section 102(l)(1);

20          shall not be subject to the limitation described in  
21          paragraph (1) with respect to transactions with af-  
22          filiates that, with respect to that foreign bank, are  
23          held and operated in compliance with the standard  
24          for investment under section 2(h)(2) of the Bank

1 Holding Company Act of 1956 that would apply if  
2 that foreign bank were subject to that Act.

3 (e) PRIMARILY ENGAGED IN FINANCIAL ACTIVI-  
4 TIES.—For purposes of subsections (a)(2)(B) and (d)(1),  
5 the term “primarily engaged in financial activities” shall  
6 be defined by regulation by the National Financial Serv-  
7 ices Committee.

8 **SEC. 105. CAPITAL REQUIREMENTS.**

9 (a) WELL-CAPITALIZED DEPOSITORY INSTITU-  
10 TIONS.—Each depository institution that is controlled by  
11 a financial services holding company shall be well capital-  
12 ized.

13 (b) ACTIONS BY APPROPRIATE FEDERAL BANKING  
14 AGENCY.—In the event of a finding by the appropriate  
15 Federal banking agency that a depository institution con-  
16 trolled by a financial services holding company is not well  
17 capitalized, the financial services holding company shall—

18 (1) execute an agreement with the appropriate  
19 Federal banking agency within 30 days to return the  
20 depository institution within a reasonable period of  
21 time to being well capitalized; or

22 (2) divest control of the depository institution  
23 in an orderly manner within 180 days, or such addi-  
24 tional period of time as the appropriate Federal

1 banking agency may determine is reasonably re-  
2 quired in order to effect such divestiture.

3 (c) NO HOLDING COMPANY CAPITAL REQUIRE-  
4 MENTS.—An appropriate Federal banking agency may not  
5 impose by regulation, order, agreement, or any other  
6 means, any requirement pertaining to the capital of a fi-  
7 nancial services holding company.

8 **SEC. 106. INTERSTATE ACQUISITIONS OF INSURED BANKS.**

9 (a) INSURED BANKS.—Except as otherwise author-  
10 ized pursuant to section 13(f) of the Federal Deposit In-  
11 surance Act, no financial services holding company may  
12 acquire control of an additional insured bank (as such  
13 term is defined in section 2(c) of the Bank Holding Com-  
14 pany Act of 1956) if the acquisition could not be approved  
15 by the Board of Governors of the Federal Reserve System  
16 under any provision of section 3(d) of the Bank Holding  
17 Company Act of 1956, other than subsection (d)(1)(A),  
18 if such acquisition were made by a bank holding company.

19 (b) TREATMENT OF FINANCIAL SERVICES HOLDING  
20 COMPANIES AND SUBSIDIARIES.—For purposes of section  
21 18(r) of the Federal Deposit Insurance Act, a financial  
22 services holding company shall be treated as a bank hold-  
23 ing company, and any depository institution affiliate of a  
24 financial services holding company shall be treated as a  
25 bank subsidiary.

1 **SEC. 107. DIFFERENTIAL TREATMENT PROHIBITION; LAWS**  
2 **INCONSISTENT WITH THIS ACT.**

3 (a) IN GENERAL.—Notwithstanding any other Fed-  
4 eral law, no State, and no Federal or State regulatory  
5 agency, including the appropriate Federal banking agency,  
6 may act by law, rule, regulation, order, or otherwise if the  
7 effect of such action would be to differentiate depository  
8 institutions controlled by financial services holding compa-  
9 nies from any other depository institutions in a manner  
10 adverse to depository institutions controlled by financial  
11 services holding companies, or to differentiate financial  
12 services holding companies or their affiliates from bank  
13 holding companies and their affiliates in a manner adverse  
14 to financial services holding companies or their affiliates,  
15 except to the extent that the appropriate Federal banking  
16 agency may act to implement this Act.

17 (b) APPLICATION OF STATE LAWS.—

18 (1) FINDINGS.—The Congress finds that:

19 (A) Certain State laws and regulations  
20 have the purpose or effect of preventing deposi-  
21 tory institutions from being or becoming affili-  
22 ated with companies or persons engaged in non-  
23 banking activities.

1           (B) Such laws restrain legitimate competi-  
2           tion in interstate commerce and deny consum-  
3           ers freedom of choice in selecting financial serv-  
4           ices.

5           (C) Such restrictions also threaten the  
6           long-term safety and soundness of depository  
7           institutions by denying them access to capital.

8           (D) Given the preponderant Federal inter-  
9           est in ensuring competition in national markets  
10          for financial services and in ensuring the safety  
11          and soundness of depository institutions, it is  
12          necessary to preempt such anticompetitive State  
13          laws and regulations to the extent necessary to  
14          permit the formation and efficient operation of  
15          financial services holding companies.

16          (E) There is, however, a legitimate and  
17          traditional State interest in ensuring that State  
18          depository institutions and other State-char-  
19          tered or licensed companies are operated in a  
20          safe and sound manner to serve the interests of  
21          the public and consumers.

22          (F) The preemption provided in paragraph  
23          (2) shall not be construed as preempting State  
24          laws that—

1 (i) concern the regulation, supervision,  
2 and examination of State depository insti-  
3 tutions (as defined in section 3 of the Fed-  
4 eral Deposit Insurance Act); and

5 (ii) are not inconsistent with the pur-  
6 poses of this Act.

7 (2) PREEMPTIONS.—

8 (A) CROSS-MARKETING.—Any provision of  
9 Federal or State law, rule, regulation, or order  
10 that is expressly or impliedly inconsistent with  
11 the provisions and purposes of this Act is here-  
12 by preempted, including, without limitation,  
13 State banking, savings and loan, insurance, real  
14 estate, securities, finance company, retail, or  
15 other laws which have the purpose or effect  
16 of—

17 (i) preventing or impeding depository  
18 institutions or affiliates, agents, principals,  
19 brokers, directors, officers, employees, or  
20 other representatives of such institutions  
21 or affiliates thereof, as a result of the  
22 types of nonbanking activities (including  
23 an insurance business) engaged in directly

1 or indirectly by such company or any affili-  
2 ate thereof or by any agent, principal, so-  
3 licitor, broker, director, officer, employee,  
4 or other representative of such company or  
5 affiliate thereof, from being owned or con-  
6 trolled by or from being affiliated in any  
7 way with a financial services holding com-  
8 pany or any affiliate of a financial services  
9 holding company;

10 (ii) preventing or impeding depository  
11 institutions or affiliates, agents, principals,  
12 brokers, directors, officers, employees or  
13 other representatives of such institutions  
14 or affiliates thereof from offering or mar-  
15 keting products or services of their affili-  
16 ated financial services holding company or  
17 any affiliate thereof or from having their  
18 products or services offered or marketed by  
19 their affiliated financial services holding  
20 company or any affiliate thereof, or by any  
21 agent, principal, broker, director, officer,  
22 employee, or other representative of such  
23 company or any affiliate of such company;  
24 or



(iii) preventing, impeding, or burdening any insurance company, or any affiliate of an insurance company (whether such affiliate is organized as a stock company, mutual holding company or otherwise), from becoming a financial services holding company under this Act or acquiring control of a depository institution or limiting the amount of an insurance company's assets that may be invested in the voting securities of a depository institution the parent company of a depository institution (except that the laws of an insurance company's State of domicile may limit the amount of an insurance company's assets that may be invested in a depository institution to an amount that is not less than 5 percent of the insurance company's admitted assets), or authorizing the insurance regulatory or other authorities of States other than the State in which an insurance company is domiciled to prevent, impede or burden or review a plan of reorganization by which the insurance company proposes to reorganize from mutual form

1 to become a stock insurance company con-  
2 trolled by a mutual holding company.

3 (B) INFORMATION SHARING.—

4 (i) IN GENERAL.—Notwithstanding  
5 any other provision of law, any depository  
6 institution, or any affiliate or subsidiary of  
7 any depository institution, may share or  
8 exchange information or otherwise transfer  
9 information between or among themselves  
10 without any restriction or limitation if it  
11 is clearly and conspicuously disclosed that  
12 the information may be communicated  
13 among such persons and the consumer is  
14 given the opportunity, before the time that  
15 the information is initially communicated,  
16 to direct that such information not be com-  
17 municated among such persons.

18 (ii) DEFINITION.—For purposes of  
19 this subsection, the term “information”  
20 means any and all data, records, or other  
21 information and material obtained or  
22 maintained by any depository institution or  
23 any affiliate or subsidiary thereof in the  
24 ordinary course of its business that relates  
25 in any way to a person who applies for,

1 maintains, or has maintained an account  
2 or credit relationship with or applied for,  
3 purchased or obtained other products or  
4 services from any depository institution or  
5 any affiliate or subsidiary of any depository  
6 institution, regardless of the source or  
7 manner in which the information is obtained  
8 or furnished.

9 (c) LAWS AFFECTING COURT ACTIONS.—

10 (1) IN GENERAL.—No State or State regulatory  
11 agency may act by law, rule, regulation, or order if  
12 the effect of such action would be to impede or prevent  
13 a depository institution that is located in another  
14 State from qualifying to maintain or defend in  
15 court any action which could be maintained or defended  
16 under similar circumstances by a company  
17 that is located in such other State and that is not  
18 a depository institution, if the depository institution  
19 does not establish or operate in that State a domestic  
20 branch.

21 (2) EXCEPTION.—Where the maintenance or  
22 defense of a court action referred to in paragraph  
23 (1) by a company that is located in such other State  
24 and that is not a depository institution is subject to  
25 certain conditions, the maintenance or defense of

1       such an action by a depository institution located in  
2       such other State may be subject to those same con-  
3       ditions, if such conditions are applied in a non-  
4       discriminatory manner to fulfill legitimate State ob-  
5       jectives and do not have the effect, directly or indi-  
6       rectly, of denying depository institutions located in  
7       other States the opportunity to maintain or defend  
8       such actions.

9       (d) OTHER RESTRICTIONS.—Except for licensing,  
10      marketing, compensation, employment, or other require-  
11      ments applied in a nondiscriminatory manner to fulfill le-  
12      gitimate State regulatory objectives which are not incon-  
13      sistent with the purposes of this Act, no State may,  
14      through legislative, administrative, executive, or judicial  
15      action, impede or prevent a financial services holding com-  
16      pany or affiliate thereof from utilizing or compensating  
17      any agent (including an affiliated depository institution  
18      acting in accordance with section 18(r) of the Federal De-  
19      posit Insurance Act), solicitor, broker, employee, or other  
20      person located in that State and representing in any lawful  
21      capacity any depository institution or any such financial  
22      services holding company or such affiliate thereof, pro-  
23      vided that if any such person is being utilized or com-  
24      pensated for the performance of activities on behalf of a  
25      depository institution, such activities do not result in the

1 establishment or operation by the depository institution of  
2 a domestic branch at any location other than the main  
3 or branch offices of such depository institution.

4 (e) DEFINITIONS.—As used in subsections (b)  
5 through (d) only—

6 (1) the term “affiliate” means a person that di-  
7 rectly or indirectly controls or is controlled by, or is  
8 under common control with the person specified; and

9 (2) the term “control,” including the terms  
10 “controlled by” and “under common control with,”  
11 means the power, directly or indirectly, to direct the  
12 management or policies of a person and shall be pre-  
13 sumed to exist if any person, directly or indirectly,  
14 owns, controls, or holds with power to vote 10 per-  
15 cent or more of the voting securities of any other  
16 person.

17 **SEC. 108. INSIDER LENDING PROVISIONS.**

18 (a) IN GENERAL.—A financial services holding com-  
19 pany shall be treated as a bank holding company, and any  
20 depository institution controlled by such financial services  
21 holding company shall be treated as a bank, for purposes  
22 of section 22(h) of the Federal Reserve Act and any regu-  
23 lation prescribed under such section.

24 (b) REGULATORY AUTHORITY.—For purposes of this  
25 subsection, the appropriate Federal banking agency shall

1 exercise the authority provided to the Board of Governors  
2 of the Federal Reserve System under section 22(h) of the  
3 Federal Reserve Act.

4 **SEC. 109. REPORTS, EXAMINATION AND ENFORCEMENT.**

5 (a) NOTICE.—

6 (1) TIMING.—Within 90 days after filing the  
7 notice referred to in section 102(a)(1), each financial  
8 services holding company shall file a separate notice  
9 with the appropriate Federal banking agency for the  
10 lead depository institution of such company.

11 (2) FORM AND CONTENT.—The notice required  
12 by paragraph (1) shall be on forms prescribed by the  
13 National Financial Services Committee, and shall in-  
14 clude such information under oath or otherwise, with  
15 respect to the financial condition, ownership, oper-  
16 ation and management of such financial services  
17 company and its subsidiaries, and related matters,  
18 as the Committee may deem necessary or appro-  
19 priate for the appropriate Federal banking agency to  
20 ascertain and monitor the impact that such financial  
21 services holding company and its subsidiaries may  
22 have on the safety and soundness of any depository  
23 institution affiliated with such financial services  
24 holding company or to otherwise carry out the pur-  
25 poses of this Act.

1 (b) REPORTING AND RECORDKEEPING.—

2 (1) DEFINITIONS.—

3 (A) DEPOSITORY INSTITUTION.—For pur-  
4 poses of this subsection, the term “depository  
5 institution”, in addition to its meaning under  
6 section 102(g), means a depository institution  
7 affiliated with a financial services holding com-  
8 pany.

9 (B) APPROPRIATE FEDERAL BANKING  
10 AGENCY.—For purposes of this subsection, the  
11 appropriate Federal banking agency of a depos-  
12 itory institution (which is affiliated with a fi-  
13 nancial services holding company) shall be the  
14 appropriate Federal banking agency of the lead  
15 depository institution of that financial services  
16 holding company.

17 (2) OBLIGATIONS TO OBTAIN, MAINTAIN, AND  
18 REPORT INFORMATION.—

19 (A) IN GENERAL.—Every depository insti-  
20 tution shall obtain such information and make  
21 and keep such records as its appropriate Fed-  
22 eral banking agency by rule prescribes concern-  
23 ing the depository institution’s policies, proce-  
24 dures, or systems for—

1 (i) monitoring and controlling finan-  
2 cial and operational risks to it resulting  
3 from the activities of any of its affiliates  
4 whose business activities are reasonably  
5 likely to have a material impact on the fi-  
6 nancial or operational condition of such de-  
7 pository institution, including its level of  
8 capitalization and its ability to conduct or  
9 finance its operations; and

10 (ii) monitoring the extent to which the  
11 depository institution or its affiliates have  
12 complied with the provisions of this Act.

13 (B) CONTENTS OF RECORDS.—Such  
14 records shall describe, in the aggregate, each of  
15 the financial activities conducted by, and the  
16 customary sources of capital and funding of,  
17 these affiliates.

18 (C) REPORTS.—The appropriate Federal  
19 banking agency, by rule, may require summary  
20 reports of such information to be filed no more  
21 frequently than quarterly.



1           (3) AUTHORITY TO REQUIRE ADDITIONAL IN-  
2       FORMATION.—If, as a result of adverse market con-  
3       ditions or based on reports provided to the appro-  
4       priate Federal banking agency pursuant to para-  
5       graph (2) or other available information, the appro-  
6       priate Federal banking agency reasonably concludes  
7       that the agency has concerns regarding the financial  
8       or operational condition of any depository institution  
9       for which such agency is the appropriate Federal  
10      banking agency, such agency may require the deposi-  
11      tory institution to make reports concerning the fi-  
12      nancial activities of any of such depository institu-  
13      tion’s affiliates engaged in financial activities whose  
14      business activities are reasonably likely to have a  
15      material impact on the financial or operational con-  
16      dition of such depository institution. The appro-  
17      priate Federal banking agency, in requiring reports  
18      pursuant to this paragraph, shall specify the infor-  
19      mation required, the period for which it is required,  
20      and the time and date on which the information  
21      must be furnished.

22           (4) SPECIAL PROVISIONS WITH RESPECT TO AF-  
23      FILIATES SUBJECT TO SECURITIES AND EXCHANGE  
24      COMMISSION OR STATE INSURANCE REGULATION.—

(A) COOPERATION IN IMPLEMENTATION.—

In developing and implementing reporting requirements pursuant to paragraph (2) of this subsection with respect to the activities of affiliates subject to examination by, or reporting requirements of, the Securities and Exchange Commission, the appropriate Federal banking agency shall consult with and consider the views of the Securities and Exchange Commission. If the Securities and Exchange Commission comments in writing on a proposed rule of the appropriate Federal banking agency under this subsection that has been published for comment, the appropriate Federal banking agency shall respond in writing to such written comment before adopting the proposed rule. The appropriate Federal banking agency shall, at the request of the Securities and Exchange Commission, publish such comment and response in the Federal Register at the time of publishing the adopted rule.

(B) USE OF SECURITIES AND EXCHANGE COMMISSION OR STATE INSURANCE RECORDS AND REPORTS.—A depository institution shall

1 be in compliance with any recordkeeping or re-  
2 porting requirement adopted pursuant to para-  
3 graph (2) of this subsection concerning an affil-  
4 iate if (i) with respect to an affiliate that is  
5 subject to examination by or reporting require-  
6 ments of the Securities and Exchange Commis-  
7 sion, such depository institution utilizes for  
8 such recordkeeping or reporting requirement  
9 copies of reports filed by the affiliate with the  
10 Securities and Exchange Commission pursuant  
11 to section 204 of the Investment Advisers Act  
12 of 1940, sections 30 and 31 of the Investment  
13 Company Act of 1940, or section 17 of the Se-  
14 curities Exchange Act of 1934; and (ii) with re-  
15 spect to an affiliate that is subject to examina-  
16 tion by or reporting requirements of a State in-  
17 surance regulator, such depository institution  
18 utilizes for such recordkeeping or reporting re-  
19 quirement copies of reports filed by the affiliate  
20 with the State insurance regulator. The appro-  
21 priate Federal banking agency of a depository  
22 institution may, however, by rule adopted pur-  
23 suant to paragraph (2), require any such depos-  
24 itory institution filing such reports with the ap-  
25 propriate Federal banking agency to obtain,

1 maintain, or report supplemental information if  
2 the appropriate Federal banking agency makes  
3 an explicit finding that such supplemental infor-  
4 mation is necessary to inform the appropriate  
5 Federal banking agency regarding potential  
6 risks to such depository institution. Prior to re-  
7 quiring any such supplemental information, the  
8 appropriate Federal banking agency shall first  
9 request the Securities and Exchange Commis-  
10 sion or the State insurance regulator, as appro-  
11 priate, to expand its reporting requirements to  
12 include such information.

13 (C) PROCEDURE FOR REQUIRING ADDI-  
14 TIONAL INFORMATION.—Prior to making a re-  
15 quest pursuant to paragraph (3) of this sub-  
16 section for information with respect to an affili-  
17 ate that is subject to examination by or report-  
18 ing requirements of the Securities and Ex-  
19 change Commission or a State insurance regu-  
20 lator, the appropriate Federal banking agency  
21 shall—

22 (i) notify the Securities and Exchange  
23 Commission or the State insurance regu-  
24 lator, as appropriate, of the information  
25 required with respect to such affiliate; and

1                   (ii) consult with the Securities and  
2                   Exchange Commission or the State insur-  
3                   ance regulator, as appropriate, to deter-  
4                   mine whether the information required is  
5                   available from the Securities and Exchange  
6                   Commission or the State insurance regu-  
7                   lator, unless the appropriate Federal bank-  
8                   ing agency determines that any delay re-  
9                   sulting from such consultation would be in-  
10                  consistent with ensuring the safety and  
11                  soundness of the depository institution or  
12                  the stability or integrity of the banking  
13                  system.

14               (D) CONFIDENTIALITY OF INFORMATION  
15               PROVIDED.—No information provided to or ob-  
16               tained by the appropriate Federal banking  
17               agency from the Securities and Exchange Com-  
18               mission or a State insurance regulator pursuant  
19               to a request by the appropriate Federal banking  
20               agency under subparagraph (C) of this para-  
21               graph may be disclosed to any other person,  
22               without the prior written approval of the Secu-  
23               rities and Exchange Commission or the State  
24               insurance regulator, as appropriate. Nothing in  
25               this subsection shall authorize the appropriate

1 Federal banking agency to withhold information  
2 from Congress, or prevent the appropriate Fed-  
3 eral banking agency from complying with a re-  
4 quest for information from any other Federal  
5 department or agency requesting the informa-  
6 tion for purposes within the scope of its juris-  
7 diction, or complying with an order of a court  
8 of the United States in an action brought by  
9 the United States or the appropriate Federal  
10 banking agency.

11 (E) NOTICE TO BANKING AGENCIES CON-  
12 CERNING FINANCIAL AND OPERATIONAL CONDI-  
13 TION CONCERNS.—The Securities and Ex-  
14 change Commission shall notify the appropriate  
15 Federal banking agency of any concerns it has  
16 regarding significant financial or operational  
17 risks to any depository institution resulting  
18 from the activities of any affiliate of the deposi-  
19 tory institution for which the Securities and Ex-  
20 change Commission is the appropriate regu-  
21 latory agency. Any State insurance regulator  
22 shall notify the appropriate Federal banking  
23 agency of any concerns it has regarding signifi-  
24 cant financial or operational risks to any deposi-  
25 tory institution resulting from the activities of

1           any affiliate of the depository institution for  
2           which the State insurance regulator is the ap-  
3           propriate regulatory agency.

4           (5) UNIFORM REGULATIONS.—The National Fi-  
5           nancial Services Committee shall prescribe by regu-  
6           lation uniform standards for the rules required by  
7           this subsection.

8           (6) EXEMPTIONS.—The National Financial  
9           Services Committee by rule or order may exempt  
10          any person or class of persons, under such terms  
11          and conditions and for such periods as the Commit-  
12          tee shall provide in such rule or order, from the pro-  
13          visions of this subsection, and the rules thereunder.  
14          In granting such exemptions, the Committee shall  
15          consider, among other factors—

16                (A) whether information of the type re-  
17                quired under this subsection is available for a  
18                supervisory agency (as defined in section  
19                1101(6) of the Right to Financial Privacy Act  
20                of 1978 (12 U.S.C. 3401(6)), a State insurance  
21                commission or similar State agency, the Com-  
22                modity Futures Trading Commission, or a for-  
23                eign regulatory body of a similar type;

24                (B) the primary business of any affiliate;

1 (C) the nature and extent of domestic or  
2 foreign regulation of the affiliate's activities;

3 (D) the nature and extent of the deposi-  
4 tory institution's banking activities;

5 (E) with respect to the depository institu-  
6 tion and its affiliates, on a consolidated basis,  
7 the amount and proportion of assets devoted to,  
8 and revenues derived from, banking activities in  
9 the United States; and

10 (F) whether the affiliate's activities could  
11 pose a significant risk to the safety and sound-  
12 ness of any depository institution subsidiary of  
13 the financial services holding company.

14 (7) AUTHORITY TO LIMIT DISCLOSURE OF IN-  
15 FORMATION.—Notwithstanding any other provision  
16 of law, the appropriate Federal banking agency shall  
17 not be compelled to disclose any information re-  
18 quired to be reported pursuant to this subsection, or  
19 any information supplied to the appropriate Federal  
20 banking agency by any domestic or foreign regu-  
21 latory agency that relates to the financial or oper-  
22 ational condition of any affiliate of a depository in-  
23 stitution. Nothing in this subsection shall authorize  
24 the appropriate Federal banking agency to withhold



1 information from Congress, or prevent the appro-  
2 priate Federal banking agency from complying with  
3 a request for information from any other Federal de-  
4 partment or agency requesting the information for  
5 purposes within the scope of its jurisdiction, or com-  
6 plying with an order of a court of the United States  
7 in an action brought by the United States or the ap-  
8 propriate Federal banking agency. For purposes of  
9 section 552 of title 5, United States Code, this sub-  
10 section shall be considered a statute described in  
11 subsection (b)(3)(B) of such section 552.

12 (8) APPLICABILITY TO FOREIGN BANKS.—For  
13 purposes of this subsection, with respect to a foreign  
14 bank that is a financial services holding company,  
15 the appropriate Federal banking agency shall give  
16 due regard to the primary authority and responsibil-  
17 ity of the foreign bank’s home country regulator for  
18 supervision and examination of the bank outside the  
19 United States and shall seek to minimize additional  
20 examination or regulatory burdens on the foreign  
21 bank outside of the United States, by coordinating  
22 with and relying on examinations of and information  
23 from the home country regulator to the fullest extent  
24 possible.

1       (c) TERMINATION.— The National Financial Services  
2 Committee may at any time, upon its own motion or upon  
3 application, terminate the status of a company as a finan-  
4 cial services holding company, if it is determined that such  
5 company no longer controls or operates any depository in-  
6 stitutions or otherwise fails to qualify as a financial serv-  
7 ices holding company as defined in this Act.

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

16       (e) ENFORCEMENT OF VIOLATIONS.—Whenever it  
17 appears to the appropriate Federal banking agency of the  
18 lead depository institution of a financial services holding  
19 company that such holding company is violating, has vio-  
20 lated, or is about to violate any provision of this Act or  
21 any regulation prescribed under this Act, such agency  
22 may, in its discretion, apply to the appropriate district  
23 court of the United States or the United States court of  
24 any territory for—

1           (1) a temporary or permanent injunction or re-  
2       straining order enjoining such financial services  
3       holding company from violating this Act or any reg-  
4       ulation prescribed under this Act; or

5           (2) such other equitable relief, including divesti-  
6       ture, as may be necessary to prevent such violation.

7       (f) COURT JURISDICTION.—The district courts of the  
8       United States and the United States court in any territory  
9       shall have jurisdiction and power to issue any injunction  
10      or restraining order or grant any other relief described in  
11      subsection (f). When appropriate, any injunction, order,  
12      or other equitable relief granted under this subparagraph  
13      shall be granted without requiring the posting of any  
14      bond.

15      (g) NOTICE OF VIOLATIONS.—Whenever it appears  
16      to a Federal or State official or agency with supervisory  
17      or examination authority over any affiliate of a financial  
18      services holding company that such affiliate or such finan-  
19      cial services holding company is violating, has violated, or  
20      is about to violate any provision of this Act or any regula-  
21      tion prescribed under this Act, such official or agency shall  
22      promptly notify the appropriate Federal banking agency  
23      of the lead depository institution of such holding company  
24      in order that such banking agency, in consultation with

1 the notifying agency, may determine whether action under  
2 this section is appropriate.

3 **SEC. 110. DIVESTITURE.**

4 (a) IN GENERAL.—In addition to all of its other reg-  
5 ulatory and supervisory powers, if the appropriate Federal  
6 banking agency determines that a depository institution  
7 under its supervision has engaged in a continuing course  
8 of conduct involving its financial services holding company  
9 or any affiliate of such holding company which has had,  
10 or has a significant probability of having, the effect of  
11 causing such depository institution to be in an unsafe or  
12 unsound condition, it may make an initial finding that the  
13 financial services holding company should be required to  
14 terminate its control or operation of the depository institu-  
15 tion. If the appropriate Federal banking agency makes  
16 such an initial finding, it shall within 3 days so notify the  
17 financial services holding company controlling or operating  
18 the depository institution and the National Financial Serv-  
19 ices Committee. Such notice shall provide a statement for  
20 the basis of the appropriate Federal banking agency's ac-  
21 tion.

22 (b) HEARING PROCEDURES.—Not later than 30 days  
23 after receipt of the notice described in subsection (a), the  
24 financial services holding company receiving such notice  
25 may request an agency hearing before the appropriate

1 Federal banking agency. In such hearing, all issues shall  
2 be determined pursuant to section 554 of title 5, United  
3 States Code. The length of the hearing shall be determined  
4 by the appropriate Federal banking agency, and such  
5 hearing may be before a hearing examiner appointed by  
6 such agency. At the conclusion thereof, the appropriate  
7 Federal banking agency shall issue a final order, on the  
8 basis of the record made at such hearing, affirming or re-  
9 versing the initial finding of the appropriate Federal bank-  
10 ing agency. A company that fails to request an agency  
11 hearing under this paragraph shall be deemed to have con-  
12 sented to the issuance of a final order affirming the initial  
13 finding without the necessity of the hearing provided for  
14 in this paragraph.

15 (c) TERMINATION OF CONTROL.—If such final order  
16 affirms the initial finding, the financial services holding  
17 company shall, upon completion of the judicial review, if  
18 any, of the appropriate Federal banking agency's final  
19 order as provided for in section 113, terminate its control  
20 or operation of the depository institution involved within  
21 1 year or such longer period as the appropriate Federal  
22 banking deems necessary and appropriate to protect the  
23 safety and soundness of the depository institution or pre-  
24 vent financial disruption.

1       (d) NO “SOURCE OF STRENGTH” DOCTRINE.—No  
2 appropriate Federal banking agency may require, by regu-  
3 lation, order, agreement, or any other means, any financial  
4 services holding company to serve as a “source of  
5 strength” to any depository institution affiliate of such  
6 holding company.

7 **SEC. 111. CRIMINAL PENALTIES.**

8       (a) WILLFUL VIOLATIONS.—Any company or insured  
9 depository institution which knowingly and willfully par-  
10 ticipates in a material violation of any provision of this  
11 Act, or any rule, regulation, or order issued by an appro-  
12 priate Federal banking agency pursuant thereto, shall,  
13 upon conviction, be fined for each violation not more than  
14 the greater of \$250,000 or an amount equal to 0.01 per-  
15 cent of the minimum required capital of the lead deposi-  
16 tory institution of the financial services holding company  
17 for each day during which the violation continues, except  
18 that in no case shall any such amount for any violation  
19 or related series of violations exceed 1 percent of the mini-  
20 mum required capital of the lead depository institution.

21       (b) ENFORCEMENT AGAINST INDIVIDUALS.—Any  
22 natural person who knowingly and willfully participates in  
23 a material violation of any provision of this Act or any  
24 rule, regulation, or order issued pursuant thereto, shall  
25 upon conviction be imprisoned not more than 5 years and

1 fined for each violation not more than the greater of  
 2 \$250,000 or double the individual's annual compensation  
 3 at the time the violation occurred.

4 (c) ENFORCEABILITY AGAINST OFFICERS AND EM-  
 5 PLOYEES.—Every officer, director, employee, and agent of  
 6 a financial services holding company or depository institu-  
 7 tion also shall be subject to the same penalties for false  
 8 entries in any book, report, or statement of such company  
 9 or depository institution as are applicable to officers, di-  
 10 rectors, employees, and agents of member banks for false  
 11 entries in any books, reports, or statements of member  
 12 banks under section 1005 of title 18, United States Code.

13 (d) ENFORCEABILITY AGAINST HOLDING COMPA-  
 14 NIES.—A financial services holding company and its affili-  
 15 ates shall be subject to the provisions of title 18, United  
 16 States Code, to the same extent as a registered bank hold-  
 17 ing company or any affiliate of such a company.

18 **SEC. 112. CIVIL ENFORCEMENT, CEASE-AND-DESIST OR-**  
 19 **DERS, CIVIL MONEY PENALTIES, REMOVAL,**  
 20 **AND PROHIBITION AUTHORITY.**

21 Subsections (b) through (s) and subsection (u) of sec-  
 22 tion 8 of the Federal Deposit Insurance Act shall apply  
 23 to any financial services holding company in the same  
 24 manner as they apply to an insured depository institution.  
 25 Nothing in subsection (b) or (c) of that section 8 shall

1 authorize any Federal banking agency, other than the ap-  
2 propriate Federal banking agency, to issue a notice of  
3 charges or cease-and-desist order against a financial serv-  
4 ices holding company.

5 **SEC. 113. JUDICIAL REVIEW.**

6 Any party aggrieved by an appropriate Federal bank-  
7 ing agency's findings or other actions under this Act may  
8 obtain review by the United States court of appeals of the  
9 circuit wherein such party has its principal place of busi-  
10 ness or the United States Court of Appeals for the District  
11 of Columbia Circuit, by filing a Notice of Appeal in such  
12 court within 30 days from the date of such action, and  
13 simultaneously sending a copy of such notice by registered  
14 or certified mail to the appropriate Federal banking agen-  
15 cy. The appropriate Federal banking agency shall prompt-  
16 ly certify and file in such court the record upon which  
17 such action or finding was based. The actions or findings  
18 of the appropriate Federal banking agency shall be set  
19 aside if not supported by substantial evidence or if found  
20 to violate procedures established by this Act. An initial  
21 finding by the appropriate Federal banking agency under  
22 section 110 shall be subject to judicial review only in the  
23 context of review of a final order under section 110(b).



1 **SEC. 114. NATIONAL FINANCIAL SERVICES COMMITTEE.**

2 (a) ESTABLISHMENT.—There is established a Na-  
3 tional Financial Services Committee which shall consist of  
4 the following members:

5 (1) The Secretary of the Treasury.

6 (2) The Chairman of the Board of Governors of  
7 the Federal Reserve System.

8 (3) The Chairman of the Board of Directors of  
9 the Federal Deposit Insurance Corporation.

10 (4) The Comptroller of the Currency.

11 (5) The Chairman of the Securities and Ex-  
12 change Commission.

13 (6) An insurance commissioner (or similar offi-  
14 cial) of a State, as designated by the National Asso-  
15 ciation of Insurance Commissioners.

16 (b) MEMBER AGENCIES.—For purposes of this Act,  
17 the term “member agencies means—

18 (1) the agencies or departments headed by  
19 members of the committee described in paragraphs  
20 (1), (2), (3), (4), and (5) of subsection (a); and

21 (2) in the case of a member of the committee  
22 appointed in accordance with paragraph (6) of such  
23 subsection, the National Association of Insurance  
24 Commissioners.

25 (c) CHAIR.—The Chair of the Committee shall be the  
26 Secretary of the Treasury.

1       (d) COMPENSATION.—Each member of the Commit-  
2     tee shall serve without additional compensation, but shall  
3     be entitled to reasonable expenses incurred in carrying out  
4     the official duties as such a member.

5       (e) PUBLIC MEETINGS.—The Committee shall hold  
6     public meetings at least annually. All meetings of the  
7     Committee shall be conducted in conformity with the pro-  
8     visions of section 3(a) of the Government in the Sunshine  
9     Act (5 U.S.C. 552b). The Committee may not take any  
10    action unless such action is approved by a majority vote  
11    of the members of the Committee.

12      (f) SECRETARIAT.—The Department of the Treasury  
13    shall provide the Secretariat for the Committee and shall  
14    assume any expenses arising from execution of the respon-  
15    sibilities of the Committee, except for expenses incurred  
16    by employees of any Member of the Committee.

17      (g) ACCESS TO RECORDS.—For the purpose of carry-  
18    ing out this section, the Committee shall have access to  
19    all books, accounts, records, reports, files, memoranda, pa-  
20    pers, things, and property belonging to or in use by any  
21    appropriate Federal banking agency.

22      (h) FUNCTIONS OF THE COMMITTEE.—

23           (1) UNIFORM PRINCIPLES AND STANDARDS.—  
24    The Committee shall, insofar as is practicable, es-  
25    tablish uniform principles and standards applicable

1 to the notices, reports, examinations and supervision  
2 of financial services institutions regulated by the  
3 member agencies, and to the extent permitted by  
4 this Act, financial services holding companies, which  
5 principles and standards shall be applied by the  
6 member agencies.

7 (2) RECOMMENDATIONS.—The Committee shall  
8 make recommendations for uniformity in other su-  
9 pervisory matters, such as, but not limited to, identi-  
10 fying financial services institutions and other provid-  
11 ers of financial services in need of special super-  
12 visory attention, the adequacy of supervisory tools  
13 for determining the impact of affiliate operations on  
14 insured depository institutions, and the ability of the  
15 member agencies to discover possible fraud or ques-  
16 tionable practices.

17 (3) RECOMMENDATIONS TO CONGRESS.—The  
18 Committee shall, from time to time, recommend to  
19 the Congress additional measures to strengthen the  
20 separation between insured depository institutions  
21 controlled by depository institutions holding compa-  
22 nies from the activities of any of their affiliates, in-  
23 cluding the imposition of additional restrictions on  
24 interaffiliate transactions and the strict application  
25 of Federal deposit insurance coverage only for the

1 benefit of depositors of insured depository institu-  
2 tions.

3 (i) CONSULTATION WITH STATE REGULATORS.—The  
4 Committee shall consult with the appropriate organiza-  
5 tions representing the State regulators of banks, savings  
6 and loan associations, savings banks, securities firms, and  
7 other providers of financial services, and as deemed appro-  
8 priate, meet with such State regulators. The Committee,  
9 when appropriate, shall invite to each public meeting of  
10 the Committee representatives of such organizations.

11 (j) STUDIES AND RECOMMENDATIONS.—The Com-  
12 mittee may conduct or authorize studies to carry out the  
13 purposes of this Act. On the basis of such studies, the  
14 Committee may make recommendations to the Congress  
15 and member agencies concerning the implementation of  
16 this Act and changes in statutes and regulations necessary  
17 to promote the strength and stability of the Nation's fi-  
18 nancial system and financial institutions, the competitive-  
19 ness of providers of financial services in domestic and  
20 international markets, and the purposes of this Act. Not  
21 later than 1 year after the date of the enactment of this  
22 Act, the Committee shall report to the Congress on pro-  
23 posals for legislative or regulatory actions that will im-  
24 prove the examination process to permit better oversight  
25 of all insured depository institutions. In particular, the

1 Committee shall consider whether the number of, or com-  
 2 pensation for, examiners employed by the appropriate  
 3 Federal regulatory agencies should be increased.

4 (k) NOTICE PROCEDURES FOR DETERMINING NEW  
 5 FINANCIAL SERVICES INSTITUTIONS AND NEW FINAN-  
 6 CIAL ACTIVITIES.—

7 (1) NOTICE REQUIREMENT.—A financial serv-  
 8 ices holding company may request the Committee to  
 9 determine that—

10 (A) an activity not described in section  
 11 102(n) (1)–(12) constitutes a financial activity  
 12 pursuant to section 102(n)(13); or

13 (B) a company not described in section  
 14 102(m) (1)–(8) is a financial services institu-  
 15 tion pursuant to section 102(m)(9),  
 16 by providing the Committee with written notice de-  
 17 scribing the proposed activity or institution.

18 (2) CONTENTS OF NOTICE.—The notice submit-  
 19 ted to the Committee shall contain such information  
 20 as the Committee shall prescribe by regulation or by  
 21 specific request in connection with a particular no-  
 22 tice.

23 (3) PROCEDURE FOR COMMITTEE ACTION.—

24 (a) NOTICE OF DISAPPROVAL.—Any notice  
 25 filed under this subsection shall be deemed to

1 be approved by the Committee unless before the  
2 end of the 60-day period beginning on the date  
3 the Committee receives a complete notice under  
4 subparagraph (1), the Committee issues an  
5 order determining the activity does not con-  
6 stitute a financial activity or the institution is  
7 not a financial services institution and setting  
8 forth the reasons for disapproval.

9 (B) EXTENSION OF PERIOD.—The Com-  
10 mittee may extend the 60-day period referred to  
11 in subparagraph (A) for an additional 30 days.  
12 The Committee may further extend the period  
13 with the agreement of the financial services  
14 holding company submitting the notice pursu-  
15 ant to this subsection.

16 (4) SHORTER PERIODS.—The Committee may  
17 prescribe regulations which provide for a shorter no-  
18 tice period than the periods described in subpara-  
19 graphs (A) and (B).

20 (5) INCOMPLETE INFORMATION.—The Commit-  
21 tee may determine that an activity or an institution  
22 for which notice has been submitted pursuant to this  
23 subsection, does not constitute a financial activity or  
24 is not a financial services institution, if the financial

1 services holding company submitting such notice ne-  
2 glects, fails, or refuses to furnish the Committee all  
3 the information required by the Committee.

4 **Subtitle B—Securities Activities of Financial**  
5 **Services Holding Companies**

6 **SEC. 121. LIMITATION ON SECURITIES ACTIVITIES OF DE-**  
7 **POSITORY INSTITUTIONS AFFILIATED WITH**  
8 **SECURITIES AFFILIATES.**

9 (a) IN GENERAL.—A financial services holding com-  
10 pany that is affiliated with a securities affiliate shall not  
11 permit any depository institution, or any subsidiary of any  
12 depository institution, which is controlled by such holding  
13 company to engage, directly or indirectly in the United  
14 States—

15 (1) in underwriting securities backed by or rep-  
16 resenting interests in notes, drafts, acceptances,  
17 loans, leases, receivables, other obligations, or pools  
18 of any such obligations originated or purchased by  
19 the institution or its affiliates; or

20 (2) in underwriting or dealing in any other se-  
21 curities,

22 except securities expressly authorized by section 5136 of  
23 the Revised Statutes of the United States as permissible  
24 for a national bank to underwrite or deal in.

1 (b) RULE OF CONSTRUCTION.—No provision of this  
2 section shall be construed as permitting a securities affili-  
3 ate to accept deposits in contravention of section 21 of  
4 the Banking Act of 1933.

5 (c) DEFINITION OF SECURITY.—

6 (1) IN GENERAL.—For purposes of this section,  
7 the term “security” has the meaning given to such  
8 term in section 3(a)(10) of the Securities Exchange  
9 Act of 1934.

10 (2) EXCEPTIONS.—Notwithstanding any other  
11 provision of law, the term “security” does not in-  
12 clude any of the following for purposes of this sec-  
13 tion:

14 (A) A contract of insurance.

15 (B) A deposit account, savings account,  
16 certificate of deposit, or other deposit instru-  
17 ment issued by a depository institution.

18 (C) A share account issued by a savings  
19 association if the account is insured by the Fed-  
20 eral Deposit Insurance Corporation.

21 (D) A banker’s acceptance.

22 (E) A letter of credit issued by a deposi-  
23 tory institution.



1 (F) A debit account at a depository insti-  
2 tution arising from a credit card or similar ar-  
3 rangement.

4 (G) A loan or loan participation (as deter-  
5 mined by the appropriate Federal banking  
6 agency), including any debt security issued in  
7 connection with sovereign debt restructuring  
8 which a bank purchases and sells pursuant to  
9 such bank's lending authority.

10 (H) A qualified financial contract (as de-  
11 fined in section 11(e)(8)(D)(i) of the Federal  
12 Deposit Insurance Act), as determined by the  
13 appropriate Federal Banking agency, after con-  
14 sultation with and consideration of the views of  
15 the Securities and Exchange Commission, ex-  
16 cept that, for purposes of this section such term  
17 does not include—

18 (i) any securities contract (as defined  
19 in section 11(e)(8)(D)(ii) of such Act) that  
20 is based on or directly relates to a security  
21 that is not expressly authorized by section  
22 5136 of the Revised Statutes of the United  
23 States as permissible for a national bank  
24 to underwrite or deal in unless the appro-  
25 priate Federal banking agency determines,

1 after consultation with and consideration  
2 of the views of the Securities and Ex-  
3 change Commission, that such securities  
4 contract is appropriate for a bank to un-  
5 derwrite or deal in, taking into account  
6 other qualified financial contracts which a  
7 bank is permitted to underwrite or deal in;  
8 and

9 (ii) any agreement, contract, or trans-  
10 action which is determined by the Federal  
11 Deposit Insurance Corporation in a regula-  
12 tion prescribed after the date of the enact-  
13 ment of this Act to be a qualified financial  
14 contract unless the appropriate Federal  
15 banking agency determines, after consulta-  
16 tion with and consideration of the views of  
17 the Securities and Exchange Commission,  
18 that such agreement, contract, or trans-  
19 action shall be treated as a qualified finan-  
20 cial contract for purposes of this section.

21 (3) AUTHORITY TO EXEMPT BANKING PROD-  
22 UCTS.—Notwithstanding any other provision of law,  
23 the appropriate Federal banking agency may, by  
24 regulation or order, exempt a banking product from

1 the definition of security if the appropriate Federal  
2 banking agency finds that—

3 (i) the product is available in the  
4 course of a banking business and is more  
5 appropriately regulated as a banking prod-  
6 uct; and

7 (ii) the exemption is otherwise consist-  
8 ent with the purposes of this section, the  
9 maintenance of fair and orderly markets,  
10 and the protection of investors.

11 (4) DEFINITION FOR LIMITED PURPOSE.—The  
12 fact that a particular instrument is excluded pursu-  
13 ant to paragraph (2) or (3) from the definition of  
14 security for purposes of this section shall not be con-  
15 strued as finding or implying that such instrument  
16 is or is not a security for purposes of—

17 (A) Federal securities law;

18 (B) section 5136 of the Revised Statutes  
19 of the United States; or

20 (C) section 20, 21, or 32 of the Banking  
21 Act of 1933 (12 U.S.C. 377, 378, and 78).

22 (5) RESERVATION OF AUTHORITY TO CHARTER-  
23 ING AUTHORITY.—A determination by the appro-  
24 priate Federal banking agency under this subsection  
25 shall not be construed in any way as authorizing a

1 bank to provide any product or service that the bank  
2 is not otherwise authorized to provide under relevant  
3 law governing the activities and powers of the bank.

4 (6) CONSULTATION WITH COMMISSION.—

5 (A) NOTICE AND CONSULTATION RE-  
6 QUIRED.—In determining whether to exempt a  
7 banking product pursuant to paragraph (3), the  
8 appropriate Federal banking agency shall pro-  
9 vide written notice to, consult with, and con-  
10 sider the views of the Securities and Exchange  
11 Commission.

12 (B) RESPONSE AND PUBLICATION.—If the  
13 Securities and Exchange Commission comments  
14 in writing on a proposed determination of the  
15 appropriate Federal banking agency, such agen-  
16 cy shall—

17 (i) respond in writing to such written  
18 comment; and

19 (ii) at the request of such Commis-  
20 sion, publish such comment and response  
21 in the Federal Register at the time the de-  
22 termination becomes effective.

23 (7) APPROVAL OF NATIONAL FINANCIAL SERV-  
24 ICES COMMITTEE.—

1 (A) IN GENERAL.—An appropriate Federal  
2 banking agency may not issue a regulation or  
3 order pursuant to paragraph (3) without the  
4 approval of the National Financial Services  
5 Committee.

6 (B) UNIFORM STANDARDS.—Any regula-  
7 tion or order subject to the approval of the Na-  
8 tional Financial Services Committee under  
9 paragraph (1) shall be identical for each appro-  
10 priate Federal banking agency, except as other-  
11 wise permitted by such Committee.

12 **SEC. 122. SAFEGUARDS RELATING TO SECURITIES AFFILI-**  
13 **ATES.**

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

16 (1) IN GENERAL.—No depository institution af-  
17 filiated with a securities affiliate shall, directly or in-  
18 directly, do any of the following:

19 (A) Extend credit in any manner to the se-  
20 curities affiliate.

21 (B) Issue a guarantee, acceptance, or let-  
22 ter of credit, including an endorsement or a  
23 standby letter of credit, for the benefit of the  
24 securities affiliate.

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

5           (2) EXCEPTION FOR CLEARING SECURITIES.—  
6           Paragraph (1)(A) shall not apply with respect to an  
7           extension of credit by a well capitalized depository  
8           institution to acquire or sell securities if the follow-  
9           ing conditions are met:

10           (A) The extension of credit is incidental to  
11           clearing transactions in those securities through  
12           the depository institution.

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

16           (C) Either—

17           (i) the extension of credit is to be re-  
18           paid before the close of business on the  
19           same business day; or

20           (ii) all of the following conditions are  
21           satisfied:

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

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

4 (III) Extensions of credit subject  
5 to this clause, when aggregated with  
6 all other covered transactions between  
7 the institution and all affiliated secu-  
8 rities affiliates do not exceed 10 per-  
9 cent of the institution's capital stock  
10 and surplus.

11 (D) Either—

12 (i) the securities are securities ex-  
13 pressly authorized by section 5136 of the  
14 Revised Statutes of the United States as  
15 permissible for a national bank to under-  
16 write or deal in; or

17 (ii) the appropriate Federal banking  
18 agency for the depository institution per-  
19 mits transactions under this paragraph in  
20 securities not described in clause (i) and  
21 the securities affiliate provides the deposi-  
22 tory institution with such additional secu-  
23 rity or other assurance of performance, if

1           any, as such agency shall require to pre-  
2           vent such transactions from posing any ap-  
3           preciable risk to the institution.

4           (3) EXCEPTIONS FOR CERTAIN SECURITIES  
5           PURCHASED FOR A DEPOSITORY INSTITUTION'S OWN  
6           ACCOUNT.—Paragraph (1)(C) shall not apply with  
7           respect to purchases at the current market value  
8           (based on reliable and regularly available price  
9           quotations, including those readily available on elec-  
10          tronic quotation systems) of—

11                 (A) securities expressly authorized by sec-  
12                 tion 5136 of the Revised Statutes of the United  
13                 States as permissible for a national bank to un-  
14                 derwrite or deal in; or

15                 (B) securities that—

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

18                         (ii) are rated investment grade by at  
19                         least one nationally recognized statistically  
20                         rating organization.

21           (4) OTHER EXCEPTIONS.—The appropriate  
22           Federal banking agency may make exceptions to  
23           paragraph (1) for well capitalized depository institu-  
24           tions it regulates if—



1 (A) the transaction is fully secured in ac-  
 2 cordance with section 23A(c) of the Federal Re-  
 3 serve Act; and

4 (B) the aggregate amount of covered  
 5 transactions between the institution and all se-  
 6 curities affiliates of the financial services hold-  
 7 ing company, excluding transactions permitted  
 8 under paragraph (2)(C)(i) or (3)(A), does not  
 9 exceed 10 percent of the institution's capital  
 10 stock and surplus.

11 (b) CREDIT ENHANCEMENT RESTRICTED.—

12 (1) IN GENERAL.—No depository institution af-  
 13 filiated with a securities affiliate shall, directly or in-  
 14 directly, extend credit, or issue or enter into a stand-  
 15 by letter of credit, asset purchase agreement, indem-  
 16 nity, guarantee, insurance, or other facility, for the  
 17 purpose of enhancing the marketability of a securi-  
 18 ties issue underwritten by the securities affiliate.

19 (2) DEFINITION OF TERM BY BOARD.—The ap-  
 20 propriate Federal banking agency shall prescribe a  
 21 definition for the term “for the purpose of enhanc-  
 22 ing the marketability of a securities issue” for pur-  
 23 pose of paragraph (1).

24 (3) EXCEPTION FOR BANK ELIGIBLE SECURI-  
 25 TIES.—Paragraph (1) shall not apply with regard to

1 securities expressly authorized by section 5136 of  
2 the Revised Statutes of the United States as permis-  
3 sible for a national bank to underwrite or deal in.

4 (4) APPLICATION TO WELL CAPITALIZED DE-  
5 POSITORY INSTITUTIONS.—

6 (A) IN GENERAL.—A well capitalized de-  
7 pository institution may engage in a transaction  
8 described in paragraph (1) if—

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

14 (ii) the institution and its securities  
15 affiliate have adopted appropriate proce-  
16 dures, including maintenance of necessary  
17 documentary records, to assure that any  
18 such extension of credit, standby letter of  
19 credit, asset purchase agreement indem-  
20 nity, guarantee, insurance or other facility,  
21 is on arm's length basis.

22 (B) ARM'S LENGTH TRANSACTION DE-  
23 SCRIBED.—An extension of credit may be con-  
24 sidered to be on arm's length basis if the terms  
25 and conditions are substantially the same as

1           those prevailing at the time for comparable  
2           transactions involving securities that are not  
3           underwritten by the securities affiliate.

4           (C) COMPLIANCE WITH PARAGRAPH (1).—

5           The appropriate Federal banking agency may  
6           require, by regulation or order, compliance with  
7           paragraph (1) by well capitalized depository in-  
8           stitutions exempt under this paragraph in order  
9           to achieve any purpose specified in subsection  
10          (k).

11          (c) PROHIBITION OF FINANCING PURCHASE OF SE-  
12          curity BEING UNDERWRITTEN.—

13           (1) IN GENERAL.—No financial services holding  
14          company or subsidiary of a financial services holding  
15          company (other than a securities affiliate) shall  
16          knowingly extend or arrange for the extension of  
17          credit, directly or indirectly, secured by or for the  
18          purpose of purchasing any security while, or for 30  
19          days after, that security is the subject of a distribu-  
20          tion in which a securities affiliate of that financial  
21          services holding company participates as an under-  
22          writer or a member of a selling group.

23           (2) RELIANCE ON ACKNOWLEDGEMENT.—For  
24          purposes of paragraph (1), a financial services hold-  
25          ing company or subsidiary may rely on an express

1 written acknowledgement signed by the borrower  
2 that the credit is not secured by or for the purpose  
3 of purchasing a security described in this subpara-  
4 graph.

5 (3) APPLICATION TO BANK ELIGIBLE SECURI-  
6 TIES.—Paragraph (1) shall not apply with regard to  
7 extensions of credit if the securities are securities ex-  
8 pressly authorized by section 5136 of the Revised  
9 Statutes of the United States as permissible for a  
10 national bank to underwrite or deal in.

11 (4) APPLICATION TO WELL CAPITALIZED DE-  
12 POSITORY INSTITUTIONS.—The appropriate Federal  
13 banking agency may make exceptions, by regulation  
14 or order, to paragraph (1) for an extension of credit,  
15 after consultation with and considering the views of  
16 the Securities and Exchange Commission.

17 (5) CONSISTENCY WITH THE FEDERAL SECURI-  
18 TIES LAWS.—No provision of this subsection shall be  
19 construed as permitting a securities affiliate to ex-  
20 tend or maintain credit, or arrange for an extension  
21 of credit, except in compliance with applicable provi-  
22 sions of the Securities Exchange Act of 1934 and  
23 the regulations prescribed and interpretations issued  
24 under such Act.

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

3 (1) IN GENERAL.—No depository institution af-  
4 filiated with a securities affiliate shall, directly or in-  
5 directly, extend credit to an issuer of securities un-  
6 derwritten by such securities affiliate for the purpose  
7 of paying the principal of those securities or interest  
8 or dividends on those securities.

9 (2) EXCEPTIONS FOR CERTAIN EXTENSIONS OF  
10 CREDIT.—Paragraph (1) shall not apply to an exten-  
11 sion of credit for a documented purpose (other than  
12 paying principal, interest, or dividends) if the tim-  
13 ing, maturity, and other terms of the credit, taken  
14 as a whole, are substantially different from those of  
15 the underwritten securities.

16 (3) EXCEPTIONS FOR BANK ELIGIBLE SECURI-  
17 TIES.—Paragraph (1) shall not apply with respect to  
18 any security expressly authorized by section 5136 of  
19 the Revised Statutes of the United States as permis-  
20 sible for a national bank to underwrite or deal in.

21 (4) APPLICATION TO WELL CAPITALIZED DE-  
22 POSITORY INSTITUTIONS.—

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

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

6           (ii) the depository institution has  
7           adopted appropriate procedures, including  
8           maintenance of necessary documentary  
9           records, to assure that any extension of  
10          credit by the depository institution to an  
11          issuer for the purpose of paying the prin-  
12          cipal, interest or dividends on securities  
13          underwritten by the securities affiliate is  
14          on an arm's length basis.

15          (B) ARM'S LENGTH TRANSACTION DE-  
16          SCRIBED.—An extension of credit may be con-  
17          sidered to have been made on an arm's length  
18          basis if the terms and conditions are substan-  
19          tially the same as those prevailing at the time  
20          for comparable transactions with issuers whose  
21          securities are not underwritten by the securities  
22          affiliate.

23          (C) COMPLIANCE WITH SUBPARAGRAPH  
24          (A).—The appropriate Federal banking agency  
25          may require by regulation or order, compliance

1 with paragraph (1) by well capitalized depository  
2 institutions exempt under this paragraph  
3 in order to achieve any purpose specified in  
4 subsection (k).

5 (e) COMMON DIRECTORS AND SENIOR EXECUTIVE  
6 OFFICERS.—

7 (1) IN GENERAL.—The appropriate Federal  
8 banking agency shall, by regulation or order, pre-  
9 scribe the circumstances under which directors and  
10 senior executive officers of a securities affiliate may  
11 serve at the same time as directors or senior execu-  
12 tive officers of any affiliated depository institutions.

13 (2) STANDARDS.—The appropriate Federal  
14 banking agency, in issuing any regulation or order  
15 pursuant to paragraph (1), shall consider appro-  
16 priate factors including—

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

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

21 (C) unfair competition in securities activi-  
22 ties;

23 (D) improper exchange of customer infor-  
24 mation; or

1           (E) harm to customers of securities affili-  
2           ates or depository institutions that could rea-  
3           sonably result from director and senior officer  
4           interlocks.

5           (3) EXCEPTION FOR SMALL FINANCIAL SERV-  
6           ICES HOLDING COMPANIES.—

7           (A) IN GENERAL.—Notwithstanding para-  
8           graph (1), a director or senior executive officer  
9           of a securities affiliate may serve at the same  
10          time as a director or senior executive officer of  
11          an affiliated depository institution if that insti-  
12          tution and all affiliated depository institutions  
13          have, in the aggregate, total assets of not more  
14          than \$500,000,000.

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

22          (4) EXCEPTION FOR CERTAIN FOREIGN AFFILI-  
23          ATES.—Paragraph (1) shall not prohibit a director  
24          or senior executive officer of a securities affiliate



1 from serving at the same time as a director or senior  
2 executive officer of an entity which—

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

5 (B) is an affiliate of such securities affili-  
6 ate; and

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

9 (f) DISCLOSURE REQUIRED BY SECURITIES AFFILI-  
10 ATE.—

11 (1) IN GENERAL.—Pursuant to rules adopted  
12 by the Securities and Exchange Commission in con-  
13 sultation with the appropriate Federal banking agen-  
14 cies, a securities affiliate shall conspicuously disclose  
15 in writing to each of its customers at the time a se-  
16 curities account is opened, or within a reasonable  
17 time thereafter if it is not practicable to provide  
18 such notice at that time, that—

19 (A) securities sold, offered, or rec-  
20 ommended by the securities affiliate—

21 (i) are not deposits;

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

24 (iii) are not guaranteed by an affili-  
25 ated insured depository institution;

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

4 (v) with regard to any product that  
5 includes any investment component, are  
6 subject to investment risks including pos-  
7 sible loss of principal invested;

8 (B) the securities affiliate is not an in-  
9 sured depository institution, and is a corpora-  
10 tion separate from any insured depository insti-  
11 tution; and

12 (C) the securities affiliate may be under-  
13 writing or dealing in the securities being sold,  
14 offered or recommended, and if so, would have  
15 a financial interest in the transaction.

16 (2) FORM OF DISCLOSURE.—The disclosures re-  
17 quired by paragraph (1) shall be made in clear and  
18 concise language that—

19 (A) is readily comprehensible to customers  
20 of the securities affiliate; and

21 (B) is designed to promote customer un-  
22 derstanding that uninsured investment products  
23 are not deposits insured by the Federal Deposit  
24 Insurance Corporation.

1           (3) DISCLOSURE AUTHORITY.—Subject to para-  
2       graph (2), the Securities and Exchange Commission,  
3       after consultation with the appropriate Federal  
4       banking agencies may, in its discretion, prescribe  
5       disclosures in addition to the disclosures prescribed  
6       by paragraph (1).

7       (g) DISCLOSURE REQUIRED BY DEPOSITORY INSTI-  
8       TUTIONS.—

9           (1) IN GENERAL.—Pursuant to rules adopted  
10      jointly by the appropriate Federal banking agencies  
11      in consultation with the Securities and Exchange  
12      Commission, no insured depository institution shall  
13      knowingly express any opinion on the value of, or  
14      the advisability of purchasing or selling, nonbanking  
15      products (as defined by the appropriate Federal  
16      banking agency) sold by the insured depository insti-  
17      tution or any affiliate of an insured depository insti-  
18      tution unless the insured depository institution con-  
19      spicuously discloses in writing to the customer  
20      that—

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

25           (B) the nonbanking products—

- 1 (i) are not deposits;  
2 (ii) are not insured by the Federal  
3 Deposit Insurance Corporation;  
4 (iii) are not guaranteed by the institu-  
5 tion or any other affiliated insured deposi-  
6 tory institution;  
7 (iv) are not otherwise an obligation of  
8 an insured depository institution (unless  
9 such is the case); and  
10 (v) with regard to any nonbanking  
11 product that includes any investment com-  
12 ponent, are subject to investment risks in-  
13 cluding possible loss of principal invested;  
14 and  
15 (C) an affiliate, if involved, is not an in-  
16 sured depository institution (unless such is the  
17 case), and is a corporation separate from any  
18 insured depository institution (unless such is  
19 not the case).
- 20 (2) FORM OF DISCLOSURE.—The disclosures re-  
21 quired by paragraph (1) shall be made in clear and  
22 concise language that—
- 23 (A) is readily comprehensible to customers  
24 of the insured depository institution, and

1 (B) is designed to promote customer un-  
2 derstanding that nonbanking products are not  
3 deposits insured by the Federal Deposit Insur-  
4 ance Corporation.

5 (3) CUSTOMER ACKNOWLEDGMENT OF DISCLO-  
6 SURE.—

7 (A) IN GENERAL.—Whenever any insured  
8 depository institution or securities affiliate  
9 opens an account for the purpose of selling a  
10 nondeposit investment product or products to a  
11 customer, such insured depository institution or  
12 securities affiliate, as the case may be, shall ob-  
13 tain a one-time acknowledgment of receipt by  
14 the customer of such disclosures, including the  
15 date of receipt with the customer's name, ad-  
16 dress, and the account number.

17 (B) ONE-TIME ACKNOWLEDGMENT.—The  
18 one-time written acknowledgment required by  
19 subparagraph (A) and obtained with respect to  
20 one account from a customer shall satisfy the  
21 requirement with respect to all other investment  
22 accounts opened by that customer at that de-  
23 pository institution or securities affiliate.

1 (C) TIMING OF ACKNOWLEDGMENT.—The  
 2 one-time acknowledgment required by subpara-  
 3 graph (A) must be obtained within a reasonable  
 4 time after the account is opened.

5 (D) SPECIAL RULE FOR ACCREDITED IN-  
 6 VESTORS.—This paragraph shall not apply to  
 7 any customer who is, or meets the requirements  
 8 for, an accredited investor (as defined in section  
 9 2(15) of the Securities Act of 1933).

10 (4) DISCLOSURE AUTHORITY.—Subject to para-  
 11 graph (2), the appropriate Federal banking agencies  
 12 may jointly prescribe, after consultation with the Se-  
 13 curities and Exchange Commission, disclosures in  
 14 addition to the disclosures required by paragraph  
 15 (1).

16 (h) UNDERWRITING SECURITIES REPRESENTING OB-  
 17 LIGATIONS ORIGINATED BY AFFILIATE RESTRICTED.—A  
 18 securities affiliate shall not underwrite securities secured  
 19 by or representing an interest in mortgages or other obli-  
 20 gations originated or purchased by an affiliated depository  
 21 institution or subsidiary of such an institution—

22 (1) unless those securities—

23 (A) are rated by at least one unaffiliated,  
 24 nationally recognized statistical rating organiza-  
 25 tion;

1 (B) are issued or guaranteed by the Fed-  
2 eral Home Loan Mortgage Corporation, the  
3 Federal National Mortgage Association, or the  
4 Government National Mortgage Association; or

5 (C) represent interests in securities de-  
6 scribed in subparagraph (B); or

7 (2) except as permitted by the appropriate Fed-  
8 eral banking agency.

9 (i) RECIPROCAL ARRANGEMENTS PROHIBITED.—No  
10 financial services holding company and no subsidiary of  
11 a financial services holding company may enter into any  
12 agreement, understanding, or other arrangement under  
13 which—

14 (1) One financial services holding company (or  
15 subsidiary of that financial services holding com-  
16 pany) agrees to engage in a transaction with, or on  
17 behalf of, another financial services holding company  
18 (or subsidiary of that financial services holding com-  
19 pany), in exchange for

20 (2) the agreement of the second financial serv-  
21 ices holding company referred to in paragraph (1)  
22 (or a subsidiary of that financial services holding  
23 company) to engage in any transaction with, or on

1       behalf of, the first financial services holding com-  
 2       pany referred to in such paragraph (or any subsidi-  
 3       ary of that financial services holding company), for  
 4       the purpose of evading any requirement or restric-  
 5       tion of Federal law on transactions between, or for  
 6       the benefit of, affiliates of financial services holding  
 7       companies.

8       (j) SAFEGUARDS APPLY TO CERTAIN SUBSIDI-  
 9       ARIES.—Except as provided in this section—

10           (1) SECURITIES AFFILIATE.—No subsidiary of  
 11       a securities affiliate may do anything that this sec-  
 12       tion prohibits the securities affiliate from doing.

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

17       (k) AUTHORITY TO MODIFY AND IMPOSE ADDI-  
 18       TIONAL SAFEGUARDS; INTERPRETIVE AUTHORITY.—

19           (1) IN GENERAL.—The appropriate Federal  
 20       banking agency may, by regulation or order—

21           (A) adopt additional limitations, restric-  
 22       tions or conditions on relationships or trans-  
 23       actions among depository institutions, their af-  
 24       filiates, and their customers; and



1 (B) make any modification to any limita-  
2 tion, restriction, or condition imposed under  
3 this section on relationships or transactions  
4 among depository institutions, the affiliates of  
5 depository institutions, and the customers of  
6 such institutions or affiliates, including modi-  
7 fications in addition to those expressly provided  
8 for in this section.

9 (2) STANDARDS.—The appropriate Federal  
10 banking agency may not exercise authority under  
11 paragraph (1) unless such agency finds that such  
12 action is consistent with the purposes of this act, in-  
13 cluding—

14 (A) the avoidance of any significant risk to  
15 the safety and soundness of depository institu-  
16 tions or the Federal deposit insurance funds;

17 (B) the enhancement of the financial sta-  
18 bility of financial services holding companies;

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

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

23 (E) the application of the principle of na-  
24 tional treatment and equality of competitive op-  
25 portunity between securities affiliates owned or

1 controlled by domestic financial services holding  
2 companies and securities affiliates owned or  
3 controlled by foreign banks operating in the  
4 United States.

5 (3) BIENNIAL REVIEW.—Beginning 2 years  
6 after the effective date of the Depository Institution  
7 Affiliation Act, the appropriate Federal banking  
8 agency shall, on a biennial basis—

9 (A) review all restrictions established pur-  
10 suant to paragraph (1) to determine whether  
11 any such restrictions are required any longer to  
12 carry out the purposes of this Act; and

13 (B) modify or eliminate any such restric-  
14 tion that such agency determines is no longer  
15 required to carry out the purposes of this Act.

16 (I) COMPLIANCE PROGRAMS REQUIRED.—

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

20 (A) sharing information, including reports  
21 of examinations, concerning compliance with  
22 this section or the amendments made by title  
23 III of the Depository Institution Affiliation and  
24 Thrift Charter Conversion Act, by—

1 (i) brokers, dealers, investment advis-  
2 ers, or investment companies that are reg-  
3 istered with the Securities and Exchange  
4 Commission and that are affiliated with  
5 depository institutions, or are separately  
6 identifiable departments or divisions of de-  
7 pository institutions registered as invest-  
8 ment advisers; and

9 (ii) depository institutions and their  
10 affiliates;

11 (B) enforcing compliance with this section  
12 and the amendments made by this subtitle and  
13 paragraphs (4) and (5) of section 3(a) of the  
14 Securities Exchange Act of 1934 by entities  
15 under its supervision; and

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

19 (2) DATA COLLECTION.—

20 (A) IN GENERAL.—The appropriate Fed-  
21 eral banking agencies, after consultation with  
22 and consideration of the views of the Securities  
23 and Exchange Commission, shall (except as oth-  
24 erwise provided by the appropriate Federal  
25 banking agency after such consultation) require

1 any depository institution that has effected se-  
2 curities transactions pursuant to any exception  
3 enumerated in paragraphs (4)(C) and (5)(D) of  
4 section 3(a) of the Securities Exchange Act of  
5 1934 to identify the exceptions relied upon and  
6 to submit such information necessary to mon-  
7 itor compliance under such paragraphs.

8 (B) COMMISSION ACCESS.—The appro-  
9 priate Federal banking agency shall make any  
10 information referred to in subparagraph (A)  
11 available to the Securities and Exchange Com-  
12 mission, upon the request of the Commission.

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

20 (3) COMMISSION'S ENFORCEMENT AUTHOR-  
21 ITY.—Without limiting in any way the authority of  
22 the appropriate Federal banking agencies under this  
23 section, the Securities and Exchange Commission  
24 shall have the authority to enforce provision of this

1 section against a securities affiliate as if such provi-  
2 sion were a provision of the Securities Exchange Act  
3 of 1934 to the extent that the provision applies with  
4 respect to the conduct or activities of the securities  
5 affiliate.

6 (4) EXAMINATION REPORTS.—

7 (A) IN GENERAL.—The appropriate Fed-  
8 eral banking agencies shall, to the fullest extent  
9 possible, use the reports of examination of any  
10 broker, dealer, investment adviser, or invest-  
11 ment company made by or on behalf of the Se-  
12 curities and Exchange Commission and reports  
13 made by or on behalf of a registered securities  
14 association or national securities exchange, and  
15 shall defer to such examinations for compliance  
16 with the Federal securities laws.

17 (B) COMPLIANCE WITH SECTION 122 SAFE-  
18 GUARDS.—The appropriate Federal banking  
19 agencies shall—

20 (i) to the fullest extent possible, use  
21 the reports of examination of any securi-  
22 ties affiliate made by the appropriate Fed-  
23 eral banking agency for such affiliate; and

1                   (ii) defer to such examinations for  
2                   compliance with the provisions of this sec-  
3                   tion.

4                   (5) INTERPRETATIONS OF THE FEDERAL SECU-  
5                   RITIES LAWS.—The appropriate Federal banking  
6                   agencies shall defer to the Securities and Exchange  
7                   Commission regarding all interpretations and en-  
8                   forcement of the Federal securities laws relating to  
9                   the application of the Federal securities laws to the  
10                  activities and conduct of brokers, dealers, investment  
11                  advisers, and investment companies.

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

19                         (A) any broker, dealer, or investment ad-  
20                         viser that—

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

23                                 (ii) is affiliated with, or is a sepa-  
24                                 rately identifiable department or division  
25                                 of, a depository institution;

1 (B) any investment company registered  
2 with the Securities and Exchange Commission  
3 that is an affiliate of or is advised by an invest-  
4 ment adviser affiliated with a depository institu-  
5 tion or by a separately identifiable department  
6 or division of a depository institution that is a  
7 registered investment adviser; or

8 (C) any financial services holding company,  
9 depository institution, or subsidiary of such  
10 company or institution, if the proposed action  
11 relates to this section or the amendments made  
12 by title III of the Depository Institution Affili-  
13 ation and Thrift Charter Conversion Act.

14 (7) NOTICE OF CERTAIN ACTIONS BY APPRO-  
15 PRIATE FEDERAL BANKING AGENCIES.—Upon the  
16 commencement of any disciplinary or law enforce-  
17 ment proceedings to enforce the provisions of this  
18 section by an appropriate Federal banking agency  
19 against any broker, dealer, investment adviser, or in-  
20 vestment company that is registered under the Fed-  
21 eral securities laws and is affiliated with a deposi-  
22 tory institution or is a separately identifiable depart-  
23 ment or division of a depository institution, the ap-  
24 propriate Federal banking agency shall give notice to

1 the Securities and Exchange Commission of the pro-  
2 posed action.

3 (8) IMMEDIATE ACTION ALLOWED BEFORE NO-  
4 TICE.—The notice required under paragraph (6) or  
5 (7) may be provided promptly after action by the Se-  
6 curities and Exchange Commission or the appro-  
7 priate Federal banking agency, if—

8 (A) the Commission determines that the  
9 protection of investors requires immediate ac-  
10 tion by the Commission and prior notice under  
11 paragraph (6) is not practical under the cir-  
12 cumstances; or

13 (B) the appropriate Federal banking agen-  
14 cy determines that concerns for the safety and  
15 soundness of a depository institution or its affil-  
16 iate require immediate action by the agency and  
17 prior notice under (7) is not practical under the  
18 circumstances.

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



1           (10) INVESTMENT COMPANIES NOT AFFILIATED  
2       WITH A DEPOSITORY INSTITUTION.—The appro-  
3       priate Federal banking agency shall not have au-  
4       thority under this section or any other provision of  
5       law to inspect or examine any investment company  
6       registered under the Federal securities laws that is  
7       not—

8                       (A) affiliated with a depository institution;  
9       or

10                      (B) advised by an investment adviser affili-  
11       ated with a depository institution or by a sepa-  
12       rately identifiable department or division of a  
13       depository institution that is a registered invest-  
14       ment adviser.

15           (11) DEFINITION.—For purposes of this sub-  
16       section, the term “Federal securities laws” means  
17       the provisions of Federal law governing securities ac-  
18       tivities that are within the jurisdiction of the Securi-  
19       ties and Exchange Commission under the Securities  
20       Act of 1933, the Securities Exchange Act of 1934,  
21       the Investment Company Act of 1940, the Invest-  
22       ment Advisers Act of 1940, and the Trust Indenture  
23       Act of 1939.

24       (m) FOREIGN BANK FIREWALLS.—

1           (1) IN GENERAL.—A branch, agency, or com-  
2           mercial lending company that is operated by a for-  
3           eign bank that is a financial services holding com-  
4           pany shall not be subject to the restrictions of any  
5           subsection of this section, other than subsections (k)  
6           and (l), if—

7                   (A) such branch, agency, or commercial  
8                   lending company accepts no deposits in the  
9                   United States that are insured under the Fed-  
10                  eral Deposit Insurance Act;

11                  (B) such foreign bank meets risk-based  
12                  capital standards comparable to the capital  
13                  standards required for a wholesale financial in-  
14                  stitution, giving due regard to the principle of  
15                  national treatment and equality of competitive  
16                  opportunity; and

17                  (C) the home country of such foreign bank  
18                  satisfies the national treatment standard de-  
19                  scribed in section 102(l)(3).

20           (2) APPLICABILITY OF SUBSECTION (K) TO FOR-  
21           EIGN BANKS.—Any limitation, restriction, condition,  
22           or modification adopted under subsection (k) may be  
23           applied by the appropriate Federal banking agency  
24           to—

1 (A) a foreign bank that operates a branch,  
 2 agency, or commercial lending company de-  
 3 scribed in paragraph (1) (and any company  
 4 that owns or controls such foreign bank);

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

8 (C) any other affiliate of such foreign bank  
 9 in the United States; if such limitation, restric-  
 10 tion, condition, or modification is applied by  
 11 regulation or order of general applicability  
 12 under subsection (n)(1) to wholesale financial  
 13 institutions and their securities affiliates, sub-  
 14 ject to such modifications, conditions, or exemp-  
 15 tions as the appropriate Federal banking agen-  
 16 cy of such wholesale financial institution deems  
 17 appropriate, giving due regard to the principle  
 18 of national treatment and equality of competi-  
 19 tive opportunity.

20 (n) FIREWALLS APPLICABLE TO WHOLESALE FI-  
 21 NANCIAL INSTITUTIONS AND NATIONAL MARKET LEND-  
 22 ING INSTITUTIONS.—

23 (1) IN GENERAL.—A wholesale financial institu-  
 24 tion, and transactions between a wholesale financial  
 25 institution and its securities affiliate, shall not be

1 subject to the provisions of this section, except that  
2 a wholesale financial institution and its securities af-  
3 filiate shall be subject to subsections (k) and (l) in  
4 the same manner and to the same extent such sub-  
5 sections would apply if the wholesale financial insti-  
6 tution were an insured depository institution.

7 (2) PROHIBITION ON EVASION OF FIREWALLS  
8 BY AFFILIATED INSURED DEPOSITORY INSTITU-  
9 TIONS.—An insured depository institution that is af-  
10 filiated with a wholesale financial institution shall  
11 not evade any requirement or restriction imposed by  
12 this section by engaging in transactions or arrange-  
13 ments with its affiliated wholesale financial institu-  
14 tion.

15 (3) SIMILAR TREATMENT FOR NATIONAL MAR-  
16 KET LENDING INSTITUTIONS.—A national market  
17 lending institution, as defined in section 5158 of the  
18 Revised Statutes of the United States, that is con-  
19 trolled by a financial services holding company shall  
20 be subject to this section in the same manner and  
21 to the same extent as a wholesale financial institu-  
22 tion.

23 (o) AUTHORITY OF NATIONAL FINANCIAL SERVICES  
24 COMMITTEE.—

1           (1) IN GENERAL.—Except for rules issued pur-  
2       suant to subsections (f) or (g), no rule, regulation,  
3       or order authorized or required by this section shall  
4       be issued without the approval of the National Fi-  
5       nancial Services Committee.

6           (2) UNIFORM STANDARDS.—Any regulation,  
7       rule, or order subject to the approval of the National  
8       Financial Services Committee under paragraph (1)  
9       shall be identical for each appropriate Federal bank-  
10      ing agency, except as otherwise permitted by such  
11      Committee, taking into account existing require-  
12      ments, coordination of new requirements, minimiza-  
13      tion of duplicative regulation, the degree of uniform-  
14      ity between regulation of securities affiliates or in-  
15      vestment companies affiliated with or advised by de-  
16      pository institutions or their affiliates and other  
17      broker dealers or investment companies, and an  
18      analysis of any of the benefits to be obtained by any  
19      unique regulatory burdens placed on securities affili-  
20      ates or investment companies affiliated with or ad-  
21      vised by depository institutions or their affiliates.

1 **SEC. 123. JOINT STANDARDS RELATING TO RETAIL SALES**  
2 **OF CERTAIN NONDEPOSIT INVESTMENT**  
3 **PRODUCTS.**

4 (a) IN GENERAL.—The National Financial Services  
5 Committee shall prescribe standards applicable to any de-  
6 pository institution which—

7 (1) is not registered as a broker under the Se-  
8 curities Exchange Act of 1934;

9 (2) effects retail transactions in securities, in-  
10 cluding securities issued by an investment company  
11 or annuities; and

12 (3) is affiliated with a financial services holding  
13 company.

14 (b) SCOPE OF STANDARDS.—The standards required  
15 under paragraph (1) with respect to retail sales of securi-  
16 ties and annuities referred to in such paragraph shall, at  
17 a minimum, establish requirements with respect to—

18 (1) sales practices;

19 (2) disclosures and advertising in connection  
20 with transactions in such securities and annuities,  
21 including—

22 (A) the content, form, and timing of any  
23 such disclosure; and

24 (B) disclaimers concerning the noninsured  
25 status of the security or annuity;

1           (3) the compensation of sales personnel with re-  
2           spect to referrals or transactions;

3           (4) the training of and qualifications for per-  
4           sonnel involved in such transactions, including train-  
5           ing in making an accurate judgment about the suit-  
6           ability of a particular investment product for a pro-  
7           spective customer; and

8           (5) the setting in which and the circumstances  
9           under which transactions may be effected, and refer-  
10          rals made, by sales personnel with respect to such  
11          securities and annuities.

12          (c) COMPARABILITY REQUIREMENT.—The standards  
13          required under paragraph (1) shall be comparable to the  
14          standards applicable to brokers and dealers registered  
15          under the Securities Exchange Act of 1934 unless the Na-  
16          tional Financial Services Committee determines that im-  
17          plementation of comparable standards is not necessary or  
18          appropriate for the maintenance of fair and orderly mar-  
19          kets or the protection of investors or is not in the public  
20          interest.

1 **Subtitle C—Insurance and Real Estate Devel-**  
2 **opment Activities of Financial Services**  
3 **Holding Companies**

4 **SEC. 131. LIMITATION ON INSURANCE UNDERWRITING AND**  
5 **REAL ESTATE DEVELOPMENT ACTIVITIES OF**  
6 **DEPOSITORY INSTITUTIONS.**

7 (a) IN GENERAL.—No depository institution that is  
8 an affiliate of a financial services holding company shall  
9 directly engage in—

10 (1) insurance underwriting (other than credit-  
11 related insurance underwriting); or

12 (2) real estate investment or development, ex-  
13 cept to the extent that such activities are performed  
14 in relation to the premises of the depository institu-  
15 tion or in connection with securing or collecting a  
16 debt previously contracted in good faith, or would be  
17 authorized for a national bank under section 5137  
18 of the Revised Statutes of the United States or the  
19 first section of the Act of September 28, 1962 (12  
20 U.S.C. 92a).

21 (b) CONSTRUCTION.—Nothing contained in this sec-  
22 tion shall be construed to prohibit or impede—

23 (1) a financial services holding company or any  
24 affiliate of a financial services holding company



1 other than a depository institution from engaging in  
2 any of the activities set forth in paragraph (1); or  
3 (2) any employee of a depository institution  
4 that is an affiliate of a financial services holding  
5 company from promoting or advertising products or  
6 services of an affiliate of such insured depository in-  
7 stitution that engages in any of such activities.

8 **SEC. 132. ACQUISITION OF PREEXISTING INSURANCE AGEN-**  
9 **CY BY BANK HOLDING COMPANIES.**

10 (a) IN GENERAL.— No bank holding company which  
11 becomes a financial services holding company and no fi-  
12 nancial services holding company which did not at any  
13 time prior to becoming such a holding company, directly  
14 or indirectly, engage in insurance agency activities other  
15 than activities generally permissible for bank holding com-  
16 panies under section 4(c)(8) of the Bank Holding Com-  
17 pany Act of 1956, shall commence any insurance agency  
18 activities not generally permissible for bank holding com-  
19 panies under section 4(c)(8) of the Bank Holding Com-  
20 pany Act of 1956, unless such activities are conducted  
21 through an existing insurance agency acquired directly or  
22 indirectly by such financial services holding company or

1 through any successor to such insurance agency, and un-  
2 less such acquired insurance agency shall have been ac-  
3 tively engaged in such insurance activities during the 2-  
4 year period preceding the date of such acquisition.

5 **SEC. 133. EXISTING CONTRACTS.**

6 Nothing in sections 131 or 132 shall require the  
7 breach of any contract entered into before the date of en-  
8 actment of this Act.

9 **Subtitle D—Redomestication of**  
10 **Mutual Life Insurers**

11 **SEC. 141. REDOMESTICATION OF MUTUAL LIFE INSURERS.**

12 (a) REDOMESTICATION.—A mutual life insurer orga-  
13 nized under the laws of any State may transfer its domi-  
14 cile to a transferee domicile as a step in a reorganization  
15 in which, pursuant to the laws of the transferee domicile,  
16 the mutual life insurer becomes a stock life insurer, wheth-  
17 er as a direct or indirect subsidiary of a mutual holding  
18 company or otherwise. Upon compliance with the applica-  
19 ble law of the transferee domicile governing transfers of  
20 domicile and completion of a transfer pursuant to this sec-  
21 tion, the mutual life insurer shall cease to be a domestic  
22 insurer in the transferor domicile and, as a continuation  
23 of its corporate existence, shall be a domestic insurer of  
24 the transferee domicile.

1       (b) LICENSES, ETC.—The certificate of authority,  
2 agents' appointments and licenses, rates, approvals and  
3 other items which a licensed State allows and that are in  
4 existence immediately prior to the time a redomesticating  
5 insurer transfers its domicile pursuant to this section shall  
6 continue in full force and effect upon transfer if the in-  
7 surer remains duly qualified to transact the business of  
8 insurance in such licensed State. All outstanding insur-  
9 ance policies and annuity contracts of a redomesticating  
10 insurer shall remain in full force and effect and need not  
11 be endorsed as to the new domicile of the insurer unless  
12 so ordered by the State insurance regulator of a licensed  
13 State, and then only as to those outstanding policies whose  
14 owners reside in such licensed State. Applicable State law  
15 may require a redomesticating insurer to file new policy  
16 forms with the State insurance regulator of a licensed  
17 State on or before the effective date of the transfer, but  
18 a redomesticating insurer may use existing policy forms  
19 with appropriate endorsements to reflect the new domicile  
20 of the redomesticating insurer until the new policy forms  
21 are approved for use by the State insurance regulator of  
22 such licensed State. A redomesticating insurer shall give  
23 notice of the proposed transfer to the State insurance reg-  
24 ulator of each licensed State and shall file promptly any  
25 resulting amendments to corporate documents required to

1 be filed by a foreign licensed mutual life insurer with the  
2 insurance regulator of each such licensed State.

3 (c) PREEMPTION OF STATE LAWS RESTRICTING RE-  
4 DOMESTICATION.—(1) Any State law conflicting with the  
5 provisions of this section is hereby preempted. Without  
6 limiting the generality of the preceding sentence, the fol-  
7 lowing State laws purporting to regulate redomesticated  
8 or redomesticating insurers shall be preempted with re-  
9 spect to such insurers:

10 (A) Any provision impeding or intended to im-  
11 pede the activities of, taking any action against, or  
12 applying any provision of law or regulation to, any  
13 insurer or affiliate of such insurer because that in-  
14 surer or any affiliate plans to redomesticate or has  
15 redomesticated pursuant to this section.

16 (B) Any provision impeding the activities of,  
17 taking any action against, or applying any provision  
18 of law or regulation to, any insured or any insurance  
19 licensee or other intermediary because such insured  
20 or such insurance licensee or other intermediary has  
21 procured insurance from or placed insurance with  
22 any insurer or any affiliate of such insurer that  
23 plans to redomesticate or has redomesticated pursu-  
24 ant to this section.

1           (C) Any provision purporting to terminate, by  
2       reason of the redomestication of a mutual life in-  
3       surer pursuant to this section, any certificate of au-  
4       thority, agent appointment or license, rate approval  
5       or other approval of any State insurance regulator  
6       or other State authority in existence immediately  
7       prior to the redomestication in any State other than  
8       the transferee domicile.

9   Where a State applies any State law to a redomesticating  
10 or redomesticated insurer or insurers (as well as affiliates  
11 of such insurer or insurers) in a different manner than  
12 the State has applied such law to insurers that are not  
13 redomesticating or redomesticated insurers, such applica-  
14 tion of such law or regulation to the redomesticating or  
15 redomesticated insurer or insurers shall be preempted.

16       (2) If any licensed State fails to issue, delays the issu-  
17 ance of, or seeks to revoke an original or renewal certifi-  
18 cate of authority of a redomesticated insurer immediately  
19 following redomestication, except on grounds and in a  
20 manner consistent with its past practices regarding the  
21 issuance of certificates of authority to foreign insurers  
22 that are not redomesticating, then the redomesticating in-  
23 surer shall be exempt from any State law of the licensed  
24 State to the extent that such State law or the operation

1 of such State law would make unlawful, or regulate, di-  
2 rectly or indirectly, the operation of the redomesticated in-  
3 surer, except that such licensed State may require the re-  
4 domesticated insurer to—

5 (A) comply with the unfair claim settlement  
6 practices law of the licensed State;

7 (B) pay, on a nondiscriminatory basis, applica-  
8 ble premium and other taxes which are levied on li-  
9 censed insurers or policyholders under the laws of  
10 the licensed State;

11 (C) register with and designate the State insur-  
12 ance regulator as its agent solely for the purpose of  
13 receiving service of legal documents or process;

14 (D) submit to an examination by the State in-  
15 surance regulator in any licensed State in which the  
16 redomesticated insurer is doing business to deter-  
17 mine the insurer's financial condition, if (i) the  
18 State insurance regulator of the transferee domicile  
19 has not begun and has refused to initiate an exam-  
20 ination of the redomesticated insurer; and (ii) any  
21 such examination is coordinated to avoid unjustified  
22 duplication and repetition;

23 (E) comply with a lawful order issued in (i) a  
24 delinquency proceeding commenced by the State in-  
25 surance regulator of any licensed State if there has

1       been a judicial finding of financial impairment under  
2       subparagraph (G) below, or (ii) a voluntary dissolu-  
3       tion proceeding;

4               (F) comply with any State law regarding decep-  
5       tive, false, or fraudulent acts or practices, except  
6       that if the licensed State seeks an injunction regard-  
7       ing the conduct described in this paragraph, such in-  
8       junction must be obtained from a court of competent  
9       jurisdiction as provided in subparagraph (D);

10              (G) comply with an injunction issued by a court  
11       of competent jurisdiction, upon a petition by the  
12       State insurance regulator alleging that the redomes-  
13       ticated insurer is in hazardous financial condition or  
14       is financially impaired;

15              (H) participate in any insurance insolvency  
16       guaranty association on the same basis as any other  
17       insurer licensed in the licensed State;

18              (I) require a person acting, or offering to act,  
19       as an insurance licensee for a redomesticated insurer  
20       in the licensed State to obtain a license from that  
21       State, except that such State may not impose any  
22       qualification or requirement which discriminates  
23       against a nonresident insurance licensee.

24       (d) JUDICIAL REVIEW.—The appropriate United  
25       States district court shall have exclusive jurisdiction over

1 litigation arising under this section involving any redomes-  
2 ticating or redomesticated company.

3 (e) SEPARABILITY.—If any provision of this section,  
4 or the application thereof to any person or circumstances,  
5 is held invalid, the remainder of the section, and the appli-  
6 cation of such provision to other persons or circumstances,  
7 shall not be affected thereby.

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

10 (1) COURT OF COMPETENT JURISDICTION.—

11 The term “court of competent jurisdiction” means a  
12 court authorized pursuant to subsection (d) to adju-  
13 dicate litigation arising under this section.

14 (2) DOMICILE.—The term “domicile” means  
15 the State in which an insurer is incorporated, char-  
16 tered or organized.

17 (3) INSURANCE LICENSEE.—The term “insur-  
18 ance licensee” means any person who or which holds  
19 a license under State law to act as insurance agent,  
20 subagent, broker or consultant.

21 (4) INSTITUTION.—The term “institution”  
22 means a corporation, joint stock company, limited li-  
23 ability company, limited liability partnership, asso-  
24 ciation, trust, partnership or any similar entity.



1           (5) LICENSED STATE.—The term “licensed  
2       State” means any State, Puerto Rico or the United  
3       States Virgin Islands in which the redomesticating  
4       insurer has a certificate of authority in effect imme-  
5       diately prior to the redomestication.

6           (6) MUTUAL LIFE INSURER.—The term “mu-  
7       tual life insurer” means a mutual life insurer orga-  
8       nized under the laws of any State.

9           (7) PERSON.—The term “person” means an in-  
10      dividual, institution, government or governmental  
11      agency, State or political subdivision of a State, pub-  
12      lic corporation, board, association, estate, trustee, or  
13      fiduciary, or any similar entity.

14          (8) REDOMESTICATED INSURER.—The term  
15      “redomesticated insurer” means a mutual life in-  
16      surer that has redomesticated pursuant to this sec-  
17      tion.

18          (9) REDOMESTICATING INSURER.—The term  
19      “redomesticating insurer” means a mutual life in-  
20      surer that is redomesticating pursuant to this sec-  
21      tion.

22          (10) REDOMESTICATION OR TRANSFER.—The  
23      terms “redomestication” and “transfer” mean the  
24      transfer of the domicile of a mutual life insurer from  
25      one State to another State pursuant to this section.

1           (11) STATE INSURANCE REGULATOR.—The  
2 term “State insurance regulator” means the prin-  
3 cipal insurance regulatory authority of a State or of  
4 Puerto Rico or the United States Virgin Islands.

5           (12) STATE LAW.—The term “State law”  
6 means the statutes of any State or of Puerto Rico  
7 or the United States Virgin Islands and any regula-  
8 tion, order, or requirement prescribed pursuant to  
9 any such statute.

10          (13) TRANSFEREE DOMICILE.—The term  
11 “transferee domicile” means the State to which a  
12 mutual life insurer is redomesticating pursuant to  
13 the provisions of this section.

14          (14) TRANSFEROR DOMICILE.—The term  
15 “transferor domicile” means the State from which a  
16 mutual life insurer is redomesticating pursuant to  
17 the provisions of this section.

18          (15) VOTING SECURITIES.—The term “voting  
19 securities” means securities of any class or any own-  
20 ership interest having voting power for the election  
21 of the board of directors of a person, other than se-  
22 curities having voting power only because of the oc-  
23 currence of a contingency.

1 **TITLE II—CONFORMING AMENDMENTS TO**  
 2 **OTHER LAWS FOR FINANCIAL SERV-**  
 3 **ICES HOLDING COMPANIES**

4 **SEC. 201. EXEMPTION OF FINANCIAL SERVICES HOLDING**  
 5 **COMPANIES FROM THE BANK HOLDING COM-**  
 6 **PANY ACT OF 1956.**

7 Section 2(c)(2) of the Bank Holding Company Act  
 8 of 1956 (12 U.S.C. 1841(c)(2)) is amended by adding at  
 9 the end the following new subparagraphs:

10 “(K) An insured bank, as defined in sec-  
 11 tion 3 of the Federal Deposit Insurance Act,  
 12 that is controlled by a financial services holding  
 13 company, as defined in section 102(a) of the  
 14 Financial Services Holding Company Act.

15 “(L) A wholesale financial institution, as  
 16 defined in section 102(i) of the Financial Serv-  
 17 ices Holding Company Act, that is controlled by  
 18 a financial services holding company, as defined  
 19 in section 102(a) of such Act.”.

20 **SEC. 202. AMENDMENTS TO THE FEDERAL RESERVE ACT.**

21 (a) IN GENERAL.—Section 23B(b)(1)(B) of the Fed-  
 22 eral Reserve Act (12 U.S.C. 371c–1(b)(1)(B)) is amended  
 23 by inserting “and for 30 days thereafter” after “during  
 24 the existence of any underwriting or selling syndicate”.

1 (b) AFFILIATES OF MEMBER BANKS.—The 22d un-  
 2 designated paragraph of section 9 of the Federal Reserve  
 3 Act (12 U.S.C. 338) is amended by adding at the end the  
 4 following new sentence: “No provision of this paragraph  
 5 shall be construed as authorizing an examination of an  
 6 affiliate of a member bank if the member bank is an affi-  
 7 ate of a financial services holding company (as defined in  
 8 section 102 of the Financial Services Holding Company  
 9 Act).”.

10 **SEC. 203. AMENDMENTS TO THE BANKING ACT OF 1933.**

11 (a) SECTION 20.—Section 20 of the Banking Act of  
 12 1933 (12 U.S.C. 377) is amended by inserting after the  
 13 first undesignated paragraph the following: “The provi-  
 14 sions of this section shall not apply to a financial services  
 15 holding company or any of its affiliates, as such terms  
 16 are defined in section 102 of the Financial Services Hold-  
 17 ing Company Act.”

18 (b) SECTION 32.—Section 32 of the Banking Act of  
 19 1933 (12 U.S.C. 78) is amended by adding at the end  
 20 the following: “This section shall not apply so as to pro-  
 21 hibit an officer, director, or employee of a securities affi-  
 22 ate (as defined in section 102(r) of the Financial Services  
 23 Holding Company Act) from serving at the same time as  
 24 an officer, director, or employee of a member bank affi-  
 25 ated with the securities affiliate pursuant to such Act.

1 This section shall not apply so as to prohibit an officer,  
 2 director, or employee of an investment company registered  
 3 under the Investment Company Act of 1940 or an invest-  
 4 ment adviser registered under the Investment Advisers  
 5 Act of 1940 from serving at the same time as an officer,  
 6 director, or employee of a member bank that is affiliated  
 7 with a financial services holding company (as defined in  
 8 section 102(a) of the Financial Services Holding Company  
 9 Act).’.

10 **SEC. 204. AMENDMENTS TO THE FEDERAL DEPOSIT INSUR-**  
 11 **ANCE ACT.**

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

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

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

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

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

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

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

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

22 and

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

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

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

12          “(B) any ‘financial services holding com-  
13      pany’, as that term is defined in section 102(a)  
14      of the Financial Services Holding Company  
15      Act, which has control of any such insured  
16      bank, and the appropriate Federal banking  
17      agency in the case of a financial services hold-  
18      ing company shall be the appropriate Federal  
19      banking agency of the lead depository institu-  
20      tion (as defined in section 102(h) of the Finan-  
21      cial Services Holding Company Act) of the fi-  
22      nancial services holding company.

23      (b) SECTION 18.—Section 18(j)(1)(A) of the Federal  
24      Deposit Insurance Act (12 U.S.C. 1828(j)(1)(A)) is  
25      amended by striking “Sections” and inserting “Subject to

1 section 104(a)(2) of the Financial Services Holding Com-  
2 pany Act, sections”.

3 (c) APPROPRIATE FEDERAL BANKING AGENCY.—

4 (1) STATE MEMBER WHOLESALE FINANCIAL IN-  
5 STITUTIONS.—Section 3(g)(2)(A) of the Federal De-  
6 posit Insurance Act (12 U.S.C. 1813 (q)(2)(A)) is  
7 amended to read as follows:

8 “(A) any State member insured bank (ex-  
9 cept a District bank) and State member whole-  
10 sale financial institution as authorized pursuant  
11 to section 9B of the Federal Reserve Act.”.

12 (2) NATIONAL WHOLESALE FINANCIAL INSTI-  
13 TUTION.—Section 3(g)(1) of the Federal Deposit In-  
14 surance Act (12 U.S.C. 1813(q)(1)) is amended by  
15 inserting “(including any national wholesale finan-  
16 cial institution and any national market funded lend-  
17 ing institution, as authorized pursuant to sections  
18 5136B and 5158 of the Revised Statutes of the  
19 United States)”.

20 (d) SECURITIES COMPANY AFFILIATIONS OF FDIC-  
21 INSURED BANKS.—Section 18 of the Federal Deposit In-  
22 surance Act (12 U.S.C. 1828) is amended by adding at  
23 the end thereof the following new subsection:

24 “(s) SECURITIES AFFILIATIONS OF BANKS.—



1           “(1) IN GENERAL.—A bank shall not be an af-  
2       filiate of any company that, directly or indirectly,  
3       acts as an underwriter or dealer of any security,  
4       other than—

5           “(A) a bank;

6           “(B) a securities affiliate as defined in sec-  
7       tion 102(r) of the Financial Services Holding  
8       Company Act; or

9           “(C) a company that underwrites or deals  
10      only in securities that are described in section  
11      121 of the Depository Institution Affiliation  
12      and Thrift Charter Conversion Act.

13          “(2) EXCEPTIONS.—

14          “(A) CERTAIN BANKS NOT INCLUDED.—  
15      For purposes of this subsection, the term ‘bank’  
16      does not include—

17           “(i) an insured bank described in sub-  
18          paragraph (D), (F), or (H) of section  
19          2(c)(2) of the Bank Holding Company Act  
20          of 1956; and

21           “(ii) a Federal branch or an insured  
22          branch (as defined in section 3 of the Fed-  
23          eral Deposit Insurance Act).

24          “(B) AFFILIATIONS WITH EDGE ACT AND  
25      AGREEMENT CORPORATIONS.—Paragraph (1)

1 shall not apply with respect to the affiliation of  
2 a bank with a company held pursuant to section  
3 25 or 25A of the Federal Reserve Act or section  
4 4(c)(13) of the Bank Holding Company Act of  
5 1956.

6 “(3) GRANDFATHER PROVISION.—This sub-  
7 section shall not apply with respect to—

8 “(A) an affiliation between a bank and a  
9 company that underwrites or deals in securities,  
10 provided that—

11 “(i) the affiliation is authorized pur-  
12 suant to an order issued by the Board of  
13 Governors of the Federal Reserved System  
14 under section 4(c)(8) of the Bank Holding  
15 Company Act of 1956; and

16 “(ii) such company complies with the  
17 limitations, restrictions, and conditions, in-  
18 cluding the limitation on the revenue that  
19 may be derived from underwriting or deal-  
20 ing activities, that were generally applica-  
21 ble to companies that, as of January 1,  
22 1996, were subject to orders described in  
23 clause (i);

24 “(B) any other lawful affiliation that ex-  
25 isted on January 1, 1996; or

1           “(C) any new affiliation by an insured that  
2           has an affiliation that would be prohibited if the  
3           affiliation were not covered by subparagraph  
4           (B).

5           “(4) DEFINITIONS.—For purposes of this sub-  
6           section, the following definitions shall apply:

7           “(A) DEALER.—The term ‘dealer’ has the  
8           meaning given to such term in section 3(a)(5)  
9           of the Securities Exchange Act of 1934.

10          “(B) SECURITY.—The term ‘security’ has  
11          the meaning given to such term in section  
12          121(c) of the Financial Services Holding Com-  
13          pany Act.

14          “(C) UNDERWRITER.—The term ‘under-  
15          writer’ has the meaning given to such term in  
16          section 2(11) of the Securities Act of 1933.”.

17          (e) AFFILIATE OF AN INSURED DEPOSITORY INSTI-  
18          TUTION.—Section 10(b)(4) of the Federal Deposit Insur-  
19          ance Act (12 U.S.C. 1820(b)(4)) is amended by adding  
20          at the end the following new subparagraph:

1           “(C) AFFILIATES OF FINANCIAL SERVICES  
 2           HOLDING COMPANY.—No provision of this para-  
 3           graph shall be construed as authorizing an ex-  
 4           amination of an affiliate of an insured deposi-  
 5           tory institution if the insured depository institu-  
 6           tion is an affiliate of a financial services holding  
 7           company (as defined in section 102 of the Fi-  
 8           nancial Services Holding Company Act).”.

9   **SEC. 205. AMENDMENT TO THE COMMUNITY REINVEST-**  
 10           **MENT ACT.**

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

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

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

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

19           (4) by adding at the end the following new sub-  
 20           paragraph:

21           “(G) the acquisition of an insured deposi-  
 22           tory institution requiring prior notice under sec-  
 23           tion 103 of the Financial Services Holding  
 24           Company Act.”.

1 **SEC. 206. AMENDMENT TO THE FEDERAL POWER ACT.**

2       Section 305(b) of the Federal Power Act shall not  
 3 apply to any person now holding, or proposing to hold,  
 4 at the same time the position of officer or director of a  
 5 public utility and the position of officer or director of a  
 6 bank, trust company, banking association, or firm per-  
 7 mitted by the Financial Services Holding Company Act  
 8 to underwrite or participate in the marketing of securities  
 9 of the public utility for which the person serves, or pro-  
 10 poses to serve, as an officer or director.

11 **SEC. 207. AMENDMENT TO THE RIGHT TO FINANCIAL PRI-**  
 12 **VACY ACT.**

13       Section 1112(e) of the Right to Financial Privacy Act  
 14 (12 U.S.C. 3412(e)) is amended as follows—

- 15               (1) by striking “this title” and inserting “law”;  
 16       and  
 17               (2) by inserting “, examination reports,” after  
 18       “financial records”.

19 **SEC. 208. AMENDMENTS TO THE INTERNATIONAL BANKING**  
 20 **ACT.**

21       (a) EXEMPTION FROM PROVISIONS OF BANK HOLD-  
 22 ING COMPANY ACT FOR FOREIGN BANKS QUALIFYING AS  
 23 FINANCIAL SERVICES HOLDING COMPANIES.—Section  
 24 8(a) of the International Banking Act (12 U.S.C.  
 25 32016(a)) is amended by adding at the end by striking

1 “provisions.” and inserting the following: “provisions, ex-  
 2 cept that any such foreign bank or company that qualifies  
 3 and elects to be treated as a financial services holding  
 4 company, shall not be so subject to the provisions of the  
 5 Bank Holding Company Act of 1956.”.

6 (b) AUTHORITY TO TERMINATE GRANDFATHER  
 7 RIGHTS.—Section 8(c) of the International Banking Act  
 8 of 1978 (12 U.S.C. 3106(c)) is amended by adding at the  
 9 end the following new paragraph:

10 “(3) PARITY IN CONDUCT OF AUTHORIZED SE-  
 11 CURITIES ACTIVITIES.—

12 “(A) IN GENERAL.—Notwithstanding the  
 13 provisions of paragraph (1) or any other provi-  
 14 sion of law, any authority conferred under this  
 15 subsection on any foreign bank or company  
 16 with respect to securities activities authorized  
 17 for bank holding companies in the United  
 18 States shall terminate 30 days after such for-  
 19 eign bank or company becomes a financial serv-  
 20 ices holding company under the Financial Serv-  
 21 ices Holding Company Act.”.

22 **SEC. 209. AMENDMENT CONCERNING NATIONAL BANKS.**

23 The 1st undesignated paragraph of section 5240 of  
 24 the Revised Statutes of the United States (12 U.S.C. 481)

1 is amended by inserting after the 1st sentence the follow-  
 2 ing new sentence: “No provision of this paragraph shall  
 3 be construed as authorizing an examination of an affiliate  
 4 of a national bank if the national bank is an affiliate of  
 5 a financial services holding company (as defined in section  
 6 102 of the Financial Services Holding Company Act).”.

7 **TITLE III—FUNCTIONAL REGULATION**  
 8 **AMENDMENTS TO SECURITIES LAWS**  
 9 **FOR FINANCIAL SERVICES HOLDING**  
 10 **COMPANIES**

11 **Subtitle A—Broker Dealer Provisions**

12 **SEC. 301. DEFINITION OF BROKER.**

13 Section 3(a)(4) of the Securities Exchange Act of  
 14 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

15 “(4) BROKER.—

16 “(A) IN GENERAL.—The term ‘broker’  
 17 means any person engaged in the business of  
 18 effecting transactions in securities for the ac-  
 19 count of others.

20 “(B) EXCLUSION OF BANKS.—The term  
 21 ‘broker’ does not include a bank unless such  
 22 bank is affiliated with a financial services hold-  
 23 ing company, as defined in section 102(a) of  
 24 the Financial Services Holding Company Act  
 25 and—

1 “(i) publicly solicits the business of  
2 effecting securities transactions for the ac-  
3 count of others; or

4 “(ii) is compensated for such business  
5 by the payment of commissions or similar  
6 remuneration based on effecting trans-  
7 actions in securities (other than fees cal-  
8 culated as a percentage of assets under  
9 management) in excess of the bank’s incre-  
10 mental costs directly attributable to  
11 effecting such transactions (hereafter re-  
12 ferred to as ‘incentive compensation’).

13 “(C) EXEMPTION FOR CERTAIN BANK AC-  
14 TIVITIES.—A bank shall not be considered to be  
15 a broker because the bank engages in any of  
16 the following activities under the conditions de-  
17 scribed:

18 “(i) THIRD PARTY BROKERAGE AR-  
19 RANGEMENTS.—The bank enters into a  
20 contractual or other arrangement with a  
21 broker or dealer registered under this title  
22 under which the broker or dealer offers  
23 brokerage services on or off the premises  
24 of the bank if—



1           “(I) such broker or dealer is  
2 clearly identified as the person per-  
3 forming the brokerage services;

4           “(II) the broker or dealer per-  
5 forms brokerage services in an area  
6 that is clearly marked, and unless  
7 made impossible by space or personnel  
8 considerations, physically separate  
9 from the routine deposit-taking activi-  
10 ties of the bank;

11           “(III) any materials used by the  
12 bank to advertise or promote generally  
13 the availability of brokerage services  
14 under the contractual or other ar-  
15 rangement clearly indicate that the  
16 brokerage services are being provided  
17 by the broker or dealer and not by the  
18 bank;

19           “(IV) any materials used by the  
20 bank to advertise or promote generally  
21 the availability of brokerage services  
22 under the contractual or other ar-  
23 rangement are in compliance with the  
24 Federal securities laws before dis-  
25 tribution;

1           “(V) bank employees perform  
2           only clerical or ministerial functions in  
3           connection with brokerage actions, in-  
4           cluding scheduling appointments with  
5           the associated persons of a broker or  
6           dealer, and on behalf of a broker or  
7           dealer, transmitting orders or han-  
8           dling customers’ funds or securities,  
9           except that bank employees who are  
10          not so qualified may describe in gen-  
11          eral terms investment vehicles under  
12          the contractual or other arrangement  
13          and accept customers’ orders on be-  
14          half of the broker or dealer if such  
15          employees have received training that  
16          is substantially equivalent to the  
17          training required for personnel quali-  
18          fied to sell securities pursuant to the  
19          requirements of a self-regulatory orga-  
20          nization (as defined in section 3(a) of  
21          the Securities Exchange Act of 1934);

22          “(VI) bank employees do not di-  
23          rectly receive incentive compensation  
24          for any brokerage transaction unless  
25          such employees are associated persons

1 of a broker or dealer and are qualified  
2 pursuant to the requirements of a  
3 self-regulatory organization (as so de-  
4 fined) except that the bank employees  
5 may receive nominal cash and  
6 noncash compensation for customer  
7 referrals if the cash compensation is a  
8 one-time fee of a fixed dollar amount  
9 and the payment of the fee is not con-  
10 tingent on whether the referral results  
11 in a transaction;

12 “(VII) such services are provided  
13 by the broker or dealer on a basis in  
14 which all customers which receive any  
15 services are fully disclosed to the  
16 broker or dealer; and

17 “(VIII) the broker or dealer in-  
18 forms each customer that the broker-  
19 age services are provided by the  
20 broker or dealer and not by the bank  
21 and that the securities are not depos-  
22 its or other obligations of the bank,  
23 are not guaranteed by the bank, and  
24 are not insured by the Federal De-  
25 posit Insurance Corporation.

1           “(ii) TRUST ACTIVITIES.—The bank  
2           engages in trust activities (including  
3           effecting transactions in the course of such  
4           trust activities) permissible for national  
5           banks under the first section of the Act of  
6           September 28, 1962, or for State banks  
7           under relevant State trust statutes or law  
8           (including securities safekeeping, self-di-  
9           rected individual retirement accounts, or  
10          managed agency accounts or other func-  
11          tionally equivalent accounts of a bank) un-  
12          less the bank—

13                 “(I) publicly solicits brokerage  
14                 business, other than by advertising  
15                 that it effects transactions in securi-  
16                 ties in conjunction with advertising its  
17                 other activities; or

18                 “(II) receives incentive com-  
19                 pensation for such brokerage activi-  
20                 ties.

21           “(iii) PERMISSIBLE SECURITIES  
22           TRANSACTIONS.—The bank effects trans-  
23           actions in exempted securities, other than  
24           municipal securities, in commercial paper,  
25           bankers acceptances, commercial bills,

1 qualified Canadian Government obligations  
2 as defined in section 5136 of the Revised  
3 Statutes, obligations of the Washington  
4 Metropolitan Area Transit Authority which  
5 are guaranteed by the Secretary of Trans-  
6 portation under section 9 of the National  
7 Capital Transportation Act of 1969, obli-  
8 gations of the North American Develop-  
9 ment Bank, and obligations of any local  
10 public agency (as defined in section 110(h)  
11 of the Housing Act of 1949) or any public  
12 housing agency (as defined in the United  
13 States Housing Act of 1937) that are ex-  
14 pressly authorized by section 5136 of the  
15 Revised Statutes of the United States as  
16 permissible for a national bank to under-  
17 write or deal in.

18 “(iv) MUNICIPAL SECURITIES.—The  
19 bank effects transactions in municipal se-  
20 curities.

21 “(v) EMPLOYEE AND SHAREHOLDER  
22 BENEFIT PLANS.—The bank effects trans-  
23 actions as part of any bonus, profit-shar-  
24 ing, pension, retirement, thrift, savings, in-  
25 centive, stock purchase, stock ownership,

1 stock appreciation, stock option, dividend  
2 reinvestment, or similar plan for employees  
3 or shareholders of an issuer or its subsidi-  
4 aries.

5 “(vi) SWEEP ACCOUNTS.—The bank  
6 effects transactions as part of a program  
7 for the investment or reinvestment of bank  
8 deposit funds into any no-load, open-end  
9 management investment company reg-  
10 istered under the Investment Company Act  
11 of 1940 that holds itself out as a money  
12 market fund.

13 “(vii) AFFILIATE TRANSACTIONS.—  
14 The bank effects transactions for the ac-  
15 count of any affiliate of the bank, as de-  
16 fined in section 102(c) of the Financial  
17 Services Holding Company Act.

18 “(viii) PRIVATE SECURITIES OFFER-  
19 INGS.—The bank—

20 “(I) effects sales as part of pri-  
21 mary offering of securities by an is-  
22 suer, not involving a public offering,  
23 pursuant to section 3(b), 4(2), or 4(6)  
24 of the Securities Act of 1933 and the

1 rules and regulations issued there-  
2 under; and

3 “(II) effects such sales exclu-  
4 sively to an accredited investor, as de-  
5 fined in section 3 of the Securities Act  
6 of 1933.

7 “(ix) DE MINIMUS EXEMPTION.—If  
8 the bank does not have a subsidiary or af-  
9 filiate registered as a broker or dealer  
10 under section 15, the bank effects, other  
11 than in transactions referred to in clauses  
12 (i) through (viii), not more than—

13 “(I) 800 transactions in any cal-  
14 endar year in securities for which a  
15 ready market exists, and

16 “(II) 200 other transactions in  
17 securities in any calendar year.

18 “(x) SAFEKEEPING AND CUSTODY  
19 SERVICES.—The bank, as part of cus-  
20 tomary banking activities—

21 “(I) provides safekeeping or cus-  
22 tody services with respect to securi-  
23 ties, including the exercise of warrants  
24 or other rights on behalf of customers;

1 “(II) clears or settles trans-  
2 actions in securities;

3 “(III) effects securities lending  
4 or borrowing transactions with or on  
5 behalf of customers as part of services  
6 provided to customers pursuant to  
7 subclauses (I) and (II) or invests cash  
8 collateral pledged in connection with  
9 such transactions; or

10 “(IV) holds securities pledged by  
11 one customer to another customer or  
12 securities subject to resale agreements  
13 between customers or facilitates the  
14 pledging or transfer of such securities  
15 by book entry.

16 “(xi) BANKING PRODUCTS.—The bank  
17 effects transactions in products that—

18 “(I) are described in section  
19 121(c)(2) of the Financial Services  
20 Holding Company Act; or

21 “(II) have been exempted by the  
22 appropriate Federal banking agency  
23 pursuant to section 121(c)(3) of such  
24 Act.



1           “(D) EXEMPTION 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 Depository Institution Af-  
6                   filiation Act, 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. 302. 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) EXCLUSION OF BANKS.—The term  
25                   ‘dealer’ does not include a bank unless such

1 bank is affiliated with a financial services hold-  
2 ing company, as defined in section 102(a) of  
3 the Financial Services Holding Company Act.

4 “(D) EXEMPTION FOR CERTAIN BANK AC-  
5 TIVITIES.—A bank shall not be considered to be  
6 a dealer because the bank engages in any of the  
7 following activities under the conditions de-  
8 scribed:

9 “(i) The bank buys and sells commer-  
10 cial paper, bankers acceptances, exempted  
11 securities (other than municipal securities),  
12 qualified Canadian Government obligations  
13 as defined in section 5136 of the Revised  
14 Statutes, obligations of the Washington  
15 Metropolitan Area Transit Authority which  
16 are guaranteed by the Secretary of Trans-  
17 portation under section 9 of the National  
18 Capital Transportation Act of 1969, obli-  
19 gations of the North American Develop-  
20 ment Bank, and obligations of any local  
21 public agency (as defined in section 110(h)  
22 of the Housing Act of 1949) or any public  
23 agency (as defined in the United States  
24 Housing Act of 1937) that are expressly  
25 authorized by section 5136 of the Revised

1 Statutes of the United States as permis-  
2 sible for a national bank to underwrite or  
3 deal in.

4 “(ii) The bank buys and sells munici-  
5 pal securities that are expressly authorized  
6 by section 5136 of the Revised Statutes of  
7 the United States as permissible for a na-  
8 tional bank to underwrite or deal in.

9 “(iii) The bank buys and sells securi-  
10 ties for investment purposes for the bank  
11 or for accounts for which the bank acts as  
12 a trustee or fiduciary.

13 “(iv) The bank—

14 “(I) has not been affiliated with  
15 a securities affiliate for purposes of  
16 the Financial Services Holding Com-  
17 pany Act for more than 1 year; and

18 “(II) engages in the issuance or  
19 sale, through a grantor trust or other-  
20 wise, of securities backed by or rep-  
21 resenting an interest in notes, drafts,  
22 acceptances, loans, leases, receivables,  
23 other obligations, or pools of any such  
24 obligations originated or purchased by  
25 the bank or any affiliate of the bank.

1 “(v) The bank buys and sells products  
 2 that—  
 3 “(I) are described in section  
 4 121(c)(2) of the Financial Services  
 5 Holding Company Act; or  
 6 “(II) have been exempted by the  
 7 appropriate Federal banking agency  
 8 pursuant to section 121(c)(3) of such  
 9 Act.”.

10 **SEC. 303. POWER TO EXEMPT FROM THE DEFINITIONS OF**  
 11 **BROKER AND DEALER.**

12 Section 3 of the Securities Exchange Act of 1934 (15  
 13 U.S.C. 78c) is amended by adding at the end the follow-  
 14 ing:

15 “(e) EXEMPTION FROM THE DEFINITION OF  
 16 BROKER AND DEALER.—The Commission, by regulation  
 17 or order, upon its own motion or upon application, may  
 18 conditionally or unconditionally exclude any person or  
 19 class of persons from the definitions of ‘broker’ or ‘dealer’,  
 20 if the Commission finds that such exclusion is consistent  
 21 with the public interest, the protection of investors, and  
 22 the purposes of this title.”.

23 **SEC. 304. MARGIN REQUIREMENTS.**

24 (a) Section 7(d) of the Securities Exchange Act of  
 25 1934 (15 U.S.C. 15g(d)) is amended by striking “or (E)”

1 and inserting “(E) to a loan to a broker or dealer by a  
 2 member bank or any other person that has entered into  
 3 an agreement pursuant to section 8(a) if the proceeds of  
 4 the loan are to be used in the ordinary course of the bro-  
 5 ker’s or dealer’s business other than for the purpose of  
 6 funding the purchase of securities for the account of such  
 7 broker or dealer, or (F)”.

8 (b) Section 8(a) of the Securities and Exchange Act  
 9 of 1934 is amended—

10 (1) by striking “nonmember bank” and insert-  
 11 ing “person other than a member bank”; and

12 (2) by striking “such bank” in the second sen-  
 13 tence and inserting “such person”.

## 14 **Subtitle B—Investment Company Provisions**

### 15 **SEC. 311. CUSTODY OF INVESTMENT COMPANY ASSETS BY** 16 **AFFILIATED BANK.**

17 (a) MANAGEMENT COMPANIES.—Section 17(f) of the  
 18 Investment Company Act of 1940 (15 U.S.C. 80a–17(f))  
 19 is amended—

20 (1) by redesignating paragraphs (1), (2), and  
 21 (3) as subparagraphs (A), (B), and (A), (B), and  
 22 (C), respectively;

23 (2) by striking “(f) Every, registered” and in-  
 24 serting “(f) CUSTODY OF SECURITIES.—

25 (1) Every registered”;

1           (C) by designating the second, third,  
2           fourth, and fifth sentences of such subsection  
3           as paragraphs (2) through (5), respectively, and  
4           indenting the left margin of such paragraphs  
5           appropriately; and

6           (D) by adding at the end the following new  
7           paragraph:

8           “(6) Notwithstanding any provision of this sub-  
9           section, if a bank described in paragraph (1) and af-  
10          filiated with a financial services company, as defined  
11          in section 102(a) of the Financial Services Holding  
12          Company Act, or an affiliated person of such bank,  
13          is an affiliated person, promoter, organizer, or spon-  
14          sor of, or principal underwriter for the registered  
15          company, such bank may serve as custodian under  
16          this subsection in accordance with such rules, regu-  
17          lations, or orders as the Commission may prescribe,  
18          consistent with the protection of investors, after con-  
19          sulting in writing with the appropriate Federal  
20          banking agency, as defined in section 3 of the Fed-  
21          eral Deposit Insurance Act.”.

22          (b) UNIT INVESTMENT TRUSTS.—Section 26(a)(1) of  
23          the Investment Company Act of 1940 (15 U.S.C. 80a–  
24          26(a)(1)) is amended by inserting before the semicolon at

1 the end the following: “, except that, if the trustee or cus-  
 2 todian described in this subsection is an affiliated person  
 3 of such underwriter or depositor and of a financial services  
 4 holding company, as defined in section 102(a) of the Fi-  
 5 nancial Services Holding Company Act, the Commission  
 6 may adopt rules and regulations or issue orders, consistent  
 7 with the protection of investors, prescribing the conditions  
 8 under which such trustee or custodian may serve, after  
 9 consulting in writing with the appropriate Federal bank-  
 10 ing agency (as defined in section 3 of the Federal Deposit  
 11 Insurance Act)”.

12 (c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a)  
 13 of the Investment Company Act of 1940 (15 U.S.C. 80a–  
 14 35(a)) is amended—

15 (1) in paragraph (1), by striking “or” at the  
 16 end;

17 (2) in paragraph (2), by striking the period at  
 18 the end and inserting “; or”; and

19 (3) by inserting after paragraph (2) the follow-  
 20 ing:

21 “(3) if affiliated with a financial services hold-  
 22 ing company, as defined section 102(a) of the Fi-  
 23 nancial Services Holding Company Act, as custo-  
 24 dian.”.

1 **SEC. 312. LENDING TO AN AFFILIATED INVESTMENT COM-**  
 2 **PANY.**

3 Section 18 of the Investment Company Act of 1940  
 4 (15 U.S.C. 80a–18) is amended by adding at the end the  
 5 following:

6 “(l) Notwithstanding any provision of this section, it  
 7 shall be unlawful for any affiliated person of a registered  
 8 investment company that is affiliated with a financial serv-  
 9 ices holding company, as defined in section 102(a) of the  
 10 Financial Services Holding Company Act, or any affiliated  
 11 person of such a person, to loan money to such investment  
 12 company in contravention of such rules, regulations, or or-  
 13 ders as the Commission may prescribe in the public inter-  
 14 est and consistent with the protection of investors.”.

15 **SEC. 313. INDEPENDENT DIRECTORS.**

16 (a) IN GENERAL.—Section 2(a)(19)(A) of the Invest-  
 17 ment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(A))  
 18 is amended—

19 (1) by striking clause (v) and inserting the fol-  
 20 lowing new clause:

21 “(v) any person affiliated with a fi-  
 22 nancial services holding company (other  
 23 than a registered investment company)  
 24 that, at any time during the preceding 6



1 months, has executed any portfolio trans-  
2 actions for, engaged in any principal trans-  
3 actions with, or distributed shares for—

4 “(I) the investment company,

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

11 “(III) any account over which the  
12 investment company’s investment ad-  
13 viser has brokerage placement discre-  
14 tion,

15 or any affiliated person of such a person,”;

16 (2) by redesignating clause (vi) as clause (vii)

17 and

18 (3) by inserting after clause (v) the following  
19 new clause:

20 “(vi) any person affiliated with a fi-  
21 nancial services holding company (other  
22 than a registered investment company)  
23 that, at any time during the preceding 6  
24 months, has loaned money to—

25 “(I) the investment company,

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

7                   “(III) any account for which the  
 8                   investment company’s investment ad-  
 9                   viser has borrowing authority,  
 10                  or any affiliated person of such a person,  
 11                  or”.

12           (b) AFFILIATION OF DIRECTORS.—Section 10(c) of  
 13 the Investment Company Act of 1940 (15 U.S.C. 80a–  
 14 10(c)) is amended by striking, “bank, except” and insert-  
 15 ing “bank affiliated with a financial services holding com-  
 16 pany (and its subsidiaries) or any single financial services  
 17 holding company (and its affiliates and subsidiaries), as  
 18 those terms are defined in the Financial Services Holding  
 19 Company Act, except”.

20           (c) EFFECTIVE DATE.—The provisions of subsection  
 21 (a) of this section shall become effective 1 year after the  
 22 effective date of this subtitle.

1 **SEC. 314. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

2 (a) MISREPRESENTATION.—Section 35(a) of the In-  
3 vestment Company Act of 1940 (15 U.S.C. 80a–34(a)) is  
4 amended to read as follows:

5 “(a) MISREPRESENTATION OF GUARANTEES.—

6 “(1) IN GENERAL.—It shall be unlawful for any  
7 person, issuing or selling any security of which a  
8 registered investment company is the issuer, to rep-  
9 resent or imply in any manner whatsoever that such  
10 security or company—

11 “(A) has been guaranteed, sponsored, rec-  
12 ommended, or approved by the United States,  
13 or any agency, instrumentality or officer of the  
14 United States;

15 “(B) has been insured by the Federal De-  
16 posit Insurance Corporation;

17 “(C) is guaranteed by or is otherwise an  
18 obligation of any bank or insured depository in-  
19 stitution.

20 “(2) DISCLOSURES.—Any person that is affili-  
21 ated with an insured depository institution and is-  
22 sues or sells the securities of a registered investment  
23 company shall prominently disclose that the invest-  
24 ment company or any security issued by the invest-  
25 ment company—

1           “(A) is not insured by the Federal Deposit  
2           Insurance Corporation;

3           “(B) is not guaranteed by an affiliated in-  
4           sured depository institution; and

5           “(C) is not otherwise an obligation of any  
6           bank or insured depository institution,  
7           in accordance with such rules, regulations, or orders  
8           as the Commission may prescribe as reasonably nec-  
9           essary or appropriate in the public interest for the  
10          protection of investors, after consulting in writing  
11          with the appropriate Federal banking agencies.

12          “(3) DEFINITIONS.—The terms ‘insured deposi-  
13          tory institution’ and ‘appropriate Federal banking  
14          agency’ have the meanings given to such terms in  
15          section 3 of the Federal Deposit Insurance Act.”.

16          (b) DECEPTIVE USE OF NAMES.—Section 35(d) of  
17          the Investment Company Act of 1940 (15 U.S.C. 80a–  
18          34(d)) is amended to read as follows:

19          “(d)(1) It shall be unlawful for any registered invest-  
20          ment company to adopt as part of the name or title of  
21          such company, or any securities of which it is the issuer,  
22          any word or words that the Commission finds are materi-  
23          ally deceptive or misleading. The Commission may adopt

1 such rules or regulations or issue such orders as are nec-  
2 essary or appropriate to prevent the use of deceptive or  
3 misleading names or titles by investment companies.

4 “(2) It shall be deceptive and misleading for any reg-  
5 istered investment company—

6 “(A) that is an affiliated person of a bank that  
7 is affiliated with a financial service holding company,  
8 as defined in section 102(a) of the Financial Serv-  
9 ices Holding Company Act, or an affiliated person of  
10 such person, or

11 “(B) for which a bank that is affiliated with a  
12 financial service holding company, as defined in sec-  
13 tion 102(a) of the Financial Services Holding Com-  
14 pany Act, or an affiliated person of such a bank,  
15 acts as investment adviser, sponsor, promoter, or  
16 principal underwriter,

17 to adopt, as part of the name or title such company, or  
18 of any security of which it is an issuer, any word that  
19 is the same or similar to, or a variation of, the name or  
20 title of such bank, in contravention of such rules, regula-  
21 tions, or orders as the Commission may, prescribe as nec-  
22 essary or appropriate in the public interest or for the pro-  
23 tection of investors.”.

1 **SEC. 315. 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. 89a–2(a)(6)) is amended to read as fol-  
5 lows:

6 “(6) The term ‘broker’ has the same meaning  
7 as in the Securities Exchange Act of 1934, except  
8 that such term does not include any person solely by  
9 reason of the fact that such person is an underwriter  
10 for one or more investment companies.”.

11 **SEC. 316. DEFINITION OF DEALER UNDER THE INVEST-**  
12 **MENT COMPANY ACT OF 1940.**

13 Section 2(a)(11) of the Investment Company Act of  
14 1940 (15 U.S.C. 80a–2(a)(11)) is amended to read as fol-  
15 lows:

16 “(11) The term ‘dealer’ has the same meaning  
17 as in the Securities Exchange Act of 1934, but does  
18 not include an insurance company or investment  
19 company.”.

20 **SEC. 317. REMOVAL OF THE EXCLUSION FROM THE DEFINI-**  
21 **TION OF INVESTMENT ADVISER FOR BANKS**  
22 **THAT ADVISE INVESTMENT COMPANIES.**

23 (a) INVESTMENT ADVISER.—Section 202(a)(11) of  
24 the Investment Advisers Act of 1940 (15 U.S.C. 80b–  
25 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 financial services holding company, as defined in sec-  
 4 tion 102(a) of the Financial Services Holding Company  
 5 Act, or any bank affiliated with such company, to the ex-  
 6 tent that such financial services holding company or bank  
 7 acts as an investment adviser to a registered investment  
 8 company, or if, in the case of such a bank, such services  
 9 are performed through a separately identifiable depart-  
 10 ment or division, the department or division, and not the  
 11 bank itself, shall be deemed to be the investment adviser”.

12 (b) SEPARATELY IDENTIFIABLE DEPARTMENT OR  
 13 DIVISION.—Section 202(a) of the Investment Advisers Act  
 14 of 1940 (15 U.S.C. 80b–2(a)) is amended by adding at  
 15 the end the following:

16 “(25) The term ‘separately identifiable depart-  
 17 ment or division’ of a bank means a unit—

18 “(A) that is under the direct supervision of  
 19 an officer or officers designated by the board of  
 20 directors of the bank as responsible for the day-  
 21 to-day conduct of the bank’s investment adviser  
 22 activities for one or more investment companies,  
 23 including the supervision of all bank employees  
 24 engaged in the performance of such activities;  
 25 and

1           “(B) for which all of the records relating  
 2           to its investment adviser activities are sepa-  
 3           rately maintained in or extractable from such  
 4           unit’s own facilities or the facilities of the bank,  
 5           and such records are so maintained or other-  
 6           wise accessible as to permit independent exam-  
 7           ination and enforcement of this Act or the In-  
 8           vestment Company Act of 1940 and rules and  
 9           regulations promulgated under this Act or the  
 10          Investment Company Act of 1940.”.

11 **SEC. 318. DEFINITION OF BROKER UNDER THE INVEST-**  
 12 **MENT ADVISERS ACT OF 1940.**

13          Section 202(a)(3) of the Investment Advisers Act of  
 14   1940 (15 U.S.C. 80b–2(a)(3)) is amended to read as fol-  
 15   lows:

16           “(3) The term ‘broker’ has the same meaning  
 17          as in the Securities Exchange Act of 1934.”.

18 **SEC. 319. 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 the Securities Exchange Act of 1934, but does



1 not include an insurance company or investment  
2 company.”.

3 **SEC. 320. 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 as each may have access to with respect  
14 to the investment advisory activities of any financial  
15 services holding company, as defined in section  
16 102(a) of the Financial Services Holding Company  
17 Act, bank that is affiliated with a financial services  
18 holding company, or separately identifiable depart-  
19 ment or division of a bank, that is registered under  
20 section 203 of this title, or, in the case of a financial  
21 services holding company or affiliated bank, that has  
22 a subsidiary or a separately identifiable department  
23 or division registered under that section, to the ex-  
24 tent necessary for the Commission to carry out its  
25 statutory responsibilities.

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 financial services holding company,  
 6           bank that is affiliated with a financial services hold-  
 7           ing company, or separately identifiable department  
 8           or division of a bank, any of which is registered  
 9           under section 203 of this title, to the extent nec-  
 10          essary for the agency to carry out its statutory re-  
 11          sponsibilities.

12          “(b) EFFECT ON OTHER AUTHORITY.—Nothing  
 13          herein shall limit in any respect the authority of the appro-  
 14          priate Federal banking agency with respect to such finan-  
 15          cial services holding company, bank that is affiliated with  
 16          a financial services holding company, or department or di-  
 17          vision under any provision of law.

18          “(c) DEFINITION.—For purposes of this section, the  
 19          term ‘appropriate Federal banking agency’ shall have the  
 20          same meaning as in section 3 of the Federal Deposit in-  
 21          surance Act.”

22   **SEC. 321. TREATMENT OF BANK COMMON TRUST FUNDS.**

23          (a) SECURITIES ACT OF 1933.—Section 3(a)(2) of  
 24          the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is  
 25          amended by striking “or any interest or participation in

1 any common trust fund or similar fund maintained by a  
 2 bank exclusively for the collective investment and reinvest-  
 3 ment of assets contributed thereto by such bank in its ca-  
 4 pacity as trustee, executor, administrator, or guardian”  
 5 and inserting “or any interest or participation in any com-  
 6 mon trust fund or similar fund that is excluded from the  
 7 definition of the term ‘investment company’ under section  
 8 3(c)(3) of the Investment Company Act of 1940”.

9 (b) SECURITIES EXCHANGE ACT OF 1934.—Section  
 10 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934  
 11 (15 U.S.C. 78c(a)(12)(A)(iii) is amended to read as fol-  
 12 lows:

13 “(iii) any interest or participation in  
 14 any common trust fund or similar fund  
 15 that is excluded from the definition of the  
 16 term ‘investment company’ under section  
 17 3(c)(3) of the Investment Company Act of  
 18 1940;”.

19 (c) INVESTMENT COMPANY ACT OF 1940.—Section  
 20 3(c)(3) of the Investment Company Act of 1940 (15  
 21 U.S.C. 80a-3(c)(3)) is amended by inserting before the  
 22 period the following: ”, if—

23 “(A) such fund is employed by the bank  
 24 solely as an aid to the administration of trusts,

1           estates, or other accounts created and main-  
2           tained for a fiduciary purpose;

3           “(B) except if the bank is not affiliated  
4           with a financial services holding company, as  
5           defined in section 102(a) of the Financial Serv-  
6           ices Holding Company Act, or in connection  
7           with the ordinary advertising of the bank’s fidu-  
8           ciary services, interests in such fund are not—

9                       “(i) advertised; or

10                      “(ii) offered for sale to the general  
11                      public, and

12           “(C) fees and expenses charged by such  
13           fund are not in contravention of fiduciary prin-  
14           ciples established under applicable Federal or  
15           State law.”

16 **SEC. 322. INVESTMENT ADVISERS PROHIBITED FROM HAV-**  
17 **ING CONTROLLING INTEREST IN REG-**  
18 **ISTERED INVESTMENT COMPANY.**

19           Section 15 of the Investment Company Act of 1940  
20           (15 U.S.C. 80a–15) is amended by adding at the end the  
21           following new subsection:

22           “(g) CONTROLLING INTEREST IN INVESTMENT COM-  
23           PANY PROHIBITED.—

24                      “(1) IN GENERAL.—If any investment adviser  
25           to a registered investment company, or an affiliated

1 person of that investment adviser, holds a control-  
2 ling interest in that registered investment company  
3 in a trustee or fiduciary capacity, such person  
4 shall—

5 “(A) if it holds the shares in a trustee or  
6 fiduciary capacity with respect to any employee  
7 benefit plan subject to the Employee Retirement  
8 Income Security Act of 1974, transfer the  
9 power to vote the shares of the investment com-  
10 pany through to another person acting in a fi-  
11 duciary capacity with respect to the plan who is  
12 not an affiliated person of that investment ad-  
13 viser or any affiliated person thereof; or

14 “(B) if it holds the shares in a trustee or  
15 fiduciary capacity with respect to any other per-  
16 son or entity other than an employee benefit  
17 plan subject to the Employee Retirement In-  
18 come Security Act of 1974—

19 “(i) transfer the power to vote the  
20 shares of the investment company through  
21 to—

22 “(I) the beneficial owners of the  
23 shares;

1                   “(II) another person acting in a  
2                   fiduciary capacity who is not an affili-  
3                   ated person of that investment adviser  
4                   or any affiliated person thereof; or

5                   “(III) any person authorized to  
6                   receive statements and information  
7                   with respect to the trust who is not an  
8                   affiliated person of that investment  
9                   adviser or any affiliated person there-  
10                  of;

11                  “(ii) vote the shares of the investment  
12                  company held by it in the same proportion  
13                  as shares held by all other shareholders of  
14                  the company; or

15                  “(iii) vote the shares of the invest-  
16                  ment company as otherwise permitted  
17                  under such rules, regulations, or orders as  
18                  the Commission may prescribe for the pro-  
19                  tection of investors.

20                  “(2) EXEMPTION.—Paragraph (1) shall not  
21                  apply to any investment adviser to a registered in-  
22                  vestment company, or an affiliated person of that in-  
23                  vestment adviser, if such investment adviser or affili-  
24                  ated person—

1           “(A) is not affiliated with a financial serv-  
2           ices holding company, as defined in section  
3           102(a) of the Financial Services Holding Com-  
4           pany Act; or

5           “(B) holds shares of the investment com-  
6           pany in a trustee or fiduciary capacity if that  
7           registered investment company consists solely of  
8           assets held in such capacities.

9           “(3) SAFE HARBOR.—No investment adviser to  
10          a registered investment company or any affiliated  
11          person of such investment adviser shall be deemed to  
12          have acted unlawfully or to have breached a fidu-  
13          ciary duty under State or Federal law solely by rea-  
14          son of acting in accordance with clause (i), (ii), or  
15          (iii) of paragraph (1)(B).

16          “(4) CHURCH PLAN EXEMPTION.—Paragraph  
17          (1) shall not apply to any investment adviser to a  
18          registered investment company, or an affiliated per-  
19          son of that investment adviser, holding shares in  
20          such a capacity, if such investment adviser or such  
21          affiliated person is an organization described in sec-  
22          tion 414(e)(3)(A) of the Internal Revenue Code of  
23          1986.”.

1 **SEC. 323. CONFORMING CHANGE IN DEFINITION.**

2 Section 2(a)(5) of the Investment Company Act of  
 3 1940 (15 U.S.C. 80a–2(a)(5)) is amended by striking  
 4 “(A) a banking institution under the laws of the United  
 5 States” and inserting “(A) a depository institution (as de-  
 6 fined in section 3 of the Federal Deposit Insurance Act)  
 7 or a branch or agency of a foreign bank (as such terms  
 8 are defined in section 101(b) of the International Banking  
 9 Act of 1978)”.

10 **SEC. 324. EFFECTIVE DATE.**

11 This subtitle shall take effect 270 days after the ef-  
 12 fective date of this Title.

13 **TITLE IV—WHOLESALE FINANCIAL INSTI-**  
 14 **TUTIONS OWNED BY FINANCIAL SERV-**  
 15 **ICES HOLDING COMPANIES**

16 **SEC. 401. NATIONAL WHOLESALE FINANCIAL INSTITU-**  
 17 **TIONS.**

18 Chapter 1 of Title LXII of the Revised Statutes of  
 19 the United States (12 U.S.C. 21 et seq.) is amended by  
 20 inserting after section 5136A the following new section:

21 **“SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITU-**  
 22 **TIONS.**

23 “(a) NATIONAL WHOLESALE FINANCIAL INSTITU-  
 24 TIONS.—Any financial services holding company (as de-  
 25 fined in Section 102(a) of the Financial Services Holding



1 Company Act) may apply to the Comptroller of the Cur-  
2 rency on such forms and in accordance with such proce-  
3 dures as the Comptroller may prescribe by regulation, for  
4 permission to organize a national wholesale financial insti-  
5 tution. Upon approval of the application, such national  
6 wholesale financial institution shall be a body corporate,  
7 chartered under the laws of the United States by the  
8 Comptroller. A national wholesale financial institution  
9 shall operate pursuant to the requirements of this section  
10 at the direction of a board of directors elected at an orga-  
11 nizational meeting, to be held as soon as practicable after  
12 issuance by the Comptroller of a charter, by such financial  
13 services holding company for the purpose of electing such  
14 board of directors and taking such other action necessary,  
15 pursuant to the charter and the regulations issued by the  
16 Comptroller, to complete the corporate organization of the  
17 national wholesale financial institution. Immediately fol-  
18 lowing its election, the board of directors shall meet to  
19 elect the officers of the national wholesale financial insti-  
20 tution and to take such other action, as prescribed by the  
21 Comptroller, to complete the corporate organization of  
22 such national wholesale financial institution.

23 “(b) UNAUTHORIZED ORGANIZATION PROHIBITED.—

24 “(1) IN GENERAL.—No person may organize a  
25 national wholesale financial institution, collect

1 money from others for such purpose, or represent  
2 himself or herself as authorized to do so and no na-  
3 tional wholesale financial institution shall transact  
4 any business prior to completion of its organization  
5 except as provided in this section and in implement-  
6 ing regulations of the Comptroller.

7 “(2) INSURANCE TERMINATION.—No bank that  
8 is insured under the Federal Deposit Insurance Act  
9 may become a national wholesale financial institu-  
10 tion unless—

11 “(A) it has met all the requirements under  
12 that Act for voluntary termination of deposit in-  
13 surance; and

14 “(B) it is affiliated with a financial service  
15 holding company, as defined in section 102(a)  
16 of the Financial Services Holding Company  
17 Act.

18 “(c) AUTHORIZED ACTIVITIES FOR NATIONAL  
19 WHOLESALE FINANCIAL INSTITUTION.—Except as other-  
20 wise provided in this section, a national wholesale financial  
21 institution—

1           “(1) may exercise, in accordance with its arti-  
2           cles of organization and such regulations as are is-  
3           sued by the Comptroller, all of the powers and privi-  
4           leges of a national banking association formed in ac-  
5           cordance with section 5133 of the Revised Statutes  
6           of the United States; and

7           “(2) shall be subject to any provision of title  
8           LXII of the Revised Statutes of the United States  
9           that is applicable to a national banking association  
10          that is not a national wholesale financial institution.

11          “(d) TERMINATION.—A national wholesale financial  
12          institution may terminate its status as a national banking  
13          association only with the prior written approval of the  
14          Comptroller and on terms and conditions that the Comp-  
15          troller determines are appropriate to carry out the pur-  
16          poses of this section.

17          “(e) PROMPT CORRECTIVE ACTION.—A national  
18          wholesale financial institution shall be deemed to be an  
19          insured depository institution for purposes of section 38  
20          of the Federal Deposit Insurance Act except that—

21                 “(1) the relevant capital levels and capital  
22                 measures for each capital category shall be the levels  
23                 specified by the Comptroller for national wholesale  
24                 financial institutions in accordance with subsection  
25                 (i)(2);

1           “(2) the provisions applicable to well capitalized  
2           insured depository institutions shall be inapplicable  
3           to national wholesale financial institutions;

4           “(3) the provisions authorizing or requiring an  
5           institution to be placed into receivership shall not  
6           apply to a national wholesale financial institution,  
7           and, instead, the Comptroller is authorized or re-  
8           quired to place the national wholesale financial insti-  
9           tution into conservatorship; and

10          “(4) for purposes of applying the provisions of  
11          section 38 of the Federal Deposit Insurance Act to  
12          national wholesale financial institutions, all ref-  
13          erences to the appropriate Federal banking agency  
14          or to the Corporation in that section shall be deemed  
15          to be references to the Comptroller.

16          “(f) ENFORCEMENT AUTHORITY.—Subsections (j)  
17          and (k) of section 7, subsections (b) through (n), (s), (u),  
18          and (v) of section 8, and section 19 of the Federal Deposit  
19          Insurance Act shall apply to a national wholesale financial  
20          institution in the same manner and to the same extent  
21          as such provisions apply to insured national banks and  
22          any references in such sections to an insured depository  
23          institution shall be deemed, for purposes of this para-  
24          graph, to be a reference to a national wholesale financial  
25          institution.

1       “(g) CERTAIN OTHER STATUTES APPLICABLE.—A  
 2 national wholesale financial institution shall be deemed to  
 3 be a banking institution, and the Comptroller shall be the  
 4 appropriate Federal banking agency for such bank and all  
 5 such bank’s affiliates, for purposes of the International  
 6 Lending Supervision Act.

7       “(h) BANK MERGER ACT.—A national wholesale fi-  
 8 nancial institution shall be subject to the provisions of sec-  
 9 tions 18(c) and 44 of the Federal Deposit Insurance Act  
 10 in the same manner and to the same extent the national  
 11 wholesale financial institution would be subject to such  
 12 sections if the institution were an insured national bank.

13       “(i) SPECIFIC REQUIREMENTS APPLICABLE TO NA-  
 14 TIONAL WHOLESALE FINANCIAL INSTITUTIONS.—

15               “(1) LIMITATIONS ON DEPOSITS.—

16                       “(A) MINIMUM AMOUNT.—

17                               “(i) IN GENERAL.—Pursuant to such  
 18 regulations as the Comptroller may pre-  
 19 scribe, no national wholesale financial in-  
 20 stitution may receive initial deposits of  
 21 \$100,000 or less, other than on an inciden-  
 22 tal or occasional basis.

23                               “(ii) LIMITATION ON DEPOSITS OF  
 24 LESS THAN \$100,000.—No bank may be  
 25 treated as a national wholesale financial

1 institution if the total amount of the initial  
2 deposits of \$100,000 or less at such bank  
3 constitutes more than 5 percent of the  
4 bank's total deposits.

5 “(B) NO DEPOSIT INSURANCE.—No depos-  
6 its held by a national wholesale financial insti-  
7 tution shall be insured deposits under the Fed-  
8 eral Deposit Insurance Act.

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

17 “(2) SPECIFIC CAPITAL REQUIREMENTS APPLI-  
18 CABLE TO NATIONAL WHOLESALE FINANCIAL INSTI-  
19 TUTIONS.—

20 “(A) MINIMUM CAPITAL LEVELS.—

21 “(i) IN GENERAL.—The Comptroller  
22 shall, by regulation, adopt capital require-  
23 ments for national wholesale financial in-  
24 stitutions to—

1           “(A) account for the status of national  
2           wholesale financial institutions as institutions  
3           that accept deposits that are not insured under  
4           the Federal Deposit Insurance Act; and

5           “(B) provide for the safe and sound oper-  
6           ation of the national wholesale financial institu-  
7           tion without undue risk to creditors or other  
8           persons engaged in transactions with such insti-  
9           tution.

10          “(2) MINIMUM TIER 1 CAPITAL RATIO.—The  
11          minimum ratio of tier 1 capital to total risk-weight-  
12          ed assets of national wholesale financial institutions  
13          shall be not less than the level required for an in-  
14          sured national bank to be well capitalized unless the  
15          Comptroller determines otherwise, consistent with  
16          safety and soundness.

17          “(3) CAPITAL CATEGORIES FOR PROMPT COR-  
18          RECTIVE ACTION.—For purposes of applying section  
19          38 of the Federal Deposit Insurance Act with re-  
20          spect to any national wholesale financial institution,  
21          the Comptroller shall, by regulation, establish, for  
22          each relevant capital measure specified by the Comp-  
23          troller under this subsection, the levels at which a

1 national wholesale financial institution is well cap-  
2 italized, adequately capitalized, undercapitalized, sig-  
3 nificantly undercapitalized, and critically under-  
4 capitalized.

5 “(4) ADDITIONAL REQUIREMENTS APPLICABLE  
6 TO NATIONAL WHOLESALE FINANCIAL INSTITU-  
7 TIONS.—In addition to any requirement otherwise  
8 applicable to State member banks or applicable,  
9 under this section, to national wholesale financial in-  
10 stitutions, the Comptroller may prescribe, by regula-  
11 tion or order, for national wholesale financial institu-  
12 tions—

13 “(A) limitations on transaction with affili-  
14 ates to prevent an affiliate from gaining access  
15 to, or the benefits of, credit from a Federal re-  
16 serve bank, including overdrafts at a Federal  
17 reserve bank;

18 “(B) special clearing balance requirements;  
19 and

20 “(C) any additional requirements that the  
21 Comptroller determines to be appropriate or  
22 necessary to—

23 “(i) promote the safety and soundness  
24 of the national wholesale financial institu-  
25 tion, or



1                   “(ii) protect creditors and other per-  
2                   sons engaged in transactions with the na-  
3                   tional wholesale financial institution.

4                   “(5) EXEMPTIONS FOR NATIONAL WHOLESALE  
5                   FINANCIAL INSTITUTIONS.—The Comptroller may,  
6                   by regulation or order, exempt any national whole-  
7                   sale financial institution from any provision applica-  
8                   ble to a national bank that is not a national whole-  
9                   sale financial institution, if the Comptroller finds  
10                  that such exemption is not inconsistent with—

11                  “(A) the promotion of the safety and  
12                  soundness of the national wholesale financial in-  
13                  stitution; and

14                  “(B) the protection of creditors and other  
15                  persons engaged in transactions with the na-  
16                  tional wholesale financial institution.

17                  “(6) NO EFFECT ON OTHER PROVISIONS.—This  
18                  section shall not be construed as limiting the Comp-  
19                  troller’s authority over national banks under any  
20                  other provision of law, or to create any obligation for  
21                  any Federal reserve bank to make, increase, review,  
22                  or extend any advances or discount under the Fed-  
23                  eral Reserve Act to any member bank or other de-  
24                  pository institution.

1       “(d) CONSERVATORSHIP AUTHORITY.—The Comp-  
2 troller may appoint a conservator to take possession and  
3 control of a national wholesale financial institution to the  
4 same extent and in the same manner as the Comptroller  
5 may appoint a conservator for a national bank under sec-  
6 tion 203 of the Bank Conservation Act, and the conserva-  
7 tor shall exercise the same powers, functions, and duties,  
8 subject to the same limitations, as are provided under such  
9 Act for conservators of national banks.

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

12               “(1) NATIONAL WHOLESALE FINANCIAL INSTI-  
13 TUTION.—The term ‘national wholesale financial in-  
14 stitution’ means a bank that has been approved to  
15 become a national wholesale financial institution by  
16 the Comptroller under this section pursuant to an  
17 application filed under subsection (a).

18               “(2) DEPOSIT.—The term ‘deposit’ has the  
19 meaning given to such term by the Comptroller  
20 under this section.

21       “(f) EXCLUSIVE JURISDICTION.—Subsections (c) and  
22 (e) of section 43 of the Federal Deposit Insurance Act  
23 shall not apply to any national wholesale financial institu-  
24 tion.”.

1 **SEC. 402. STATE MEMBER WHOLESALE FINANCIAL INSTITU-**  
2 **TIONS.**

3 (a) IN GENERAL.—The Federal Reserve Act (12  
4 U.S.C. 221 et seq.) is amended by inserting after section  
5 9A the following new section:

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

7 **“(a) APPLICATION FOR MEMBERSHIP AS WHOLE-**  
8 **SALE FINANCIAL INSTITUTION.—**

9 **“(1) APPLICATION REQUIRED.—**

10 **“(A) IN GENERAL.—**Any bank incor-  
11 porated by special law of any State, or orga-  
12 nized under the general laws of any State, may  
13 apply to the Board of Governors of the Federal  
14 Reserve System to become a State member  
15 wholesale financial institution and to subscribe  
16 to the stock of the Federal reserve bank orga-  
17 nized within the district where the applying  
18 bank is located.

19 **“(B) TREATMENT AS STATE MEMBER**  
20 **BANK.—**Any application under subparagraph  
21 (A) shall be treated as an application to become  
22 a State member bank under, and shall be sub-  
23 ject to the provisions of, section 9.

24 **“(2) INSURANCE TERMINATION.—**No bank that  
25 is insured under the Federal Deposit Insurance Act

1       may become a State member wholesale financial in-  
2       stitution unless—

3               “(A) it has met all requirements under  
4               that Act for voluntary termination of deposit in-  
5               surance; and

6               “(B) is affiliated with a financial services  
7               holding company, as defined in section 102(a)  
8               of the Financial Services Holding Company  
9               Act.

10       “(b) GENERAL REQUIREMENTS APPLICABLE TO  
11 STATE MEMBER WHOLESALE FINANCIAL INSTITU-  
12 TIONS.—

13               “(1) FEDERAL RESERVE ACT.—Except as oth-  
14       erwise provided in this section, State member whole-  
15       sale financial institutions shall be member banks  
16       and shall be subject to the provisions of this Act  
17       that apply to member banks to the same extent and  
18       in the same manner as State member insured banks,  
19       except that a State member wholesale financial insti-  
20       tution may terminate membership under this Act  
21       only with the prior written approval of the Board  
22       and on terms and conditions that the Board deter-  
23       mines are appropriate to carry out the purposes of  
24       this Act.

1           “(2) PROMPT CORRECTIVE ACTION.—A State  
2       member wholesale financial institution shall be  
3       deemed to be an insured depository institution for  
4       purposes of section 38 of the Federal Deposit Insur-  
5       ance Act except that—

6           “(A) the relevant capital levels and capital  
7       measures for each capital category shall be the  
8       levels specified by the Board for State member  
9       wholesale financial institutions in accordance  
10      with subsection (c);

11          “(B) the provisions applicable to well cap-  
12      italized insured depository institutions shall be  
13      inapplicable to wholesale financial institutions;

14          “(C) the provisions authorizing or requir-  
15      ing an institution to be placed into receivership  
16      shall not apply to a State member wholesale fi-  
17      nancial institution, and, instead, the Board is  
18      authorized or required, as the case may be, to  
19      terminate the State member wholesale financial  
20      institution’s membership in the Federal Reserve  
21      System or place the bank into conservatorship;  
22      and

1           “(D) for purposes of applying the provi-  
2           sions of section 38 of the Federal Deposit In-  
3           surance Act to State member wholesale finan-  
4           cial institutions, all references to the appro-  
5           priate Federal banking agency or to the Cor-  
6           poration in that section shall be deemed to be  
7           references to the Board.

8           “(3) ENFORCEMENT AUTHORITY.—Subsections  
9           (j) and (k) of section 7, subsections (b) through (n),  
10          (s), (u), and (v) of section 8, and section 19 of the  
11          Federal Deposit Insurance Act shall apply to a State  
12          member wholesale financial institution in the same  
13          manner and to the same extent as such provisions  
14          apply to State member insured banks and any ref-  
15          erences in such sections to an insured depository in-  
16          stitution shall be deemed, for purposes of this para-  
17          graph, to be a reference to a State member whole-  
18          sale financial institution.

19          “(4) CERTAIN OTHER STATUTES APPLICA-  
20          BLE.—A State member wholesale financial institu-  
21          tion shall be deemed to be a banking institution, and  
22          the Board shall be the appropriate Federal banking  
23          agency for such bank and all such bank’s affiliates  
24          for purposes of the International Lending Super-  
25          vision Act.

1           “(5) BANK MERGER ACT.—A State member  
2       wholesale financial institution shall be subject to the  
3       provisions of sections 18(c) and 44 of the Federal  
4       Deposit Insurance Act in the same manner and to  
5       the same extent as the State member wholesale fi-  
6       nancial institution would be subject to such sections  
7       if the institution were a State member insured bank.

8       “(c) SPECIFIC REQUIREMENTS APPLICABLE TO  
9       STATE MEMBER WHOLESALE FINANCIAL INSTITU-  
10      TIONS.—

11           “(1) LIMITATIONS ON DEPOSITS.—

12           “(A) MINIMUM AMOUNT.—

13           “(i) IN GENERAL.—Pursuant to such  
14       regulations as the Board may prescribe, no  
15       State member wholesale financial institu-  
16       tion may receive initial deposits of  
17       \$100,000 or less, other than on an inciden-  
18       tal or occasional basis.

19           “(ii) LIMITATION ON DEPOSITS OF  
20       LESS THAN \$100,000.—No bank may be  
21       treated as a State member wholesale finan-  
22       cial institution if the total amount of the  
23       initial deposits of \$100,000 or less at such  
24       bank constitutes more than 5 percent of  
25       the bank’s total deposits.

1           “(B) NO DEPOSIT INSURANCE.—No depos-  
2           its held by a State member wholesale financial  
3           institution shall be insured deposits under the  
4           Federal Deposit Insurance Act.

5           “(C) ADVERTISING AND DISCLOSURE.—  
6           The Board shall prescribe regulations pertain-  
7           ing to advertising and disclosure by State mem-  
8           ber wholesale financial institutions to ensure  
9           that each depositor is notified that deposits at  
10          such wholesale financial institution are not fed-  
11          erally insured or otherwise guaranteed by the  
12          United States Government.

13          “(2) SPECIAL CAPITAL REQUIREMENTS APPLI-  
14          CABLE TO STATE MEMBER WHOLESALE FINANCIAL  
15          INSTITUTIONS.—

16                 “(A) MINIMUM CAPITAL LEVELS.—

17                         “(i) IN GENERAL.—The Board shall,  
18                         by regulation, adopt capital requirements  
19                         for State member wholesale financial insti-  
20                         tutions—

21                                 “(I) to account for the status of  
22                                 State member wholesale financial in-  
23                                 stitutions as institutions that accept  
24                                 deposits that are not insured under



1 the Federal Deposit Insurance Act;  
2 and

3 “(II) to provide for the safe and  
4 sound operation of the State member  
5 wholesale financial institution without  
6 undue risk to creditors or other per-  
7 sons, including Federal reserve banks,  
8 engaged in transactions with such in-  
9 stitution.

10 “(ii) MINIMUM TIER 1 CAPITAL  
11 RATIO.—The minimum ratio of tier 1 cap-  
12 ital to total risk-weighted assets of State  
13 member wholesale financial institutions  
14 shall be not less than the level required for  
15 a State member insured bank to be well  
16 capitalized unless the Board determines  
17 otherwise, consistent with safety and  
18 soundness.

19 “(B) CAPITAL CATEGORIES FOR PROMPT  
20 CORRECTIVE ACTION.—For purposes of apply-  
21 ing section 38 of the Federal Deposit Insurance  
22 Act with respect to any wholesale financial in-  
23 stitution, the Board shall, by regulation, estab-  
24 lish, for each relevant capital measure specified

1 by the Board under subparagraph (A), the lev-  
2 els at which a State member wholesale financial  
3 institution is well capitalized, adequately cap-  
4 italized, undercapitalized, significantly under-  
5 capitalized, and critically undercapitalized.

6 “(3) ADDITIONAL REQUIREMENTS APPLICABLE  
7 TO STATE MEMBER WHOLESALE FINANCIAL INSTI-  
8 TUTIONS.—In addition to any requirement otherwise  
9 applicable to State member banks or applicable,  
10 under this section, to State member wholesale finan-  
11 cial institutions, the Board may prescribe, by regula-  
12 tion or order, for State member wholesale financial  
13 institutions—

14 “(A) limitations on transaction with affili-  
15 ates to prevent an affiliate from gaining access  
16 to, or the benefits of, credit from a Federal re-  
17 serve bank, including overdrafts at a Federal  
18 reserve bank;

19 “(B) special clearing balance requirements;  
20 and

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

24 “(i) promote the safety and soundness  
25 of the wholesale financial institution, or

1                   “(ii) protect creditors and other per-  
2                   sons, including Federal reserve banks, en-  
3                   gaged in transactions with the State mem-  
4                   ber wholesale financial institution.

5                   “(4) EXEMPTIONS FOR STATE MEMBER WHOLE-  
6                   SALE FINANCIAL INSTITUTIONS.—The Board may,  
7                   by regulation or order, exempt any State member  
8                   wholesale financial institution from any provision ap-  
9                   plicable to a State member bank that is not a State  
10                  member wholesale financial institution, if the Board  
11                  finds that such exemption is not inconsistent with—

12                  “(A) the promotion of the safety and  
13                  soundness of the State member wholesale finan-  
14                  cial institution; and

15                  “(B) the protection of creditors and other  
16                  persons, including Federal reserve banks, en-  
17                  gaged in transactions with the State member  
18                  wholesale financial institution.

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

1 “(d) CONSERVATORSHIP AUTHORITY.—

2 “(1) IN GENERAL.—The Board may appoint a  
3 conservator to take possession and control of a State  
4 member wholesale financial institution to the same  
5 extent and in the same manner as the Comptroller  
6 of the Currency may appoint a conservator for a na-  
7 tional bank under section 203 of the Bank Con-  
8 servation Act, and the conservator shall exercise the  
9 same powers, functions, and duties, subject to the  
10 same limitations, as are provided under such Act for  
11 conservators of national banks.

12 “(2) BOARD AUTHORITY.—The Board shall  
13 have the same authority with respect to any con-  
14 servator appointed under paragraph (1) and the  
15 State member wholesale financial institution for  
16 which such conservator has been appointed as the  
17 Comptroller of the Currency has under the Bank  
18 Conservation Act with respect to a conservator ap-  
19 pointed under such Act and a national bank for  
20 which the conservator has been appointed.

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

23 “(1) STATE MEMBER WHOLESALE FINANCIAL  
24 INSTITUTION.—The term ‘State member wholesale  
25 financial institution’ means a bank whose application

1 to become a State member wholesale financial insti-  
 2 tution and a State member bank has been approved  
 3 by the Board under this section.

4 “(2) DEPOSIT.—The term ‘deposit’ has the  
 5 meaning given to such term by the Board under this  
 6 Act.

7 “(3) STATE MEMBER INSURED BANK.—The  
 8 term ‘State member insured bank’ means a State  
 9 member bank which is an insured bank (as defined  
 10 in section 3(h) of the Federal Deposit Insurance  
 11 Act).

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

16 **SEC. 403. AMENDMENTS TO THE FEDERAL DEPOSIT INSUR-**  
 17 **ANCE ACT.**

18 (a) VOLUNTARY TERMINATION OF INSURED STATUS  
 19 BY CERTAIN INSTITUTIONS.—

20 (1) SECTION 8 DESIGNATIONS.—Section 8(a) of  
 21 the Federal Deposit Insurance Act (12 U.S.C.  
 22 1818(a)) is amended—

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

1 (B) by redesignating paragraphs (2)  
 2 through (9) as paragraphs (1) through (8), re-  
 3 spectively.

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

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

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

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

17 “(A) to the Corporation and either the  
 18 Board of Governors of the Federal Reserve Sys-  
 19 tem (in the case of a State member bank) or  
 20 the Comptroller of the Currency (in the case of  
 21 a national bank) not less than 6 months before  
 22 the effective date of such termination; and

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

1 “(2) either—

2 “(A) the deposit insurance fund of which  
3 such bank is a member equals or exceeds the  
4 fund’s designated reserve ratio as of the date  
5 the bank provides a written notice under para-  
6 graph (1) and the Corporation determines that  
7 the fund will equal or exceed the applicable des-  
8 ignated reserve ratio for the 2 semiannual as-  
9 sessment periods immediately following such  
10 date; or

11 “(B) the Corporation and the Board of  
12 Governors of the Federal Reserve System (in  
13 the case of a State member bank) or the Comp-  
14 troller of the Currency (in the case of a na-  
15 tional bank) approve the termination of the  
16 bank’s insured status and the bank pays an exit  
17 fee in accordance with subsection (e).

18 “(b) EXCEPTION.—Subsection (a) shall not apply  
19 with respect to—

20 “(1) an insured savings association;

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

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

1       “(c) ELIGIBILITY FOR INSURANCE TERMINATED.—

2 Any bank that voluntarily elects to terminate the bank’s  
3 insured status under subsection (a) shall not be eligible  
4 for insurance on any deposits or any assistance authorized  
5 under this Act after the period specified in subsection  
6 (f)(1).

7       “(d) INSTITUTION MUST BECOME WHOLESALE FI-

8 NANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING  
9 ACTIVITIES.—Any depository institution which voluntarily  
10 terminates such institution’s status as an insured deposi-  
11 tory institution under this section may not, upon termi-  
12 nation of insurance, accept any deposits unless the institu-  
13 tion is either a State member wholesale financial institu-  
14 tion under section 9B of the Federal Reserve Act, or a  
15 national wholesale financial institution under section  
16 5136B of the Revised Statutes of the United States.

17       “(e) EXIT FEES.—

18               “(1) IN GENERAL.—Any bank that voluntarily  
19 terminates such bank’s status as an insured deposi-  
20 tory institution under this section shall pay an exit  
21 fee in an amount that the Corporation determines is  
22 sufficient to account for the institution’s pro rata  
23 share of the amount (if any) which would be re-  
24 quired to restore the relevant deposit insurance fund  
25 to the fund’s designated reserve ratio as of the date



1 the bank provides a written notice under subsection  
2 (a)(1).

3 “(2) PROCEDURES.—The Corporation shall pre-  
4 scribe, by regulation, procedures for assessing any  
5 exit fee under this subsection.

6 “(f) TEMPORARY INSURANCE OF DEPOSITS INSURED  
7 AS OF TERMINATION.—

8 “(1) TRANSITION PERIOD.—The insured depos-  
9 its of each depositor in a State bank or a national  
10 bank on the effective date of the voluntary termi-  
11 nation of the bank’s insured status, less all subse-  
12 quent withdrawals from any deposits of such deposi-  
13 tor, shall continue to be insured for a period of not  
14 less than 6 months and not more than 2 years, as  
15 determined by the Corporation. During such period,  
16 no additions to any such deposits, and no new de-  
17 posits in the depository institution made after the ef-  
18 fective date of such termination shall be insured by  
19 the Corporation.

20 “(2) TEMPORARY ASSESSMENTS; OBLIGATIONS  
21 AND DUTIES.—During the period specified in para-  
22 graph (1) with respect to any bank, the bank shall  
23 continue to pay assessments under section 7 as if  
24 the bank were an insured depository institution. The  
25 bank shall, in all other respects, be subject to the

1 authority of the Corporation and the duties and obli-  
2 gations of an insured depository institution under  
3 this Act during such period, and in the event that  
4 the bank is closed due to an inability to meet the de-  
5 mands of the bank's depositors during such period,  
6 the Corporation shall have the same powers and  
7 rights with respect to such bank as in the case of  
8 an insured depository institution.

9 “(g) ADVERTISEMENTS.—

10 “(1) IN GENERAL.—A bank that voluntarily  
11 terminates the bank's insured status under this sec-  
12 tion shall not advertise or hold itself out as having  
13 insured deposits, except that the bank may advertise  
14 the temporary insurance of deposits under sub-  
15 section (f) if, in connection with any such advertise-  
16 ment, the advertisement also states with equal prom-  
17 inence that additions to deposits and new deposits  
18 made after the effective date of the termination are  
19 not insured.

20 “(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS,  
21 AND SECURITIES.—Any certificate of deposit or  
22 other obligation or security issued by a State bank  
23 or a national bank after the effective date of the vol-  
24 untary termination of the bank's insured status

1 under this section shall be accompanied by a con-  
 2 spicuous, prominently displayed notice that such cer-  
 3 tificate of deposit or other obligation or security is  
 4 not insured under this Act.

5 “(h) NOTICE REQUIREMENTS.—

6 “(1) NOTICE TO THE CORPORATION.—The no-  
 7 tice required under subsection (a)(1)(A) shall be in  
 8 such form as the Corporation may require.

9 “(2) NOTICE TO DEPOSITORS.—The notice re-  
 10 quired under subsection (a)(1)(B) shall be—

11 “(A) sent to each depositor’s last address  
 12 of record with the bank; and

13 “(B) in such manner and form as the Cor-  
 14 poration finds to be necessary and appropriate  
 15 for the protection of depositors.”.

16 (b) DEFINITION.—Section 19(b)(1)(A)(i) of the Fed-  
 17 eral Reserve Act (12 U.S.C. 461(b)(1)(A)(i)) is amended  
 18 after “such Act” by inserting “, or any State member  
 19 wholesale financial institution as defined in section 9B of  
 20 this Act or any national wholesale financial institution as  
 21 defined in section 5136B of the Revised Statutes of the  
 22 United States”.

23 (c) REPORTS ON DISCOUNTS AND ADVANCES TO  
 24 WHOLESALE FINANCIAL INSTITUTIONS.—Section 10B of

1 the Federal Reserve Act (12 U.S.C. 347(b)) is amended  
2 by adding at the end the following new subsection:

3 “(c) REPORTS ON DISCOUNTS AND ADVANCES TO  
4 WHOLESALE FINANCIAL INSTITUTIONS.—

5 “(1) IN GENERAL.—The Board shall submit a  
6 report to the Congress at the end of any year in  
7 which any State member wholesale financial institu-  
8 tion or national wholesale financial institution (as  
9 defined in section 5136B of the Revised Statutes of  
10 the United States) has obtained a discount, advance,  
11 or other extension of credit from a Federal reserve  
12 bank.

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

1 **TITLE V—MERGER OF BANK AND THRIFT**  
 2 **CHARTERS, REGULATORS, AND INSUR-**  
 3 **ANCE FUNDS**

4 **Subtitle A—Conversion of Thrift Charters**

5 **SEC. 501. SHORT TITLE.**

6 This title may be cited as the Thrift Charter Conver-  
 7 sion Act of 1997.

8 **SEC. 502. TERMINATION OF FEDERAL SAVINGS ASSOCIA-**  
 9 **TIONS; TREATMENT OF STATE SAVINGS ASSO-**  
 10 **CIATIONS AS BANKS FOR PURPOSES OF FED-**  
 11 **ERAL BANKING LAW.**

12 (a) **TERMINATION OF FEDERAL SAVINGS ASSOCIA-**  
 13 **TION CHARTERS.—**

14 (1) **IN GENERAL.—**No later than June 30,  
 15 1998, each Federal savings association shall—

16 (A) convert to a national bank charter;

17 (B) convert to a State depository institu-  
 18 tion; or

19 (C) surrender the charter of such savings  
 20 association and liquidate the institution.

21 (2) **CONVERSION TO NATIONAL BANK BY OPER-**  
 22 **ATION OF LAW.—**

23 (A) **IN GENERAL.—**Except as provided in  
 24 paragraph (1), the requirement under para-  
 25 graph (1)(A) for a Federal savings association

1 to convert shall be deemed to have been satis-  
2 fied by operation of law effective 15 days after  
3 such association has delivered a conversion reg-  
4 istration statement to the Comptroller of the  
5 Currency.

6 (B) POWERS, PRIVILEGES, DUTIES, AND  
7 LIABILITIES.—After the conversion of a Federal  
8 savings association to a national bank by oper-  
9 ation of law, such national bank shall, except as  
10 otherwise specified by law, have the same pow-  
11 ers and privileges and shall be subject to the  
12 same duties, liabilities, and regulation as an in-  
13 stitution originally organized as a national bank  
14 under Federal law.

15 (3) CONVERSION REGISTRATION STATEMENT.—

16 A conversion registration statement shall include the  
17 following:

18 (A) A copy of the resolution approved by  
19 a majority of the full board of directors of the  
20 Federal savings association resolving to convert  
21 the association into a national bank.

1 (B) A certification by the secretary of a  
2 Federal savings association attesting to the re-  
3 ceipt of any required affirmative vote of share-  
4 holders necessary to convert the Federal sav-  
5 ings association into a national bank.

6 (C) A copy of the most recent charter and  
7 bylaws of the Federal savings association cer-  
8 tified by the Office of Thrift Supervision.

9 (D) Articles of association and an organi-  
10 zational certificate in accordance with sections  
11 5133, 5134, and 5135 of the Revised Statutes  
12 of the United States, except that—

13 (i) a Federal savings association may  
14 include in such articles any provisions in  
15 the most recent Federal charter under  
16 which it operated as a Federal savings as-  
17 sociation; and

18 (ii) references to capital stock, shares,  
19 shareholders, and related terms in such  
20 sections of the Revised Statutes of the  
21 United States shall not apply to a mutual  
22 savings association converting to a national  
23 bank organized in mutual form.

24 (4) EFFECTIVE DATE OF CONVERSION TO NA-  
25 TIONAL BANK.—

1           (A) If the Comptroller of the Currency de-  
2           termines that a conversion registration state-  
3           ment includes all of the documents described in  
4           subsection (a)(3) (A) through (D), the Comp-  
5           troller of the Currency shall issue a certificate,  
6           under the Comptroller's hand and official seal,  
7           that such association has complied with all the  
8           provisions required herein to be complied with,  
9           and that such association is authorized to com-  
10          mence the business of banking effective 15 days  
11          after the date of delivery of the conversion reg-  
12          istration statement. Such converted association  
13          may include in its bylaws as a national bank  
14          any provisions in the most recent bylaws under  
15          which it operated as a Federal savings associa-  
16          tion.

17          (B) If the Comptroller of the Currency de-  
18          termines that a conversion registration state-  
19          ment does not include all of the documents de-  
20          scribed in subsection (a)(3) (A) through (D),  
21          the Comptroller shall advise the Federal savings  
22          association, before the end of the 15-day period  
23          beginning on the date of delivery, to resubmit  
24          a new statement with the required documents



1 to initiate a new 15-day period. A Federal sav-  
2 ings association shall not otherwise be required  
3 to take any additional action beyond those spec-  
4 ified in subsection (a) (2) and (3) in order to  
5 satisfy the requirement of subsection (a)(1)(A).

6 (5) TERMINATION OF SAVINGS ASSOCIATION  
7 CHARTER.—Upon conversion of a Federal savings  
8 association to a national bank or State bank pursu-  
9 ant to the requirements of paragraph (1), the asso-  
10 ciation's charter as a savings association shall auto-  
11 matically terminate and be canceled.

12 (6) NO FEES OR CHARGES.—A Federal savings  
13 association that converts to a national bank or State  
14 bank pursuant to the requirements of paragraph (1)  
15 shall not be required to pay any application fee, ex-  
16 amination fee, assessment, or other charge to any  
17 Federal agency in connection with such conversion.

18 (7) SHARE CONVERSION.—Notwithstanding any  
19 other provision of law, upon conversion of a Federal  
20 savings association organized in stock form to a na-  
21 tional bank or State bank pursuant to the require-  
22 ments of paragraph (1), the shares of such stock  
23 savings association shall automatically convert into  
24 shares of such national bank or State bank, each for  
25 the same value as they were and with the same

1 terms and conditions as they contained immediately  
2 before the conversion.

3 (8) DIRECTORS AND OFFICERS.—

4 (A) IN GENERAL.—Notwithstanding any  
5 other provision of law, upon conversion of a  
6 Federal savings association to a national bank  
7 or State bank pursuant to the requirements of  
8 paragraph (1), each person who was a director  
9 or officer of such association before such con-  
10 version may continue to serve as and be elected  
11 a director or officer of such national bank or  
12 State bank.

13 (B) TREATMENT FOR CERTAIN PUR-  
14 POSES.—For purposes of section 32 of the Fed-  
15 eral Deposit Insurance Act, a national bank or  
16 State bank which converted from a savings as-  
17 sociation pursuant to the requirements of para-  
18 graph (1) shall not be treated as having been  
19 chartered less than 2 years or having undergone  
20 a change in control within the preceding 2  
21 years solely because of its conversion into a na-  
22 tional bank or State bank.

23 (9) FAILURE TO OBTAIN A CHARTER.—

1 (A) IN GENERAL.—Any Federal savings  
 2 association that has not complied with para-  
 3 graph (1) by June 30, 1998, shall as of that  
 4 date be subject to all laws, regulations, and or-  
 5 ders applicable to a national bank, and the  
 6 Comptroller of the Currency may determine the  
 7 terms and conditions upon which the savings  
 8 association converts into a national bank.

9 (B) CONTINUING FAILURE TO COMPLY.—A  
 10 Federal savings association's continuing failure  
 11 to comply with paragraph (1) may, in the dis-  
 12 cretion of the Comptroller of the Currency, be  
 13 considered an unsafe or unsound condition to  
 14 transact business, or a violation of law under  
 15 section 11 of the Federal Deposit Insurance  
 16 Act.

17 (10) ASSOCIATION CONVERTING IN UNSAFE  
 18 AND UNSOUND CONDITION.—If the Comptroller of  
 19 the Currency determines that a Federal savings as-  
 20 sociation is operating in an unsafe and unsound con-  
 21 dition, the Comptroller may determine the terms and  
 22 conditions upon which such association converts into  
 23 a national bank.

24 (b) TREATMENT OF STATE SAVINGS ASSOCIATIONS  
 25 AS BANKS FOR PURPOSES OF FEDERAL BANKING LAW.—

1           (1) AMENDMENTS TO FEDERAL DEPOSIT IN-  
2           SURANCE ACT.—Section 3 of the Federal Deposit  
3           Insurance Act (12 U.S.C. 1813) is amended—

4                   (A) by striking paragraph (2) of subsection  
5           (a) and inserting the following new paragraph:  
6           “(2) STATE BANK.—

7                   “(A) IN GENERAL.—The term ‘State bank’  
8           means any bank, banking association, trust  
9           company, savings bank, industrial bank (or  
10          similar depository institution which the Board  
11          of Directors finds to be operating substantially  
12          in the same manner as an industrial bank),  
13          building and loan association, savings and loan  
14          association, homestead association, cooperative  
15          bank, or other banking institution—

16                   “(i) which is engaged in the business  
17          of receiving deposits, other than trust  
18          funds (as defined in this section); and

19                   “(ii) which—

20                   “(I) is incorporated under the  
21          laws of any State;

22                   “(II) is organized and operating  
23          according to the laws of the State in  
24          which such institution is chartered or  
25          organized; or

1 “(III) is operating under the  
2 Code of Law for the District of Co-  
3 lumbia (except a national bank).

4 “(B) CERTAIN INSURED BANKS IN-  
5 CLUDED.—The term ‘State bank’ includes a co-  
6 operative bank or other unincorporated bank  
7 the deposits of which were insured by the Cor-  
8 poration on the day before the date of the en-  
9 actment of the Financial Institutions Reform  
10 Recovery, and Enforcement Act of 1989.

11 “(C) CERTAIN UNINSURED BANKS EX-  
12 CLUDED.—The term ‘State bank’ does not in-  
13 clude any cooperative bank or other unincor-  
14 porated bank the deposits of which were not in-  
15 sured by the Corporation on the day before the  
16 date of the enactment of the Financial Institu-  
17 tions Reform, Recovery, and Enforcement Act  
18 of 1989.”; and

19 (B) in subsection (q)—

20 (i) by inserting “and” after the semi-  
21 colon at the end of paragraph (2);

22 (ii) by striking “; and” at the end of  
23 paragraph (3) and inserting a period; and

24 (iii) by striking paragraph (4).

1           (2) AMENDMENTS TO THE BANK HOLDING  
2           COMPANY ACT OF 1956.—Section 2 of the Bank  
3           Holding Company Act of 1956 (12 U.S.C. 1841) is  
4           amended—

5                   (A) by striking subparagraph (E) of sub-  
6                   section (a)(5); and

7                   (B) by striking subparagraphs (B) and (J)  
8                   of subsection (c)(2).

9           (3) AMENDMENTS TO THE FEDERAL RESERVE  
10          ACT.—The 2d and 3d paragraphs of the 1st section  
11          of the Federal Reserve Act (12 U.S.C. 221) are each  
12          amended by inserting “(as defined in section 3(a)(2)  
13          of the Federal Deposit Insurance Act)” after “State  
14          bank”.

15          (c) COMPARABILITY OF REGULATION FOR STATE-  
16          CHARTERED DEPOSITORY INSTITUTIONS.—

17               (1) REVIEW OF STATE SUPERVISION.—The  
18          Corporation shall maintain procedures for reviewing,  
19          under standards the Board of Directors shall pre-  
20          scribe in regulations, the manner in which State de-  
21          pository institutions are regulated by a State for the  
22          purpose of ensuring that State savings associations  
23          are no less rigorously regulated by a State than  
24          State banks.

1           (2) INADEQUATE STATE REGULATIONS.—If, in  
2           connection with a review of State regulation of State  
3           depository institutions pursuant to paragraph (2),  
4           the Corporation determines that a State regulates  
5           savings associations chartered by such State less rig-  
6           orously than the State regulates banks chartered by  
7           such State, the Corporation may take such action  
8           under section 8(a) of the Federal Deposit Insurance  
9           Act as the Corporation determines to be appropriate  
10          which shall be effective no later than the end of the  
11          1-year period beginning on the date of such deter-  
12          mination.

13          (3) DEFINITIONS.—The following definitions  
14          shall apply for purposes of this subsection:

15                (A) STATE BANK.—The term “State  
16                bank” has the same meaning as in section  
17                3(a)(2) of the Federal Deposit Insurance Act  
18                (as in effect on the date of the enactment of the  
19                Thrift Charter Conversion Act of 1997).

20                (B) STATE SAVINGS ASSOCIATION.—The  
21                term “State savings association” has the same  
22                meaning as in section 3(b)(2) of the Federal  
23                Deposit Insurance Act (as in effect on the date  
24                of the enactment of the Thrift Charter Conver-  
25                sion Act of 1997).

1 (C) STATE DEPOSITORY INSTITUTION.—

2 The term “State depository institution” has the  
3 same meaning as in section 3(c)(5) of the Fed-  
4 eral Deposit Insurance Act.

5 **SEC. 503. TREATMENT OF CERTAIN ACTIVITIES AND AFFILI-**  
6 **ATIONS OF BANK HOLDING COMPANIES RE-**  
7 **SULTING FROM THIS ACT.**

8 Section 4 of the Bank Holding Company Act of 1956  
9 (12 U.S.C. 1843) is amended by adding at the end the  
10 following new subsection:

11 “(k) TREATMENT OF COMPANIES RESULTING FROM  
12 SAVINGS AND LOAN HOLDING COMPANIES.—

13 “(1) IN GENERAL.—Notwithstanding any other  
14 provision of this section (other than paragraph (5))  
15 or any other provision of Federal law including sec-  
16 tions 20 and 32 of the Banking Act of 1933, a  
17 qualified bank holding company may, after such  
18 company becomes a bank holding company—

19 “(A) maintain or enter into any non-bank-  
20 ing affiliation which such company was author-  
21 ized to maintain or enter into as of the date of  
22 the enactment of the Depository Institution Af-  
23 filiation and Thrift Charter Conversion Act or  
24 was authorized to maintain following a merger  
25 of insured depository institution subsidiaries



1           pursuant to an application filed no later than  
2           such date; and

3           “(B) engage, directly or through any affili-  
4           ate described in subparagraph (A) which is not  
5           a bank, in any activity in which such company  
6           or any affiliate described in subparagraph (A)  
7           was authorized to engage as of such date of en-  
8           actment, or in which such company was author-  
9           ized to engage following a merger of insured de-  
10          pository institution subsidiaries pursuant to an  
11          application filed no later than such date, if the  
12          requirements of paragraph (4) are met.

13          “(2) QUALIFIED BANK HOLDING COMPANY DE-  
14          FINED.—For purposes of this subsection, the term  
15          ‘qualified bank holding company’ means—

16               “(A) any company—

17                   “(i) which—

18                       “(I) as of the date of the enact-  
19                       ment of the Depository Institution Af-  
20                       filiation and Thrift Charter Conver-  
21                       sion Act, is a savings and loan holding  
22                       company; or

1                   “(II) as of such date of enact-  
2                   ment, has filed an application to char-  
3                   ter a de novo Federal savings associa-  
4                   tion and thereafter becomes a savings  
5                   and loan holding company by virtue of  
6                   the establishment of such savings as-  
7                   sociation; and

8                   “(ii) which as of the dates referred to  
9                   in subclause (I) or (II), as the case may  
10                  be, is not a bank holding company and be-  
11                  comes a bank holding company after such  
12                  date, or any subsidiary of such company;  
13                  and

14                  “(B) any bank holding company which as  
15                  of the date of the enactment of the Depository  
16                  Institution Affiliation and Thrift Charter Con-  
17                  version Act—

18                         “(i) is a savings and loan holding  
19                         company; and

20                         “(ii) is exempt from this section pur-  
21                         suant to an order issued by the Board  
22                         under subsection (d).

23                   “(3) NO LOSS OF SUBSECTION (d) EXEMP-  
24                   TION.—No qualified bank holding company de-  
25                   scribed in paragraph (2)(B) shall lose the grounds

1 for the exemption under subsection (d) because a  
2 savings association which such company controlled,  
3 directly or indirectly, as of the date of the enactment  
4 of the Depository Institution Affiliation and Thrift  
5 Charter Conversion Act, becomes a bank after such  
6 date so long as such bank continues to meet the re-  
7 quirements of subparagraphs (A) and (B) of para-  
8 graph (4).

9 “(4) PREREQUISITES FOR CONTINUATION OF  
10 GRANDFATHERED ACTIVITIES AND AFFILIATIONS.—

11 “(A) IN GENERAL.—This subsection shall  
12 cease to apply with respect to a qualified bank  
13 holding company if, at any time after such com-  
14 pany first meets the definition of a qualified  
15 bank holding company—

16 “(i) any insured depository institution  
17 controlled by such company which, as of  
18 the day before the company first meets the  
19 definition of a qualified bank holding com-  
20 pany—

21 “(I) was subject to the require-  
22 ments contained in section 10(m) of  
23 the Home Owners’ Loan Act, as in ef-  
24 fect on such date, (and regulations in

1 effect on such date under such sec-  
2 tion) for treatment as a qualified  
3 thrift lender under such section; and

4 “(II) was not a savings associa-  
5 tion described in section 10(m)(3)(F)  
6 of such Act, as in effect on such date,  
7 fails to meet any requirement of such sec-  
8 tion;

9 “(ii) any insured depository institu-  
10 tion controlled by such company fails to  
11 comply with any limitation or restriction  
12 on the type of amounts of loans or invest-  
13 ments of the institution to which such in-  
14 stitution was subject as of the date of the  
15 enactment of the Thrift Charter Conver-  
16 sion Act of 1997, other than any limitation  
17 relating to qualified thrift investments  
18 under section 10(m) of the Home Owners’  
19 Loan Act, as in effect on such date, unless  
20 such failure to comply is the 1st such fail-  
21 ure and the institution returns to compli-  
22 ance within 60 days of having learned or  
23 been notified of such noncompliance;

1 “(iii) the company or any subsidiary  
2 of the company acquires more than 5 per-  
3 cent of the shares or assets of any bank or  
4 any savings association (as such term is  
5 defined in section 3 of the Federal Deposit  
6 Insurance Act, as in effect on the date of  
7 the enactment of the Depository Institu-  
8 tion Affiliation and Thrift Charter Conver-  
9 sion Act) after such date of enactment.

10 “(B) REQUALIFICATION AS QUALIFIED  
11 THRIFT LENDER.—

12 “(i) NOTIFICATION OF INTENTION TO  
13 REQUALIFY.—If an institution referred to  
14 in subparagraph (A)(i) notifies—

15 “(I) the Board; or

16 “(II) in the case of an institution  
17 which is controlled by a financial serv-  
18 ices holding company, the appropriate  
19 Federal banking agency for such com-  
20 pany’s lead depository institution (as  
21 defined by the Financial Services  
22 Holding Company Act),  
23 within 15 days of having learned of such  
24 institution’s failure to meet such require-  
25 ments, of the intention of the institution to

1 requalify as a qualified thrift lender pursu-  
2 ant to the requirements of such section,  
3 the institution shall be deemed not to have  
4 failed to meet the requirements for treat-  
5 ment as a qualified thrift lender for pur-  
6 poses of this paragraph.

7 “(ii) FAILURE TO REQUALIFY.—If an  
8 institution referred to in clause (i) notifies  
9 an agency described in subclause (I) or  
10 (II) of clause (i) in accordance with such  
11 clause and thereafter fails to requalify as  
12 a qualified thrift lender within 1 year from  
13 the date of the institution’s initial failure  
14 to meet such requirements, the institution  
15 shall be deemed to have failed to meet such  
16 requirements at the end of such 1-year pe-  
17 riod.

18 “(iii) 1 ELECTION TO REQUALIFY.—  
19 An institution referred to in clause (i) may  
20 elect to requalify as a qualified thrift lend-  
21 er under this subparagraph only once.

22 “(5) NONTRANSFERABLE.—This subsection  
23 shall not apply with respect to any qualified bank  
24 holding company if, after the date of the enactment

1 of the Depository Institution Affiliation and Thrift  
2 Charter Conversion Act—

3 “(A) any person not under common control  
4 with such company acquires, directly or indi-  
5 rectly, control of the company; or

6 “(B) the company is the subject of any  
7 merger, consolidation, or other similar trans-  
8 action as a result of which a person not under  
9 common control with such company acquires,  
10 directly or indirectly, control of such company.

11 “(6) PROHIBITION ON CERTAIN INSURED DE-  
12 POSITORY INSTITUTIONS IDENTIFYING THEMSELVES  
13 AS NATIONAL BANKS.—

14 “(A) IN GENERAL.—Notwithstanding the  
15 requirement of section 5134 of the Revised  
16 Statutes of the United States—

17 “(i) the name of an insured depository  
18 institution subsidiary of a qualified bank  
19 holding company which—

20 “(I) as of the date of the enact-  
21 ment of the Thrift Charter Conversion  
22 Act of 1997, is a savings and loan  
23 holding company described in section  
24 10(c)(3) of the Home Owners’ Loan  
25 Act (as in effect on such date); and

1                   “(II) is subject to the restrictions  
2                   contained in paragraph (4),  
3                   may not include the term “national”; and  
4                   “(ii) such insured depository institu-  
5                   tion may not be identified as a national  
6                   bank on any sign displayed by the institu-  
7                   tion or in any advertisement or other pub-  
8                   lication of the institution.

9                   “(B) DEPOSITORY INSTITUTION NOT LIA-  
10                  BLE FOR FRAUDULENT MISREPRESENTATION  
11                  FOR NOT REPRESENTING ITSELF AS A NA-  
12                  TIONAL BANK.—An insured depository institu-  
13                  tion which is subject to subparagraph (A) shall  
14                  not be liable for any civil or criminal penalty  
15                  under any Federal or State consumer protection  
16                  law, or in any criminal or civil action, for fraud-  
17                  ulently misrepresenting the nature of the char-  
18                  ter of the institution, for falsely advertising the  
19                  status of the institution, for making a false  
20                  statement with respect to the status of the in-  
21                  stitution, or for any similar offense by reason of  
22                  the institution’s compliance with such subpara-  
23                  graph.



1           “(7) ENFORCEMENT.—In addition to any other  
2           power of the Board, the Board may enforce compli-  
3           ance with the provisions of this subsection with re-  
4           spect to any qualified bank holding company and  
5           any bank controlled by such company under section  
6           8 of the Federal Deposit Insurance Act.”.

7   **SEC. 504. TRANSITION PROVISIONS FOR ACTIVITIES OF**  
8                   **SAVINGS ASSOCIATIONS WHICH CONVERT**  
9                   **INTO OR BECOME TREATED AS BANKS.**

10          (a) IN GENERAL.—Notwithstanding any other provi-  
11          sion of Federal law, any insured depository institution  
12          which, as of the date of the enactment of the Depository  
13          Institution Affiliation and Thrift Charter Conversion Act,  
14          is a savings association (as defined in section 3(b) of the  
15          Federal Depository Insurance Act (as in effect on such  
16          date)) and after such date converts to a national or State  
17          bank charter or becomes treated as a State bank pursuant  
18          to the amendment made by section 502(b), may continue  
19          to engage, directly or indirectly, in any activity in which  
20          such institution was lawfully engaged as of such date dur-  
21          ing the 2-year period beginning on the effective date of  
22          such conversion or the effective date of such amendments,  
23          as the case may be.

24          (b) TWO 1-YEAR EXTENSIONS AUTHORIZED.—The  
25          2-year period described in subsection (a) with respect to

1 any insured depository institution may be extended for  
 2 such institution not to exceed two additional times for not  
 3 more than 1 year each time if the appropriate Federal  
 4 banking agency determines that such extension is nec-  
 5 essary to avert substantial loss to the institution and is  
 6 otherwise consistent with the safety and soundness of the  
 7 institution.

8 **SEC. 505. REGISTRATION OF BANK HOLDING COMPANIES**  
 9 **RESULTING FROM CONVERSIONS OF SAV-**  
 10 **INGS ASSOCIATIONS TO BANKS OR TREAT-**  
 11 **MENT OF SAVINGS ASSOCIATIONS AS BANKS.**

12 Section 3 of the Bank Holding Company Act of 1956  
 13 (12 U.S.C. 1842) is amended by adding at the end the  
 14 following new subsections:

15 “(h) REGISTRATION OF CERTAIN BANK HOLDING  
 16 COMPANIES.—A company which, as of September 13,  
 17 1995, is a savings and loan holding company (as defined  
 18 in section 10(a)(1)(D) of the Home Owners’ Loan Act,  
 19 as in effect on such date) and is not a bank holding com-  
 20 pany shall not be required to obtain the approval of the  
 21 Board under subsection (a) to become a bank holding com-  
 22 pany after September 13, 1995, as a result of the conver-  
 23 sion of any insured depository institution subsidiary of  
 24 such company into a bank or by virtue of the treatment  
 25 of any insured depository institution subsidiary of such

1 company as a bank pursuant to the amendments made  
2 by the Thrift Charter Conversion Act of 1997, if such  
3 company—

4 “(1) registers as a bank holding company with  
5 the Board in accordance with section 5(a); and

6 “(2) does not acquire, directly or indirectly,  
7 ownership or control of any additional insured de-  
8 pository institution or other company in connection  
9 with such conversion or treatment.

10 “(i) REGULATION OF QUALIFIED BANK HOLDING  
11 COMPANIES.—The Board shall regulate qualified bank  
12 holding companies (as defined in section 4(k)(2)) in a  
13 manner consistent with—

14 “(1) the regulation of such companies by the  
15 Director of the Office of Thrift Supervision before  
16 the date of the enactment of the Depository Institu-  
17 tion Affiliation and Thrift Charter Conversion Act;  
18 and

19 “(2) the safety and soundness of insured depos-  
20 itory institution subsidiaries of such companies.

21 “(j) OPPORTUNITY TO BECOME A BANK HOLDING  
22 COMPANY OR A FINANCIAL SERVICES HOLDING COM-  
23 PANY.—

24 “(1) ELECTION.—A company described in sub-  
25 section (h) may elect to conform the activities of the

1 company to those activities permitted for a bank  
 2 holding company or a financial services holding com-  
 3 pany.

4 “(2) TRANSITION PERIOD.—A company which  
 5 makes an election under paragraph (1) shall have a  
 6 6-month period beginning on the date of the enact-  
 7 ment of the Depository Institution Affiliation and  
 8 Thrift Charter Conversion Act to conform the activi-  
 9 ties of the company to those permitted for a bank  
 10 holding company or a financial services holding com-  
 11 pany, as the case may be.

12 “(3) EXEMPTION DURING TRANSITION PE-  
 13 RIOD.—During the 6-month period described in  
 14 paragraph (2), a company which makes an election  
 15 under paragraph (1) shall be exempt from the re-  
 16 quirements imposed on a qualified bank holding  
 17 company.”.

18 **SEC. 506. ADDITIONAL TRANSITION PROVISIONS AND SPE-**  
 19 **CIAL RULES.**

20 (a) MUTUAL NATIONAL BANKS AUTHORIZED; CON-  
 21 VERSION OF MUTUAL SAVINGS ASSOCIATIONS INTO NA-  
 22 TIONAL BANKS.—

23 (1) IN GENERAL.—Chapter one of title LXII of  
 24 the Revised Statutes of the United States (12

1 U.S.C. 21 et seq.) is amended by inserting after sec-  
2 tion 5133 the following new section:

3 **“SEC. 5133A. MUTUAL NATIONAL BANKS.**

4 “(a) IN GENERAL.—Notwithstanding the paragraph  
5 designated the “Third” of section 5134, the Comptroller  
6 of the Currency may charter national banks organized in  
7 the mutual form either de novo or through a conversion  
8 of any stock national or State bank (as defined in section  
9 3 of the Federal Deposit Insurance Act) or any State mu-  
10 tual bank or credit union, subject to regulations prescribed  
11 by the Comptroller of the Currency in accordance with this  
12 section.

13 “(b) REGULATIONS.—

14 “(1) TRANSITION RULES.—National banks or-  
15 ganized in the mutual form shall be subject to the  
16 regulations of the Director of the Office of Thrift  
17 Supervision governing corporate organization, gov-  
18 ernance, and conversion of mutual institutions, as in  
19 effect on September 13, 1995, including parts 543,  
20 544, 546, 563b, and 563c) of chapter V of title 12  
21 of the Code of Federal Regulations (as in effect on  
22 such date), during the 3-year period beginning on  
23 the date of the enactment of the Thrift Charter Con-  
24 version Act of 1997.

1           “(2) REGULATIONS OF THE COMPTROLLER.—

2           The Comptroller of the Currency shall prescribe ap-  
3           propriate regulations for national banks organized in  
4           the mutual form, effective as of the end of the 3-  
5           year period referred to in paragraph (1).

6           “(3) APPLICABILITY OF CAPITAL STOCK RE-

7           QUIREMENTS.—The Comptroller of the Currency  
8           shall prescribe regulations regarding the manner in  
9           which requirements of title LXII of the Revised  
10          Statutes of the United States with respect to capital  
11          stock, and limitations imposed on national banks  
12          under such title based on capital stock, shall apply  
13          to national banks organized in mutual form pursu-  
14          ant to subsection (a).

15          “(c) CONVERSIONS.—

16          “(1) CONVERSION TO STOCK NATIONAL

17          BANK.—Subject to such regulations as the Comp-  
18          troller of the Currency may prescribe for the protec-  
19          tion of depositors’ rights and for any other purpose  
20          the Comptroller of the Currency may consider ap-  
21          propriate, any national bank which is organized in  
22          mutual form pursuant to paragraph (1) may reorga-  
23          nize as a stock national bank.

24          “(2) CONVERSIONS TO STATE BANKS.—Any na-

25          tional mutual bank may convert to a State bank

1 charter in accordance with regulations prescribed by  
 2 the Comptroller of the Currency and applicable  
 3 State law.”.

4 (2) MUTUAL BANK HOLDING COMPANIES.—  
 5 Subsection (g) of section 3 of the Bank Holding  
 6 Company Act of 1956 (12 U.S.C. 1842(g)) is  
 7 amended to read as follows:

8 “(g) MUTUAL BANK HOLDING COMPANIES.—

9 “(1) IN GENERAL.—A national mutual bank  
 10 may reorganize so as to become a holding company  
 11 by—

12 “(A) chartering an interim national bank,  
 13 the stock of which is to be wholly owned, except  
 14 as otherwise provided in this section by the na-  
 15 tional mutual bank; and

16 “(B) transferring the substantial part of  
 17 the national mutual bank’s assets and liabil-  
 18 ities, including all of the bank’s insured liabil-  
 19 ities, to the interim national bank.

20 “(2) DIRECTORS AND CERTAIN ACCOUNT HOLD-  
 21 ERS” APPROVAL OF PLAN REQUIRED.—A reorga-  
 22 nization is not authorized under this subsection un-  
 23 less—

24 “(A) a plan providing for such reorganiza-  
 25 tion has been approved by a majority of the

1 board of directors of the national mutual bank;  
2 and

3 “(B) in the case of a national mutual bank  
4 in which holders of accounts and obligers exer-  
5 cise voting rights, such plan has been submitted  
6 to an approved by a majority of such individ-  
7 uals at a meeting held at the call of the direc-  
8 tors in accordance with the procedures pre-  
9 scribed by the bank’s charter and bylaws.

10 “(3) NOTICE TO THE BOARD; DISAPPROVAL PE-  
11 RIOD.—

12 “(A) NOTICE REQUIRED.—

13 “(i) IN GENERAL.—At least 60 days  
14 before taking any action described in para-  
15 graph (1), a national mutual bank seeking  
16 to establish a mutual holding company  
17 shall provide written notice to the Board.

18 “(ii) CONTENTS OF NOTICE.—The no-  
19 tice shall contain such relevant information  
20 as the Board shall require by regulation or  
21 by specific request in connection with any  
22 particular notice.

23 “(B) TRANSACTION ALLOWED IF NOT DIS-  
24 APPROVED.—Unless the Board within such 60-  
25 day notice period disapproves the proposed



1 holding company formation, or extends for an-  
2 other 30 days the period during which such dis-  
3 approval may be issued, the national mutual  
4 bank providing such notice may proceed with  
5 the transaction, if the requirements of para-  
6 graph (2) have been met.

7 “(C) GROUNDS FOR DISAPPROVAL.—The  
8 Board may disapprove any proposed holding  
9 company formation only if—

10 “(i) such disapproval is necessary to  
11 prevent unsafe or unsound practices;

12 “(ii) the financial or management re-  
13 sources of the national mutual bank in-  
14 volved warrant disapproval;

15 “(iii) the national mutual bank fails  
16 to furnish the information required under  
17 subparagraph (A); or

18 “(iv) the national mutual bank fails to  
19 comply with the requirement of paragraph  
20 (2).

21 “(D) RETENTION OF CAPITAL ASSETS.—In  
22 connection with the transaction described in  
23 paragraph (1), a national mutual bank may,  
24 subject to the approval of the Board, retain  
25 capital assets at the holding company level to

1 the extent that the capital retained at the hold-  
2 ing company is in excess of the amount of cap-  
3 ital required in order for the interim national  
4 bank to meet all relevant capital standards es-  
5 tablished by the Comptroller of the Currency  
6 for national banks.

7 “(4) OWNERSHIP.—

8 “(A) IN GENERAL.—Persons having own-  
9 ership rights in the national mutual bank under  
10 section 5133A of the Revised Statutes of the  
11 United States (including paragraph 575.5 of  
12 chapter V of title 12 of the Code of Federal  
13 Regulations, as in effect on September 13,  
14 1995, and applicable to national mutual banks  
15 pursuant to such section) or State law shall  
16 have the same ownership rights with respect to  
17 the mutual holding company.

18 “(B) HOLDERS OF CERTAIN ACCOUNTS.—  
19 Holders of savings, demand, or other accounts  
20 of—

21 “(i) a national bank chartered as part  
22 of a transaction described in paragraph  
23 (1); or

24 “(ii) a mutual bank acquired pursuant  
25 to paragraph (5)(B),

1           shall have the same ownership rights with re-  
2           spect to the mutual holding company as persons  
3           described in subparagraph (A) of this para-  
4           graph.

5           “(5) PERMITTED ACTIVITIES.—A mutual hold-  
6           ing company may engage only in the following activi-  
7           ties:

8                   “(A) Investing in the stock of a national or  
9                   State bank.

10                   “(B) Acquiring a mutual bank through the  
11                   merger of such bank into a national bank sub-  
12                   sidiary of such holding company or an interim  
13                   national bank subsidiary of such holding com-  
14                   pany.

15                   “(C) Subject to paragraph (6), merging  
16                   with or acquiring another holding company, one  
17                   of whose subsidiaries is a national mutual bank.

18                   “(D) Investing in a corporation the capital  
19                   stock of which is available for purchase by a na-  
20                   tional mutual bank under Federal law or under  
21                   the law of any State where the home office of  
22                   any subsidiary bank is located.

23                   “(E) Engaging in the activities permitted  
24                   under section 4(c).

1           “(F) Engaging in the activities permitted  
2           for financial services holding companies under  
3           the Financial Services Holding Company Act, if  
4           such company elects to be a financial services  
5           holding company.

6           “(6) LIMITATIONS ON CERTAIN ACTIVITIES OF  
7           ACQUIRED HOLDING COMPANIES.—

8           “(A) NEW ACTIVITIES.—If a mutual hold-  
9           ing company acquires or merges with another  
10          holding company under paragraph (5)(C), the  
11          holding company acquired or the holding com-  
12          pany resulting from such merger or acquisition  
13          may only invest in assets and engage in activi-  
14          ties which are authorized under paragraph (5).

15          “(B) GRACE PERIOD FOR DIVESTING PRO-  
16          HIBITED OR DISCONTINUING PROHIBITED AC-  
17          TIVITIES.—Not later than 2 years following a  
18          merger or acquisition described in paragraph  
19          (5)(C), the acquired holding company or the  
20          holding company resulting from such merger or  
21          acquisition shall—

22                 “(i) dispose of any asset which is an  
23                 asset in which a mutual holding company  
24                 may not invest under paragraph (5); and

1                   “(ii) cease any activity which is an ac-  
 2                   tivity in which a mutual holding company  
 3                   may not engage under paragraph (5).

4                   “(7) CHARTERING AND OTHER REQUIRE-  
 5                   MENTS.—

6                   “(A) IN GENERAL.—A mutual holding  
 7                   company shall be chartered by the Board and  
 8                   shall be subject to such regulations as the  
 9                   Board may prescribe.

10                  “(B) OTHER REQUIREMENTS.—Unless the  
 11                  context otherwise required, a mutual holding  
 12                  company shall be subject to the other require-  
 13                  ments of this Act regarding regulation of hold-  
 14                  ing companies.

15                  “(8) CAPITAL IMPROVEMENT.—

16                  “(A) PLEDGE OF STOCK OF SAVINGS ASSO-  
 17                  CIATION SUBSIDIARY.—This section shall not  
 18                  prohibit a mutual holding company from pledg-  
 19                  ing all or a portion of the stock of a national  
 20                  bank chartered as part of a transaction de-  
 21                  scribed in paragraph (1) to raise capital for  
 22                  such bank.

23                  “(B) ISSUANCE OF NONVOTING SHARES.—  
 24                  No provision of this Act shall be construed as  
 25                  prohibiting a national bank chartered as part of

1 a transaction described in paragraph (1) from  
 2 issuing any nonvoting shares or less than 50  
 3 percent of the voting shares of such bank to  
 4 any person other than the mutual holding com-  
 5 pany.

6 “(9) INSOLVENCY AND LIQUIDATION.—

7 “(A) IN GENERAL.—Notwithstanding any  
 8 provision of law, upon—

9 “(i) the default of any national  
 10 bank—

11 “(I) the stock of which is owned  
 12 by any mutual holding company; and

13 “(II) which was chartered in a  
 14 transaction described in paragraph  
 15 (1);

16 “(ii) the default of a mutual holding  
 17 company; or

18 “(iii) a foreclosure on a pledge by a  
 19 mutual holding company described in para-  
 20 graph (8)(A),

21 A trustee shall be appointed receiver of such  
 22 mutual holding company and such trustee shall  
 23 have the authority to liquidate the assets of,

1 and satisfy the liabilities of, such mutual hold-  
2 ing company pursuant to title 11, United States  
3 Code.

4 “(B) DISTRIBUTION OF NET PROCEEDS.—  
5 Except as provided in subparagraph (C), the  
6 net proceeds of any liquidation of any mutual  
7 holding company pursuant to subparagraph (A)  
8 shall be transferred to persons who hold owner-  
9 ship interests in such mutual holding company.

10 “(C) RECOVERY BY FEDERAL DEPOSIT IN-  
11 SURANCE CORPORATION.—If the Federal De-  
12 posit Insurance Corporation incurs a loss as a  
13 result of the default of any depository institu-  
14 tion subsidiary of a mutual holding company  
15 which is liquidated pursuant to subparagraph  
16 (A), the Federal Deposit Insurance Corporation  
17 shall succeed to the ownership interest of the  
18 depositors of such depository institution in the  
19 mutual holding company, to the extent of the  
20 Federal Deposit Insurance Corporation’s loss.

21 “(10) STATE MUTUAL BANK HOLDING COM-  
22 PANY.—

1           “(A) IN GENERAL.—Notwithstanding any  
2           provision of Federal law, a State bank operat-  
3           ing in mutual form may reorganize so as to  
4           form a holding company under State law.

5           “(B) REGULATION OF STATE MUTUAL  
6           HOLDING COMPANY.—A corporation organized  
7           as a holding company in accordance with sub-  
8           paragraph (A) shall be regulated on the same  
9           terms and be subject to the same limitations as  
10          any other holding company which controls a  
11          bank.

12          “(11) REGULATIONS.—

13               “(A) TRANSITION RULES.—Mutual bank  
14               holding companies organized under this sub-  
15               section shall be subject to the regulations of the  
16               Director of the Office of Thrift Supervision gov-  
17               erning corporate organization, governance, and  
18               conversion of mutual institutions, as in effect  
19               on September 13, 1995, including part 575 of  
20               chapter V of title 12 of the Code of Federal  
21               Regulations (as in effect on such date), during  
22               the 3-year period beginning on the date of the  
23               enactment of the Thrift Charter Conversion Act  
24               of 1997.



1           “(B) REGULATIONS OF THE BOARD.—The  
2           Board shall prescribe appropriate regulations  
3           for mutual holding companies, effective at the  
4           end of the 3-year period referred to in subpara-  
5           graph (A).

6           “(12) NO CHANGE OF CONTROL.—Any second  
7           stage conversion of a mutual holding company to full  
8           stock form shall not be deemed to be a change of  
9           control if, in connection with such conversion, no  
10          company, directly or indirectly, acquires control of  
11          such mutual holding company or any successor to  
12          such company.

13          “(13) DEFINITIONS.—For purposes of this sub-  
14          section, the following definitions shall apply:

15               “(A) MUTUAL HOLDING COMPANY.—The  
16               term ‘mutual holding company’ means a cor-  
17               poration organized as a holding company under  
18               this subsection.

19               “(B) DEFAULT.—The term ‘default’  
20               means an adjudication or other official deter-  
21               mination of a court of competent jurisdiction or  
22               other public authority pursuant to which a con-  
23               servator, receiver, or other legal custodian is  
24               appointed.

1                   “(C) NATIONAL MUTUAL BANK.—The term  
2                   ‘national mutual bank’ means a national bank  
3                   organized in mutual form under section 5133A  
4                   of the Revised Statutes of the United States.”.

5                   (3) LIMITATION ON FEDERAL REGULATION OF  
6                   STATE BANKS.—Except as otherwise provide in Fed-  
7                   eral law, the Comptroller of the Currency, Board of  
8                   Governors of the Federal Reserve System, and Fed-  
9                   eral Deposit Insurance Corporation may not adopt  
10                  or enforce any regulation which contravenes the cor-  
11                  poration governance rules prescribed by State law or  
12                  regulation for State banks unless the Comptroller,  
13                  Board, or Corporation finds that such Federal regu-  
14                  lation is necessary to assure the safety and sound-  
15                  ness of such State banks.

16                  (4) CONVERSIONS OF MUTUAL SAVINGS ASSO-  
17                  CIATION TO MUTUAL NATIONAL BANKS BY OPER-  
18                  ATION OF LAW.—Notwithstanding any other provi-  
19                  sion of Federal or State law, any savings association  
20                  (as defined in section 3 of the Federal Deposit In-  
21                  surance Act (as in effect on September 13, 1995))  
22                  which is organized in mutual form as of the date of  
23                  the enactment of this Act may become a national  
24                  mutual bank by operation of law if the association—

1 (A) files the articles of association and or-  
 2 ganization certificate with the Comptroller of  
 3 the Currency before January 1, 1998, in ac-  
 4 cordance with chapter one of the LXII of the  
 5 Revised Statutes of the United States; and

6 (B) provides such other document or infor-  
 7 mation as the Comptroller of the Currency may  
 8 prescribe in regulations consistent with this sec-  
 9 tion and section 5133A of the Revised Statutes  
 10 of the United States (as added by paragraph  
 11 (1) of this subsection).

12 (b) MEMBERSHIP IN FEDERAL HOME LOAN  
 13 BANKS.—Any insured depository institution which—

14 (1) as of the date of the enactment of this Act,  
 15 is a Federal savings association which, pursuant to  
 16 section 6(e) of the Federal Home Loan Bank Act,  
 17 may not voluntarily withdraw from membership in a  
 18 federal home loan bank; and

19 (2) after such date converts from a Federal  
 20 savings association to a national bank, shall continue  
 21 to be subject to the prohibition under such section  
 22 on voluntary withdrawal from such membership as  
 23 though such bank were still a Federal savings asso-  
 24 ciation until the bank ceases to be a national bank.

25 (c) BRANCHES.—

1           (1) IN GENERAL.—Notwithstanding any provi-  
2           sion of the Federal Deposit Insurance Act, the Bank  
3           Holding Company Act of 1956, or any other Federal  
4           or State law, any depository institution which—

5                   (A) as of the date of the enactment of this  
6           Act, is a savings association; and

7                   (B) becomes a bank before January 1,  
8           1998, or, pursuant to the amendments made by  
9           this subsection, is treated as a bank as of such  
10          date under the Federal Deposit Insurance Act,  
11          and any depository institution or bank holding com-  
12          pany which acquires such depository institution, may  
13          continue, after the depository institution becomes or  
14          commences to be treated as a bank, to operate any  
15          branch or agency which the savings association was  
16          operating as a branch or agency or was in the proc-  
17          ess of establishing as a branch or agency on January  
18          7, 1997.

19          (2) NO ADDITIONAL BRANCHES.—Paragraph  
20          (1) shall not be construed as authorizing the estab-  
21          lishment, acquisition, or operation of any additional  
22          branch of a depository institution, or the conversion  
23          of any agency to a branch, in any State by virtue  
24          of the operation by such institution of a branch or

1 agency in such State pursuant to such paragraph ex-  
2 cept to the extent such establishment, acquisition,  
3 operation, or conversion is permitted under the Fed-  
4 eral Deposit Insurance Act, Bank Holding Company  
5 Act of 1956, and any other applicable Federal or  
6 State law.

7 (3) ESTABLISHING A BRANCH OF AGENCY.—

8 For purposes of paragraph (1), a savings association  
9 shall be treated as having been in the process of es-  
10 tablishing a branch or agency as of January 7,  
11 1997, if, as of such date, the savings association—

12 (A) had received approval from the Direc-  
13 tor of the Office of Thrift Supervision to estab-  
14 lish such branch or agency;

15 (B) had pending with the Director of the  
16 Office of Thrift Supervision an application or  
17 notice to establish such branch or agency;

18 (C) had a legal and contractual obligation  
19 to establish such branch or agency;

20 (D) had received authority from the appro-  
21 priate Federal banking agency to establish such  
22 branch in connection with the assumption of li-  
23 abilities or an acquisition of an insured deposi-  
24 tory institution pursuant to subsection (f) or

1 (k) of section 13 of the Federal Deposit Insur-  
2 ance Act or section 408(m) of the National  
3 Housing Act (as in effect before the date of the  
4 enactment of the Financial Institutions Reform,  
5 Recovery, and Enforcement Act of 1989); or

6 (E) in the case of a well capitalized deposi-  
7 tory institution, is able to demonstrate to the  
8 appropriate Federal banking agency that the  
9 savings association—

10 (i) had made a significant financial  
11 commitment; and

12 (ii) had taken legally binding action or  
13 incurred a contractual obligation, in fur-  
14 therance of the establishment of such  
15 branch or agency.

16 (d) TRANSITION PROVISION RELATING TO LIMITA-  
17 TIONS ON LOANS TO ONE BORROWER.—Section 5200 of  
18 the Revised Statutes of the United States (12 U.S.C. 84)  
19 is amended by adding at the end the following new sub-  
20 section:

21 “(e) TRANSITION PROVISIONS FOR SAVINGS ASSO-  
22 CIATIONS CONVERTING TO NATIONAL BANKS.—In the  
23 case of any depository institution which, as of the date  
24 of the enactment of the Depository Institution Affiliation

1 and Thrift Charter Conversion Act, is a savings associa-  
 2 tion (as defined in section 3(b) of the Federal Deposit In-  
 3 surance Act (as in effect on such date)) and becomes a  
 4 national bank on or before January 1, 1998, any loan,  
 5 or legally binding commitment to make a loan, made or  
 6 entered into by such institution becomes a national bank  
 7 may continue to be held without regard to any limitation  
 8 contained in this section and any such loan may be re-  
 9 newed, modified or extended after the savings association  
 10 becomes a national bank except that any increase in the  
 11 aggregate amount of funds disbursed under such loan  
 12 shall be subject to prior approval by the Comptroller of  
 13 the Currency.”.

14 (e) RIGHTS AND AUTHORITY OF BANKS RESULTING  
 15 FROM CONVERSIONS OF SAVINGS ASSOCIATIONS.—

16 (1) IN GENERAL.—Upon conversion of a sav-  
 17 ings association to a national or State bank in ac-  
 18 cordance with this Act and the amendments made  
 19 by this title or other provisions of law—

20 (A) the national or State bank shall suc-  
 21 ceed to all rights, benefits, privileges, powers  
 22 and franchises, and be subject to all the obliga-  
 23 tions, duties, restrictions, and disabilities, of  
 24 such savings association under any contract,  
 25 agreement, document, or instrument in effect at

1 the time of such conversion to which such sav-  
2 ings association was a party; and

3 (B) any reference to the savings associa-  
4 tion in any such contract, agreement, docu-  
5 ment, or instrument shall be deemed to be a  
6 reference to such national or State bank.

7 (2) TREATMENT OF BANK OR SAVINGS ASSOCIA-  
8 TION.—If the application of paragraph (1) with re-  
9 spect to any national or State bank referred to in  
10 such paragraph would—

11 (A) be inconsistent or in conflict with any  
12 contract, agreement, document, or instrument  
13 described in such paragraph;

14 (B) constitute a default under the con-  
15 tract, agreement, document, or instrument;

16 (C) cause such national or State bank to  
17 be in default or breach under any provision of  
18 the contract, agreement, document, or instru-  
19 ment, the national or State bank shall be  
20 deemed to be, and treated as, a savings associa-  
21 tion for purposes of the contract, agreement,  
22 document, or instrument.

23 (f) TRANSFER AND GRANDFATHER OF MUTUAL  
24 HOLDINGS COMPANIES.—



1           (1) SUPERVISION AND REGULATION OF MUTUAL  
2 HOLDINGS COMPANIES.—

3           (A) IN GENERAL.—The supervision and  
4 regulation of any mutual holding company in  
5 existence as of the date of the enactment of this  
6 Act is hereby transferred to the Board of Gov-  
7 ernors of the Federal Reserve System.

8           (B) TRANSITION RULES.—Mutual bank  
9 holding companies described in subparagraph  
10 (A) shall be subject to the regulations of the  
11 Director of the Office of Thrift Supervision, as  
12 in effect on September 13, 1995, including part  
13 575 of chapter V of title 12 of the Code of Fed-  
14 eral Regulations (as in effect on such date),  
15 during the 3-year period beginning on the date  
16 of the enactment of the Thrift Charter Conver-  
17 sion Act of 1997.

18           (2) GRANDFATHER OF EXISTING FEDERAL MU-  
19 TUAL HOLDING COMPANIES.—

20           (A) IN GENERAL.—Any Federal mutual  
21 holding company in existence as of the date of  
22 the enactment of this Act shall be subject to  
23 section 4(k) of the Bank Holding Company Act  
24 of 1956 (as added by section 2222 of this title).

1           (B) TREATMENT UNDER 4(K).—Any treat-  
2           ment of a Federal mutual holding company  
3           under section 4(k) shall not be construed as a  
4           change in control unless, as a result of the  
5           transaction, the holding company no longer con-  
6           trols the entity.

7           (g) TREATMENT OF INSTITUTIONS SPECIALIZING IN  
8           HOUSING FINANCE.—Section 18(o)(2) of the Federal De-  
9           posit Insurance Act (12 U.S.C. 1828(o)(2)) is amended  
10          by adding at the end the following new subparagraph:

11                 “(C) TREATMENT OF INSTITUTIONS SPE-  
12                 CIALIZING IN HOUSING FINANCE.—No deposi-  
13                 tory institution shall be subject to regulatory  
14                 criticism, enforcement action of any type, or in-  
15                 creased capital requirements by the appropriate  
16                 Federal banking agency based on credit con-  
17                 centration concerns resulting from maintaining  
18                 a portfolio that reflects the institution’s spe-  
19                 cialization in residential housing finance.”.

20   **SEC. 507. TECHNICAL AND CONFORMING AMENDMENTS.**

21           (a) AMENDMENTS TO THE FEDERAL DEPOSIT IN-  
22           SURANCE ACT.—

1           (1) Section 3(z) of the Federal Deposit Insur-  
2           ance Act (12 U.S.C. 1813(z)) is amended by strik-  
3           ing “, the Director of the Office of Thrift Super-  
4           vision”.

5           (2) Section 8(b) of the Federal Deposit Insur-  
6           ance Act (12 U.S.C. 1818(b)) is amended by strik-  
7           ing paragraph (9).

8           (3) Section 13 of the Federal Deposit Insurance  
9           Act (12 U.S.C. 1823) is amended by striking sub-  
10          section (k).

11          (4) Subsections (c)(2) and (i)(2) of section 18  
12          of the Federal Deposit Insurance Act (12 U.S.C.  
13          1828) are each amended—

14                (A) in the subparagraph (B), by inserting  
15                “and” after the semicolon;

16                (B) in subparagraph (C), by striking “;  
17                and” and inserting a period; and

18                (C) by striking subparagraph (D).

19          (5) Section 18 of the Federal Deposit Insurance  
20          Act (12 U.S.C. 1828) is amended by striking sub-  
21          section (m).

22          (6) The Federal Deposit Insurance Act (12  
23          U.S.C. 1811 et seq.) is amended by striking 28.

24          (b) AMENDMENTS TO THE BANK HOLDING COMPANY  
25          ACT OF 1956.—

1           (1) Section 2 of the Bank Holding Company  
2       Act of 1956 (12 U.S.C. 1841) is amended by strik-  
3       ing subsections (i) and (j).

4           (2) Section 4(c)(8) of the Bank Holding Com-  
5       pany Act of 1956 (12 U.S.C. 1843(c)(8)) is amend-  
6       ed by striking the sentence preceding the penul-  
7       timate sentence.

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

10           (A) in paragraph (2)(A)(i), by striking “or  
11       an insured institution” and all that follows  
12       through “of this subsection”;

13           (B) in paragraph (2)(A)(ii)—

14           (i) by striking “or a savings associa-  
15       tion” where such term appears in the por-  
16       tion of such paragraph which precedes sub-  
17       clause (I));

18           (ii) by inserting “and” at the end of  
19       subclause (VI);

20           (iii) by striking subclauses (VIII),  
21       (IX), and (X); and

22           (iv) by striking “(V), and (VIII)”,  
23       where such term appears in the portion of  
24       such paragraph which appears after the

1                   end of subclause (VII), and inserting “and  
2                   (V)””; and  
3                   (C) by striking paragraphs (10), (11),  
4                   (12), and (13).

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

7                   (A) by striking paragraphs (1) and (2);  
8                   and

9                   (B) in paragraph (3)(A), by striking “any  
10           Federal savings association” and all that fol-  
11           lows through the period at the end of such  
12           paragraph and inserting “such association was  
13           authorized to engage under this section as of  
14           September 15, 1995.”

15           (c) OTHER TECHNICAL AND CONFORMING AMEND-  
16   MENTS.—

17                   (1) Section 804(a) of the Alternative Mortgage  
18           Transaction Parity Act of 1982 (12 U.S.C. 3803) is  
19           amended.—

20                   (A) in the portion of such subsection which  
21           precedes paragraph (1)—

22                           (i) by striking “, and other nonfeder-  
23                           ally chartered housing creditors,”; and

24                           (ii) by inserting “and in order to per-  
25                           mit other nonfederally chartered housing

1           creditors to make, purchase, and enforce  
2           alternative mortgage transactions,” after  
3           “enforcing alternative mortgage trans-  
4           actions,”; and

5           (B) in paragraph (1), by inserting “(as  
6           such term is defined in section 3(a) of the Fed-  
7           eral Deposit Insurance Act)” after “with re-  
8           spect to banks”.

9           (2) Section 205 of the Depository Institution  
10          Management Interlock Act (12 U.S.C. 3204) is  
11          amended.—

12           (A) in the portion of paragraph (8)(A)  
13           which precedes clause (i), by striking “diversi-  
14           fied savings” and all that follows through “with  
15           respect to” and inserting “depository institution  
16           holding company which, as of September 13,  
17           1995, and at all times thereafter, satisfies the  
18           consolidated net worth and consolidated net  
19           earnings requirements for a diversified savings  
20           and loan holding company (as set forth in sec-  
21           tion 10(1)(F) of Home Owners’ Loan Act, as  
22           such section is in effect on such date, which

shall be applicable for purposes of this paragraph without regard to the fact that a depository institution subsidiary of such holding company has ceased to be a savings association after September 13, 1995) with respect to”; and

(B) by striking paragraph (9).

(3) Section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)) is amended—

(A) by inserting “and” after the semicolon at the end of clause (v); and

(B) by striking clause (vi).

(4) Subparagraphs (A), (B), and (C) of section 10(e)(5) of the Federal Home Loan Bank Act (12 U.S.C. 1430(e)(5)) are each amended by inserting before the period at the end “(as such section is in effect on September 13, 1995)”.

**SEC. 508. REFERENCES TO SAVINGS ASSOCIATIONS AND STATE BANKS IN FEDERAL LAW.**

Effective January 1, 1998, any reference in any Federal banking law to—

(1) the term “savings association” shall be deemed to be a reference to a bank as defined in section 3(a) of the Federal Deposit Insurance Act; and

1           (2) the term “State bank” shall be deemed to  
2       include any depository institution included in the  
3       definition of such term in section 3(a)(2) of such  
4       Act.

5   **SEC. 509. REPEAL OF HOME OWNERS’ LOAN ACT.**

6       The Home Owners’ Loan Act (12 U.S.C. 1461 et  
7   seq.) is hereby repealed.

8   **SEC. 510. DEFINITIONS.**

9       For purposes of this subtitle, the terms “appropriate  
10   Federal banking agency”, “bank holding company”, “de-  
11   pository institution”, “Federal savings association”, “in-  
12   sured depository institution”, “savings association”, and  
13   “State bank” have the same meanings as in section 3 of  
14   the Federal Deposit Insurance Act (as in effect on the  
15   date of the enactment of this Act).

16       **Subtitle B—Elimination of Office of The**  
17               **Thrift Supervision**

18   **SEC. 511. OFFICE OF THRIFT SUPERVISION ABOLISHED.**

19       Effective January 1, 1998, the Office of Thrift Su-  
20   pervision and the position of Director of the Office of  
21   Thrift Supervision are hereby abolished.



1 **SEC. 512. DETERMINATION OF TRANSFERRED FUNCTIONS**  
2 **AND EMPLOYEES.**

3 (a) ALL OFFICE OF THRIFT SUPERVISION EMPLOY-  
4 EES SHALL BE TRANSFERRED.—All employees of the Of-  
5 fice of Thrift Supervision shall be identified for transfer  
6 under subsection (b) to the Office of the Comptroller of  
7 the Currency, the Federal Deposit Insurance Corporation,  
8 or the Board of Governors of the Federal Reserve System.

9 (b) FUNCTIONS AND EMPLOYEES TRANSFERRED.—

10 (1) IN GENERAL.—The Director of the Office of  
11 Thrift Supervision, the Comptroller of the Currency,  
12 the Chairperson of the Federal Deposit Insurance  
13 Corporation, and the Chairman of the Board of Gov-  
14 ernors of the Federal Reserve System shall jointly  
15 determine the functions or activities of the Office of  
16 Thrift Supervision, and the number of employees of  
17 such Office necessary to perform or support such  
18 functions or activities, which are transferred from  
19 the Office to the Office of the Comptroller of the  
20 Currency, the Federal Deposit Insurance Corpora-  
21 tion, or the Board of Governors of the Federal Re-  
22 serve System, as the case may be.

1           (2) ALLOCATION OF EMPLOYEES.—The Comp-  
2       troller of the Currency, the Chairperson of the Fed-  
3       eral Deposit Insurance Corporation, and the Chair-  
4       man of the Board of Governors of the Federal Re-  
5       serve System shall allocate the employees of the Of-  
6       fice of Thrift Supervision consistent with the num-  
7       ber determined pursuant to paragraph (1) in a man-  
8       ner which such Comptroller, Chairperson, and Chair-  
9       man, in their sole discretion, deem equitable except  
10      that, within work units, the agency preferences of  
11      individual employees shall be accommodated as far  
12      as possible.

13      (c) RIGHTS OF EMPLOYEES OF THE OFFICE OF  
14      THRIFT SUPERVISION.—All employees of the Office of  
15      Thrift Supervision who are identified for transfer under  
16      subsection (b) shall be entitled to the following rights:

17           (1) Each employee so identified shall be trans-  
18      ferred to the appropriate agency or entity for em-  
19      ployment no later than the earlier of the end of the  
20      60-day period beginning on the date such employees  
21      are identified for transfer under subsection (b) or  
22      January 1, 1998, and such transfer shall be deemed  
23      a transfer of function for the purpose of section  
24      3503 of title 5, United States Code.

1           (2) Each transferred employee holding a perma-  
2           nent position shall not be involuntarily separated or  
3           reduced in grade or compensation for 1 year after  
4           the date of transfer, except for cause or, if the em-  
5           ployee is a temporary employee, separated in accord-  
6           ance with the terms of the appointment.

7           (3) If any agency or entity to which employees  
8           are transferred determines, after the end of the 1-  
9           year period beginning on the date the transfer of  
10          functions to such agency or entity is completed, that  
11          a reorganization of the combined work force is re-  
12          quired, that reorganization shall be deemed a “major  
13          reorganization” for purposes of affording affected  
14          employees retirement under section 833(d)(2) or  
15          8414(b)(1)(B) of title 5, United States Code.

16         (d) DISPOSITION OF AFFAIRS.—

17                 (1) IN GENERAL.—In winding up the affairs of  
18                 the Office of Thrift Supervision, the Director of the  
19                 Office of Thrift Supervision shall consult and co-  
20                 operate with the Comptroller of the Currency, the  
21                 Federal Deposit Insurance Corporation, and the  
22                 Board of Governors of the Federal Reserve System,  
23                 as the case may be, to facilitate the orderly transfer  
24                 of the functions to such Comptroller, Corporation,  
25                 or Board.

1           (2) CONTINUING AUTHORITY OF DIRECTOR OF  
2           THE OFFICE OF THRIFT SUPERVISION.—Except as  
3           provided in paragraph (1), no provision of this sub-  
4           title shall be construed as affecting the authority  
5           vested in the Director of the Office of Thrift Super-  
6           vision before the date of enactment of this Act which  
7           is necessary to carry out the duties of the position  
8           until the date upon which the position of Director of  
9           the Office of Thrift Supervision is abolished.

10          (3) CONTINUATION OF AGENCY SERVICES.—  
11          Any agency, department, or other instrumentality of  
12          the United States, or any successor to any such  
13          agency, department or instrumentality, which was  
14          providing support services to the Director of the Of-  
15          fice of Thrift Supervision on the day before the date  
16          such position is abolished shall—

17                (A) continue to provide such services on a  
18                reimbursable basis, in accordance with the  
19                terms of the arrangement pursuant to which  
20                such services were provided until the arrange-  
21                ment is modified or terminated in accordance  
22                with such terms, except that effective January  
23                1, 1998, the Comptroller of the Currency, the  
24                Federal Deposit Insurance Corporation, or the

1 Board of Governors of the Federal Reserve Sys-  
2 tem, as the case may be, shall be substituted  
3 for the Director of the Office of Thrift Super-  
4 vision as a party to the arrangement; and

5 (B) consult with the Comptroller, the Cor-  
6 poration, or the Board to coordinate and facili-  
7 tate a prompt and reasonable transition.

8 (e) TRANSFER OF PROPERTY.—Effective January 1,  
9 1998, all property of the Office of Thrift Supervision shall  
10 be transferred to the Comptroller of the Currency, the  
11 Federal Deposit Insurance Corporation, or the Board of  
12 Governors of the Federal Reserve System, as determined  
13 in accordance with subsections (a) and (b).

14 **SEC. 513. SAVINGS PROVISIONS.**

15 (a) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS  
16 NOT AFFECTED.—No provision of this title shall be con-  
17 strued as affecting the validity of any right, duty or obliga-  
18 tion of the United States, the Director of the Office of  
19 Thrift Supervision, or any person, which existed on the  
20 day before the date upon which the position of Director  
21 of the Office of Thrift Supervision and the Office of Thrift  
22 Supervision are abolished.

23 (b) CONTINUATION OF SUITE.—No action or other  
24 proceeding commenced by or against the Director of the

1 Office of Thrift Supervision shall abate by reason of enact-  
2 ment of this title, except that, effective January 1, 1998,  
3 the Comptroller of the Currency, the Federal Deposit In-  
4 surance Corporation, or the Board of Governors of the  
5 Federal Reserve System, as the case may be, shall be sub-  
6 stituted as a party to any such action or proceeding.

7 (c) CONTINUATION OF ADMINISTRATIVE RULES.—  
8 All orders, resolutions, determinations, regulations, inter-  
9 pretative rules, other interpretations, guidelines, proce-  
10 dures, supervisory and enforcement actions, and other ad-  
11 visory material (other than any regulation implementing  
12 or prescribed pursuant to section 3(f) of the Home Own-  
13 ers' Loan Act (as in effect on September 13, 1995))  
14 which—

15 (1) have been issued, made, prescribed, or per-  
16 mitted to become effective by the Office of Thrift  
17 Supervision, and

18 (2) are in effect on December 31, 1997 (or be-  
19 come effective after such date pursuant to the terms  
20 of the order, resolution, determination, rule, other  
21 interpretation, guideline, procedure, supervisory or  
22 enforcement action, and other advisory material, as  
23 in effect on such date), shall—

1 (A) continue in effect according to the  
 2 terms of such orders, resolutions, determina-  
 3 tions, regulations, interpretative rules, other in-  
 4 terpretations, guidelines, procedures, super-  
 5 visory or enforcement actions, or other advisory  
 6 material;

7 (B) be administered by the Comptroller of  
 8 the Currency, the Federal Deposit Insurance  
 9 Corporation, or the Board of Governors of the  
 10 Federal Reserve System; and

11 (C) be enforceable by or against the Comp-  
 12 troller of the Currency, the Federal Deposit In-  
 13 surance Corporation, or the Board of Governors  
 14 of the Federal Reserve System until modified,  
 15 terminated, set aside, or superseded in accord-  
 16 ance with applicable law by the Comptroller,  
 17 Corporation, or Board, by any court of com-  
 18 petent jurisdiction, or by operation of law.

19 (d) TREATMENT OF REFERENCES IN ADJUSTABLE  
 20 RATE MORTGAGES ISSUED BEFORE FIRREA.—

21 (1) REFERENCES IN PRIOR LAW.—For purposes  
 22 of section 402(e) of Financial Institutions Reform,  
 23 Recovery, and Enactment Act of 1989 (12 U.S.C.  
 24 1437 note), any reference in such section to—

1 (A) the Director of the Office of Thrift Su-  
2 pervision shall be deemed to be a reference to  
3 the Secretary of the Treasury; and

4 (B) a Savings Association Insurance Fund  
5 member shall be deemed to be a reference to an  
6 insured depository institution (as defined in sec-  
7 tion 3 of the Federal Deposit Insurance Act).

8 (e) TREATMENT OF REFERENCES IN ADJUSTABLE  
9 RATE MORTGAGES INSTRUMENTS ISSUED AFTER  
10 FIRREA.—

11 (1) IN GENERAL.—For purposes of adjustable  
12 rate mortgage instruments that are in effect as of  
13 the date of enactment of this Act, any reference in  
14 the instrument to the Director of the Office of  
15 Thrift Supervision or Savings Association Insurance  
16 Fund members shall be treated as a reference to the  
17 Secretary of the Treasury or insured depository in-  
18 stitutions (as defined in section 3 of the Federal De-  
19 posit Insurance Act), as appropriate.

20 (2) SUBSTITUTION FOR INDEXES.—If any index  
21 used to calculate the applicable interest rate on any  
22 adjustable rate mortgage instrument is no longer  
23 calculated and made available as a direct or indirect  
24 result of the enactment of this title, any index—



1 (A) made available by the Secretary of the  
2 Treasury; or

3 (B) determined by the Secretary of the  
4 Treasury, pursuant to paragraph (4), to be sub-  
5 stantially similar to the index which is no  
6 longer calculated or made available,  
7 may be substituted by the holder of any such adjust-  
8 able rate mortgage instrument upon notice to the  
9 borrower.

10 (3) AGENCY ACTION REQUIRED TO PROVIDE  
11 CONTINUED AVAILABILITY OF INDEXES.—Promptly  
12 after the enactment of this subsection, the Secretary  
13 of the Treasury, the Chairperson of the Federal De-  
14 posit Insurance Corporation, and the Comptroller of  
15 the Currency shall take such action as may be nec-  
16 essary to assure that the indexes prepared by the  
17 Director of the Office of Thrift Supervision imme-  
18 diately before the enactment of this subsection and  
19 used to calculate the interest rate on adjustable rate  
20 mortgage instruments continue to be available.

21 (4) REQUIREMENTS RELATING TO SUBSTITUTE  
22 INDEXES.—If any agency can no longer make avail-  
23 able an index pursuant to paragraph (3), an index  
24 that is substantially similar to such index may be  
25 substituted for such index for purposes of paragraph

1       (2) if the Secretary of the Treasury determines,  
2       after notice and opportunity for comment, that—

3               (A) the new index is based upon data sub-  
4               stantially similar to that of the original index;  
5               and

6               (B) the substitution of the new index will  
7               result in an interest rate substantially similar to  
8               the rate in effect at the time the original index  
9               became unavailable.

10 **SEC. 514. COST OF FUNDS INDEXES.**

11       (a) **COST OF FUNDS INDEX DEFINED.**—The term  
12 “cost of funds indexed” means any index that is published  
13 by a Federal home loan bank and is based, in whole or  
14 in part, upon the cost of funds of such bank’s members.

15       (b) **CALCULATIONS BASED ON TYPE OF CHARTER**  
16 **AND INSURANCE FUND MEMBERSHIP OF MEMBERS.**— If  
17 any cost of funds index includes data based on charter  
18 type, insurance fund membership, or other similar charac-  
19 teristics of members of a Federal home loan bank, such  
20 index shall be calculated after the date of the enactment  
21 of this Act using data only from insured depository insti-  
22 tutions which were bank members and whose data was in-  
23 cluded in such index on or before such date of enactment.

24       (c) **ACQUISITION OF DATA.**—

1           (1) IN GENERAL.—Each insured depository in-  
2           stitution the data from which is required to compile  
3           a cost of funds index in accordance with subsection  
4           (b) shall provide to the Federal home loan bank  
5           which maintains the index such information as may  
6           be necessary, and in such form as may be appro-  
7           priate, for the bank to calculate and publish the  
8           index.

9           (2) ENFORCEMENT BY BANKING AGENCIES.—  
10          Each appropriate Federal banking agency shall take  
11          such action as may be necessary to ensure that in-  
12          sured depository institutions which are required to  
13          provide information to any Federal home loan bank  
14          under paragraph (1) furnish such information on a  
15          timely basis and in the form required by the bank.

16          (3) TREATMENT OF INSTITUTIONS.—Notwith-  
17          standing any other provision of law, an insured de-  
18          pository institution which furnishes information to a  
19          Federal home loan bank pursuant to this section for  
20          use in compiling a cost of funds index shall not be  
21          deemed to control, directly, or indirectly, such index.

22          (d) CERTAIN DATA EXCLUDED.—Notwithstanding  
23          subsections (b) and (c), no cost of funds index shall in-  
24          clude any data from any insured depository institution  
25          which results from the merger, consolidation, or other

1 combination of a member of a Federal home loan bank  
2 with a nonmember of any such bank if—

3 (1) the total assets of the nonmember exceed  
4 the total assets of the bank member at the time of  
5 such merger, consolidation, or other combination; or

6 (2) in the case of a merger, consolidation, or  
7 other merger in which a member of a Federal home  
8 loan bank is the resulting insured depository institu-  
9 tion, combined ratio of the average amount of sin-  
10 gle-family loan balances to average total assets of all  
11 insured depository institutions involved in such  
12 merger, consolidation, or other combination for the  
13 12-months period ending on the date of such trans-  
14 action is less than 70 percent.

15 (e) OTHER DEFINITIONS.—For purposes of this sec-  
16 tion, the terms “appropriate Federal banking agency” and  
17 “insured depository institution” shall have the same  
18 meanings as in section 3 of the Federal Deposit Insurance  
19 Act.

20 **SEC. 515. REFERENCES IN FEDERAL LAW TO DIRECTOR OF**  
21 **THE OFFICE OF THRIFT SUPERVISION.**

22 Effective January 1, 1998, any reference in any Fed-  
23 eral law to the Director of the office of Thrift Supervision  
24 or the Office of Thrift supervision shall be deemed to be  
25 a reference to the appropriate Federal banking agency (as

1 defined in section 3(q) of the Federal Deposit insurance  
2 Act).

3 **SEC. 516. RECONFIGURATION OF BOARD OF DIRECTORS OF**  
4 **FDIC AS A RESULT OF REMOVAL OF DIREC-**  
5 **TOR OF THE OFFICE OF THRIFT SUPER-**  
6 **VISION.**

7 (a) IN GENERAL.—Section 2(a)(1) of the Federal  
8 Deposit Insurance Act (12 U.S.C. 1812(a)(1)) is amended  
9 to read as follows:

10 “(1) IN GENERAL.—The management of the  
11 Corporation shall be vested in a Board of Directors  
12 consisting of 5 members—

13 (A) 1 of whom shall be the Comptroller of  
14 the Currency; and

15 (B) 4 of whom shall be appointed by the  
16 President, and with the advice and consent of  
17 the Senate, from among individuals who are  
18 citizens of the United States, 1 of whom shall  
19 have State bank supervisory experience”.

20 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

21 (1) Section 2(d)(2) of the Federal Deposit In-  
22 surance Act (12 U.S.C. 1812(d)(2)) is amended—

23 (A) by striking “or the Office of Director  
24 of the Office of Thrift Supervision”;

25 (B) by striking “or such Director”;

1 (C) by striking “or the acting Director of  
 2 the Office of Thrift Supervision, as the case  
 3 may be”; and

4 (D) by striking “or Director”.

5 (2) Section 2(f)(2) of the Federal Deposit In-  
 6 surance Act (12 U.S.C. 1812(f)(2)) is amended by  
 7 striking “or of the Office of Thrift Supervision”.

8 (c) EFFECTIVE DATE.—The amendments made by  
 9 subsections (a) and (b) shall take effect on January 1,  
 10 1998.

# 11 **Subtitle C—Merger of BIF and SAIF**

## 12 **SEC. 521. AMENDMENT TO ECONOMIC GROWTH AND REGU-** 13 **LATORY PAPERWORK REDUCTION ACT OF** 14 **1996.**

15 Section 2704(c) of the Economic Growth and Regu-  
 16 latory Paperwork Reduction Act of 1996 is amended to  
 17 read as follows:

18 “(c) EFFECTIVE DATE.—This section and the  
 19 amendments made by this section shall become effective  
 20 on the date of the enactment of the Depository Institution  
 21 Affiliation and Thrift Charter Conversion Act.”.

1     **TITLE VI—NATIONAL MARKET FUNDING**  
2                     **LENDING INSTITUTIONS**

3     **SEC. 601. NATIONAL MARKET FUNDED LENDING INSTITU-**  
4                     **TIONS.**

5         Chapter 1 of title LXII of the Revised Statutes of  
6 the United States is amended by adding the following sec-  
7 tion:

8     **“SEC. 5158. NATIONAL MARKET FUNDED LENDING INSTITU-**  
9                     **TIONS.**

10         “(a) NATIONAL MARKET FUNDED LENDING INSTI-  
11 TUTIONS.—

12             “(1) ORGANIZATION OF NATIONAL MARKET  
13 FUNDED LENDING INSTITUTIONS.—Any company  
14 (as defined in section 2(b) of the Bank Holding  
15 Company Act of 1956 (12 U.S.C. 1841(b)) or any  
16 number of natural persons, not less in any case than  
17 five, may apply to the Comptroller of the Currency  
18 on such forms and in accordance with such proce-  
19 dures as the Comptroller may prescribe by regula-  
20 tion, for permission to organize a national market  
21 funded lending institution. Upon approval of the ap-  
22 plication, such national market funded lending insti-  
23 tution shall be a body corporate, chartered under the  
24 laws of the United States by the Comptroller. All

1 national market funded lending institutions shall op-  
2 erate pursuant to the requirements of this section at  
3 the direction of a board of directors elected at an or-  
4 ganizational meeting to be held as soon as prac-  
5 ticable after issuance by the Comptroller of a charter  
6 by such company or such natural persons for the  
7 purpose of electing such board of directors and tak-  
8 ing such other action necessary, pursuant to the  
9 charter and the regulations issued by the Comptrol-  
10 ler, to complete the corporate organization of the na-  
11 tional market funded lending institution. Imme-  
12 diately following their election, the board of directors  
13 shall meet to elect officers of the national market  
14 funded lending institution and to take such other ac-  
15 tion, as prescribed by the Comptroller, to complete  
16 the corporate organization of such national market  
17 funded lending institution.

18 “(2) UNAUTHORIZED ORGANIZATION PROHIB-  
19 ITED.—No company or person may organize a na-  
20 tional market funded lending institution, collect  
21 money from others for such purpose, or represent it-  
22 self, himself, or herself as authorized to do so and  
23 no national market funded lending institution shall



1 transact any business prior to completion of its or-  
2 ganization except as provided in this Act and in im-  
3 plementing regulations of the Comptroller.

4 “(3) AUTHORIZED ACTIVITIES FOR NATIONAL  
5 MARKET-FUNDED LENDING INSTITUTION.—Subject  
6 to the provisions of paragraphs (4) and (5) of this  
7 subsection, and subsections (b) and (c) of this sec-  
8 tion, a national market funded lending institution  
9 may exercise, in accordance with its articles of orga-  
10 nization and such regulations as are issued by the  
11 Comptroller, all of the powers and privileges of a na-  
12 tional banking association formed in accordance with  
13 section 5133 of the Revised Statutes (12 U.S.C. 21).

14 “(4) PROHIBITION OF TAKING DEPOSITS OR  
15 RECEIVING FEDERAL DEPOSIT INSURANCE.—No na-  
16 tional market funded lending institution may—

17 (A) become an “insured depository institu-  
18 tion” within the meaning of section 3(c)(2) of  
19 the Federal Deposit Insurance Act (12 U.S.C.  
20 1813(c)(2)) or acquire, directly or indirectly  
21 through a subsidiary, control of such an insured  
22 depository institution;

23 (B) accept any deposits as defined in sec-  
24 tion (3)(l)(1) of the Federal Deposit Insurance  
25 Act (12 U.S.C. 1813(l)(1));

1 (C) advertise or hold itself out as having  
2 deposits insured by the Federal Deposit Insur-  
3 ance Corporation.

4 “(5) PROHIBITION ON ACCESS TO DISCOUNT  
5 WINDOW.—No national market funded lending insti-  
6 tution may exercise discount borrowing privileges  
7 pursuant to section 19(b)(7) of the Federal Reserve  
8 Act.

9 “(6) PROHIBITION ON ACCESS TO PAYMENTS  
10 SYSTEM.—No national market funded lending insti-  
11 tution may obtain payment or payment related serv-  
12 ices from any Federal Reserve bank, including any  
13 service referred to in section 11A of the Federal Re-  
14 serve Act.

15 “(7) CAPITAL.—The capital of national market  
16 funded lending institution shall be maintained at all  
17 times at such level and in such manner as may be  
18 prescribed by the Comptroller by regulation.

19 “(8) PROHIBITION ON IDENTIFICATION AS A  
20 BANK.—

21 “(A) In general.—Notwithstanding the re-  
22 quirement of section 5134 of the Revised Stat-  
23 utes of the United States—

1 “(i) the name of a national market  
2 lending institution may not include the  
3 term “bank”; and

4 “(ii) such institution may not be iden-  
5 tified as a bank on any sign displayed by  
6 the institution or in any advertisement or  
7 other publication of the institution.

8 “(B) DEPOSITORY INSTITUTION NOT LIA-  
9 BLE FOR FRAUDULENT MISREPRESENTATION  
10 FOR NOT REPRESENTING ITSELF AS A BANK.—  
11 A national market lending institution shall not  
12 be liable for any civil or criminal penalty under  
13 any Federal or State consumer protection law,  
14 or in any criminal or civil action, for falsely ad-  
15 vertising the status of the institution, for mak-  
16 ing a false statement with respect to the status  
17 of the institution, or for any similar offense by  
18 reason of the institution’s compliance with this  
19 paragraph.

20 “(9) IMPLEMENTING REGULATIONS.—The  
21 Comptroller shall promulgate such regulations as  
22 may be necessary to implement the provisions of this  
23 section.

24 “(b) REGULATION AND SUPERVISION OF NATIONAL  
25 MARKET FUNDED LENDING INSTITUTION.—

1           “(1) AUTHORITY VESTED IN COMPTROLLER OF  
2       THE CURRENCY.—Notwithstanding any other provi-  
3       sion of law, the authority to regulate and supervise  
4       the activities of national market funding lending in-  
5       stitutions shall be vested exclusively in the Comptrol-  
6       ler of the Currency.

7           “(2) EXAMINATION.—Each national market  
8       funded lending institution and each subsidiary there-  
9       of shall be subject to such examinations and to such  
10      reporting and recordkeeping requirements as the  
11      Comptroller may prescribe. The cost of examinations  
12      shall be assessed against and paid by such national  
13      market funded lending institution. Examiners ap-  
14      pointed by the Comptroller for the purposes of this  
15      Act shall be subject to the same requirements, re-  
16      sponsibilities, and penalties as are applicable to ex-  
17      aminers under the Federal Reserve Act and title  
18      LXII of the Revised Statutes and shall have, in the  
19      exercise of functions under this Act, the same pow-  
20      ers and privileges as are vested in such examiners  
21      by law. If any national market funded lending insti-  
22      tution fails to pay any assessment required under  
23      this subsection within 60 days of such assessment,  
24      or refuses to permit any examiner appointed by the  
25      Comptroller to make an examination, or refuses to

1 provide any information required to be disclosed by  
2 regulation or in the course of any examination, or  
3 submits or publishes any false or misleading report  
4 or information, the Comptroller may assess against  
5 such national market funded lending institution civil  
6 penalty of not more than \$5,000 for each day any  
7 such failure or refusal continues. And such civil pen-  
8 alty shall be assessed by the Comptroller in a man-  
9 ner prescribed in subparagraphs (E), (F), (G), (I)  
10 and (J) of section 8(i)(2) of the Federal Deposit In-  
11 surance Act, for penalties imposed by such section,  
12 and such assessment shall also be subject to the pro-  
13 visions of subparagraph (H) of that section and of  
14 section 8(h) of that Act.

15 “(3) ENFORCEMENT.—

16 “(A) CAPITAL.—If any national market  
17 funded lending institution fails to maintain cap-  
18 ital at or above the minimum level prescribed  
19 by the Comptroller’s regulations, the Comptrol-  
20 ler may issue a directive requiring the national  
21 market funded lending institution to submit  
22 and adhere to a plan for increasing capital  
23 which is acceptable to the Comptroller. Any  
24 such directive, and such plan when approved by

1 the Comptroller, shall be enforceable as pro-  
2 vided in this paragraph.

3 “(B) CEASE-AND-DESIST AUTHORITY.—If  
4 a national market funded lending institution  
5 subject to a capital directive issued pursuant to  
6 subparagraph (A) fails to submit or adhere to  
7 a plan for increasing capital which is acceptable  
8 to the Comptroller, or if the Comptroller has  
9 reasonable cause to believe that any national  
10 market funded lending institution has accepted  
11 any deposit or has taken action which has  
12 caused it to become an “insured depository in-  
13 stitution” within the meaning of section 3(c)(2)  
14 of the Federal Deposit Insurance Act or has  
15 represented to any person that any amount ac-  
16 cepted by such national market funded lending  
17 institution is an “insured deposit” within the  
18 meaning of section 3(m) of the Federal Deposit  
19 Insurance Act, the Comptroller may issue and  
20 serve upon such national market funded lending  
21 institution a notice of charges which shall con-  
22 tain a statement of the facts constituting the  
23 alleged violation or violations of this Act and  
24 shall fix a time and a place at which a hearing  
25 will be held to determine whether an order to

1           cease-and-desist   therefrom   should   be   issued  
2           against the national market funded lending in-  
3           stitution. Such hearing shall be fixed for a date  
4           not earlier than 30 days nor later than 60 days  
5           after service of such notice unless an earlier or  
6           later date is set by the Comptroller at the re-  
7           quest of the national market funded lending in-  
8           stitution. Unless the institution so served shall  
9           appear at the hearing, it shall be deemed to  
10          have consented to the issuance of the cease-and-  
11          desist order. In the event of such consent, or  
12          if upon the record made at any such hearing  
13          the Comptroller shall find that any violation or  
14          violations specified in the notice of charges has  
15          or have been established, the Comptroller may  
16          issue an order to cease-and-desist from any  
17          such violation or violations and, in an appro-  
18          priate case as determined by the Comptroller in  
19          his or her discretion, to take affirmative action  
20          to correct the conditions resulting from any  
21          such violation or violations. Such order shall be-  
22          come effective at the expiration of 30 days after  
23          service thereof upon the national market funded  
24          lending institution (except in the case of a  
25          cease-and-desist   order   issued   upon   consent,

1           which shall become effective at the time speci-  
2           fied therein), and shall remain effective and en-  
3           forceable, as provided therein except as stayed,  
4           modified, terminated or set aside by action of  
5           the Comptroller or reviewing court. Any hearing  
6           provided for in this subsection and judicial re-  
7           view of any final cease-and-desist order (other  
8           than a cease-and-desist order issued upon con-  
9           sent, which shall be unreviewable) shall be in  
10          accordance with the provisions of section 8(h)  
11          of the Federal Deposit Insurance Act.

12                 “(C) CIVIL MONEY PENALTY.—Any person  
13          who violates, or has caused a national market  
14          funded lending institution to violate any cease-  
15          and-desist order issued pursuant to subpara-  
16          graph (B) shall forfeit and pay a civil penalty  
17          of not more than \$100,000 for each day during  
18          which such violation continues. Any such civil  
19          penalty shall be assessed and collected by the  
20          Comptroller in the manner provided in subpara-  
21          graphs (E), (F), (G), (I), and (J) of section  
22          8(i)(2) of the Federal Deposit Insurance Act,  
23          and any such assessment shall be subject to the  
24          provisions of subparagraph (H) of that section  
25          and of section 8(h) of that Act.



1           “(D) CHARTER REVOCATION.—If the  
2           Comptroller determines that any national mar-  
3           ket funded lending institution has violated any  
4           cease-and-desist order which was issued under  
5           subparagraph (B) of this paragraph and which  
6           has become final, the Comptroller may, in addi-  
7           tion to or in lieu of any other remedies provided  
8           by law, issue an order revoking the charter of  
9           such national market funded lending institu-  
10          tion. Any order revoking the charter of a na-  
11          tional market funded lending institution shall  
12          be effected within 20 days of service upon such  
13          national market funded lending institution un-  
14          less stayed, modified, terminated or set aside by  
15          a court in proceedings authorized in this sub-  
16          paragraph. The national market funded lending  
17          institution shall give notice of such revocation  
18          order to each of its depositors in such manner  
19          and at such times as the Comptroller may deem  
20          necessary and may order for the protection of  
21          the depositors. Any national market funded  
22          lending institution served with an order revok-  
23          ing its charter, may, within 10 days of the date  
24          of service of such order, apply to the United

1 States District Court for the District of Colum-  
2 bia or the United States District Court for the  
3 judicial district in which the home office of such  
4 national market funded lending institution is lo-  
5 cated for an injunction setting aside, limiting,  
6 modifying, or suspending the enforcement, oper-  
7 ation, or effectiveness of such order, and such  
8 court shall have jurisdiction to issue such in-  
9 junction. Failure to seek judicial review within  
10 such 10-day period shall constitute a waiver  
11 thereof and shall constitute consent by the na-  
12 tional market funded lending institution or any  
13 company which controls such national market  
14 funded lending institution to the issuance of a  
15 final order of revocation of its charter.

16 “(c) CRIMINAL PENALTIES.—

17 “(1) UNAUTHORIZED ORGANIZATION.—Any  
18 person who violates the provisions of this title or any  
19 regulation or order issued by the Comptroller pursu-  
20 ant hereto by knowingly organizing a national mar-  
21 ket funded lending institution, collecting money from  
22 others for such purpose, or representing himself or  
23 herself as authorized to do so, or transacting busi-  
24 ness as a national market lending institution, with-  
25 out a validly issued and unrevoked charter from the

1 Comptroller of the Currency, or, in the case of a na-  
2 tional market funded lending institution which has  
3 had its charter revoked, by failing to give notice to  
4 depositors of charter revocation when and as di-  
5 rected by the Comptroller under this section, shall  
6 be imprisoned not more than one year, fined not  
7 more than \$100,000 for each day during which such  
8 violation continues, or both.

9 “(2) VIOLATION OF ACTIVITIES LIMITATION.—

10 Whoever violates this section by knowingly causing  
11 a national market funded lending institution to ac-  
12 cept any deposit or by representing to any person  
13 that any deposit accepted by such national market  
14 funded lending institution is an “insured deposit”  
15 within the meaning of section 3(m) of Federal De-  
16 posit Insurance Act (12 U.S.C. 1813(m)) shall be  
17 imprisoned not more than 5 years, fined not more  
18 than \$500,000 per day for each day during which  
19 such violation continues, or both.

20 “(3) VIOLATION DEFINED.—For purposes of  
21 this section, the term “violation” includes any action  
22 (alone or with another or others) for or toward caus-  
23 ing, bringing about, participating in, counseling or  
24 aiding or abetting a violation.

1       “(d) VOLUNTARY LIQUIDATION.—A national market  
2 funded lending institution may go into voluntary liquida-  
3 tion and be closed by a vote of its shareholders owning  
4 two-thirds of its stock, pursuant to sections 5220 and  
5 5221 of the Revised States (12 U.S.C. 181, 182).

6       “(e) CONSERVATORSHIP.—The Comptroller may ap-  
7 point a conservator to take possession and control of a  
8 national market funded lending institution pursuant to the  
9 Bank Conservation Act (12 U.S.C. 201 et seq.).

10       “(f) CONVERSIONS OF DEPOSITORY INSTITUTIONS  
11 INTO NATIONAL MARKET FUNDED LENDING INSTITU-  
12 TIONS.—Any depository institution (as defined in section  
13 3(c)(1) of the Federal Deposit Insurance Act) may, by the  
14 vote of its shareholders owning not less than two-thirds  
15 of the stock of such depository institution, and with the  
16 approval of the Comptroller upon such terms as he or she  
17 shall determine are necessary to further the purposes of  
18 this section, be converted into a national market funded  
19 lending institution, provided, however that said conversion  
20 shall not be in contravention of any applicable State law.  
21 Such national market funded lending institution shall have  
22 the same powers and privileges and shall be subject to the  
23 same duties, liabilities and regulations in all respects, as  
24 national market funded lending institutions originally or-  
25 ganized under this section.”.

1                   **TITLE VII—EFFECTIVE DATE**

2   **SEC. 701. EFFECTIVE DATE.**

3           Except as otherwise provided, this Act shall take ef-  
4   fect on January 1, 1998.

○