I

105TH CONGRESS
1ST SESSION

H. R. 268

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

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 subsequently 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.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Depository Institution Affiliation and Thrift Charter Conversion Act''.

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

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) current laws and regulations restrain efficiency, competition, and innovation in the design and delivery of financial services to the disadvantage of consumers;

(2) restrictions on ownership of depository institutions and affiliations with other business organizations and restrictions and burdens on ownership of other financial institutions by insurance companies interfere with their ability to attract and retain capital and managerial resources;

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

(4) the thrift charter has become obsolete;

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

(6) current laws inhibit the ability of domestic financial markets and intermediaries to respond to the serious competitive challenges presented by foreign intermediaries and the globalization of markets.

(b) PURPOSES.—The purposes of this Act are to promote the safety and soundness of the Nation's financial system, enhance the quality of regulation and supervision of financial intermediaries, and achieve a more efficient market and effective regulatory structure by—

(1) establishing an alternative and comprehensive legislative framework for the creation and regulation of financial services holding companies;

(2) enhancing the capital adequacy of commercial banks, brokers and dealers, insurance companies, and other financial companies by eliminating prohibitions on common ownership and affiliation within a financial services holding company;

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

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

(5) permitting the efficient marketing and distribution of financial services to consumers subject to safeguards against coercive tie-ins and other unfair and abusive practices;

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

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

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

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

TITLE I—FINANCIAL SERVICES HOLDING COMPANY ACT

SEC. 101. SHORT TITLE.

This title may be cited as the ''Financial Services Holding Company Act''.

Subtitle A—General Provisions

SEC. 102. DEFINITIONS.

For purposes of this Act, the following definitions apply.

(a) FINANCIAL SERVICES HOLDING COMPANY.—The term ''financial services holding company'' means a company that—

(1) has filed with the National Financial Services Committee a notice stating such company's intent to comply with the requirements of this Act and has not withdrawn such notice;

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

(3) is predominantly a financial company.

(b) COMPANY.—The term ''company'' means any corporation, partnership, business, trust, association, or similar organization, or any other trust unless by its terms it must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, but shall not include any corporation the majority of the shares of which are owned by the United States or by any State.

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

(d) CONTROL.—Except as provided in section 107(e)(2), the term ''control'' means, directly or indirectly, owns or has the power to vote 25 percent or more of any class of voting securities of a company, or has the power to elect a majority of the directors of a company, except that—

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

(A) acquired or held in an agency, trust, or other fiduciary capacity, unless the company has sole discretionary authority to exercise voting rights with respect thereto;

(B) acquired or held in connection with or incidental to the underwriting of securities if such securities are held only for such period of time as will permit the sale thereof on a reasonable basis; or

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

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

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

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

(g) DEPOSITORY INSTITUTION AND INSURED DEPOSITORY INSTITUTION.—

(1) IN GENERAL.—The terms ''depository institution'' and ''insured depository institution'' have the same meanings as in section 3 of the Federal Deposit Insurance Act, except that the term ''depository institution'' also means—

(A) any wholesale financial institution; and

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

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

National Financial Services Committee may, for purposes of any section or provision of this Act, exempt from the definition of ''depository institution'' any branch, agency, or commercial lending company operated in the United States by a foreign bank as the Committee deems appropriate, provided that such exemption is—

(A) issued by regulation, and

(B) consistent with the principles of national treatment and equality of competitive opportunity.

(h) LEAD DEPOSITORY INSTITUTION.—The term ''lead depository institution'' means the largest depository institution controlled by the financial services holding company, based on a comparison of the average total assets controlled by each depository institution during the previous 12-month period.

(i) WHOLESALE FINANCIAL INSTITUTION.—The term ''wholesale financial institution'' means a national wholesale financial institution described in section 5136B of the Revised Statutes of the United States or a State member wholesale financial institution described in section 9B of the Federal Reserve Act.

(j) FOREIGN BANK TERMS.—

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

(2) COMMERCIAL LENDING COMPANY OPERATED BY A FOREIGN BANK.—The term ''commercial lending company operated by a foreign bank'' means a commercial lending company controlled by a foreign bank.

(3) BRANCH OR AGENCY OPERATED BY A FOREIGN BANK.—A branch or agency operated by a foreign bank shall be deemed to be controlled by that foreign bank.

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

(l) PREDOMINANTLY A FINANCIAL COMPANY.

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

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

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

(2) QUALIFIED BANK HOLDING COMPANY ALTERNATIVE.—As an alternative to paragraph (1), the term ''predominantly a financial company'' means any company which would satisfy all the requirements of section 4(k) of the Bank Holding Company Act of 1956 if such company had elected to be a bank holding company rather than a financial services holding company.

(3) FOREIGN BANK ALTERNATIVE.—As an alternative to paragraph (1), a foreign bank, and any company of which a foreign bank is a subsidiary, is ''predominantly a financial company'' if—

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

(i) financial services institutions controlled or operated by such foreign bank;

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

(iii) companies that, with respect to that foreign bank, would meet the standard for investment under sections 2(h)(2) or 4(c)(9) of the Bank Holding Company

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

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

(B) the amount of banking business conducted outside the United States by such foreign bank and such company of which that foreign bank is a subsidiary satisfies the standard described in section 2(h)(2) of the Bank Holding Company Act of 1956.

(4) RECIPROCAL NATIONAL TREATMENT.—

(A) IN GENERAL.—A foreign bank that operates a branch, agency or commercial lending company in the United States, and any company that owns or controls such a foreign bank, shall be eligible for the treatment afforded under paragraph (1) and section 122(m) only if the home country of such foreign bank or company accords to the United States banks the same competitive opportunities in banking as such country accords to domestic banks of such country.

(B) COORDINATION WITH NAFTA.—Subparagraph (A) shall not apply in derogation of any obligation under the North American Free Trade Agreement.

(C) HOME COUNTRY DEFINED.—For purposes of subparagraph (A), the term ''home country'' means, with respect to any foreign bank or company referred to in subparagraph (A), the country under the laws of which the foreign bank or company is organized.

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

(6) IMPLEMENTATION AND AUTHORITY.—The appropriate Federal banking agency of the lead depository institution of a financial services holding company shall implement and enforce the regulations prescribed pursuant to paragraph (4) with respect to such holding company.

(m) FINANCIAL SERVICES INSTITUTION.—The term ''financial services institution'' means—

(1) A depository institution;

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

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

(4) An investment company (as defined in section 3 of the Investment Company Act of 1940);

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

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

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

(8) A national market funded lending institution organized pursuant to section 5158 of the Revised Statutes of the United States, as added by section 601 of the Depository Institution Affiliation and Thrift Charter Conversion Act;

(9) Any other type of company that is ''engaged in the business of providing financial services'', as determined by the National Financial Services Committee by rule, regulation, or order.

(n) FINANCIAL ACTIVITIES.—The term ''financial activities'' means any of the following—

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

(2) lending, exchanging, transferring or safeguarding money or other financial assets;

(3) providing any device or other instrumentality for the transfer of money or other financial assets;

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

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

(6) directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the financial services holding company controls), or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates, or

other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity if—

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

(B) such shares, assets, or ownership interests are acquired and held as part of a bona fide underwriting, investment banking, or insurance company investment activity, which includes investment activities engaged in for the purpose of appreciation and ultimate resale or other disposition of the investment, and such shares, assets, or ownership interest are held for such a period of time as will permit the sale or disposition thereof on a reasonable basis consistent with the nature of such activities; and

(C) during the period such shares, assets, or ownership interests are held, the financial services holding company does not actively manage or operate the company or entity except insofar as necessary to achieve the objectives of subparagraph (B);

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

(8) underwriting, dealing in or making a market in securities;

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

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

(A) permissible for a bank holding company to engage in outside the United States, and

(B) considered a financial activity or banking or financial operation, pursuant to section 4(c)(13) of the Bank Holding Company Act of 1956 or any rule, order, or regulation issued thereunder;

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

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

(13) engaging in any activity that the National Financial Services Committee determines by rule, order, or regulation to be financial in nature or incidental to such financial activities, taking into account—

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

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

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

(i) allow a financial services holding company and its affiliates to compete effectively against any company seeking to provide financial services in the United States;

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

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

(o) APPROPRIATE FEDERAL BANKING AGENCY.—The term ''appropriate Federal banking agency'' has the

same meaning as in section 3 of the Federal Deposit Insurance Act.

(p) STATE.—The term ''State'' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(q) CAPITAL TERMS.—

(1) IN GENERAL.—The terms ''adequately capitalized'' and ''well capitalized'' have the same meanings as in—

(A) section 38(b)(1) of the Federal Deposit Insurance Act with respect to an insured depository institution;

(B) section 9B(c)(2)(B) of the Federal Reserve Act with respect to a State member wholesale financial institution; and

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

(2) FOREIGN BANK CAPITAL.—With respect to a branch, agency, or commercial lending company operated in the United States by a foreign bank, the terms ''adequately capitalized'' and ''well capitalized'' shall be defined and established by the National Financial Services Committee for purposes of this Act, provided that such capital standards—

(A) are comparable to the capital standards that apply to other depository institutions for purposes of this Act; and

(B) give due regard to the principle of national treatment and equality of competitive opportunity.

(r) SECURITIES AFFILIATE.—The term ''securities affiliate'' means a company that—

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

(2) underwrites or deals in any security; and

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

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

SEC. 103. CHANGES IN CONTROL OF DEPOSITORY INSTITUTIONS.

No financial services holding company acting directly or indirectly, or through or in concert with one or more other persons, all acquire control of a depository institution, bank holding company, or financial services holding

company not controlled by such company on the date it became a financial services holding company, if such acquisition and control occurs through a purchase, assignment, transfer, pledge, or other deposition of voting stock of such depository institution, bank holding company, or financial services holding company, unless the financial services holding company has complied with the requirements of section 7(j) of the Federal Deposit Insurance Act. Any failure to comply with the preceding requirements shall subject the relevant financial services holding company to the penalties and other procedures provided in sections 109 through 112, in addition to otherwise applicable penalties.

SEC. 104. AFFILIATE TRANSACTIONS.

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

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

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

(2) APPLICABILITY TO FOREIGN BANKS.—A depository institution that is a branch, agency or commercial lending company operated in the United States by a foreign bank that is a financial services holding company shall be deemed to satisfy the requirements of paragraph (1) if all of the transactions between the depository institution and any of the following companies affiliated with the depository institution comply with the provisions of Sections 23A and 23B of the Federal Reserve Act in the same manner and to the same extent as if the foreign bank were a member bank—

(A) a securities affiliate; and

(B) any company that is neither a financial services institution nor primarily engaged in financial activities, other than, with respect to a foreign bank that qualifies as ''predominantly a financial company'' under section 102(l)(2) rather than section 102(l)(1), an affiliate that is held and operated in compliance with the standards of sections 2(h)(2) and 2(h)(4) of the Bank Holding Company Act of

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

(b) ADDITIONAL LIMITATIONS ON AFFILIATE TRANSACTIONS.—

(1) IN GENERAL.—The appropriate Federal banking agency may, upon a finding of probable harm that cannot adequately be prevented by less burdensome rules and regulations, adopt such rules and regulations, consistent with the purposes of this Act, as may be necessary in order to prevent a depository institution that is controlled or operated by a financial services holding company from engaging in unsafe or unsound practices that involve the financial services holding company or any of its affiliates including, without limitation, unsafe or unsound practices that involve covered transactions, as defined in section 23A of the Federal Reserve Act, and any transactions described in section 23B(a)(2) of the Federal Reserve Act.

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

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

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

(c) EXCEPTIONS.—With the concurrence of the National Financial Services Committee, the appropriate Federal banking agency may, by rule, regulation or order, exempt any depository institution that is controlled by a financial services holding company or class of such institutions, or any transaction or class of transactions (including transactions with affiliates that are neither located nor doing business in the United States) from any requirement under subsection (b)(1) or section 23A or 23B of the Federal Reserve Act, notwithstanding the provisions of any other law, rule, regulation or order, if the appropriate Federal banking agency deems such an exemption to be reasonable and not inconsistent with the purposes of this Act and in the public interest.

(d) SAFEGUARDS RELATING TO NONFINANCIAL AFFILIATES.—

(1) IN GENERAL.—Except as permitted pursuant to regulations issued by the National Financial Services Committee, no depository institution controlled by a financial services holding company shall directly or indirectly extend credit, or issue or enter into a standby letter of credit, indemnity, guarantee, insurance, or other similar facility to or for the benefit of any affiliate that is neither a financial services institution nor primarily engaged in financial activities.

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

(A) is a financial services holding company; and

(B) qualifies as ''predominantly a financial company'' under section 102(l)(2) rather than section 102(l)(1);

shall not be subject to the limitation described in paragraph (1) with respect to transactions with affiliates that, with respect to that foreign bank, are held and operated in compliance with the standard for investment under section 2(h)(2) of the Bank

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

(e) PRIMARILY ENGAGED IN FINANCIAL ACTIVITIES.—For purposes of subsections (a)(2)(B) and (d)(1), the term ''primarily engaged in financial activities'' shall be defined by regulation by the National Financial Services Committee.

SEC. 105. CAPITAL REQUIREMENTS.

(a) WELL-CAPITALIZED DEPOSITORY INSTITUTIONS.—Each depository institution that is controlled by a financial services holding company shall be well capitalized.

(b) ACTIONS BY APPROPRIATE FEDERAL BANKING AGENCY.—In the event of a finding by the appropriate Federal banking agency that a depository institution controlled by a financial services holding company is not well capitalized, the financial services holding company shall—

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

(2) divest control of the depository institution in an orderly manner within 180 days, or such additional period of time as the appropriate Federal

banking agency may determine is reasonably required in order to effect such divestiture.

(c) NO HOLDING COMPANY CAPITAL REQUIREMENTS.—An appropriate Federal banking agency may not impose by regulation, order, agreement, or any other means, any requirement pertaining to the capital of a financial services holding company.

SEC. 106. INTERSTATE ACQUISITIONS OF INSURED BANKS.

(a) INSURED BANKS.—Except as otherwise authorized pursuant to section 13(f) of the Federal Deposit Insurance Act, no financial services holding company may acquire control of an additional insured bank (as such term is defined in section 2(c) of the Bank Holding Company Act of 1956) if the acquisition could not be approved by the Board of Governors of the Federal Reserve System under any provision of section 3(d) of the Bank Holding Company Act of 1956, other than subsection (d)(1)(A), if such acquisition were made by a bank holding company.

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

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

(a) IN GENERAL.—Notwithstanding any other Federal law, no State, and no Federal or State regulatory agency, including the appropriate Federal banking agency, may act by law, rule, regulation, order, or otherwise if the effect of such action would be to differentiate depository institutions controlled by financial services holding companies from any other depository institutions in a manner adverse to depository institutions controlled by financial services holding companies, or to differentiate financial services holding companies or their affiliates from bank holding companies and their affiliates in a manner adverse to financial services holding companies or their affiliates, except to the extent that the appropriate Federal banking agency may act to implement this Act.

(b) APPLICATION OF STATE LAWS.—

(1) FINDINGS.—The Congress finds that:

(A) Certain State laws and regulations have the purpose or effect of preventing depository institutions from being or becoming affiliated with companies or persons engaged in nonbanking activities.

(B) Such laws restrain legitimate competition in interstate commerce and deny consumers freedom of choice in selecting financial services.

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

(D) Given the preponderant Federal interest in ensuring competition in national markets for financial services and in ensuring the safety and soundness of depository institutions, it is necessary to preempt such anticompetitive State laws and regulations to the extent necessary to permit the formation and efficient operation of financial services holding companies.

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

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

(i) concern the regulation, supervision, and examination of State depository institutions (as defined in section 3 of the Federal Deposit Insurance Act); and

(ii) are not inconsistent with the purposes of this Act.

(2) PREEMPTIONS.—

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

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

or indirectly by such company or any affiliate thereof or by any agent, principal, solicitor, broker, director, officer, employee, or other representative of such company or affiliate thereof, from being owned or controlled by or from being affiliated in any way with a financial services holding company or any affiliate of a financial services holding company;

(ii) preventing or impeding depository institutions or affiliates, agents, principals, brokers, directors, officers, employees or other representatives of such institutions or affiliates thereof from offering or marketing products or services of their affiliated financial services holding company or any affiliate thereof or from having their products or services offered or marketed by their affiliated financial services holding company or any affiliate thereof, or by any agent, principal, broker, director, officer, employee, or other representative of such company or any affiliate of such company; 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

to become a stock insurance company controlled by a mutual holding company.

(B) INFORMATION SHARING.—

(i) IN GENERAL.—Notwithstanding any other provision of law, any depository institution, or any affiliate or subsidiary of any depository institution, may share or exchange information or otherwise transfer information between or among themselves without any restriction or limitation if it is clearly and conspicuously disclosed that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons.

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

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

(c) LAWS AFFECTING COURT ACTIONS.—

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

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

such an action by a depository institution located in such other State may be subject to those same conditions, if such conditions are applied in a nondiscriminatory manner to fulfill legitimate State objectives and do not have the effect, directly or indirectly, of denying depository institutions located in other States the opportunity to maintain or defend such actions.

(d) OTHER RESTRICTIONS.—Except for licensing, marketing, compensation, employment, or other requirements applied in a nondiscriminatory manner to fulfill legitimate State regulatory objectives which are not inconsistent with the purposes of this Act, no State may, through legislative, administrative, executive, or judicial action, impede or prevent a financial services holding company or affiliate thereof from utilizing or compensating any agent (including an affiliated depository institution acting in accordance with section 18(r) of the Federal Deposit Insurance Act), solicitor, broker, employee, or other person located in that State and representing in any lawful capacity any depository institution or any such financial services holding company or such affiliate thereof, provided that if any such person is being utilized or compensated for the performance of activities on behalf of a depository institution, such activities do not result in the

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

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

(1) the term ''affiliate'' means a person that directly or indirectly controls or is controlled by, or is under common control with the person specified; and

(2) the term ''control,'' including the terms ''controlled by'' and ''under common control with,'' means the power, directly or indirectly, to direct the management or policies of a person and shall be presumed to exist if any person, directly or indirectly, owns, controls, or holds with power to vote 10 percent or more of the voting securities of any other person.

SEC. 108. INSIDER LENDING PROVISIONS.

(a) IN GENERAL.—A financial services holding company shall be treated as a bank holding company, and any depository institution controlled by such financial services holding company shall be treated as a bank, for purposes of section 22(h) of the Federal Reserve Act and any regulation prescribed under such section.

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

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

SEC. 109. REPORTS, EXAMINATION AND ENFORCEMENT.

(a) NOTICE.—

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

(2) FORM AND CONTENT.—The notice required by paragraph (1) shall be on forms prescribed by the National Financial Services Committee, and shall include such information under oath or otherwise, with respect to the financial condition, ownership, operation and management of such financial services company and its subsidiaries, and related matters, as the Committee may deem necessary or appropriate for the appropriate Federal banking agency to ascertain and monitor the impact that such financial services holding company and its subsidiaries may have on the safety and soundness of any depository institution affiliated with such financial services holding company or to otherwise carry out the purposes of this Act.

(b) REPORTING AND RECORDKEEPING.—

(1) DEFINITIONS.—

(A) DEPOSITORY INSTITUTION.—For purposes of this subsection, the term ''depository institution'', in addition to its meaning under section 102(g), means a depository institution affiliated with a financial services holding company.

(B) APPROPRIATE FEDERAL BANKING AGENCY.—For purposes of this subsection, the appropriate Federal banking agency of a depository institution (which is affiliated with a financial services holding company) shall be the appropriate Federal banking agency of the lead depository institution of that financial services holding company.

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

(A) IN GENERAL.—Every depository institution shall obtain such information and make and keep such records as its appropriate Federal banking agency by rule prescribes concerning the depository institution's policies, procedures, or systems for—

(i) monitoring and controlling financial and operational risks to it resulting from the activities of any of its affiliates whose business activities are reasonably likely to have a material impact on the financial or operational condition of such depository institution, including its level of capitalization and its ability to conduct or finance its operations; and

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

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

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

(3) AUTHORITY TO REQUIRE ADDITIONAL INFORMATION.—If, as a result of adverse market conditions or based on reports provided to the appropriate Federal banking agency pursuant to paragraph (2) or other available information, the appropriate Federal banking agency reasonably concludes that the agency has concerns regarding the financial or operational condition of any depository institution for which such agency is the appropriate Federal banking agency, such agency may require the depository institution to make reports concerning the financial activities of any of such depository institution's affiliates engaged in financial activities whose business activities are reasonably likely to have a material impact on the financial or operational condition of such depository institution. The appropriate Federal banking agency, in requiring reports pursuant to this paragraph, shall specify the information required, the period for which it is required, and the time and date on which the information must be furnished.

(4) SPECIAL PROVISIONS WITH RESPECT TO AFFILIATES SUBJECT TO SECURITIES AND EXCHANGE 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

be in compliance with any recordkeeping or reporting requirement adopted pursuant to paragraph (2) of this subsection concerning an affiliate if (i) with respect to an affiliate that is subject to examination by or reporting requirements of the Securities and Exchange Commission, such depository institution utilizes for such recordkeeping or reporting requirement copies of reports filed by the affiliate with the Securities and Exchange Commission pursuant to section 204 of the Investment Advisers Act of 1940, sections 30 and 31 of the Investment Company Act of 1940, or section 17 of the Securities Exchange Act of 1934; and (ii) with respect to an affiliate that is subject to examination by or reporting requirements of a State insurance regulator, such depository institution utilizes for such recordkeeping or reporting requirement copies of reports filed by the affiliate with the State insurance regulator. The appropriate Federal banking agency of a depository institution may, however, by rule adopted pursuant to paragraph (2), require any such depository institution filing such reports with the appropriate Federal banking agency to obtain,

maintain, or report supplemental information if the appropriate Federal banking agency makes an explicit finding that such supplemental information is necessary to inform the appropriate Federal banking agency regarding potential risks to such depository institution. Prior to requiring any such supplemental information, the appropriate Federal banking agency shall first request the Securities and Exchange Commission or the State insurance regulator, as appropriate, to expand its reporting requirements to include such information.

(C) PROCEDURE FOR REQUIRING ADDITIONAL INFORMATION.—Prior to making a request pursuant to paragraph (3) of this subsection for information with respect to an affiliate that is subject to examination by or reporting requirements of the Securities and Exchange Commission or a State insurance regulator, the appropriate Federal banking agency shall—

(i) notify the Securities and Exchange Commission or the State insurance regulator, as appropriate, of the information required with respect to such affiliate; and

(ii) consult with the Securities and Exchange Commission or the State insurance regulator, as appropriate, to determine whether the information required is available from the Securities and Exchange Commission or the State insurance regulator, unless the appropriate Federal banking agency determines that any delay resulting from such consultation would be inconsistent with ensuring the safety and soundness of the depository institution or the stability or integrity of the banking system.

(D) CONFIDENTIALITY OF INFORMATION PROVIDED.—No information provided to or obtained by the appropriate Federal banking agency from the Securities and Exchange Commission or a State insurance regulator pursuant to a request by the appropriate Federal banking agency under subparagraph (C) of this paragraph may be disclosed to any other person, without the prior written approval of the Securities and Exchange Commission or the State insurance regulator, as appropriate. Nothing in this subsection shall authorize the appropriate

Federal banking agency to withhold information from Congress, or prevent the appropriate Federal banking agency from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the appropriate Federal banking agency.

(E) NOTICE TO BANKING AGENCIES CONCERNING FINANCIAL AND OPERATIONAL CONDITION CONCERNS.—The Securities and Exchange Commission shall notify the appropriate Federal banking agency of any concerns it has regarding significant financial or operational risks to any depository institution resulting from the activities of any affiliate of the depository institution for which the Securities and Exchange Commission is the appropriate regulatory agency. Any State insurance regulator shall notify the appropriate Federal banking agency of any concerns it has regarding significant financial or operational risks to any depository institution resulting from the activities of

any affiliate of the depository institution for which the State insurance regulator is the appropriate regulatory agency.

(5) UNIFORM REGULATIONS.—The National Financial Services Committee shall prescribe by regulation uniform standards for the rules required by this subsection.

(6) EXEMPTIONS.—The National Financial Services Committee by rule or order may exempt any person or class of persons, under such terms and conditions and for such periods as the Committee shall provide in such rule or order, from the provisions of this subsection, and the rules thereunder. In granting such exemptions, the Committee shall consider, among other factors—

(A) whether information of the type required under this subsection is available for a supervisory agency (as defined in section 1101(6) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401(6)), a State insurance commission or similar State agency, the Commodity Futures Trading Commission, or a foreign regulatory body of a similar type;

(B) the primary business of any affiliate;

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

(D) the nature and extent of the depository institution's banking activities;

(E) with respect to the depository institution and its affiliates, on a consolidated basis, the amount and proportion of assets devoted to, and revenues derived from, banking activities in the United States; and

(F) whether the affiliate's activities could pose a significant risk to the safety and soundness of any depository institution subsidiary of the financial services holding company.

(7) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the appropriate Federal banking agency shall not be compelled to disclose any information required to be reported pursuant to this subsection, or any information supplied to the appropriate Federal banking agency by any domestic or foreign regulatory agency that relates to the financial or operational condition of any affiliate of a depository institution. Nothing in this subsection shall authorize the appropriate Federal banking agency to withhold

information from Congress, or prevent the appropriate Federal banking agency from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the appropriate Federal banking agency. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(8) APPLICABILITY TO FOREIGN BANKS.—For purposes of this subsection, with respect to a foreign bank that is a financial services holding company, the appropriate Federal banking agency shall give due regard to the primary authority and responsibility of the foreign bank's home country regulator for supervision and examination of the bank outside the United States and shall seek to minimize additional examination or regulatory burdens on the foreign bank outside of the United States, by coordinating with and relying on examinations of and information from the home country regulator to the fullest extent possible.

(c) TERMINATION.— The National Financial Services Committee may at any time, upon its own motion or upon application, terminate the status of a company as a financial services holding company, if it is determined that such company no longer controls or operates any depository institutions or otherwise fails to qualify as a financial services holding company as defined in this Act.

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

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

(1) a temporary or permanent injunction or restraining order enjoining such financial services holding company from violating this Act or any regulation prescribed under this Act; or

(2) such other equitable relief, including divestiture, as may be necessary to prevent such violation.

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

(g) NOTICE OF VIOLATIONS.—Whenever it appears to a Federal or State official or agency with supervisory or examination authority over any affiliate of a financial services holding company that such affiliate or such financial services holding company is violating, has violated, or is about to violate any provision of this Act or any regulation prescribed under this Act, such official or agency shall promptly notify the appropriate Federal banking agency of the lead depository institution of such holding company in order that such banking agency, in consultation with

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

SEC. 110. DIVESTITURE.

(a) IN GENERAL.—In addition to all of its other regulatory and supervisory powers, if the appropriate Federal banking agency determines that a depository institution under its supervision has engaged in a continuing course of conduct involving its financial services holding company or any affiliate of such holding company which has had, or has a significant probability of having, the effect of causing such depository institution to be in an unsafe or unsound condition, it may make an initial finding that the financial services holding company should be required to terminate its control or operation of the depository institution. If the appropriate Federal banking agency makes such an initial finding, it shall within 3 days so notify the financial services holding company controlling or operating the depository institution and the National Financial Services Committee. Such notice shall provide a statement for the basis of the appropriate Federal banking agency's action.

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

Federal banking agency. In such hearing, all issues shall be determined pursuant to section 554 of title 5, United States Code. The length of the hearing shall be determined by the appropriate Federal banking agency, and such hearing may be before a hearing examiner appointed by such agency. At the conclusion thereof, the appropriate Federal banking agency shall issue a final order, on the basis of the record made at such hearing, affirming or reversing the initial finding of the appropriate Federal banking agency. A company that fails to request an agency hearing under this paragraph shall be deemed to have consented to the issuance of a final order affirming the initial finding without the necessity of the hearing provided for in this paragraph.

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

(d) NO ''SOURCE OF STRENGTH'' DOCTRINE.—No appropriate Federal banking agency may require, by regulation, order, agreement, or any other means, any financial services holding company to serve as a ''source of strength'' to any depository institution affiliate of such holding company.

SEC. 111. CRIMINAL PENALTIES.

(a) WILLFUL VIOLATIONS.—Any company or insured depository institution which knowingly and willfully participates in a material violation of any provision of this Act, or any rule, regulation, or order issued by an appropriate Federal banking agency pursuant thereto, shall, upon conviction, be fined for each violation not more than the greater of $250,000 or an amount equal to 0.01 percent of the minimum required capital of the lead depository institution of the financial services holding company for each day during which the violation continues, except that in no case shall any such amount for any violation or related series of violations exceed 1 percent of the minimum required capital of the lead depository institution.

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

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

(c) ENFORCEABILITY AGAINST OFFICERS AND EMPLOYEES.—Every officer, director, employee, and agent of a financial services holding company or depository institution also shall be subject to the same penalties for false entries in any book, report, or statement of such company or depository institution as are applicable to officers, directors, employees, and agents of member banks for false entries in any books, reports, or statements of member banks under section 1005 of title 18, United States Code.

(d) ENFORCEABILITY AGAINST HOLDING COMPANIES.—A financial services holding company and its affiliates shall be subject to the provisions of title 18, United States Code, to the same extent as a registered bank holding company or any affiliate of such a company.

SEC. 112. CIVIL ENFORCEMENT, CEASE-AND-DESIST ORDERS, CIVIL MONEY PENALTIES, REMOVAL, AND PROHIBITION AUTHORITY.

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

authorize any Federal banking agency, other than the appropriate Federal banking agency, to issue a notice of charges or cease-and-desist order against a financial services holding company.

SEC. 113. JUDICIAL REVIEW.

Any party aggrieved by an appropriate Federal banking agency's findings or other actions under this Act may obtain review by the United States court of appeals of the circuit wherein such party has its principal place of business or the United States Court of Appeals for the District of Columbia Circuit, by filing a Notice of Appeal in such court within 30 days from the date of such action, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The appropriate Federal banking agency shall promptly certify and file in such court the record upon which such action or finding was based. The actions or findings of the appropriate Federal banking agency shall be set aside if not supported by substantial evidence or if found to violate procedures established by this Act. An initial finding by the appropriate Federal banking agency under section 110 shall be subject to judicial review only in the context of review of a final order under section 110(b).

SEC. 114. NATIONAL FINANCIAL SERVICES COMMITTEE.

(a) ESTABLISHMENT.—There is established a National Financial Services Committee which shall consist of the following members:

(1) The Secretary of the Treasury.

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

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

(4) The Comptroller of the Currency.

(5) The Chairman of the Securities and Exchange Commission.

(6) An insurance commissioner (or similar official) of a State, as designated by the National Association of Insurance Commissioners.

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

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

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

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

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

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

(f) SECRETARIAT.—The Department of the Treasury shall provide the Secretariat for the Committee and shall assume any expenses arising from execution of the responsibilities of the Committee, except for expenses incurred by employees of any Member of the Committee.

(g) ACCESS TO RECORDS.—For the purpose of carrying out this section, the Committee shall have access to all books, accounts, records, reports, files, memoranda, papers, things, and property belonging to or in use by any appropriate Federal banking agency.

(h) FUNCTIONS OF THE COMMITTEE.—

(1) UNIFORM PRINCIPLES AND STANDARDS.—The Committee shall, insofar as is practicable, establish uniform principles and standards applicable

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

(2) RECOMMENDATIONS.—The Committee shall make recommendations for uniformity in other supervisory matters, such as, but not limited to, identifying financial services institutions and other providers of financial services in need of special supervisory attention, the adequacy of supervisory tools for determining the impact of affiliate operations on insured depository institutions, and the ability of the member agencies to discover possible fraud or questionable practices.

(3) RECOMMENDATIONS TO CONGRESS.—The Committee shall, from time to time, recommend to the Congress additional measures to strengthen the separation between insured depository institutions controlled by depository institutions holding companies from the activities of any of their affiliates, including the imposition of additional restrictions on interaffiliate transactions and the strict application of Federal deposit insurance coverage only for the

benefit of depositors of insured depository institutions.

(i) CONSULTATION WITH STATE REGULATORS.—The Committee shall consult with the appropriate organizations representing the State regulators of banks, savings and loan associations, savings banks, securities firms, and other providers of financial services, and as deemed appropriate, meet with such State regulators. The Committee, when appropriate, shall invite to each public meeting of the Committee representatives of such organizations.

(j) STUDIES AND RECOMMENDATIONS.—The Committee may conduct or authorize studies to carry out the purposes of this Act. On the basis of such studies, the Committee may make recommendations to the Congress and member agencies concerning the implementation of this Act and changes in statutes and regulations necessary to promote the strength and stability of the Nation's financial system and financial institutions, the competitiveness of providers of financial services in domestic and international markets, and the purposes of this Act. Not later than 1 year after the date of the enactment of this Act, the Committee shall report to the Congress on proposals for legislative or regulatory actions that will improve the examination process to permit better oversight of all insured depository institutions. In particular, the

Committee shall consider whether the number of, or compensation for, examiners employed by the appropriate Federal regulatory agencies should be increased.

(k) NOTICE PROCEDURES FOR DETERMINING NEW FINANCIAL SERVICES INSTITUTIONS AND NEW FINANCIAL ACTIVITIES.—

(1) NOTICE REQUIREMENT.—A financial services holding company may request the Committee to determine that—

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

(B) a company not described in section 102(m) (1)–(8) is a financial services institution pursuant to section 102(m)(9),

by providing the Committee with written notice describing the proposed activity or institution.

(2) CONTENTS OF NOTICE.—The notice submitted to the Committee shall contain such information as the Committee shall prescribe by regulation or by specific request in connection with a particular notice.

(3) PROCEDURE FOR COMMITTEE ACTION.—

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

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

(B) EXTENSION OF PERIOD.—The Committee may extend the 60-day period referred to in subparagraph (A) for an additional 30 days. The Committee may further extend the period with the agreement of the financial services holding company submitting the notice pursuant to this subsection.

(4) SHORTER PERIODS.—The Committee may prescribe regulations which provide for a shorter notice period than the periods described in subparagraphs (A) and (B).

(5) INCOMPLETE INFORMATION.—The Committee may determine that an activity or an institution for which notice has been submitted pursuant to this subsection, does not constitute a financial activity or is not a financial services institution, if the financial

services holding company submitting such notice neglects, fails, or refuses to furnish the Committee all the information required by the Committee.

Subtitle B—Securities Activities of Financial Services Holding Companies

SEC. 121. LIMITATION ON SECURITIES ACTIVITIES OF DEPOSITORY INSTITUTIONS AFFILIATED WITH SECURITIES AFFILIATES.

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

(1) in underwriting securities backed by or representing interests in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations originated or purchased by the institution or its affiliates; or

(2) in underwriting or dealing in any other securities,

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

(b) RULE OF CONSTRUCTION.—No provision of this section shall be construed as permitting a securities affiliate to accept deposits in contravention of section 21 of the Banking Act of 1933.

(c) DEFINITION OF SECURITY.—

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

(2) EXCEPTIONS.—Notwithstanding any other provision of law, the term ''security'' does not include any of the following for purposes of this section:

(A) A contract of insurance.

(B) A deposit account, savings account, certificate of deposit, or other deposit instrument issued by a depository institution.

(C) A share account issued by a savings association if the account is insured by the Federal Deposit Insurance Corporation.

(D) A banker's acceptance.

(E) A letter of credit issued by a depository institution.

(F) A debit account at a depository institution arising from a credit card or similar arrangement.

(G) A loan or loan participation (as determined by the appropriate Federal banking agency), including any debt security issued in connection with sovereign debt restructuring which a bank purchases and sells pursuant to such bank's lending authority.

(H) A qualified financial contract (as defined in section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act), as determined by the appropriate Federal Banking agency, after consultation with and consideration of the views of the Securities and Exchange Commission, except that, for purposes of this section such term does not include—

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

after consultation with and consideration of the views of the Securities and Exchange Commission, that such securities contract is appropriate for a bank to underwrite or deal in, taking into account other qualified financial contracts which a bank is permitted to underwrite or deal in; and

(ii) any agreement, contract, or transaction which is determined by the Federal Deposit Insurance Corporation in a regulation prescribed after the date of the enactment of this Act to be a qualified financial contract unless the appropriate Federal banking agency determines, after consultation with and consideration of the views of the Securities and Exchange Commission, that such agreement, contract, or transaction shall be treated as a qualified financial contract for purposes of this section.

(3) AUTHORITY TO EXEMPT BANKING PRODUCTS.—Notwithstanding any other provision of law, the appropriate Federal banking agency may, by regulation or order, exempt a banking product from

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

(i) the product is available in the course of a banking business and is more appropriately regulated as a banking product; and

(ii) the exemption is otherwise consistent with the purposes of this section, the maintenance of fair and orderly markets, and the protection of investors.

(4) DEFINITION FOR LIMITED PURPOSE.—The fact that a particular instrument is excluded pursuant to paragraph (2) or (3) from the definition of security for purposes of this section shall not be construed as finding or implying that such instrument is or is not a security for purposes of—

(A) Federal securities law;

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

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

(5) RESERVATION OF AUTHORITY TO CHARTERING AUTHORITY.—A determination by the appropriate Federal banking agency under this subsection shall not be construed in any way as authorizing a

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

(6) CONSULTATION WITH COMMISSION.—

(A) NOTICE AND CONSULTATION REQUIRED.—In determining whether to exempt a banking product pursuant to paragraph (3), the appropriate Federal banking agency shall provide written notice to, consult with, and consider the views of the Securities and Exchange Commission.

(B) RESPONSE AND PUBLICATION.—If the Securities and Exchange Commission comments in writing on a proposed determination of the appropriate Federal banking agency, such agency shall—

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

(ii) at the request of such Commission, publish such comment and response in the Federal Register at the time the determination becomes effective.

(7) APPROVAL OF NATIONAL FINANCIAL SERVICES COMMITTEE.—

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

(B) UNIFORM STANDARDS.—Any regulation or order subject to the approval of the National Financial Services Committee under paragraph (1) shall be identical for each appropriate Federal banking agency, except as otherwise permitted by such Committee.

SEC. 122. SAFEGUARDS RELATING TO SECURITIES AFFILIATES.

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

(1) IN GENERAL.—No depository institution affiliated with a securities affiliate shall, directly or indirectly, do any of the following:

(A) Extend credit in any manner to the securities affiliate.

(B) Issue a guarantee, acceptance, or letter of credit, including an endorsement or a standby letter of credit, for the benefit of the securities affiliate.

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

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

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

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

(C) Either—

(i) the extension of credit is to be repaid before the close of business on the same business day; or

(ii) all of the following conditions are satisfied:

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

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

(III) Extensions of credit subject to this clause, when aggregated with all other covered transactions between the institution and all affiliated securities affiliates do not exceed 10 percent of the institution's capital stock and surplus.

(D) Either—

(i) the securities are securities expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in; or

(ii) the appropriate Federal banking agency for the depository institution permits transactions under this paragraph in securities not described in clause (i) and the securities affiliate provides the depository institution with such additional security or other assurance of performance, if

any, as such agency shall require to prevent such transactions from posing any appreciable risk to the institution.

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

(A) securities expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in; or

(B) securities that—

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

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

(4) OTHER EXCEPTIONS.—The appropriate Federal banking agency may make exceptions to paragraph (1) for well capitalized depository institutions it regulates if—

(A) the transaction is fully secured in accordance with section 23A(c) of the Federal Reserve Act; and

(B) the aggregate amount of covered transactions between the institution and all securities affiliates of the financial services holding company, excluding transactions permitted under paragraph (2)(C)(i) or (3)(A), does not exceed 10 percent of the institution's capital stock and surplus.

(b) CREDIT ENHANCEMENT RESTRICTED.—

(1) IN GENERAL.—No depository institution affiliated with a securities affiliate shall, directly or indirectly, extend credit, or issue or enter into a standby letter of credit, asset purchase agreement, indemnity, guarantee, insurance, or other facility, for the purpose of enhancing the marketability of a securities issue underwritten by the securities affiliate.

(2) DEFINITION OF TERM BY BOARD.—The appropriate Federal banking agency shall prescribe a definition for the term ''for the purpose of enhancing the marketability of a securities issue'' for purpose of paragraph (1).

(3) EXCEPTION FOR BANK ELIGIBLE SECURITIES.—Paragraph (1) shall not apply with regard to

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

(4) APPLICATION TO WELL CAPITALIZED DEPOSITORY INSTITUTIONS.—

(A) IN GENERAL.—A well capitalized depository institution may engage in a transaction described in paragraph (1) if—

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

(ii) the institution and its securities affiliate have adopted appropriate procedures, including maintenance of necessary documentary records, to assure that any such extension of credit, standby letter of credit, asset purchase agreement indemnity, guarantee, insurance or other facility, is on arm's length basis.

(B) ARM'S LENGTH TRANSACTION DESCRIBED.—An extension of credit may be considered to be on arm's length basis if the terms and conditions are substantially the same as

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

(C) COMPLIANCE WITH PARAGRAPH (1).—The appropriate Federal banking agency may require, by regulation or order, compliance with paragraph (1) by well capitalized depository institutions exempt under this paragraph in order to achieve any purpose specified in subsection (k).

(c) PROHIBITION OF FINANCING PURCHASE OF SECURITY BEING UNDERWRITTEN.—

(1) IN GENERAL.—No financial services holding company or subsidiary of a financial services holding company (other than a securities affiliate) shall knowingly extend or arrange for the extension of credit, directly or indirectly, secured by or for the purpose of purchasing any security while, or for 30 days after, that security is the subject of a distribution in which a securities affiliate of that financial services holding company participates as an underwriter or a member of a selling group.

(2) RELIANCE ON ACKNOWLEDGEMENT.—For purposes of paragraph (1), a financial services holding company or subsidiary may rely on an express

written acknowledgement signed by the borrower that the credit is not secured by or for the purpose of purchasing a security described in this subparagraph.

(3) APPLICATION TO BANK ELIGIBLE SECURITIES.—Paragraph (1) shall not apply with regard to extensions of credit if the securities are securities expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in.

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

(5) CONSISTENCY WITH THE FEDERAL SECURITIES LAWS.—No provision of this subsection shall be construed as permitting a securities affiliate to extend or maintain credit, or arrange for an extension of credit, except in compliance with applicable provisions of the Securities Exchange Act of 1934 and the regulations prescribed and interpretations issued under such Act.

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

(1) IN GENERAL.—No depository institution affiliated with a securities affiliate shall, directly or indirectly, extend credit to an issuer of securities underwritten by such securities affiliate for the purpose of paying the principal of those securities or interest or dividends on those securities.

(2) EXCEPTIONS FOR CERTAIN EXTENSIONS OF CREDIT.—Paragraph (1) shall not apply to an extension of credit for a documented purpose (other than paying principal, interest, or dividends) if the timing, maturity, and other terms of the credit, taken as a whole, are substantially different from those of the underwritten securities.

(3) EXCEPTIONS FOR BANK ELIGIBLE SECURITIES.—Paragraph (1) shall not apply with respect to any security expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in.

(4) APPLICATION TO WELL CAPITALIZED DEPOSITORY INSTITUTIONS.—

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

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

(ii) the depository institution has adopted appropriate procedures, including maintenance of necessary documentary records, to assure that any extension of credit by the depository institution to an issuer for the purpose of paying the principal, interest or dividends on securities underwritten by the securities affiliate is on an arm's length basis.

(B) ARM'S LENGTH TRANSACTION DESCRIBED.—An extension of credit may be considered to have been made on an arm's length basis if the terms and conditions are substantially the same as those prevailing at the time for comparable transactions with issuers whose securities are not underwritten by the securities affiliate.

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

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

(e) COMMON DIRECTORS AND SENIOR EXECUTIVE OFFICERS.—

(1) IN GENERAL.—The appropriate Federal banking agency shall, by regulation or order, prescribe the circumstances under which directors and senior executive officers of a securities affiliate may serve at the same time as directors or senior executive officers of any affiliated depository institutions.

(2) STANDARDS.—The appropriate Federal banking agency, in issuing any regulation or order pursuant to paragraph (1), shall consider appropriate factors including—

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

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

(C) unfair competition in securities activities;

(D) improper exchange of customer information; or

(E) harm to customers of securities affiliates or depository institutions that could reasonably result from director and senior officer interlocks.

(3) EXCEPTION FOR SMALL FINANCIAL SERVICES HOLDING COMPANIES.—

(A) IN GENERAL.—Notwithstanding paragraph (1), a director or senior executive officer of a securities affiliate may serve at the same time as a director or senior executive officer of an affiliated depository institution if that institution and all affiliated depository institutions have, in the aggregate, total assets of not more than $500,000,000.

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

(4) EXCEPTION FOR CERTAIN FOREIGN AFFILIATES.—Paragraph (1) shall not prohibit a director or senior executive officer of a securities affiliate

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

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

(B) is an affiliate of such securities affiliate; and

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

(f) DISCLOSURE REQUIRED BY SECURITIES AFFILIATE.—

(1) IN GENERAL.—Pursuant to rules adopted by the Securities and Exchange Commission in consultation with the appropriate Federal banking agencies, a securities affiliate shall conspicuously disclose in writing to each of its customers at the time a securities account is opened, or within a reasonable time thereafter if it is not practicable to provide such notice at that time, that—

(A) securities sold, offered, or recommended by the securities affiliate—

(i) are not deposits;

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

(iii) are not guaranteed by an affiliated insured depository institution;

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

(v) with regard to any product that includes any investment component, are subject to investment risks including possible loss of principal invested;

(B) the securities affiliate is not an insured depository institution, and is a corporation separate from any insured depository institution; and

(C) the securities affiliate may be underwriting or dealing in the securities being sold, offered or recommended, and if so, would have a financial interest in the transaction.

(2) FORM OF DISCLOSURE.—The disclosures required by paragraph (1) shall be made in clear and concise language that—

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

(B) is designed to promote customer understanding that uninsured investment products are not deposits insured by the Federal Deposit Insurance Corporation.

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

(g) DISCLOSURE REQUIRED BY DEPOSITORY INSTITUTIONS.—

(1) IN GENERAL.—Pursuant to rules adopted jointly by the appropriate Federal banking agencies in consultation with the Securities and Exchange Commission, no insured depository institution shall knowingly express any opinion on the value of, or the advisability of purchasing or selling, nonbanking products (as defined by the appropriate Federal banking agency) sold by the insured depository institution or any affiliate of an insured depository institution unless the insured depository institution conspicuously discloses in writing to the customer that—

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

(B) the nonbanking products—

(i) are not deposits;

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

(iii) are not guaranteed by the institution or any other affiliated insured depository institution;

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

(v) with regard to any nonbanking product that includes any investment component, are subject to investment risks including possible loss of principal invested; and

(C) an affiliate, if involved, is not an insured depository institution (unless such is the case), and is a corporation separate from any insured depository institution (unless such is not the case).

(2) FORM OF DISCLOSURE.—The disclosures required by paragraph (1) shall be made in clear and concise language that—

(A) is readily comprehensible to customers of the insured depository institution, and

(B) is designed to promote customer understanding that nonbanking products are not deposits insured by the Federal Deposit Insurance Corporation.

(3) CUSTOMER ACKNOWLEDGMENT OF DISCLOSURE.—

(A) IN GENERAL.—Whenever any insured depository institution or securities affiliate opens an account for the purpose of selling a nondeposit investment product or products to a customer, such insured depository institution or securities affiliate, as the case may be, shall obtain a one-time acknowledgment of receipt by the customer of such disclosures, including the date of receipt with the customer's name, address, and the account number.

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

(C) TIMING OF ACKNOWLEDGMENT.—The one-time acknowledgment required by subparagraph (A) must be obtained within a reasonable time after the account is opened.

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

(4) DISCLOSURE AUTHORITY.—Subject to paragraph (2), the appropriate Federal banking agencies may jointly prescribe, after consultation with the Securities and Exchange Commission, disclosures in addition to the disclosures required by paragraph (1).

(h) UNDERWRITING SECURITIES REPRESENTING OBLIGATIONS ORIGINATED BY AFFILIATE RESTRICTED.—A securities affiliate shall not underwrite securities secured by or representing an interest in mortgages or other obligations originated or purchased by an affiliated depository institution or subsidiary of such an institution—

(1) unless those securities—

(A) are rated by at least one unaffiliated, nationally recognized statistical rating organization;

(B) are issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association; or

(C) represent interests in securities described in subparagraph (B); or

(2) except as permitted by the appropriate Federal banking agency.

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

(1) One financial services holding company (or subsidiary of that financial services holding company) agrees to engage in a transaction with, or on behalf of, another financial services holding company (or subsidiary of that financial services holding company), in exchange for

(2) the agreement of the second financial services holding company referred to in paragraph (1) (or a subsidiary of that financial services holding company) to engage in any transaction with, or on

behalf of, the first financial services holding company referred to in such paragraph (or any subsidiary of that financial services holding company), for the purpose of evading any requirement or restriction of Federal law on transactions between, or for the benefit of, affiliates of financial services holding companies.

(j) SAFEGUARDS APPLY TO CERTAIN SUBSIDIARIES.—Except as provided in this section—

(1) SECURITIES AFFILIATE.—No subsidiary of a securities affiliate may do anything that this section prohibits the securities affiliate from doing.

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

(k) AUTHORITY TO MODIFY AND IMPOSE ADDITIONAL SAFEGUARDS; INTERPRETIVE AUTHORITY.—

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

(A) adopt additional limitations, restrictions or conditions on relationships or transactions among depository institutions, their affiliates, and their customers; and

(B) make any modification to any limitation, restriction, or condition imposed under this section on relationships or transactions among depository institutions, the affiliates of depository institutions, and the customers of such institutions or affiliates, including modifications in addition to those expressly provided for in this section.

(2) STANDARDS.—The appropriate Federal banking agency may not exercise authority under paragraph (1) unless such agency finds that such action is consistent with the purposes of this act, including—

(A) the avoidance of any significant risk to the safety and soundness of depository institutions or the Federal deposit insurance funds;

(B) the enhancement of the financial stability of financial services holding companies;

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

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

(E) the application of the principle of national treatment and equality of competitive opportunity between securities affiliates owned or

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

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

(A) review all restrictions established pursuant to paragraph (1) to determine whether any such restrictions are required any longer to carry out the purposes of this Act; and

(B) modify or eliminate any such restriction that such agency determines is no longer required to carry out the purposes of this Act.

(l) COMPLIANCE PROGRAMS REQUIRED.—

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

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

(i) brokers, dealers, investment advisers, or investment companies that are registered with the Securities and Exchange Commission and that are affiliated with depository institutions, or are separately identifiable departments or divisions of depository institutions registered as investment advisers; and

(ii) depository institutions and their affiliates;

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

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

(2) DATA COLLECTION.—

(A) IN GENERAL.—The appropriate Federal banking agencies, after consultation with and consideration of the views of the Securities and Exchange Commission, shall (except as otherwise provided by the appropriate Federal banking agency after such consultation) require

any depository institution that has effected securities transactions pursuant to any exception enumerated in paragraphs (4)(C) and (5)(D) of section 3(a) of the Securities Exchange Act of 1934 to identify the exceptions relied upon and to submit such information necessary to monitor compliance under such paragraphs.

(B) COMMISSION ACCESS.—The appropriate Federal banking agency shall make any information referred to in subparagraph (A) available to the Securities and Exchange Commission, upon the request of the Commission.

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

(3) COMMISSION'S ENFORCEMENT AUTHORITY.—Without limiting in any way the authority of the appropriate Federal banking agencies under this section, the Securities and Exchange Commission shall have the authority to enforce provision of this

section against a securities affiliate as if such provision were a provision of the Securities Exchange Act of 1934 to the extent that the provision applies with respect to the conduct or activities of the securities affiliate.

(4) EXAMINATION REPORTS.—

(A) IN GENERAL.—The appropriate Federal banking agencies shall, to the fullest extent possible, use the reports of examination of any broker, dealer, investment adviser, or investment company made by or on behalf of the Securities and Exchange Commission and reports made by or on behalf of a registered securities association or national securities exchange, and shall defer to such examinations for compliance with the Federal securities laws.

(B) COMPLIANCE WITH SECTION 122 SAFEGUARDS.—The appropriate Federal banking agencies shall—

(i) to the fullest extent possible, use the reports of examination of any securities affiliate made by the appropriate Federal banking agency for such affiliate; and

(ii) defer to such examinations for compliance with the provisions of this section.

(5) INTERPRETATIONS OF THE FEDERAL SECURITIES LAWS.—The appropriate Federal banking agencies shall defer to the Securities and Exchange Commission regarding all interpretations and enforcement of the Federal securities laws relating to the application of the Federal securities laws to the activities and conduct of brokers, dealers, investment advisers, and investment companies.

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

(A) any broker, dealer, or investment adviser that—

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

(ii) is affiliated with, or is a separately identifiable department or division of, a depository institution;

(B) any investment company registered with the Securities and Exchange Commission that is an affiliate of or is advised by an investment adviser affiliated with a depository institution or by a separately identifiable department or division of a depository institution that is a registered investment adviser; or

(C) any financial services holding company, depository institution, or subsidiary of such company or institution, if the proposed action relates to this section or the amendments made by title III of the Depository Institution Affiliation and Thrift Charter Conversion Act.

(7) NOTICE OF CERTAIN ACTIONS BY APPROPRIATE FEDERAL BANKING AGENCIES.—Upon the commencement of any disciplinary or law enforcement proceedings to enforce the provisions of this section by an appropriate Federal banking agency against any broker, dealer, investment adviser, or investment company that is registered under the Federal securities laws and is affiliated with a depository institution or is a separately identifiable department or division of a depository institution, the appropriate Federal banking agency shall give notice to

the Securities and Exchange Commission of the proposed action.

(8) IMMEDIATE ACTION ALLOWED BEFORE NOTICE.—The notice required under paragraph (6) or (7) may be provided promptly after action by the Securities and Exchange Commission or the appropriate Federal banking agency, if—

(A) the Commission determines that the protection of investors requires immediate action by the Commission and prior notice under paragraph (6) is not practical under the circumstances; or

(B) the appropriate Federal banking agency determines that concerns for the safety and soundness of a depository institution or its affiliate require immediate action by the agency and prior notice under (7) is not practical under the circumstances.

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

(10) INVESTMENT COMPANIES NOT AFFILIATED WITH A DEPOSITORY INSTITUTION.—The appropriate Federal banking agency shall not have authority under this section or any other provision of law to inspect or examine any investment company registered under the Federal securities laws that is not—

(A) affiliated with a depository institution; or

(B) advised by an investment adviser affiliated with a depository institution or by a separately identifiable department or division of a depository institution that is a registered investment adviser.

(11) DEFINITION.—For purposes of this subsection, the term ''Federal securities laws'' means the provisions of Federal law governing securities activities that are within the jurisdiction of the Securities and Exchange Commission under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and the Trust Indenture Act of 1939.

(m) FOREIGN BANK FIREWALLS.—

(1) IN GENERAL.—A branch, agency, or commercial lending company that is operated by a foreign bank that is a financial services holding company shall not be subject to the restrictions of any subsection of this section, other than subsections (k) and (l), if—

(A) such branch, agency, or commercial lending company accepts no deposits in the United States that are insured under the Federal Deposit Insurance Act;

(B) such foreign bank meets risk-based capital standards comparable to the capital standards required for a wholesale financial institution, giving due regard to the principle of national treatment and equality of competitive opportunity; and

(C) the home country of such foreign bank satisfies the national treatment standard described in section 102(l)(3).

(2) APPLICABILITY OF SUBSECTION (K) TO FOREIGN BANKS.—Any limitation, restriction, condition, or modification adopted under subsection (k) may be applied by the appropriate Federal banking agency to—

(A) a foreign bank that operates a branch, agency, or commercial lending company described in paragraph (1) (and any company that owns or controls such foreign bank);

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

(C) any other affiliate of such foreign bank in the United States; if such limitation, restriction, condition, or modification is applied by regulation or order of general applicability under subsection (n)(1) to wholesale financial institutions and their securities affiliates, subject to such modifications, conditions, or exemptions as the appropriate Federal banking agency of such wholesale financial institution deems appropriate, giving due regard to the principle of national treatment and equality of competitive opportunity.

(n) FIREWALLS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS AND NATIONAL MARKET LENDING INSTITUTIONS.—

(1) IN GENERAL.—A wholesale financial institution, and transactions between a wholesale financial institution and its securities affiliate, shall not be

subject to the provisions of this section, except that a wholesale financial institution and its securities affiliate shall be subject to subsections (k) and (l) in the same manner and to the same extent such subsections would apply if the wholesale financial institution were an insured depository institution.

(2) PROHIBITION ON EVASION OF FIREWALLS BY AFFILIATED INSURED DEPOSITORY INSTITUTIONS.—An insured depository institution that is affiliated with a wholesale financial institution shall not evade any requirement or restriction imposed by this section by engaging in transactions or arrangements with its affiliated wholesale financial institution.

(3) SIMILAR TREATMENT FOR NATIONAL MARKET LENDING INSTITUTIONS.—A national market lending institution, as defined in section 5158 of the Revised Statutes of the United States, that is controlled by a financial services holding company shall be subject to this section in the same manner and to the same extent as a wholesale financial institution.

(o) AUTHORITY OF NATIONAL FINANCIAL SERVICES COMMITTEE.—

(1) IN GENERAL.—Except for rules issued pursuant to subsections (f) or (g), no rule, regulation, or order authorized or required by this section shall be issued without the approval of the National Financial Services Committee.

(2) UNIFORM STANDARDS.—Any regulation, rule, or order subject to the approval of the National Financial Services Committee under paragraph (1) shall be identical for each appropriate Federal banking agency, except as otherwise permitted by such Committee, taking into account existing requirements, coordination of new requirements, minimization of duplicative regulation, the degree of uniformity between regulation of securities affiliates or investment companies affiliated with or advised by depository institutions or their affiliates and other broker dealers or investment companies, and an analysis of any of the benefits to be obtained by any unique regulatory burdens placed on securities affiliates or investment companies affiliated with or advised by depository institutions or their affiliates.

SEC. 123. JOINT STANDARDS RELATING TO RETAIL SALES OF CERTAIN NONDEPOSIT INVESTMENT PRODUCTS.

(a) IN GENERAL.—The National Financial Services Committee shall prescribe standards applicable to any depository institution which—

(1) is not registered as a broker under the Securities Exchange Act of 1934;

(2) effects retail transactions in securities, including securities issued by an investment company or annuities; and

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

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

(1) sales practices;

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

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

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

(3) the compensation of sales personnel with respect to referrals or transactions;

(4) the training of and qualifications for personnel involved in such transactions, including training in making an accurate judgment about the suitability of a particular investment product for a prospective customer; and

(5) the setting in which and the circumstances under which transactions may be effected, and referrals made, by sales personnel with respect to such securities and annuities.

(c) COMPARABILITY REQUIREMENT.—The standards required under paragraph (1) shall be comparable to the standards applicable to brokers and dealers registered under the Securities Exchange Act of 1934 unless the National Financial Services Committee determines that implementation of comparable standards is not necessary or appropriate for the maintenance of fair and orderly markets or the protection of investors or is not in the public interest.

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.

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

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

(2) real estate investment or development, except to the extent that such activities are performed in relation to the premises of the depository institution or in connection with securing or collecting a debt previously contracted in good faith, or would be authorized for a national bank under section 5137 of the Revised Statutes of the United States or the first section of the Act of September 28, 1962 (12 U.S.C. 92a).

(b) CONSTRUCTION.—Nothing contained in this section shall be construed to prohibit or impede—

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

other than a depository institution from engaging in any of the activities set forth in paragraph (1); or

(2) any employee of a depository institution that is an affiliate of a financial services holding company from promoting or advertising products or services of an affiliate of such insured depository institution that engages in any of such activities.

SEC. 132. ACQUISITION OF PREEXISTING INSURANCE AGENCY BY BANK HOLDING COMPANIES.

(a) IN GENERAL.— No bank holding company which becomes a financial services holding company and no financial services holding company which did not at any time prior to becoming such a holding company, directly or indirectly, engage in insurance agency activities other than activities generally permissible for bank holding companies under section 4(c)(8) of the Bank Holding Company Act of 1956, shall commence any insurance agency activities not generally permissible for bank holding companies under section 4(c)(8) of the Bank Holding Company Act of 1956, unless such activities are conducted through an existing insurance agency acquired directly or indirectly by such financial services holding company or

through any successor to such insurance agency, and unless such acquired insurance agency shall have been actively engaged in such insurance activities during the 2-year period preceding the date of such acquisition.

SEC. 133. EXISTING CONTRACTS.

Nothing in sections 131 or 132 shall require the breach of any contract entered into before the date of enactment of this Act.

Subtitle D—Redomestication of Mutual Life Insurers

SEC. 141. REDOMESTICATION OF MUTUAL LIFE INSURERS.

(a) REDOMESTICATION.—A mutual life insurer organized under the laws of any State may transfer its domicile to a transferee domicile as a step in a reorganization in which, pursuant to the laws of the transferee domicile, the mutual life insurer becomes a stock life insurer, whether as a direct or indirect subsidiary of a mutual holding company or otherwise. Upon compliance with the applicable law of the transferee domicile governing transfers of domicile and completion of a transfer pursuant to this section, the mutual life insurer shall cease to be a domestic insurer in the transferor domicile and, as a continuation of its corporate existence, shall be a domestic insurer of the transferee domicile.

(b) LICENSES, ETC.—The certificate of authority, agents' appointments and licenses, rates, approvals and other items which a licensed State allows and that are in existence immediately prior to the time a redomesticating insurer transfers its domicile pursuant to this section shall continue in full force and effect upon transfer if the insurer remains duly qualified to transact the business of insurance in such licensed State. All outstanding insurance policies and annuity contracts of a redomesticating insurer shall remain in full force and effect and need not be endorsed as to the new domicile of the insurer unless so ordered by the State insurance regulator of a licensed State, and then only as to those outstanding policies whose owners reside in such licensed State. Applicable State law may require a redomesticating insurer to file new policy forms with the State insurance regulator of a licensed State on or before the effective date of the transfer, but a redomesticating insurer may use existing policy forms with appropriate endorsements to reflect the new domicile of the redomesticating insurer until the new policy forms are approved for use by the State insurance regulator of such licensed State. A redomesticating insurer shall give notice of the proposed transfer to the State insurance regulator of each licensed State and shall file promptly any resulting amendments to corporate documents required to

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

(c) PREEMPTION OF STATE LAWS RESTRICTING REDOMESTICATION.—(1) Any State law conflicting with the provisions of this section is hereby preempted. Without limiting the generality of the preceding sentence, the following State laws purporting to regulate redomesticated or redomesticating insurers shall be preempted with respect to such insurers:

(A) Any provision impeding or intended to impede the activities of, taking any action against, or applying any provision of law or regulation to, any insurer or affiliate of such insurer because that insurer or any affiliate plans to redomesticate or has redomesticated pursuant to this section.

(B) Any provision impeding the activities of, taking any action against, or applying any provision of law or regulation to, any insured or any insurance licensee or other intermediary because such insured or such insurance licensee or other intermediary has procured insurance from or placed insurance with any insurer or any affiliate of such insurer that plans to redomesticate or has redomesticated pursuant to this section.

(C) Any provision purporting to terminate, by reason of the redomestication of a mutual life insurer pursuant to this section, any certificate of authority, agent appointment or license, rate approval or other approval of any State insurance regulator or other State authority in existence immediately prior to the redomestication in any State other than the transferee domicile.

Where a State applies any State law to a redomesticating or redomesticated insurer or insurers (as well as affiliates of such insurer or insurers) in a different manner than the State has applied such law to insurers that are not redomesticating or redomesticated insurers, such application of such law or regulation to the redomesticating or redomesticated insurer or insurers shall be preempted.

(2) If any licensed State fails to issue, delays the issuance of, or seeks to revoke an original or renewal certificate of authority of a redomesticated insurer immediately following redomestication, except on grounds and in a manner consistent with its past practices regarding the issuance of certificates of authority to foreign insurers that are not redomesticating, then the redomesticating insurer shall be exempt from any State law of the licensed State to the extent that such State law or the operation

of such State law would make unlawful, or regulate, directly or indirectly, the operation of the redomesticated insurer, except that such licensed State may require the redomesticated insurer to—

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

(B) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on licensed insurers or policyholders under the laws of the licensed State;

(C) register with and designate the State insurance regulator as its agent solely for the purpose of receiving service of legal documents or process;

(D) submit to an examination by the State insurance regulator in any licensed State in which the redomesticated insurer is doing business to determine the insurer's financial condition, if (i) the State insurance regulator of the transferee domicile has not begun and has refused to initiate an examination of the redomesticated insurer; and (ii) any such examination is coordinated to avoid unjustified duplication and repetition;

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

been a judicial finding of financial impairment under subparagraph (G) below, or (ii) a voluntary dissolution proceeding;

(F) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the licensed State seeks an injunction regarding the conduct described in this paragraph, such injunction must be obtained from a court of competent jurisdiction as provided in subparagraph (D);

(G) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance regulator alleging that the redomesticated insurer is in hazardous financial condition or is financially impaired;

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

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

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

litigation arising under this section involving any redomesticating or redomesticated company.

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

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

(1) COURT OF COMPETENT JURISDICTION.—The term ''court of competent jurisdiction'' means a court authorized pursuant to subsection (d) to adjudicate litigation arising under this section.

(2) DOMICILE.—The term ''domicile'' means the State in which an insurer is incorporated, chartered or organized.

(3) INSURANCE LICENSEE.—The term ''insurance licensee'' means any person who or which holds a license under State law to act as insurance agent, subagent, broker or consultant.

(4) INSTITUTION.—The term ''institution'' means a corporation, joint stock company, limited liability company, limited liability partnership, association, trust, partnership or any similar entity.

(5) LICENSED STATE.—The term ''licensed State'' means any State, Puerto Rico or the United States Virgin Islands in which the redomesticating insurer has a certificate of authority in effect immediately prior to the redomestication.

(6) MUTUAL LIFE INSURER.—The term ''mutual life insurer'' means a mutual life insurer organized under the laws of any State.

(7) PERSON.—The term ''person'' means an individual, institution, government or governmental agency, State or political subdivision of a State, public corporation, board, association, estate, trustee, or fiduciary, or any similar entity.

(8) REDOMESTICATED INSURER.—The term ''redomesticated insurer'' means a mutual life insurer that has redomesticated pursuant to this section.

(9) REDOMESTICATING INSURER.—The term ''redomesticating insurer'' means a mutual life insurer that is redomesticating pursuant to this section.

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

(11) STATE INSURANCE REGULATOR.—The term ''State insurance regulator'' means the principal insurance regulatory authority of a State or of Puerto Rico or the United States Virgin Islands.

(12) STATE LAW.—The term ''State law'' means the statutes of any State or of Puerto Rico or the United States Virgin Islands and any regulation, order, or requirement prescribed pursuant to any such statute.

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

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

(15) VOTING SECURITIES.—The term ''voting securities'' means securities of any class or any ownership interest having voting power for the election of the board of directors of a person, other than securities having voting power only because of the occurrence of a contingency.

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.

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

''(K) An insured bank, as defined in section 3 of the Federal Deposit Insurance Act, that is controlled by a financial services holding company, as defined in section 102(a) of the Financial Services Holding Company Act.

''(L) A wholesale financial institution, as defined in section 102(i) of the Financial Services Holding Company Act, that is controlled by a financial services holding company, as defined in section 102(a) of such Act.''.

SEC. 202. AMENDMENTS TO THE FEDERAL RESERVE ACT.

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

(b) AFFILIATES OF MEMBER BANKS.—The 22d undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 338) is amended by adding at the end the following new sentence: ''No provision of this paragraph shall be construed as authorizing an examination of an affiliate of a member bank if the member bank is an affiliate of a financial services holding company (as defined in section 102 of the Financial Services Holding Company Act).''.

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

(a) SECTION 20.—Section 20 of the Banking Act of 1933 (12 U.S.C. 377) is amended by inserting after the first undesignated paragraph the following: ''The provisions of this section shall not apply to a financial services holding company or any of its affiliates, as such terms are defined in section 102 of the Financial Services Holding Company Act.''

(b) SECTION 32.—Section 32 of the Banking Act of 1933 (12 U.S.C. 78) is amended by adding at the end the following: ''This section shall not apply so as to prohibit an officer, director, or employee of a securities affiliate (as defined in section 102(r) of the Financial Services Holding Company Act) from serving at the same time as an officer, director, or employee of a member bank affiliated with the securities affiliate pursuant to such Act.

This section shall not apply so as to prohibit an officer, director, or employee of an investment company registered under the Investment Company Act of 1940 or an investment adviser registered under the Investment Advisers Act of 1940 from serving at the same time as an officer, director, or employee of a member bank that is affiliated with a financial services holding company (as defined in section 102(a) of the Financial Services Holding Company Act).''.

SEC. 204. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.

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

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

''(B) the term 'control' means the power, directly or indirectly, to direct the management or policies of a company, or to vote 25 percent or more of any class of voting securities of a company, except that no company shall be deemed to control or to have acquired control of any other company by virtue of its ownership of the voting securities of such other company—

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

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

''(I) the underwriting of securities if such securities are held only for such person of time as will permit the sale thereof on a reasonable basis; or

''(II) market making, dealing, trading, brokerage, or other securities-related activities and not with a view to acquiring, exercising, or transferring any control over the management or policies of such company; or

''(iii) acquired in securing or collecting a debt previously contracted in good faith, until 2 years after the date of acquisition, except that no company formed for the sole purpose of participating in a proxy solicitation is in control of a company by virtue of its acquisition of voting rights with respect to shares of such company acquired in the course of such solicitation.''; and

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

''(19) DEFINITION.—For purposes of this subsection, the term 'insured depository institution' shall include—

''(A) any 'bank holding company', as that term is defined in section 2 of the Bank Holding Company Act of 1956, which has control of any insured bank (as defined in that section 2), and the appropriate Federal banking agency in the case of a bank holding company shall be the Board of Governors of the Federal Reserve System; and

''(B) any 'financial services holding company', as that term is defined in section 102(a) of the Financial Services Holding Company Act, which has control of any such insured bank, and the appropriate Federal banking agency in the case of a financial services holding company shall be the appropriate Federal banking agency of the lead depository institution (as defined in section 102(h) of the Financial Services Holding Company Act) of the financial services holding company.

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

section 104(a)(2) of the Financial Services Holding Company Act, sections''.

(c) APPROPRIATE FEDERAL BANKING AGENCY.—

(1) STATE MEMBER WHOLESALE FINANCIAL INSTITUTIONS.—Section 3(g)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1813 (q)(2)(A)) is amended to read as follows:

''(A) any State member insured bank (except a District bank) and State member wholesale financial institution as authorized pursuant to section 9B of the Federal Reserve Act.''.

(2) NATIONAL WHOLESALE FINANCIAL INSTITUTION.—Section 3(g)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)(1)) is amended by inserting ''(including any national wholesale financial institution and any national market funded lending institution, as authorized pursuant to sections 5136B and 5158 of the Revised Statutes of the United States)''.

(d) SECURITIES COMPANY AFFILIATIONS OF FDIC–INSURED BANKS.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end thereof the following new subsection:

''(s) SECURITIES AFFILIATIONS OF BANKS.—

''(1) IN GENERAL.—A bank shall not be an affiliate of any company that, directly or indirectly, acts as an underwriter or dealer of any security, other than—

''(A) a bank;

''(B) a securities affiliate as defined in section 102(r) of the Financial Services Holding Company Act; or

''C) a company that underwrites or deals only in securities that are described in section 121 of the Depository Institution Affiliation and Thrift Charter Conversion Act.

''(2) EXCEPTIONS.—

''(A) CERTAIN BANKS NOT INCLUDED.—For purposes of this subsection, the term 'bank' does not include—

''(i) an insured bank described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956; and

''(ii) a Federal branch or an insured branch (as defined in section 3 of the Federal Deposit Insurance Act).

''(B) AFFILIATIONS WITH EDGE ACT AND AGREEMENT CORPORATIONS.—Paragraph (1)

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

''(3) GRANDFATHER PROVISION.—This subsection shall not apply with respect to—

''(A) an affiliation between a bank and a company that underwrites or deals in securities, provided that—

''(i) the affiliation is authorized pursuant to an order issued by the Board of Governors of the Federal Reserved System under section 4(c)(8) of the Bank Holding Company Act of 1956; and

''(ii) such company complies with the limitations, restrictions, and conditions, including the limitation on the revenue that may be derived from underwriting or dealing activities, that were generally applicable to companies that, as of January 1, 1996, were subject to orders described in clause (i);

''(B) any other lawful affiliation that existed on January 1, 1996; or

"(C) any new affiliation by an insured that has an affiliation that would be prohibited if the affiliation were not covered by subparagraph (B).

"(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

"(A) DEALER.—The term 'dealer' has the meaning given to such term in section 3(a)(5) of the Securities Exchange Act of 1934.

"(B) SECURITY.—The term 'security' has the meaning given to such term in section 121(c) of the Financial Services Holding Company Act.

"(C) UNDERWRITER.—The term 'underwriter' has the meaning given to such term in section 2(11) of the Securities Act of 1933.".

(e) AFFILIATE OF AN INSURED DEPOSITORY INSTITUTION.—Section 10(b)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)(4)) is amended by adding at the end the following new subparagraph:

''(C) AFFILIATES OF FINANCIAL SERVICES HOLDING COMPANY.—No provision of this paragraph shall be construed as authorizing an examination of an affiliate of an insured depository institution if the insured depository institution is an affiliate of a financial services holding company (as defined in section 102 of the Financial Services Holding Company Act).''.

SEC. 205. AMENDMENT TO THE COMMUNITY REINVESTMENT ACT.

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

(1) by inserting ''or notice, as appropriate'' after ''an application'';

(2) in subparagraph (E), by striking ''or'' at the end;

(3) in subparagraph (F), by striking the period at the end and inserting ''; or''; and

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

''(G) the acquisition of an insured depository institution requiring prior notice under section 103 of the Financial Services Holding Company Act.''.

SEC. 206. AMENDMENT TO THE FEDERAL POWER ACT.

Section 305(b) of the Federal Power Act shall not apply to any person now holding, or proposing to hold, at the same time the position of officer or director of a public utility and the position of officer or director of a bank, trust company, banking association, or firm permitted by the Financial Services Holding Company Act to underwrite or participate in the marketing of securities of the public utility for which the person serves, or proposes to serve, as an officer of director.

SEC. 207. AMENDMENT TO THE RIGHT TO FINANCIAL PRIVACY ACT.

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

(1) by striking ''this title'' and inserting ''law''; and

(2) by inserting '', examination reports,'' after ''financial records''.

SEC. 208. AMENDMENTS TO THE INTERNATIONAL BANKING ACT.

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

''provisions.'' and inserting the following: ''provisions, except that any such foreign bank or company that qualifies and elects to be treated as a financial services holding company, shall not be so subject to the provisions of the Bank Holding Company Act of 1956.''.

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

''(3) PARITY IN CONDUCT OF AUTHORIZED SECURITIES ACTIVITIES.—

''(A) IN GENERAL.—Notwithstanding the provisions of paragraph (1) or any other provision of law, any authority conferred under this subsection on any foreign bank or company with respect to securities activities authorized for bank holding companies in the United States shall terminate 30 days after such foreign bank or company becomes a financial services holding company under the Financial Services Holding Company Act.''.

SEC. 209. AMENDMENT CONCERNING NATIONAL BANKS.

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

is amended by inserting after the 1st sentence the following new sentence: ''No provision of this paragraph shall be construed as authorizing an examination of an affiliate of a national bank if the national bank is an affiliate of a financial services holding company (as defined in section 102 of the Financial Services Holding Company Act).''.

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

Subtitle A—Broker Dealer Provisions

SEC. 301. DEFINITION OF BROKER.

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

''(4) BROKER.—

''(A) IN GENERAL.—The term 'broker' means any person engaged in the business of effecting transactions in securities for the account of others.

''(B) EXCLUSION OF BANKS.—The term 'broker' does not include a bank unless such bank is affiliated with a financial services holding company, as defined in section 102(a) of the Financial Services Holding Company Act and—

''(i) publicly solicits the business of effecting securities transactions for the account of others; or

''(ii) is compensated for such business by the payment of commissions or similar remuneration based on effecting transactions in securities (other than fees calculated as a percentage of assets under management) in excess of the bank's incremental costs directly attributable to effecting such transactions (hereafter referred to as 'incentive compensation').

''(C) EXEMPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a broker because the bank engages in any of the following activities under the conditions described:

''(i) THIRD PARTY BROKERAGE ARRANGEMENTS.—The bank enters into a contractual or other arrangement with a broker or dealer registered under this title under which the broker or dealer offers brokerage services on or off the premises of the bank if—

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

''(II) the broker or dealer performs brokerage services in an area that is clearly marked, and unless made impossible by space or personnel considerations, physically separate from the routine deposit-taking activities of the bank;

''(III) any materials used by the bank to advertise or promote generally the availability of brokerage services under the contractual or other arrangement clearly indicate that the brokerage services are being provided by the broker or dealer and not by the bank;

''(IV) any materials used by the bank to advertise or promote generally the availability of brokerage services under the contractual or other arrangement are in compliance with the Federal securities laws before distribution;

"(V) bank employees perform only clerical or ministerial functions in connection with brokerage actions, including scheduling appointments with the associated persons of a broker or dealer, and on behalf of a broker or dealer, transmitting orders or handling customers' funds or securities, except that bank employees who are not so qualified may describe in general terms investment vehicles under the contractual or other arrangement and accept customers' orders on behalf of the broker or dealer if such employees have received training that is substantially equivalent to the training required for personnel qualified to sell securities pursuant to the requirements of a self-regulatory organization (as defined in section 3(a) of the Securities Exchange Act of 1934);

"(VI) bank employees do not directly receive incentive compensation for any brokerage transaction unless such employees are associated persons

of a broker or dealer and are qualified pursuant to the requirements of a self-regulatory organization (as so defined) except that the bank employees may receive nominal cash and noncash compensation for customer referrals if the cash compensation is a one-time fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction;

''(VII) such services are provided by the broker or dealer on a basis in which all customers which receive any services are fully disclosed to the broker or dealer; and

''(VIII) the broker or dealer informs each customer that the brokerage services are provided by the broker or dealer and not by the bank and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not insured by the Federal Deposit Insurance Corporation.

''(ii) TRUST ACTIVITIES.—The bank engages in trust activities (including effecting transactions in the course of such trust activities) permissible for national banks under the first section of the Act of September 28, 1962, or for State banks under relevant State trust statutes or law (including securities safekeeping, self-directed individual retirement accounts, or managed agency accounts or other functionally equivalent accounts of a bank) unless the bank—

''(I) publicly solicits brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other activities; or

''(II) receives incentive compensation for such brokerage activities.

''(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in exempted securities, other than municipal securities, in commercial paper, bankers acceptances, commercial bills,

qualified Canadian Government obligations as defined in section 5136 of the Revised Statues, obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969, obligations of the North American Development Bank, and obligations of any local public agency (as defined in section 110(h) of the Housing Act of 1949) or any public housing agency (as defined in the United States Housing Act of 1937) that are expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in.

''(iv) MUNICIPAL SECURITIES.—The bank effects transactions in municipal securities.

''(v) EMPLOYEE AND SHAREHOLDER BENEFIT PLANS.—The bank effects transactions as part of any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership,

stock appreciation, stock option, dividend reinvestment, or similar plan for employees or shareholders of an issuer or its subsidiaries.

''(vi) SWEEP ACCOUNTS.—The bank effects transactions as part of a program for the investment or reinvestment of bank deposit funds into any no-load, open-end management investment company registered under the Investment Company Act of 1940 that holds itself out as a money market fund.

''(vii) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate of the bank, as defined in section 102(c) of the Financial Services Holding Company Act.

''(viii) PRIVATE SECURITIES OFFERINGS.—The bank—

''(I) effects sales as part of primary offering of securities by an issuer, not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the

rules and regulations issued thereunder; and

''(II) effects such sales exclusively to an accredited investor, as defined in section 3 of the Securities Act of 1933.

''(ix) DE MINIMUS EXEMPTION.—If the bank does not have a subsidiary or affiliate registered as a broker or dealer under section 15, the bank effects, other than in transactions referred to in clauses (i) through (viii), not more than—

''(I) 800 transactions in any calendar year in securities for which a ready market exists, and

''(II) 200 other transactions in securities in any calendar year.

''(x) SAFEKEEPING AND CUSTODY SERVICES.—The bank, as part of customary banking activities—

''(I) provides safekeeping or custody services with respect to securities, including the exercise of warrants or other rights on behalf of customers;

''(II) clears or settles transactions in securities;

''(III) effects securities lending or borrowing transactions with or on behalf of customers as part of services provided to customers pursuant to subclauses (I) and (II) or invests cash collateral pledged in connection with such transactions; or

''(IV) holds securities pledged by one customer to another customer or securities subject to resale agreements between customers or facilitates the pledging or transfer of such securities by book entry.

''(xi) BANKING PRODUCTS.—The bank effects transactions in products that—

''(I) are described in section 121(c)(2) of the Financial Services Holding Company Act; or

''(II) have been exempted by the appropriate Federal banking agency pursuant to section 121(c)(3) of such Act.

''(D) EXEMPTION FOR ENTITIES SUBJECT TO SECTION 15(e).—The term 'broker' does not include a bank that—

''(i) was, immediately prior to the enactment of the Depository Institution Affiliation Act, subject to section 15(e); and

''(ii) is subject to such restrictions and requirements as the Commission considers appropriate.''.

SEC. 302. DEFINITION OF DEALER.

Section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

''(5) DEALER.—

''(A) IN GENERAL.—The term 'dealer' means any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise.

''(B) EXCEPTION FOR PERSON NOT ENGAGED IN THE BUSINESS OF DEALING.—The term 'dealer' does not include a person that buys or sells securities for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

''(C) EXCLUSION OF BANKS.—The term 'dealer' does not include a bank unless such

bank is affiliated with a financial services holding company, as defined in section 102(a) of the Financial Services Holding Company Act.

''(D) EXEMPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a dealer because the bank engages in any of the following activities under the conditions described:

''(i) The bank buys and sells commercial paper, bankers acceptances, exempted securities (other than municipal securities), qualified Canadian Government obligations as defined in section 5136 of the Revised Statutes, obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969, obligations of the North American Development Bank, and obligations of any local public agency (as defined in section 110(h) of the Housing Act of 1949) or any public agency (as defined in the United States Housing Act of 1937) that are expressly authorized by section 5136 of the Revised

Statutes of the United States as permissible for a national bank to underwrite or deal in.

''(ii) The bank buys and sells municipal securities that are expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in.

''(iii) The bank buys and sells securities for investment purposes for the bank or for accounts for which the bank acts as a trustee or fiduciary.

''(iv) The bank—

''(I) has not been affiliated with a securities affiliate for purposes of the Financial Services Holding Company Act for more than 1 year; and

''(II) engages in the issuance or sale, through a grantor trust or otherwise, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations originated or purchased by the bank or any affiliate of the bank.

''(v) The bank buys and sells products that—

''(I) are described in section 121(c)(2) of the Financial Services Holding Company Act; or

''(II) have been exempted by the appropriate Federal banking agency pursuant to section 121(c)(3) of such Act.''.

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

Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) is amended by adding at the end the following:

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

SEC. 304. MARGIN REQUIREMENTS.

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

and inserting ''(E) to a loan to a broker or dealer by a member bank or any other person that has entered into an agreement pursuant to section 8(a) if the proceeds of the loan are to be used in the ordinary course of the broker's or dealer's business other than for the purpose of funding the purchase of securities for the account of such broker or dealer, or (F)''.

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

(1) by striking ''nonmember bank'' and inserting ''person other than a member bank''; and

(2) by striking ''such bank'' in the second sentence and inserting ''such person''.

Subtitle B—Investment Company Provisions

SEC. 311. CUSTODY OF INVESTMENT COMPANY ASSETS BY AFFILIATED BANK.

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

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

(2) by striking ''(f) Every, registered'' and inserting ''(f) CUSTODY OF SECURITIES.—

(1) Every registered'';

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

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

''(6) Notwithstanding any provision of this subsection, if a bank described in paragraph (1) and affiliated with a financial services company, as defined in section 102(a) of the Financial Services Holding Company Act, or an affiliated person of such bank, is an affiliated person, promoter, organizer, or sponsor of, or principal underwriter for the registered company, such bank may serve as custodian under this subsection in accordance with such rules, regulations, or orders as the Commission may prescribe, consistent with the protection of investors, after consulting in writing with the appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act.''.

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

the end the following: ‘‘, except that, if the trustee or custodian described in this subsection is an affiliated person of such underwriter or depositor and of a financial services holding company, as defined in section 102(a) of the Financial Services Holding Company Act, the Commission may adopt rules and regulations or issue orders, consistent with the protection of investors, prescribing the conditions under which such trustee or custodian may serve, after consulting in writing with the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act)’’.

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

(1) in paragraph (1), by striking ‘‘or’’ at the end;

(2) in paragraph (2), by striking the period at the end and inserting ‘‘; or’’; and

(3) by inserting after paragraph (2) the following:

‘‘(3) if affiliated with a financial services holding company, as defined section 102(a) of the Financial Services Holding Company Act, as custodian.’’.

SEC. 312. LENDING TO AN AFFILIATED INVESTMENT COMPANY.

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

''(l) Notwithstanding any provision of this section, it shall be unlawful for any affiliated person of a registered investment company that is affiliated with a financial services holding company, as defined in section 102(a) of the Financial Services Holding Company Act, or any affiliated person of such a person, to loan money to such investment company in contravention of such rules, regulations, or orders as the Commission may prescribe in the public interest and consistent with the protection of investors.''.

SEC. 313. INDEPENDENT DIRECTORS.

(a) IN GENERAL.—Section 2(a)(19)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(A)) is amended—

(1) by striking clause (v) and inserting the following new clause:

''(v) any person affiliated with a financial services holding company (other than a registered investment company) that, at any time during the preceding 6

months, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

''(I) the investment company,

''(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services, or

''(III) any account over which the investment company's investment adviser has brokerage placement discretion,

or any affiliated person of such a person,'';

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

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

''(vi) any person affiliated with a financial services holding company (other than a registered investment company) that, at any time during the preceding 6 months, has loaned money to—

''(I) the investment company,

''(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services, or

''(III) any account for which the investment company's investment adviser has borrowing authority,

or any affiliated person of such a person, or''.

(b) AFFILIATION OF DIRECTORS.—Section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(c)) is amended by striking, ''bank, except'' and inserting ''bank affiliated with a financial services holding company (and its subsidiaries) or any single financial services holding company (and its affiliates and subsidiaries), as those terms are defined in the Financial Services Holding Company Act, except''.

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

SEC. 314. ADDITIONAL SEC DISCLOSURE AUTHORITY.

(a) MISREPRESENTATION.—Section 35(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–34(a)) is amended to read as follows:

''(a) MISREPRESENTATION OF GUARANTEES.—

''(1) IN GENERAL.—It shall be unlawful for any person, issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company—

''(A) has been guaranteed, sponsored, recommended, or approved by the United States, or any agency, instrumentality or officer of the United States;

''(B) has been insured by the Federal Deposit Insurance Corporation;

''(C) is guaranteed by or is otherwise an obligation of any bank or insured depository institution.

''(2) DISCLOSURES.—Any person that is affiliated with an insured depository institution and issues or sells the securities of a registered investment company shall prominently disclose that the investment company or any security issued by the investment company—

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

"(B) is not guaranteed by an affiliated insured depository institution; and

"(C) is not otherwise an obligation of any bank or insured depository institution,

in accordance with such rules, regulations, or orders as the Commission may prescribe as reasonably necessary or appropriate in the public interest for the protection of investors, after consulting in writing with the appropriate Federal banking agencies.

"(3) DEFINITIONS.—The terms 'insured depository institution' and 'appropriate Federal banking agency' have the meanings given to such terms in section 3 of the Federal Deposit Insurance Act.".

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

"(d)(1) It shall be unlawful for any registered investment company to adopt as part of the name or title of such company, or any securities of which it is the issuer, any word or words that the Commission finds are materially deceptive or misleading. The Commission may adopt

such rules or regulations or issue such orders as are necessary or appropriate to prevent the use of deceptive or misleading names or titles by investment companies.

''(2) It shall be deceptive and misleading for any registered investment company—

''(A) that is an affiliated person of a bank that is affiliated with a financial service holding company, as defined in section 102(a) of the Financial Services Holding Company Act, or an affiliated person of such person, or

''(B) for which a bank that is affiliated with a financial service holding company, as defined in section 102(a) of the Financial Services Holding Company Act, or an affiliated person of such a bank, acts as investment adviser, sponsor, promoter, or principal underwriter,

to adopt, as part of the name or title such company, or of any security of which it is an issuer, any word that is the same or similar to, or a variation of, the name or title of such bank, in contravention of such rules, regulations, or orders as the Commission may, prescribe as necessary or appropriate in the public interest or for the protection of investors.''.

SEC. 315. DEFINITION OF BROKER UNDER THE INVESTMENT COMPANY ACT OF 1940.

Section 2(a)(6) of the Investment Company Act of 1940 (15 U.S.C. 89a–2(a)(6)) is amended to read as follows:

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

SEC. 316. DEFINITION OF DEALER UNDER THE INVESTMENT COMPANY ACT OF 1940.

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

''(11) The term 'dealer' has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.''.

SEC. 317. REMOVAL OF THE EXCLUSION FROM THE DEFINITION OF INVESTMENT ADVISER FOR BANKS THAT ADVISE INVESTMENT COMPANIES.

(a) INVESTMENT ADVISER.—Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is amended in subparagraph (A), by striking

''investment company'' and inserting ''investment company, except that the term 'investment adviser' includes any financial services holding company, as defined in section 102(a) of the Financial Services Holding Company Act, or any bank affiliated with such company, to the extent that such financial services holding company or bank acts as an investment adviser to a registered investment company, or if, in the case of such a bank, such services are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser''.

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

''(25) The term 'separately identifiable department or division' of a bank means a unit—

''(A) that is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's investment adviser activities for one or more investment companies, including the supervision of all bank employees engaged in the performance of such activities; and

''(B) for which all of the records relating to its investment adviser activities are separately maintained in or extractable from such unit's own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement of this Act or the Investment Company Act of 1940 and rules and regulations promulgated under this Act or the Investment Company Act of 1940.''.

SEC. 318. DEFINITION OF BROKER UNDER THE INVESTMENT ADVISERS ACT OF 1940.

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

''(3) The term 'broker' has the same meaning as in the Securities Exchange Act of 1934.''.

SEC. 319. DEFINITION OF DEALER UNDER THE INVESTMENT ADVISERS ACT OF 1940.

Section 202(a)(7) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(7)) is amended to read as follows:

''(7) The term 'dealer' has the same meaning as in the Securities Exchange Act of 1934, but does

not include an insurance company or investment company.''.

SEC. 320. INTERAGENCY CONSULTATION.

The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is amended by inserting after section 210 the following new section:

''SEC. 210A. CONSULTATION.

''(a) EXAMINATION RESULTS AND OTHER INFORMATION.—

''(1) The appropriate Federal banking agency shall provide the Commission upon request the results of any examination, reports, records, or other information as each may have access to with respect to the investment advisory activities of any financial services holding company, as defined in section 102(a) of the Financial Services Holding Company Act, bank that is affiliated with a financial services holding company, or separately identifiable department or division of a bank, that is registered under section 203 of this title, or, in the case of a financial services holding company or affiliated bank, that has a subsidiary or a separately identifiable department or division registered under that section, to the extent necessary for the Commission to carry out its statutory responsibilities.

''(2) The Commission shall provide to the appropriate Federal banking agency upon request the results of any examination, reports, records, or other information with respect to the investment advisory activities of any financial services holding company, bank that is affiliated with a financial services holding company, or separately identifiable department or division of a bank, any of which is registered under section 203 of this title, to the extent necessary for the agency to carry out its statutory responsibilities.

''(b) EFFECT ON OTHER AUTHORITY.—Nothing herein shall limit in any respect the authority of the appropriate Federal banking agency with respect to such financial services holding company, bank that is affiliated with a financial services holding company, or department or division under any provision of law.

''(c) DEFINITION.—For purposes of this section, the term 'appropriate Federal banking agency' shall have the same meaning as in section 3 of the Federal Deposit insurance Act.''

SEC. 321. TREATMENT OF BANK COMMON TRUST FUNDS.

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

any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian'' and inserting ''or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940''.

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

> ''(iii) any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940;''.

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

> ''(A) such fund is employed by the bank solely as an aid to the administration of trusts,

estates, or other accounts created and maintained for a fiduciary purpose;

''(B) except if the bank is not affiliated with a financial services holding company, as defined in section 102(a) of the Financial Services Holding Company Act, or in connection with the ordinary advertising of the bank's fiduciary services, interests in such fund are not—

''(i) advertised; or

''(ii) offered for sale to the general public, and

''(C) fees and expenses charged by such fund are not in contravention of fiduciary principles established under applicable Federal or State law.''

SEC. 322. INVESTMENT ADVISERS PROHIBITED FROM HAVING CONTROLLING INTEREST IN REGISTERED INVESTMENT COMPANY.

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

''(g) CONTROLLING INTEREST IN INVESTMENT COMPANY PROHIBITED.—

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

person of that investment adviser, holds a controlling interest in that registered investment company in a trustee or fiduciary capacity, such person shall—

''(A) if it holds the shares in a trustee or fiduciary capacity with respect to any employee benefit plan subject to the Employee Retirement Income Security Act of 1974, transfer the power to vote the shares of the investment company through to another person acting in a fiduciary capacity with respect to the plan who is not an affiliated person of that investment adviser or any affiliated person thereof; or

''(B) if it holds the shares in a trustee or fiduciary capacity with respect to any other person or entity other than an employee benefit plan subject to the Employee Retirement Income Security Act of 1974—

''(i) transfer the power to vote the shares of the investment company through to—

''(I) the beneficial owners of the shares;

''(II) another person acting in a fiduciary capacity who is not an affiliated person of that investment adviser or any affiliated person thereof; or

''(III) any person authorized to receive statements and information with respect to the trust who is not an affiliated person of that investment adviser or any affiliated person thereof;

''(ii) vote the shares of the investment company held by it in the same proportion as shares held by all other shareholders of the company; or

''(iii) vote the shares of the investment company as otherwise permitted under such rules, regulations, or orders as the Commission may prescribe for the protection of investors.

''(2) EXEMPTION.—Paragraph (1) shall not apply to any investment adviser to a registered investment company, or an affiliated person of that investment adviser, if such investment adviser or affiliated person—

"(A) is not affiliated with a financial services holding company, as defined in section 102(a) of the Financial Services Holding Company Act; or

"(B) holds shares of the investment company in a trustee or fiduciary capacity if that registered investment company consists solely of assets held in such capacities.

"(3) SAFE HARBOR.—No investment adviser to a registered investment company or any affiliated person of such investment adviser shall be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law solely by reason of acting in accordance with clause (i), (ii), or (iii) of paragraph (1)(B).

"(4) CHURCH PLAN EXEMPTION.—Paragraph (1) shall not apply to any investment adviser to a registered investment company, or an affiliated person of that investment adviser, holding shares in such a capacity, if such investment adviser or such affiliated person is an organization described in section 414(e)(3)(A) of the Internal Revenue Code of 1986.".

SEC. 323. CONFORMING CHANGE IN DEFINITION.

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

SEC. 324. EFFECTIVE DATE.

This subtitle shall take effect 270 days after the effective date of this Title.

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

SEC. 401. NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.

Chapter 1 of Title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5136A the following new section:

''SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.

''(a) NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.—Any financial services holding company (as defined in Section 102(a) of the Financial Services Holding

Company Act) may apply to the Comptroller of the Currency on such forms and in accordance with such procedures as the Comptroller may prescribe by regulation, for permission to organize a national wholesale financial institution. Upon approval of the application, such national wholesale financial institution shall be a body corporate, chartered under the laws of the United States by the Comptroller. A national wholesale financial institution shall operate pursuant to the requirements of this section at the direction of a board of directors elected at an organizational meeting, to be held as soon as practicable after issuance by the Comptroller of a charter, by such financial services holding company for the purpose of electing such board of directors and taking such other action necessary, pursuant to the charter and the regulations issued by the Comptroller, to complete the corporate organization of the national wholesale financial institution. Immediately following its election, the board of directors shall meet to elect the officers of the national wholesale financial institution and to take such other action, as prescribed by the Comptroller, to complete the corporate organization of such national wholesale financial institution.

''(b) UNAUTHORIZED ORGANIZATION PROHIBITED.—

''(1) IN GENERAL.—No person may organize a national wholesale financial institution, collect

money from others for such purpose, or represent himself or herself as authorized to do so and no national wholesale financial institution shall transact any business prior to completion of its organization except as provided in this section and in implementing regulations of the Comptroller.

''(2) INSURANCE TERMINATION.—No bank that is insured under the Federal Deposit Insurance Act may become a national wholesale financial institution unless—

''(A) it has met all the requirements under that Act for voluntary termination of deposit insurance; and

''(B) it is affiliated with a financial service holding company, as defined in section 102(a) of the Financial Services Holding Company Act.

''(c) AUTHORIZED ACTIVITIES FOR NATIONAL WHOLESALE FINANCIAL INSTITUTION.—Except as otherwise provided in this section, a national wholesale financial institution—

''(1) may exercise, in accordance with its articles of organization and such regulations as are issued by the Comptroller, all of the powers and privileges of a national banking association formed in accordance with section 5133 of the Revised Statutes of the United States; and

''(2) shall be subject to any provision of title LXII of the Revised Statutes of the United States that is applicable to a national banking association that is not a national wholesale financial institution.

''(d) TERMINATION.—A national wholesale financial institution may terminate its status as a national banking association only with the prior written approval of the Comptroller and on terms and conditions that the Comptroller determines are appropriate to carry out the purposes of this section.

''(e) PROMPT CORRECTIVE ACTION.—A national wholesale financial institution shall be deemed to be an insured depository institution for purposes of section 38 of the Federal Deposit Insurance Act except that—

''(1) the relevant capital levels and capital measures for each capital category shall be the levels specified by the Comptroller for national wholesale financial institutions in accordance with subsection (i)(2);

''(2) the provisions applicable to well capitalized insured depository institutions shall be inapplicable to national wholesale financial institutions;

''(3) the provisions authorizing or requiring an institution to be placed into receivership shall not apply to a national wholesale financial institution, and, instead, the Comptroller is authorized or required to place the national wholesale financial institution into conservatorship; and

''(4) for purposes of applying the provisions of section 38 of the Federal Deposit Insurance Act to national wholesale financial institutions, all references to the appropriate Federal banking agency or to the Corporation in that section shall be deemed to be references to the Comptroller.

''(f) ENFORCEMENT AUTHORITY.—Subsections (j) and (k) of section 7, subsections (b) through (n), (s), (u), and (v) of section 8, and section 19 of the Federal Deposit Insurance Act shall apply to a national wholesale financial institution in the same manner and to the same extent as such provisions apply to insured national banks and any references in such sections to an insured depository institution shall be deemed, for purposes of this paragraph, to be a reference to a national wholesale financial institution.

''(g) CERTAIN OTHER STATUTES APPLICABLE.—A national wholesale financial institution shall be deemed to be a banking institution, and the Comptroller shall be the appropriate Federal banking agency for such bank and all such bank's affiliates, for purposes of the International Lending Supervision Act.

''(h) BANK MERGER ACT.—A national wholesale financial institution shall be subject to the provisions of sections 18(c) and 44 of the Federal Deposit Insurance Act in the same manner and to the same extent the national wholesale financial institution would be subject to such sections if the institution were an insured national bank.

''(i) SPECIFIC REQUIREMENTS APPLICABLE TO NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.—

''(1) LIMITATIONS ON DEPOSITS.—

''(A) MINIMUM AMOUNT.—

''(i) IN GENERAL.—Pursuant to such regulations as the Comptroller may prescribe, no national wholesale financial institution may receive initial deposits of $100,000 or less, other than on an incidental or occasional basis.

''(ii) LIMITATION ON DEPOSITS OF LESS THAN $100,000.—No bank may be treated as a national wholesale financial

institution if the total amount of the initial deposits of $100,000 or less at such bank constitutes more than 5 percent of the bank's total deposits.

''(B) NO DEPOSIT INSURANCE.—No deposits held by a national wholesale financial institution shall be insured deposits under the Federal Deposit Insurance Act.

''(C) ADVERTISING AND DISCLOSURE.—The Comptroller shall prescribe regulations pertaining to advertising and disclosure by national wholesale financial institutions to ensure that each depositor is notified that deposits at such wholesale financial institution are not federally insured or otherwise guaranteed by the United States Government.

''(2) SPECIFIC CAPITAL REQUIREMENTS APPLICABLE TO NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.—

''(A) MINIMUM CAPITAL LEVELS.—

''(i) IN GENERAL.—The Comptroller shall, by regulation, adopt capital requirements for national wholesale financial institutions to—

"(A) account for the status of national wholesale financial institutions as institutions that accept deposits that are not insured under the Federal Deposit Insurance Act; and

"(B) provide for the safe and sound operation of the national wholesale financial institution without undue risk to creditors or other persons engaged in transactions with such institution.

"(2) MINIMUM TIER 1 CAPITAL RATIO.—The minimum ratio of tier 1 capital to total risk-weighted assets of national wholesale financial institutions shall be not less than the level required for an insured national bank to be well capitalized unless the Comptroller determines otherwise, consistent with safety and soundness.

"(3) CAPITAL CATEGORIES FOR PROMPT CORRECTIVE ACTION.—For purposes of applying section 38 of the Federal Deposit Insurance Act with respect to any national wholesale financial institution, the Comptroller shall, by regulation, establish, for each relevant capital measure specified by the Comptroller under this subsection, the levels at which a

national wholesale financial institution is well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized.

''(4) ADDITIONAL REQUIREMENTS APPLICABLE TO NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.—In addition to any requirement otherwise applicable to State member banks or applicable, under this section, to national wholesale financial institutions, the Comptroller may prescribe, by regulation or order, for national wholesale financial institutions—

''(A) limitations on transaction with affiliates to prevent an affiliate from gaining access to, or the benefits of, credit from a Federal reserve bank, including overdrafts at a Federal reserve bank;

''(B) special clearing balance requirements; and

''(C) any additional requirements that the Comptroller determines to be appropriate or necessary to—

''(i) promote the safety and soundness of the national wholesale financial institution, or

"(ii) protect creditors and other persons engaged in transactions with the national wholesale financial institution.

"(5) EXEMPTIONS FOR NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.—The Comptroller may, by regulation or order, exempt any national wholesale financial institution from any provision applicable to a national bank that is not a national wholesale financial institution, if the Comptroller finds that such exemption is not inconsistent with—

"(A) the promotion of the safety and soundness of the national wholesale financial institution; and

"(B) the protection of creditors and other persons engaged in transactions with the national wholesale financial institution.

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

''(d) CONSERVATORSHIP AUTHORITY.—The Comptroller may appoint a conservator to take possession and control of a national wholesale financial institution to the same extent and in the same manner as the Comptroller may appoint a conservator for a national bank under section 203 of the Bank Conservation Act, and the conservator shall exercise the same powers, functions, and duties, subject to the same limitations, as are provided under such Act for conservators of national banks.

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

''(1) NATIONAL WHOLESALE FINANCIAL INSTITUTION.—The term 'national wholesale financial institution' means a bank that has been approved to become a national wholesale financial institution by the Comptroller under this section pursuant to an application filed under subsection (a).

''(2) DEPOSIT.—The term 'deposit' has the meaning given to such term by the Comptroller under this section.

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

SEC. 402. STATE MEMBER WHOLESALE FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended by inserting after section 9A the following new section:

"SEC. 9B. WHOLESALE FINANCIAL INSTITUTIONS.

"(a) APPLICATION FOR MEMBERSHIP AS WHOLESALE FINANCIAL INSTITUTION.—

"(1) APPLICATION REQUIRED.—

"(A) IN GENERAL.—Any bank incorporated by special law of any State, or organized under the general laws of any State, may apply to the Board of Governors of the Federal Reserve System to become a State member wholesale financial institution and to subscribe to the stock of the Federal reserve bank organized within the district where the applying bank is located.

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

"(2) INSURANCE TERMINATION.—No bank that is insured under the Federal Deposit Insurance Act

may become a State member wholesale financial institution unless—

"(A) it has met all requirements under that Act for voluntary termination of deposit insurance; and

"(B) is affiliated with a financial services holding company, as defined in section 102(a) of the Financial Services Holding Company Act.

"(b) GENERAL REQUIREMENTS APPLICABLE TO STATE MEMBER WHOLESALE FINANCIAL INSTITUTIONS.—

"(1) FEDERAL RESERVE ACT.—Except as otherwise provided in this section, State member wholesale financial institutions shall be member banks and shall be subject to the provisions of this Act that apply to member banks to the same extent and in the same manner as State member insured banks, except that a State member wholesale financial institution may terminate membership under this Act only with the prior written approval of the Board and on terms and conditions that the Board determines are appropriate to carry out the purposes of this Act.

"(2) PROMPT CORRECTIVE ACTION.—A State member wholesale financial institution shall be deemed to be an insured depository institution for purposes of section 38 of the Federal Deposit Insurance Act except that—

"(A) the relevant capital levels and capital measures for each capital category shall be the levels specified by the Board for State member wholesale financial institutions in accordance with subsection (c);

"(B) the provisions applicable to well capitalized insured depository institutions shall be inapplicable to wholesale financial institutions;

"(C) the provisions authorizing or requiring an institution to be placed into receivership shall not apply to a State member wholesale financial institution, and, instead, the Board is authorized or required, as the case may be, to terminate the State member wholesale financial institution's membership in the Federal Reserve System or place the bank into conservatorship; and

"(D) for purposes of applying the provisions of section 38 of the Federal Deposit Insurance Act to State member wholesale financial institutions, all references to the appropriate Federal banking agency or to the Corporation in that section shall be deemed to be references to the Board.

"(3) ENFORCEMENT AUTHORITY.—Subsections (j) and (k) of section 7, subsections (b) through (n), (s), (u), and (v) of section 8, and section 19 of the Federal Deposit Insurance Act shall apply to a State member wholesale financial institution in the same manner and to the same extent as such provisions apply to State member insured banks and any references in such sections to an insured depository institution shall be deemed, for purposes of this paragraph, to be a reference to a State member wholesale financial institution.

"(4) CERTAIN OTHER STATUTES APPLICABLE.—A State member wholesale financial institution shall be deemed to be a banking institution, and the Board shall be the appropriate Federal banking agency for such bank and all such bank's affiliates for purposes of the International Lending Supervision Act.

''(5) BANK MERGER ACT.—A State member wholesale financial institution shall be subject to the provisions of sections 18(c) and 44 of the Federal Deposit Insurance Act in the same manner and to the same extent as the State member wholesale financial institution would be subject to such sections if the institution were a State member insured bank.

''(c) SPECIFIC REQUIREMENTS APPLICABLE TO STATE MEMBER WHOLESALE FINANCIAL INSTITUTIONS.—

''(1) LIMITATIONS ON DEPOSITS.—

''(A) MINIMUM AMOUNT.—

''(i) IN GENERAL.—Pursuant to such regulations as the Board may prescribe, no State member wholesale financial institution may receive initial deposits of $100,000 or less, other than on an incidental or occasional basis.

''(ii) LIMITATION ON DEPOSITS OF LESS THAN $100,000.—No bank may be treated as a State member wholesale financial institution if the total amount of the initial deposits of $100,000 or less at such bank constitutes more than 5 percent of the bank's total deposits.

"(B) NO DEPOSIT INSURANCE.—No deposits held by a State member wholesale financial institution shall be insured deposits under the Federal Deposit Insurance Act.

"(C) ADVERTISING AND DISCLOSURE.—The Board shall prescribe regulations pertaining to advertising and disclosure by State member wholesale financial institutions to ensure that each depositor is notified that deposits at such wholesale financial institution are not federally insured or otherwise guaranteed by the United States Government.

"(2) SPECIAL CAPITAL REQUIREMENTS APPLICABLE TO STATE MEMBER WHOLESALE FINANCIAL INSTITUTIONS.—

"(A) MINIMUM CAPITAL LEVELS.—

"(i) IN GENERAL.—The Board shall, by regulation, adopt capital requirements for State member wholesale financial institutions—

"(I) to account for the status of State member wholesale financial institutions as institutions that accept deposits that are not insured under

the Federal Deposit Insurance Act; and

"(II) to provide for the safe and sound operation of the State member wholesale financial institution without undue risk to creditors or other persons, including Federal reserve banks, engaged in transactions with such institution.

"(ii) MINIMUM TIER 1 CAPITAL RATIO.—The minimum ratio of tier 1 capital to total risk-weighted assets of State member wholesale financial institutions shall be not less than the level required for a State member insured bank to be well capitalized unless the Board determines otherwise, consistent with safety and soundness.

"(B) CAPITAL CATEGORIES FOR PROMPT CORRECTIVE ACTION.—For purposes of applying section 38 of the Federal Deposit Insurance Act with respect to any wholesale financial institution, the Board shall, by regulation, establish, for each relevant capital measure specified

by the Board under subparagraph (A), the levels at which a State member wholesale financial institution is well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized.

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

''(A) limitations on transaction with affiliates to prevent an affiliate from gaining access to, or the benefits of, credit from a Federal reserve bank, including overdrafts at a Federal reserve bank;

''(B) special clearing balance requirements; and

''(C) any additional requirements that the Board determines to be appropriate or necessary to—

''(i) promote the safety and soundness of the wholesale financial institution, or

"(ii) protect creditors and other persons, including Federal reserve banks, engaged in transactions with the State member wholesale financial institution.

"(4) EXEMPTIONS FOR STATE MEMBER WHOLESALE FINANCIAL INSTITUTIONS.—The Board may, by regulation or order, exempt any State member wholesale financial institution from any provision applicable to a State member bank that is not a State member wholesale financial institution, if the Board finds that such exemption is not inconsistent with—

"(A) the promotion of the safety and soundness of the State member wholesale financial institution; and

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

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

''(d) CONSERVATORSHIP AUTHORITY.—

''(1) IN GENERAL.—The Board may appoint a conservator to take possession and control of a State member wholesale financial institution to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator for a national bank under section 203 of the Bank Conservation Act, and the conservator shall exercise the same powers, functions, and duties, subject to the same limitations, as are provided under such Act for conservators of national banks.

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

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

''(1) STATE MEMBER WHOLESALE FINANCIAL INSTITUTION.—The term 'State member wholesale financial institution' means a bank whose application

to become a State member wholesale financial institution and a State member bank has been approved by the Board under this section.

''(2) DEPOSIT.—The term 'deposit' has the meaning given to such term by the Board under this Act.

''(3) STATE MEMBER INSURED BANK.—The term 'State member insured bank' means a State member bank which is an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act).

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

SEC. 403. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.

(a) VOLUNTARY TERMINATION OF INSURED STATUS BY CERTAIN INSTITUTIONS.—

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

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (9) as paragraphs (1) through (8), respectively.

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

"SEC. 8A. VOLUNTARY TERMINATION OF STATUS AS INSURED DEPOSITORY INSTITUTION.

''(a) IN GENERAL.—Except as provided in subsection (b), an insured State bank or a national bank may voluntarily terminate such bank's status as an insured depository institution in accordance with regulations of the Corporation if—

''(1) the bank provides written notice of the bank's intent to terminate such insured status—

''(A) to the Corporation and either the Board of Governors of the Federal Reserve System (in the case of a State member bank) or the Comptroller of the Currency (in the case of a national bank) not less than 6 months before the effective date of such termination; and

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

"(2) either—

"(A) the deposit insurance fund of which such bank is a member equals or exceeds the fund's designated reserve ratio as of the date the bank provides a written notice under paragraph (1) and the Corporation determines that the fund will equal or exceed the applicable designated reserve ratio for the 2 semiannual assessment periods immediately following such date; or

"(B) the Corporation and the Board of Governors of the Federal Reserve System (in the case of a State member bank) or the Comptroller of the Currency (in the case of a national bank) approve the termination of the bank's insured status and the bank pays an exit fee in accordance with subsection (e).

"(b) EXCEPTION.—Subsection (a) shall not apply with respect to—

"(1) an insured savings association;

"(2) an insured branch that is required to be insured under subsection (a) or (b) of section 6 of the International Banking Act of 1978; or

"(3) any institution described in section 2(c)(2) of the Bank Holding Company Act of 1956.

''(c) ELIGIBILITY FOR INSURANCE TERMINATED.—Any bank that voluntarily elects to terminate the bank's insured status under subsection (a) shall not be eligible for insurance on any deposits or any assistance authorized under this Act after the period specified in subsection (f)(1).

''(d) INSTITUTION MUST BECOME WHOLESALE FINANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING ACTIVITIES.—Any depository institution which voluntarily terminates such institution's status as an insured depository institution under this section may not, upon termination of insurance, accept any deposits unless the institution is either a State member wholesale financial institution under section 9B of the Federal Reserve Act, or a national wholesale financial institution under section 5136B of the Revised Statutes of the United States.

''(e) EXIT FEES.—

''(1) IN GENERAL.—Any bank that voluntarily terminates such bank's status as an insured depository institution under this section shall pay an exit fee in an amount that the Corporation determines is sufficient to account for the institution's pro rata share of the amount (if any) which would be required to restore the relevant deposit insurance fund to the fund's designated reserve ratio as of the date

the bank provides a written notice under subsection (a)(1).

''(2) PROCEDURES.—The Corporation shall prescribe, by regulation, procedures for assessing any exit fee under this subsection.

''(f) TEMPORARY INSURANCE OF DEPOSITS INSURED AS OF TERMINATION.—

''(1) TRANSITION PERIOD.—The insured deposits of each depositor in a State bank or a national bank on the effective date of the voluntary termination of the bank's insured status, less all subsequent withdrawals from any deposits of such depositor, shall continue to be insured for a period of not less than 6 months and not more than 2 years, as determined by the Corporation. During such period, no additions to any such deposits, and no new deposits in the depository institution made after the effective date of such termination shall be insured by the Corporation.

''(2) TEMPORARY ASSESSMENTS; OBLIGATIONS AND DUTIES.—During the period specified in paragraph (1) with respect to any bank, the bank shall continue to pay assessments under section 7 as if the bank were an insured depository institution. The bank shall, in all other respects, be subject to the

authority of the Corporation and the duties and obligations of an insured depository institution under this Act during such period, and in the event that the bank is closed due to an inability to meet the demands of the bank's depositors during such period, the Corporation shall have the same powers and rights with respect to such bank as in the case of an insured depository institution.

''(g) ADVERTISEMENTS.—

''(1) IN GENERAL.—A bank that voluntarily terminates the bank's insured status under this section shall not advertise or hold itself out as having insured deposits, except that the bank may advertise the temporary insurance of deposits under subsection (f) if, in connection with any such advertisement, the advertisement also states with equal prominence that additions to deposits and new deposits made after the effective date of the termination are not insured.

''(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS, AND SECURITIES.—Any certificate of deposit or other obligation or security issued by a State bank or a national bank after the effective date of the voluntary termination of the bank's insured status

under this section shall be accompanied by a conspicuous, prominently displayed notice that such certificate of deposit or other obligation or security is not insured under this Act.

''(h) NOTICE REQUIREMENTS.—

''(1) NOTICE TO THE CORPORATION.—The notice required under subsection (a)(1)(A) shall be in such form as the Corporation may require.

''(2) NOTICE TO DEPOSITORS.—The notice required under subsection (a)(1)(B) shall be—

''(A) sent to each depositor's last address of record with the bank; and

''(B) in such manner and form as the Corporation finds to be necessary and appropriate for the protection of depositors.''.

(b) DEFINITION.—Section 19(b)(1)(A)(i) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)) is amended after ''such Act'' by inserting '', or any State member wholesale financial institution as defined in section 9B of this Act or any national wholesale financial institution as defined in section 5136B of the Revised Statutes of the United States''.

(c) REPORTS ON DISCOUNTS AND ADVANCES TO WHOLESALE FINANCIAL INSTITUTIONS.—Section 10B of

the Federal Reserve Act (12 U.S.C. 347(b)) is amended by adding at the end the following new subsection:

''(c) REPORTS ON DISCOUNTS AND ADVANCES TO WHOLESALE FINANCIAL INSTITUTIONS.—

''(1) IN GENERAL.—The Board shall submit a report to the Congress at the end of any year in which any State member wholesale financial institution or national wholesale financial institution (as defined in section 5136B of the Revised Statutes of the United States) has obtained a discount, advance, or other extension of credit from a Federal reserve bank.

''(2) CONTENTS.—Any report submitted under paragraph (1) shall explain the circumstances and need for any discount, advance, or other extension of credit to a wholesale financial institution during the period covered by the report, including the type and amount of credit extended and the amount of credit remaining outstanding as of the date of the report.''.

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

Subtitle A—Conversion of Thrift Charters

SEC. 501. SHORT TITLE.

This title may be cited as the Thrift Charter Conversion Act of 1997.

SEC. 502. TERMINATION OF FEDERAL SAVINGS ASSOCIATIONS; TREATMENT OF STATE SAVINGS ASSOCIATIONS AS BANKS FOR PURPOSES OF FEDERAL BANKING LAW.

(a) TERMINATION OF FEDERAL SAVINGS ASSOCIATION CHARTERS.—

(1) IN GENERAL.—No later than June 30, 1998, each Federal savings association shall—

(A) convert to a national bank charter;

(B) convert to a State depository institution; or

(C) surrender the charter of such savings association and liquidate the institution.

(2) CONVERSION TO NATIONAL BANK BY OPERATION OF LAW.—

(A) IN GENERAL.—Except as provided in paragraph (1), the requirement under paragraph (1)(A) for a Federal savings association

to convert shall be deemed to have been satisfied by operation of law effective 15 days after such association has delivered a conversion registration statement to the Comptroller of the Currency.

(B) POWERS, PRIVILEGES, DUTIES, AND LIABILITIES.—After the conversion of a Federal savings association to a national bank by operation of law, such national bank shall, except as otherwise specified by law, have the same powers and privileges and shall be subject to the same duties, liabilities, and regulation as an institution originally organized as a national bank under Federal law.

(3) CONVERSION REGISTRATION STATEMENT.—A conversion registration statement shall include the following:

(A) A copy of the resolution approved by a majority of the full board of directors of the Federal savings association resolving to convert the association into a national bank.

(B) A certification by the secretary of a Federal savings association attesting to the receipt of any required affirmative vote of shareholders necessary to convert the Federal savings association into a national bank.

(C) A copy of the most recent charter and bylaws of the Federal savings association certified by the Office of Thrift Supervision.

(D) Articles of association and an organizational certificate in accordance with sections 5133, 5134, and 5135 of the Revised Statutes of the United States, except that—

(i) a Federal savings association may include in such articles any provisions in the most recent Federal charter under which it operated as a Federal savings association; and

(ii) references to capital stock, shares, shareholders, and related terms in such sections of the Revised Statutes of the United States shall not apply to a mutual savings association converting to a national bank organized in mutual form.

(4) EFFECTIVE DATE OF CONVERSION TO NATIONAL BANK.—

(A) If the Comptroller of the Currency determines that a conversion registration statement includes all of the documents described in subsection (a)(3) (A) through (D), the Comptroller of the Currency shall issue a certificate, under the Comptroller's hand and official seal, that such association has complied with all the provisions required herein to be complied with, and that such association is authorized to commence the business of banking effective 15 days after the date of delivery of the conversion registration statement. Such converted association may include in its bylaws as a national bank any provisions in the most recent bylaws under which it operated as a Federal savings association.

(B) If the Comptroller of the Currency determines that a conversion registration statement does not include all of the documents described in subsection (a)(3) (A) through (D), the Comptroller shall advise the Federal savings association, before the end of the 15-day period beginning on the date of delivery, to resubmit a new statement with the required documents

to initiate a new 15-day period. A Federal savings association shall not otherwise be required to take any additional action beyond those specified in subsection (a) (2) and (3) in order to satisfy the requirement of subsection (a)(1)(A).

(5) TERMINATION OF SAVINGS ASSOCIATION CHARTER.—Upon conversion of a Federal savings association to a national bank or State bank pursuant to the requirements of paragraph (1), the association's charter as a savings association shall automatically terminate and be canceled.

(6) NO FEES OR CHARGES.—A Federal savings association that converts to a national bank or State bank pursuant to the requirements of paragraph (1) shall not be required to pay any application fee, examination fee, assessment, or other charge to any Federal agency in connection with such conversion.

(7) SHARE CONVERSION.—Notwithstanding any other provision of law, upon conversion of a Federal savings association organized in stock form to a national bank or State bank pursuant to the requirements of paragraph (1), the shares of such stock savings association shall automatically convert into shares of such national bank or State bank, each for the same value as they were and with the same

terms and conditions as they contained immediately before the conversion.

(8) DIRECTORS AND OFFICERS.—

(A) IN GENERAL.—Notwithstanding any other provision of law, upon conversion of a Federal savings association to a national bank or State bank pursuant to the requirements of paragraph (1), each person who was a director or officer of such association before such conversion may continue to serve as and be elected a director or officer of such national bank or State bank.

(B) TREATMENT FOR CERTAIN PURPOSES.—For purposes of section 32 of the Federal Deposit Insurance Act, a national bank or State bank which converted from a savings association pursuant to the requirements of paragraph (1) shall not be treated as having been chartered less than 2 years or having undergone a change in control within the preceding 2 years solely because of its conversion into a national bank or State bank.

(9) FAILURE TO OBTAIN A CHARTER.—

(A) IN GENERAL.—Any Federal savings association that has not complied with paragraph (1) by June 30, 1998, shall as of that date be subject to all laws, regulations, and orders applicable to a national bank, and the Comptroller of the Currency may determine the terms and conditions upon which the savings association converts into a national bank.

(B) CONTINUING FAILURE TO COMPLY.—A Federal savings association's continuing failure to comply with paragraph (1) may, in the discretion of the Comptroller of the Currency, be considered an unsafe or unsound condition to transact business, or a violation of law under section 11 of the Federal Deposit Insurance Act.

(10) ASSOCIATION CONVERTING IN UNSAFE AND UNSOUND CONDITION.—If the Comptroller of the Currency determines that a Federal savings association is operating in an unsafe and unsound condition, the Comptroller may determine the terms and conditions upon which such association converts into a national bank.

(b) TREATMENT OF STATE SAVINGS ASSOCIATIONS AS BANKS FOR PURPOSES OF FEDERAL BANKING LAW.—

(1) AMENDMENTS TO FEDERAL DEPOSIT INSURANCE ACT.—Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended—

(A) by striking paragraph (2) of subsection (a) and inserting the following new paragraph:

''(2) STATE BANK.—

''(A) IN GENERAL.—The term 'State bank' means any bank, banking association, trust company, savings bank, industrial bank (or similar depository institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank), building and loan association, savings and loan association, homestead association, cooperative bank, or other banking institution—

''(i) which is engaged in the business of receiving deposits, other than trust funds (as defined in this section); and

''(ii) which—

''(I) is incorporated under the laws of any State;

''(II) is organized and operating according to the laws of the State in which such institution is chartered or organized; or

"(III) is operating under the Code of Law for the District of Columbia (except a national bank).

"(B) CERTAIN INSURED BANKS INCLUDED.—The term 'State bank' includes a cooperative bank or other unincorporated bank the deposits of which were insured by the Corporation on the day before the date of the enactment of the Financial Institutions Reform Recovery, and Enforcement Act of 1989.

"(C) CERTAIN UNINSURED BANKS EXCLUDED.—The term 'State bank' does not include any cooperative bank or other unincorporated bank the deposits of which were not insured by the Corporation on the day before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989."; and

(B) in subsection (q)—

(i) by inserting "and" after the semicolon at the end of paragraph (2);

(ii) by striking "; and" at the end of paragraph (3) and inserting a period; and

(iii) by striking paragraph (4).

(2) AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.—Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended—

(A) by striking subparagraph (E) of subsection (a)(5); and

(B) by striking subparagraphs (B) and (J) of subsection (c)(2).

(3) AMENDMENTS TO THE FEDERAL RESERVE ACT.—The 2d and 3d paragraphs of the 1st section of the Federal Reserve Act (12 U.S.C. 221) are each amended by inserting ''(as defined in section 3(a)(2) of the Federal Deposit Insurance Act)'' after ''State bank''.

(c) COMPARABILITY OF REGULATION FOR STATE-CHARTERED DEPOSITORY INSTITUTIONS.—

(1) REVIEW OF STATE SUPERVISION.—The Corporation shall maintain procedures for reviewing, under standards the Board of Directors shall prescribe in regulations, the manner in which State depository institutions are regulated by a State for the purpose of ensuring that State savings associations are no less rigorously regulated by a State than State banks.

(2) INADEQUATE STATE REGULATIONS.—If, in connection with a review of State regulation of State depository institutions pursuant to paragraph (2), the Corporation determines that a State regulates savings associations chartered by such State less rigorously than the State regulates banks chartered by such State, the Corporation may take such action under section 8(a) of the Federal Deposit Insurance Act as the Corporation determines to be appropriate which shall be effective no later than the end of the 1-year period beginning on the date of such determination.

(3) DEFINITIONS.—The following definitions shall apply for purposes of this subsection:

(A) STATE BANK.—The term ''State bank'' has the same meaning as in section 3(a)(2) of the Federal Deposit Insurance Act (as in effect on the date of the enactment of the Thrift Charter Conversion Act of 1997).

(B) STATE SAVINGS ASSOCIATION.—The term ''State savings association'' has the same meaning as in section 3(b)(2) of the Federal Deposit Insurance Act (as in effect on the date of the enactment of the Thrift Charter Conversion Act of 1997).

(C) STATE DEPOSITORY INSTITUTION.—The term ''State depository institution'' has the same meaning as in section 3(c)(5) of the Federal Deposit Insurance Act.

SEC. 503. TREATMENT OF CERTAIN ACTIVITIES AND AFFILIATIONS OF BANK HOLDING COMPANIES RESULTING FROM THIS ACT.

Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended by adding at the end the following new subsection:

''(k) TREATMENT OF COMPANIES RESULTING FROM SAVINGS AND LOAN HOLDING COMPANIES.—

''(1) IN GENERAL.—Notwithstanding any other provision of this section (other than paragraph (5)) or any other provision of Federal law including sections 20 and 32 of the Banking Act of 1933, a qualified bank holding company may, after such company becomes a bank holding company—

''(A) maintain or enter into any non-banking affiliation which such company was authorized to maintain or enter into as of the date of the enactment of the Depository Institution Affiliation and Thrift Charter Conversion Act or was authorized to maintain following a merger of insured depository institution subsidiaries

pursuant to an application filed no later than such date; and

''(B) engage, directly or through any affiliate described in subparagraph (A) which is not a bank, in any activity in which such company or any affiliate described in subparagraph (A) was authorized to engage as of such date of enactment, or in which such company was authorized to engage following a merger of insured depository institution subsidiaries pursuant to an application filed no later than such date, if the requirements of paragraph (4) are met.

''(2) QUALIFIED BANK HOLDING COMPANY DEFINED.—For purposes of this subsection, the term 'qualified bank holding company' means—

''(A) any company—

''(i) which—

''(I) as of the date of the enactment of the Depository Institution Affiliation and Thrift Charter Conversion Act, is a savings and loan holding company; or

''(II) as of such date of enactment, has filed an application to charter a de novo Federal savings association and thereafter becomes a savings and loan holding company by virtue of the establishment of such savings association; and

''(ii) which as of the dates referred to in subclause (I) or (II), as the case may be, is not a bank holding company and becomes a bank holding company after such date, or any subsidiary of such company; and

''(B) any bank holding company which as of the date of the enactment of the Depository Institution Affiliation and Thrift Charter Conversion Act—

''(i) is a savings and loan holding company; and

''(ii) is exempt from this section pursuant to an order issued by the Board under subsection (d).

''(3) NO LOSS OF SUBSECTION (d) EXEMPTION.—No qualified bank holding company described in paragraph (2)(B) shall lose the grounds

for the exemption under subsection (d) because a savings association which such company controlled, directly or indirectly, as of the date of the enactment of the Depository Institution Affiliation and Thrift Charter Conversion Act, becomes a bank after such date so long as such bank continues to meet the requirements of subparagraphs (A) and (B) of paragraph (4).

''(4) PREREQUISITES FOR CONTINUATION OF GRANDFATHERED ACTIVITIES AND AFFILIATIONS.—

''(A) IN GENERAL.—This subsection shall cease to apply with respect to a qualified bank holding company if, at any time after such company first meets the definition of a qualified bank holding company—

''(i) any insured depository institution controlled by such company which, as of the day before the company first meets the definition of a qualified bank holding company—

''(I) was subject to the requirements contained in section 10(m) of the Home Owners' Loan Act, as in effect on such date, (and regulations in

effect on such date under such section) for treatment as a qualified thrift lender under such section; and

''(II) was not a savings association described in section 10(m)(3)(F) of such Act, as in effect on such date, fails to meet any requirement of such section;

''(ii) any insured depository institution controlled by such company fails to comply with any limitation or restriction on the type of amounts of loans or investments of the institution to which such institution was subject as of the date of the enactment of the Thrift Charter Conversion Act of 1997, other than any limitation relating to qualified thrift investments under section 10(m) of the Home Owners' Loan Act, as in effect on such date, unless such failure to comply is the 1st such failure and the institution returns to compliance within 60 days of having learned or been notified of such noncompliance;

"(iii) the company or any subsidiary of the company acquires more than 5 percent of the shares or assets of any bank or any savings association (as such term is defined in section 3 of the Federal Deposit Insurance Act, as in effect on the date of the enactment of the Depository Institution Affiliation and Thrift Charter Conversion Act) after such date of enactment.

"(B) REQUALIFICATION AS QUALIFIED THRIFT LENDER.—

"(i) NOTIFICATION OF INTENTION TO REQUALIFY.—If an institution referred to in subparagraph (A)(i) notifies—

"(I) the Board; or

"(II) in the case of an institution which is controlled by a financial services holding company, the appropriate Federal banking agency for such company's lead depository institution (as defined by the Financial Services Holding Company Act),

within 15 days of having learned of such institution's failure to meet such requirements, of the intention of the institution to

requalify as a qualified thrift lender pursuant to the requirements of such section, the institution shall be deemed not to have failed to meet the requirements for treatment as a qualified thrift lender for purposes of this paragraph.

''(ii) FAILURE TO REQUALIFY.—If an institution referred to in clause (i) notifies an agency described in subclause (I) or (II) of clause (i) in accordance with such clause and thereafter fails to requalify as a qualified thrift lender within 1 year from the date of the institution's initial failure to meet such requirements, the institution shall be deemed to have failed to meet such requirements at the end of such 1-year period.

''(iii) 1 ELECTION TO REQUALIFY.—An institution referred to in clause (i) may elect to requalify as a qualified thrift lender under this subparagraph only once.

''(5) NONTRANSFERABLE.—This subsection shall not apply with respect to any qualified bank holding company if, after the date of the enactment

of the Depository Institution Affiliation and Thrift Charter Conversion Act—

"(A) any person not under common control with such company acquires, directly or indirectly, control of the company; or

"(B) the company is the subject of any merger, consolidation, or other similar transaction as a result of which a person not under common control with such company acquires, directly or indirectly, control of such company.

"(6) PROHIBITION ON CERTAIN INSURED DEPOSITORY INSTITUTIONS IDENTIFYING THEMSELVES AS NATIONAL BANKS.—

"(A) IN GENERAL.—Notwithstanding the requirement of section 5134 of the Revised Statutes of the United States—

"(i) the name of an insured depository institution subsidiary of a qualified bank holding company which—

"(I) as of the date of the enactment of the Thrift Charter Conversion Act of 1997, is a savings and loan holding company described in section 10(c)(3) of the Home Owners' Loan Act (as in effect on such date); and

''(II) is subject to the restrictions contained in paragraph (4),

may not include the term ''national''; and

''(ii) such insured depository institution may not be identified as a national bank on any sign displayed by the institution or in any advertisement or other publication of the institution.

''(B) DEPOSITORY INSTITUTION NOT LIABLE FOR FRAUDULENT MISREPRESENTATION FOR NOT REPRESENTING ITSELF AS A NATIONAL BANK.—An insured depository institution which is subject to subparagraph (A) shall not be liable for any civil or criminal penalty under any Federal or State consumer protection law, or in any criminal or civil action, for fraudulently misrepresenting the nature of the charter of the institution, for falsely advertising the status of the institution, for making a false statement with respect to the status of the institution, or for any similar offense by reason of the institution's compliance with such subparagraph.

''(7) ENFORCEMENT.—In addition to any other power of the Board, the Board may enforce compliance with the provisions of this subsection with respect to any qualified bank holding company and any bank controlled by such company under section 8 of the Federal Deposit Insurance Act.''.

SEC. 504. TRANSITION PROVISIONS FOR ACTIVITIES OF SAVINGS ASSOCIATIONS WHICH CONVERT INTO OR BECOME TREATED AS BANKS.

(a) IN GENERAL.—Notwithstanding any other provision of Federal law, any insured depository institution which, as of the date of the enactment of the Depository Institution Affiliation and Thrift Charter Conversion Act, is a savings association (as defined in section 3(b) of the Federal Depository Insurance Act (as in effect on such date)) and after such date converts to a national or State bank charter or becomes treated as a State bank pursuant to the amendment made by section 502(b), may continue to engage, directly or indirectly, in any activity in which such institution was lawfully engaged as of such date during the 2-year period beginning on the effective date of such conversion or the effective date of such amendments, as the case may be.

(b) TWO 1-YEAR EXTENSIONS AUTHORIZED.—The 2-year period described in subsection (a) with respect to

any insured depository institution may be extended for such institution not to exceed two additional times for not more than 1 year each time if the appropriate Federal banking agency determines that such extension is necessary to avert substantial loss to the institution and is otherwise consistent with the safety and soundness of the institution.

SEC. 505. REGISTRATION OF BANK HOLDING COMPANIES RESULTING FROM CONVERSIONS OF SAVINGS ASSOCIATIONS TO BANKS OR TREATMENT OF SAVINGS ASSOCIATIONS AS BANKS.

Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended by adding at the end the following new subsections:

''(h) REGISTRATION OF CERTAIN BANK HOLDING COMPANIES.—A company which, as of September 13, 1995, is a savings and loan holding company (as defined in section 10(a)(1)(D) of the Home Owners' Loan Act, as in effect on such date) and is not a bank holding company shall not be required to obtain the approval of the Board under subsection (a) to become a bank holding company after September 13, 1995, as a result of the conversion of any insured depository institution subsidiary of such company into a bank or by virtue of the treatment of any insured depository institution subsidiary of such

company as a bank pursuant to the amendments made by the Thrift Charter Conversion Act of 1997, if such company—

''(1) registers as a bank holding company with the Board in accordance with section 5(a); and

''(2) does not acquire, directly or indirectly, ownership or control of any additional insured depository institution or other company in connection with such conversion or treatment.

''(i) REGULATION OF QUALIFIED BANK HOLDING COMPANIES.—The Board shall regulate qualified bank holding companies (as defined in section 4(k)(2)) in a manner consistent with—

''(1) the regulation of such companies by the Director of the Office of Thrift Supervision before the date of the enactment of the Depository Institution Affiliation and Thrift Charter Conversion Act; and

''(2) the safety and soundness of insured depository institution subsidiaries of such companies.

''(j) OPPORTUNITY TO BECOME A BANK HOLDING COMPANY OR A FINANCIAL SERVICES HOLDING COMPANY.—

''(1) ELECTION.—A company described in subsection (h) may elect to conform the activities of the

company to those activities permitted for a bank holding company or a financial services holding company.

''(2) TRANSITION PERIOD.—A company which makes an election under paragraph (1) shall have a 6-month period beginning on the date of the enactment of the Depository Institution Affiliation and Thrift Charter Conversion Act to conform the activities of the company to those permitted for a bank holding company or a financial services holding company, as the case may be.

''(3) EXEMPTION DURING TRANSITION PERIOD.—During the 6-month period described in paragraph (2), a company which makes an election under paragraph (1) shall be exempt from the requirements imposed on a qualified bank holding company.''.

SEC. 506. ADDITIONAL TRANSITION PROVISIONS AND SPECIAL RULES.

(a) MUTUAL NATIONAL BANKS AUTHORIZED; CONVERSION OF MUTUAL SAVINGS ASSOCIATIONS INTO NATIONAL BANKS.—

(1) IN GENERAL.—Chapter one of title LXII of the Revised Statutes of the United States (12

U.S.C. 21 et seq.) is amended by inserting after section 5133 the following new section:

"SEC. 5133A. MUTUAL NATIONAL BANKS.

"(a) IN GENERAL.—Notwithstanding the paragraph designated the "Third" of section 5134, the Comptroller of the Currency may charter national banks organized in the mutual form either de novo or through a conversion of any stock national or State bank (as defined in section 3 of the Federal Deposit Insurance Act) or any State mutual bank or credit union, subject to regulations prescribed by the Comptroller of the Currency in accordance with this section.

"(b) REGULATIONS.—

"(1) TRANSITION RULES.—National banks organized in the mutual form shall be subject to the regulations of the Director of the Office of Thrift Supervision governing corporate organization, governance, and conversion of mutual institutions, as in effect on September 13, 1995, including parts 543, 544, 546, 563b, and 563c) of chapter V of title 12 of the Code of Federal Regulations (as in effect on such date), during the 3-year period beginning on the date of the enactment of the Thrift Charter Conversion Act of 1997.

''(2) REGULATIONS OF THE COMPTROLLER.—The Comptroller of the Currency shall prescribe appropriate regulations for national banks organized in the mutual form, effective as of the end of the 3-year period referred to in paragraph (1).

''(3) APPLICABILITY OF CAPITAL STOCK REQUIREMENTS.—The Comptroller of the Currency shall prescribe regulations regarding the manner in which requirements of title LXII of the Revised Statutes of the United States with respect to capital stock, and limitations imposed on national banks under such title based on capital stock, shall apply to national banks organized in mutual form pursuant to subsection (a).

''(c) CONVERSIONS.—

''(1) CONVERSION TO STOCK NATIONAL BANK.—Subject to such regulations as the Comptroller of the Currency may prescribe for the protection of depositors' rights and for any other purpose the Comptroller of the Currency may consider appropriate, any national bank which is organized in mutual form pursuant to paragraph (1) may reorganize as a stock national bank.

''(2) CONVERSIONS TO STATE BANKS.—Any national mutual bank may convert to a State bank

charter in accordance with regulations prescribed by the Comptroller of the Currency and applicable State law.''.

(2) MUTUAL BANK HOLDING COMPANIES.—Subsection (g) of section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(g)) is amended to read as follows:

''(g) MUTUAL BANK HOLDING COMPANIES.—

''(1) IN GENERAL.—A national mutual bank may reorganize so as to become a holding company by—

''(A) chartering an interim national bank, the stock of which is to be wholly owned, except as otherwise provided in this section by the national mutual bank; and

''(B) transferring the substantial part of the national mutual bank's assets and liabilities, including all of the bank's insured liabilities, to the interim national bank.

''(2) DIRECTORS AND CERTAIN ACCOUNT HOLDERS'' APPROVAL OF PLAN REQUIRED.—A reorganization is not authorized under this subsection unless—

''(A) a plan providing for such reorganization has been approved by a majority of the

board of directors of the national mutual bank; and

"(B) in the case of a national mutual bank in which holders of accounts and obligers exercise voting rights, such plan has been submitted to an approved by a majority of such individuals at a meeting held at the call of the directors in accordance with the procedures prescribed by the bank's charter and bylaws.

"(3) NOTICE TO THE BOARD; DISAPPROVAL PERIOD.—

"(A) NOTICE REQUIRED.—

"(i) IN GENERAL.—At least 60 days before taking any action described in paragraph (1), a national mutual bank seeking to establish a mutual holding company shall provide written notice to the Board.

"(ii) CONTENTS OF NOTICE.—The notice shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

"(B) TRANSACTION ALLOWED IF NOT DISAPPROVED.—Unless the Board within such 60-day notice period disapproves the proposed

holding company formation, or extends for another 30 days the period during which such disapproval may be issued, the national mutual bank providing such notice may proceed with the transaction, if the requirements of paragraph (2) have been met.

''(C) GROUNDS FOR DISAPPROVAL.—The Board may disapprove any proposed holding company formation only if—

''(i) such disapproval is necessary to prevent unsafe or unsound practices;

''(ii) the financial or management resources of the national mutual bank involved warrant disapproval;

''(iii) the national mutual bank fails to furnish the information required under subparagraph (A); or

''(iv) the national mutual bank fails to comply with the requirement of paragraph (2).

''(D) RETENTION OF CAPITAL ASSETS.—In connection with the transaction described in paragraph (1), a national mutual bank may, subject to the approval of the Board, retain capital assets at the holding company level to

the extent that the capital retained at the holding company is in excess of the amount of capital required in order for the interim national bank to meet all relevant capital standards established by the Comptroller of the Currency for national banks.

''(4) OWNERSHIP.—

''(A) IN GENERAL.—Persons having ownership rights in the national mutual bank under section 5133A of the Revised Statutes of the United States (including paragraph 575.5 of chapter V of title 12 of the Code of Federal Regulations, as in effect on September 13, 1995, and applicable to national mutual banks pursuant to such section) or State law shall have the same ownership rights with respect to the mutual holding company.

''(B) HOLDERS OF CERTAIN ACCOUNTS.—Holders of savings, demand, or other accounts of—

''(i) a national bank chartered as part of a transaction described in paragraph (1); or

''(ii) a mutual bank acquired pursuant to paragraph (5)(B),

shall have the same ownership rights with respect to the mutual holding company as persons described in subparagraph (A) of this paragraph.

''(5) PERMITTED ACTIVITIES.—A mutual holding company may engage only in the following activities:

''(A) Investing in the stock of a national or State bank.

''(B) Acquiring a mutual bank through the merger of such bank into a national bank subsidiary of such holding company or an interim national bank subsidiary of such holding company.

''(C) Subject to paragraph (6), merging with or acquiring another holding company, one of whose subsidiaries is a national mutual bank.

''(D) Investing in a corporation the capital stock of which is available for purchase by a national mutual bank under Federal law or under the law of any State where the home office of any subsidiary bank is located.

''(E) Engaging in the activities permitted under section 4(c).

''(F) Engaging in the activities permitted for financial services holding companies under the Financial Services Holding Company Act, if such company elects to be a financial services holding company.

''(6) LIMITATIONS ON CERTAIN ACTIVITIES OF ACQUIRED HOLDING COMPANIES.—

''(A) NEW ACTIVITIES.—If a mutual holding company acquires or merges with another holding company under paragraph (5)(C), the holding company acquired or the holding company resulting from such merger or acquisition may only invest in assets and engage in activities which are authorized under paragraph (5).

''(B) GRACE PERIOD FOR DIVESTING PROHIBITED OR DISCONTINUING PROHIBITED ACTIVITIES.—Not later than 2 years following a merger or acquisition described in paragraph (5)(C), the acquired holding company or the holding company resulting from such merger or acquisition shall—

''(i) dispose of any asset which is an asset in which a mutual holding company may not invest under paragraph (5); and

"(ii) cease any activity which is an activity in which a mutual holding company may not engage under paragraph (5).

"(7) CHARTERING AND OTHER REQUIREMENTS.—

"(A) IN GENERAL.—A mutual holding company shall be chartered by the Board and shall be subject to such regulations as the Board may prescribe.

"(B) OTHER REQUIREMENTS.—Unless the context otherwise required, a mutual holding company shall be subject to the other requirements of this Act regarding regulation of holding companies.

"(8) CAPITAL IMPROVEMENT.—

"(A) PLEDGE OF STOCK OF SAVINGS ASSOCIATION SUBSIDIARY.—This section shall not prohibit a mutual holding company from pledging all or a portion of the stock of a national bank chartered as part of a transaction described in paragraph (1) to raise capital for such bank.

"(B) ISSUANCE OF NONVOTING SHARES.—No provision of this Act shall be construed as prohibiting a national bank chartered as part of

a transaction described in paragraph (1) from issuing any nonvoting shares or less than 50 percent of the voting shares of such bank to any person other than the mutual holding company.

''(9) INSOLVENCY AND LIQUIDATION.—

''(A) IN GENERAL.—Notwithstanding any provision of law, upon—

''(i) the default of any national bank—

''(I) the stock of which is owned by any mutual holding company; and

''(II) which was chartered in a transaction described in paragraph (1);

''(ii) the default of a mutual holding company; or

''(iii) a foreclosure on a pledge by a mutual holding company described in paragraph (8)(A),

A trustee shall be appointed receiver of such mutual holding company and such trustee shall have the authority to liquidate the assets of,

and satisfy the liabilities of, such mutual holding company pursuant to title 11, United States Code.

"(B) DISTRIBUTION OF NET PROCEEDS.—Except as provided in subparagraph (C), the net proceeds of any liquidation of any mutual holding company pursuant to subparagraph (A) shall be transferred to persons who hold ownership interests in such mutual holding company.

"(C) RECOVERY BY FEDERAL DEPOSIT INSURANCE CORPORATION.—If the Federal Deposit Insurance Corporation incurs a loss as a result of the default of any depository institution subsidiary of a mutual holding company which is liquidated pursuant to subparagraph (A), the Federal Deposit Insurance Corporation shall succeed to the ownership interest of the depositors of such depository institution in the mutual holding company, to the extent of the Federal Deposit Insurance Corporation's loss.

"(10) STATE MUTUAL BANK HOLDING COMPANY.—

"(A) IN GENERAL.—Notwithstanding any provision of Federal law, a State bank operating in mutual form may reorganize so as to form a holding company under State law.

"(B) REGULATION OF STATE MUTUAL HOLDING COMPANY.—A corporation organized as a holding company in accordance with subparagraph (A) shall be regulated on the same terms and be subject to the same limitations as any other holding company which controls a bank.

"(11) REGULATIONS.—

"(A) TRANSITION RULES.—Mutual bank holding companies organized under this subsection shall be subject to the regulations of the Director of the Office of Thrift Supervision governing corporate organization, governance, and conversion of mutual institutions, as in effect on September 13, 1995, including part 575 of chapter V of title 12 of the Code of Federal Regulations (as in effect on such date), during the 3-year period beginning on the date of the enactment of the Thrift Charter Conversion Act of 1997.

"(B) REGULATIONS OF THE BOARD.—The Board shall prescribe appropriate regulations for mutual holding companies, effective at the end of the 3-year period referred to in subparagraph (A).

"(12) NO CHANGE OF CONTROL.—Any second stage conversion of a mutual holding company to full stock form shall not be deemed to be a change of control if, in connection with such conversion, no company, directly or indirectly, acquires control of such mutual holding company or any successor to such company.

"(13) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

"(A) MUTUAL HOLDING COMPANY.—The term 'mutual holding company' means a corporation organized as a holding company under this subsection.

"(B) DEFAULT.—The term 'default' means an adjudication or other official determination of a court of competent jurisdiction or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed.

"(C) NATIONAL MUTUAL BANK.—The term 'national mutual bank' means a national bank organized in mutual form under section 5133A of the Revised Statutes of the United States.".

(3) LIMITATION ON FEDERAL REGULATION OF STATE BANKS.—Except as otherwise provide in Federal law, the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation may not adopt or enforce any regulation which contravenes the corporation governance rules prescribed by State law or regulation for State banks unless the Comptroller, Board, or Corporation finds that such Federal regulation is necessary to assure the safety and soundness of such State banks.

(4) CONVERSIONS OF MUTUAL SAVINGS ASSOCIATION TO MUTUAL NATIONAL BANKS BY OPERATION OF LAW.—Notwithstanding any other provision of Federal or State law, any savings association (as defined in section 3 of the Federal Deposit Insurance Act (as in effect on September 13, 1995)) which is organized in mutual form as of the date of the enactment of this Act may become a national mutual bank by operation of law if the association—

(A) files the articles of association and organization certificate with the Comptroller of the Currency before January 1, 1998, in accordance with chapter one of the LXII of the Revised Statutes of the United States; and

(B) provides such other document or information as the Comptroller of the Currency may prescribe in regulations consistent with this section and section 5133A of the Revised Statutes of the United States (as added by paragraph (1) of this subsection).

(b) MEMBERSHIP IN FEDERAL HOME LOAN BANKS.—Any insured depository institution which—

(1) as of the date of the enactment of this Act, is a Federal savings association which, pursuant to section 6(e) of the Federal Home Loan Bank Act, may not voluntarily withdraw from membership in a federal home loan bank; and

(2) after such date converts from a Federal savings association to a national bank, shall continue to be subject to the prohibition under such section on voluntary withdrawal from such membership as though such bank were still a Federal savings association until the bank ceases to be a national bank.

(c) BRANCHES.—

(1) IN GENERAL.—Notwithstanding any provision of the Federal Deposit Insurance Act, the Bank Holding Company Act of 1956, or any other Federal or State law, any depository institution which—

(A) as of the date of the enactment of this Act, is a savings association; and

(B) becomes a bank before January 1, 1998, or, pursuant to the amendments made by this subsection, is treated as a bank as of such date under the Federal Deposit Insurance Act,

and any depository institution or bank holding company which acquires such depository institution, may continue, after the depository institution becomes or commences to be treated as a bank, to operate any branch or agency which the savings association was operating as a branch or agency or was in the process of establishing as a branch or agency on January 7, 1997.

(2) NO ADDITIONAL BRANCHES.—Paragraph (1) shall not be construed as authorizing the establishment, acquisition, or operation of any additional branch of a depository institution, or the conversion of any agency to a branch, in any State by virtue of the operation by such institution of a branch or

agency in such State pursuant to such paragraph except to the extent such establishment, acquisition, operation, or conversion is permitted under the Federal Deposit Insurance Act, Bank Holding Company Act of 1956, and any other applicable Federal or State law.

(3) ESTABLISHING A BRANCH OF AGENCY.—For purposes of paragraph (1), a savings association shall be treated as having been in the process of establishing a branch or agency as of January 7, 1997, if, as of such date, the savings association—

(A) had received approval from the Director of the Office of Thrift Supervision to establish such branch or agency;

(B) had pending with the Director of the Office of Thrift Supervision an application or notice to establish such branch or agency;

(C) had a legal and contractual obligation to establish such branch or agency;

(D) had received authority from the appropriate Federal banking agency to establish such branch in connection with the assumption of liabilities or an acquisition of an insured depository institution pursuant to subsection (f) or

(k) of section 13 of the Federal Deposit Insurance Act or section 408(m) of the National Housing Act (as in effect before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989); or

(E) in the case of a well capitalized depository institution, is able to demonstrate to the appropriate Federal banking agency that the savings association—

(i) had made a significant financial commitment; and

(ii) had taken legally binding action or incurred a contractual obligation, in furtherance of the establishment of such branch or agency.

(d) TRANSITION PROVISION RELATING TO LIMITATIONS ON LOANS TO ONE BORROWER.—Section 5200 of the Revised Statutes of the United States (12 U.S.C. 84) is amended by adding at the end the following new subsection:

''(e) TRANSITION PROVISIONS FOR SAVINGS ASSOCIATIONS CONVERTING TO NATIONAL BANKS.—In the case of any depository institution which, as of the date of the enactment of the Depository Institution Affiliation

and Thrift Charter Conversion Act, is a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (as in effect on such date)) and becomes a national bank on or before January 1, 1998, any loan, or legally binding commitment to make a loan, made or entered into by such institution becomes a national bank may continue to be held without regard to any limitation contained in this section and any such loan may be renewed, modified or extended after the savings association becomes a national bank except that any increase in the aggregate amount of funds disbursed under such loan shall be subject to prior approval by the Comptroller of the Currency.''.

(e) RIGHTS AND AUTHORITY OF BANKS RESULTING FROM CONVERSIONS OF SAVINGS ASSOCIATIONS.—

(1) IN GENERAL.—Upon conversion of a savings association to a national or State bank in accordance with this Act and the amendments made by this title or other provisions of law—

(A) the national or State bank shall succeed to all rights, benefits, privileges, powers and franchises, and be subject to all the obligations, duties, restrictions, and disabilities, of such savings association under any contract, agreement, document, or instrument in effect at

the time of such conversion to which such savings association was a party; and

(B) any reference to the savings association in any such contract, agreement, document, or instrument shall be deemed to be a reference to such national or State bank.

(2) TREATMENT OF BANK OR SAVINGS ASSOCIATION.—If the application of paragraph (1) with respect to any national or State bank referred to in such paragraph would—

(A) be inconsistent or in conflict with any contract, agreement, document, or instrument described in such paragraph;

(B) constitute a default under the contract, agreement, document, or instrument;

(C) cause such national or State bank to be in default or breach under any provision of the contract, agreement, document, or instrument, the national or State bank shall be deemed to be, and treated as, a savings association for purposes of the contract, agreement, document, or instrument.

(f) TRANSFER AND GRANDFATHER OF MUTUAL HOLDINGS COMPANIES.—

(1) SUPERVISION AND REGULATION OF MUTUAL HOLDINGS COMPANIES.—

(A) IN GENERAL.—The supervision and regulation of any mutual holding company in existence as of the date of the enactment of this Act is hereby transferred to the Board of Governors of the Federal Reserve System.

(B) TRANSITION RULES.—Mutual bank holding companies described in subparagraph (A) shall be subject to the regulations of the Director of the Office of Thrift Supervision, as in effect on September 13, 1995, including part 575 of chapter V of title 12 of the Code of Federal Regulations (as in effect on such date), during the 3-year period beginning on the date of the enactment of the Thrift Charter Conversion Act of 1997.

(2) GRANDFATHER OF EXISTING FEDERAL MUTUAL HOLDING COMPANIES.—

(A) IN GENERAL.—Any Federal mutual holding company in existence as of the date of the enactment of this Act shall be subject to section 4(k) of the Bank Holding Company Act of 1956 (as added by section 2222 of this title).

(B) TREATMENT UNDER 4(K).—Any treatment of a Federal mutual holding company under section 4(k) shall not be construed as a change in control unless, as a result of the transaction, the holding company no longer controls the entity.

(g) TREATMENT OF INSTITUTIONS SPECIALIZING IN HOUSING FINANCE.—Section 18(o)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1828(o)(2)) is amended by adding at the end the following new subparagraph:

''(C) TREATMENT OF INSTITUTIONS SPECIALIZING IN HOUSING FINANCE.—No depository institution shall be subject to regulatory criticism, enforcement action of any type, or increased capital requirements by the appropriate Federal banking agency based on credit concentration concerns resulting from maintaining a portfolio that reflects the institution's specialization in residential housing finance.''.

SEC. 507. TECHNICAL AND CONFORMING AMENDMENTS.

(a) AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.—

(1) Section 3(z) of the Federal Deposit Insurance Act (12 U.S.C. 1813(z)) is amended by striking '', the Director of the Office of Thrift Supervision''.

(2) Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended by striking paragraph (9).

(3) Section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) is amended by striking subsection (k).

(4) Subsections (c)(2) and (i)(2) of section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) are each amended—

(A) in the subparagraph (B), by inserting ''and'' after the semicolon;

(B) in subparagraph (C), by striking ''; and'' and inserting a period; and

(C) by striking subparagraph (D).

(5) Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by striking subsection (m).

(6) The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by striking 28.

(b) AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.—

(1) Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended by striking subsections (i) and (j).

(2) Section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)) is amended by striking the sentence preceding the penultimate sentence.

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

(A) in paragraph (2)(A)(i), by striking ''or an insured institution'' and all that follows through ''of this subsection)'';

(B) in paragraph (2)(A)(ii)—

(i) by striking ''or a savings association'' where such term appears in the portion of such paragraph which precedes subclause (I));

(ii) by inserting ''and'' at the end of subclause (VI);

(iii) by striking subclauses (VIII), (IX), and (X); and

(iv) by striking ''(V), and (VIII)'', where such term appears in the portion of such paragraph which appears after the

end of subclause (VII), and inserting ''and (V)''; and

(C) by striking paragraphs (10), (11), (12), and (13).

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

(A) by striking paragraphs (1) and (2); and

(B) in paragraph (3)(A), by striking ''any Federal savings association'' and all that follows through the period at the end of such paragraph and inserting ''such association was authorized to engage under this section as of September 15, 1995.''

(c) OTHER TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 804(a) of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3803) is amended.—

(A) in the portion of such subsection which precedes paragraph (1)—

(i) by striking '', and other nonfederally chartered housing creditors,''; and

(ii) by inserting ''and in order to permit other nonfederally chartered housing

creditors to make, purchase, and enforce alternative mortgage transactions,'' after ''enforcing alternative mortgage transactions,''; and

(B) in paragraph (1), by inserting ''(as such term is defined in section 3(a) of the Federal Deposit Insurance Act)'' after ''with respect to banks''.

(2) Section 205 of the Depository Institution Management Interlock Act (12 U.S.C. 3204) is amended.—

(A) in the portion of paragraph (8)(A) which precedes clause (i), by striking ''diversified savings'' and all that follows through ''with respect to'' and inserting ''depository institution holding company which, as of September 13, 1995, and at all times thereafter, satisfies the consolidated net worth and consolidated net earnings requirements for a diversified savings and loan holding company (as set forth in section 10(1)(F) of Home Owners' Loan Act, as 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

(2) the term ''State bank'' shall be deemed to include any depository institution included in the definition of such term in section 3(a)(2) of such Act.

SEC. 509. REPEAL OF HOME OWNERS' LOAN ACT.

The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is hereby repealed.

SEC. 510. DEFINITIONS.

For purposes of this subtitle, the terms ''appropriate Federal banking agency'', ''bank holding company'', ''depository institution'', ''Federal savings association'', ''insured depository institution'', ''savings association'', and ''State bank'' have the same meanings as in section 3 of the Federal Deposit Insurance Act (as in effect on the date of the enactment of this Act).

Subtitle B—Elimination of Office of The Thrift Supervision

SEC. 511. OFFICE OF THRIFT SUPERVISION ABOLISHED.

Effective January 1, 1998, the Office of Thrift Supervision and the position of Director of the Office of Thrift Supervision are hereby abolished.

SEC. 512. DETERMINATION OF TRANSFERRED FUNCTIONS AND EMPLOYEES.

(a) ALL OFFICE OF THRIFT SUPERVISION EMPLOYEES SHALL BE TRANSFERRED.—All employees of the Office of Thrift Supervision shall be identified for transfer under subsection (b) to the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System.

(b) FUNCTIONS AND EMPLOYEES TRANSFERRED.—

(1) IN GENERAL.—The Director of the Office of Thrift Supervision, the Comptroller of the Currency, the Chairperson of the Federal Deposit Insurance Corporation, and the Chairman of the Board of Governors of the Federal Reserve System shall jointly determine the functions or activities of the Office of Thrift Supervision, and the number of employees of such Office necessary to perform or support such functions or activities, which are transferred from the Office to the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System, as the case may be.

(2) ALLOCATION OF EMPLOYEES.—The Comptroller of the Currency, the Chairperson of the Federal Deposit Insurance Corporation, and the Chairman of the Board of Governors of the Federal Reserve System shall allocate the employees of the Office of Thrift Supervision consistent with the number determined pursuant to paragraph (1) in a manner which such Comptroller, Chairperson, and Chairman, in their sole discretion, deem equitable except that, within work units, the agency preferences of individual employees shall be accommodated as far as possible.

(c) RIGHTS OF EMPLOYEES OF THE OFFICE OF THRIFT SUPERVISION.—All employees of the Office of Thrift Supervision who are identified for transfer under subsection (b) shall be entitled to the following rights:

(1) Each employee so identified shall be transferred to the appropriate agency or entity for employment no later than the earlier of the end of the 60-day period beginning on the date such employees are identified for transfer under subsection (b) or January 1, 1998, and such transfer shall be deemed a transfer of function for the purpose of section 3503 of title 5, United States Code.

(2) Each transferred employee holding a permanent position shall not be involuntarily separated or reduced in grade or compensation for 1 year after the date of transfer, except for cause or, if the employee is a temporary employee, separated in accordance with the terms of the appointment.

(3) If any agency or entity to which employees are transferred determines, after the end of the 1-year period beginning on the date the transfer of functions to such agency or entity is completed, that a reorganization of the combined work force is required, that reorganization shall be deemed a ''major reorganization'' for purposes of affording affected employees retirement under section 833(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

(d) DISPOSITION OF AFFAIRS.—

(1) IN GENERAL.—In winding up the affairs of the Office of Thrift Supervision, the Director of the Office of Thrift Supervision shall consult and cooperate with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System, as the case may be, to facilitate the orderly transfer of the functions to such Comptroller, Corporation, or Board.

(2) CONTINUING AUTHORITY OF DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—Except as provided in paragraph (1), no provision of this subtitle shall be construed as affecting the authority vested in the Director of the Office of Thrift Supervision before the date of enactment of this Act which is necessary to carry out the duties of the position until the date upon which the position of Director of the Office of Thrift Supervision is abolished.

(3) CONTINUATION OF AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States, or any successor to any such agency, department or instrumentality, which was providing support services to the Director of the Office of Thrift Supervision on the day before the date such position is abolished shall—

(A) continue to provide such services on a reimbursable basis, in accordance with the terms of the arrangement pursuant to which such services were provided until the arrangement is modified or terminated in accordance with such terms, except that effective January 1, 1998, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the

Board of Governors of the Federal Reserve System, as the case may be, shall be substituted for the Director of the Office of Thrift Supervision as a party to the arrangement; and

(B) consult with the Comptroller, the Corporation, or the Board to coordinate and facilitate a prompt and reasonable transition.

(e) TRANSFER OF PROPERTY.—Effective January 1, 1998, all property of the Office of Thrift Supervision shall be transferred to the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System, as determined in accordance with subsections (a) and (b).

SEC. 513. SAVINGS PROVISIONS.

(a) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—No provision of this title shall be construed as affecting the validity of any right, duty or obligation of the United States, the Director of the Office of Thrift Supervision, or any person, which existed on the day before the date upon which the position of Director of the Office of Thrift Supervision and the Office of Thrift Supervision are abolished.

(b) CONTINUATION OF SUITE.—No action or other proceeding commenced by or against the Director of the

Office of Thrift Supervision shall abate by reason of enactment of this title, except that, effective January 1, 1998, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System, as the case may be, shall be substituted as a party to any such action or proceeding.

(c) CONTINUATION OF ADMINISTRATIVE RULES.—All orders, resolutions, determinations, regulations, interpretative rules, other interpretations, guidelines, procedures, supervisory and enforcement actions, and other advisory material (other than any regulation implementing or prescribed pursuant to section 3(f) of the Home Owners' Loan Act (as in effect on September 13, 1995)) which—

(1) have been issued, made, prescribed, or permitted to become effective by the Office of Thrift Supervision, and

(2) are in effect on December 31, 1997 (or become effective after such date pursuant to the terms of the order, resolution, determination, rule, other interpretation, guideline, procedure, supervisory or enforcement action, and other advisory material, as in effect on such date), shall—

(A) continue in effect according to the terms of such orders, resolutions, determinations, regulations, interpretative rules, other interpretations, guidelines, procedures, supervisory or enforcement actions, or other advisory material;

(B) be administered by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System; and

(C) be enforceable by or against the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System until modified, terminated, set aside, or superseded in accordance with applicable law by the Comptroller, Corporation, or Board, by any court of competent jurisdiction, or by operation of law.

(d) TREATMENT OF REFERENCES IN ADJUSTABLE RATE MORTGAGES ISSUED BEFORE FIRREA.—

(1) REFERENCES IN PRIOR LAW.—For purposes of section 402(e) of Financial Institutions Reform, Recovery, and Enactment Act of 1989 (12 U.S.C. 1437 note), any reference in such section to—

(A) the Director of the Office of Thrift Supervision shall be deemed to be a reference to the Secretary of the Treasury; and

(B) a Savings Association Insurance Fund member shall be deemed to be a reference to an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act).

(e) TREATMENT OF REFERENCES IN ADJUSTABLE RATE MORTGAGES INSTRUMENTS ISSUED AFTER FIRREA.—

(1) IN GENERAL.—For purposes of adjustable rate mortgage instruments that are in effect as of the date of enactment of this Act, any reference in the instrument to the Director of the Office of Thrift Supervision or Savings Association Insurance Fund members shall be treated as a reference to the Secretary of the Treasury or insured depository institutions (as defined in section 3 of the Federal Deposit Insurance Act), as appropriate.

(2) SUBSTITUTION FOR INDEXES.—If any index used to calculate the applicable interest rate on any adjustable rate mortgage instrument is no longer calculated and made available as a direct or indirect result of the enactment of this title, any index—

(A) made available by the Secretary of the Treasury; or

(B) determined by the Secretary of the Treasury, pursuant to paragraph (4), to be substantially similar to the index which is no longer calculated or made available,

may be substituted by the holder of any such adjustable rate mortgage instrument upon notice to the borrower.

(3) AGENCY ACTION REQUIRED TO PROVIDE CONTINUED AVAILABILITY OF INDEXES.—Promptly after the enactment of this subsection, the Secretary of the Treasury, the Chairperson of the Federal Deposit Insurance Corporation, and the Comptroller of the Currency shall take such action as may be necessary to assure that the indexes prepared by the Director of the Office of Thrift Supervision immediately before the enactment of this subsection and used to calculate the interest rate on adjustable rate mortgage instruments continue to be available.

(4) REQUIREMENTS RELATING TO SUBSTITUTE INDEXES.—If any agency can no longer make available an index pursuant to paragraph (3), an index that is substantially similar to such index may be substituted for such index for purposes of paragraph

(2) if the Secretary of the Treasury determines, after notice and opportunity for comment, that—

(A) the new index is based upon data substantially similar to that of the original index; and

(B) the substitution of the new index will result in an interest rate substantially similar to the rate in effect at the time the original index became unavailable.

SEC, 514. COST OF FUNDS INDEXES.

(a) COST OF FUNDS INDEX DEFINED.—The term ''cost of funds indexed'' means any index that is published by a Federal home loan bank and is based, in whole or in part, upon the cost of funds of such bank's members.

(b) CALCULATIONS BASED ON TYPE OF CHARTER AND INSURANCE FUND MEMBERSHIP OF MEMBERS.— If any cost of funds index includes data based on charter type, insurance fund membership, or other similar characteristics of members of a Federal home loan ban, such index shall be calculated after the date of the enactment of this Act using data only from insured depository institutions which were bank members and whose data was included in such index on or before such date of enactment.

(c) ACQUISITION OF DATA.—

(1) IN GENERAL.—Each insured depository institution the data from which is required to compile a cots of funds index in accordance with subsection (b) shall provide to the Federal home loan bank which maintains the index such information as may be necessary, and in such form as may be appropriate, for the bank to calculate and publish the index.

(2) ENFORCEMENT BY BANKING AGENCIES.—Each appropriate Federal banking agency shall take such action as may be necessary to ensure that insured depository institutions which are required to provide information to any Federal home loan bank under paragraph (1) furnish such information on a timely basis and in the form required by the bank.

(3) TREATMENT OF INSTITUTIONS.—Notwithstanding any other provision of law, an insured depository institution which furnishes information to a Federal home loan bank pursuant to this section for use in compiling a cost of funds index shall not be deemed to control, directly, or indirectly, such index.

(d) CERTAIN DATA EXCLUDED.—Notwithstanding subsections (b) and (c), no cost of funds index shall include any data from any insured depository institution which results from the merger, consolidation, or other

combination of a member of a Federal home loan bank with a nonmember of any such bank if—

(1) the total assets of the nonmember exceed the total assets of the bank member at the time of such merger, consolidation, or other combination; or

(2) in the case of a merger, consolidation, or other merger in which a member of a Federal home loan bank is the resulting insured depository institution, combined ration of the average amount of single-family loan balances to average total assets of all insured depository institutions involved in such merger, consolidation, or other combination for the 12-months period ending on the date of such transaction is less than 70 percent.

(e) OTHER DEFINITIONS.—For purposes of this section, the terms ''appropriate Federal banking agency'' and ''insured depository institution'' shall have the same meanings as in section 3 of the Federal Deposit Insurance Act.

SEC. 515. REFERENCES IN FEDERAL LAW TO DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.

Effective January 1, 1998, any reference in any Federal law to the Director of the office of Thrift Supervision or the Office of Thrift supervision shall be deemed to be a reference to the appropriate Federal banking agency (as

defined in section 3(q) of the Federal Deposit insurance Act).

SEC. 516. RECONFIGURATION OF BOARD OF DIRECTORS OF FDIC AS A RESULT OF REMOVAL OF DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.

(a) IN GENERAL.—Section 2(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1812(a)(1)) is amended to read as follows:

''(1) IN GENERAL.—The management of the Corporation shall be vested in a Board of Directors consisting of 5 members—

(A) 1 of whom shall be the Comptroller of the Currency; and

(B) 4 of whom shall be appointed by the President, and with the advice and consent of the Senate, from among individuals who are citizens of the United States, 1 of whom shall have State bank supervisory experience''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 2(d)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1812(d)(2)) is amended—

(A) by striking ''or the Office of Director of the Office of Thrift Supervision'';

(B) by striking ''or such Director'';

(C) by striking ''or the acting Director of the Office of Thrift Supervision, as the case may be''; and

(D) by striking ''or Director''.

(2) Section 2(f)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1812(f)(2)) is amended by striking ''or of the Office of Thrift Supervision''.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on January 1, 1998.

Subtitle C—Merger of BIF and SAIF

SEC. 521. AMENDMENT TO ECONOMIC GROWTH AND REGULATORY PAPERWORK REDUCTION ACT OF 1996.

Section 2704(c) of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 is amended to read as follows:

''(c) EFFECTIVE DATE.—This section and the amendments made by this section shall become effective on the date of the enactment of the Depository Institution Affiliation and Thrift Charter Conversion Act.''.

TITLE VI—NATIONAL MARKET FUNDING LENDING INSTITUTIONS

SEC. 601. NATIONAL MARKET FUNDED LENDING INSTITUTIONS.

Chapter 1 of title LXII of the Revised Statutes of the United States is amended by adding the following section:

"SEC. 5158. NATIONAL MARKET FUNDED LENDING INSTITUTIONS.

''(a) NATIONAL MARKET FUNDED LENDING INSTITUTIONS.—

''(1) ORGANIZATION OF NATIONAL MARKET FUNDED LENDING INSTITUTIONS.—Any company (as defined in section 2(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(b)) or any number of natural persons, not less in any case than five, may apply to the Comptroller of the Currency on such forms and in accordance with such procedures as the Comptroller may prescribe by regulation, for permission to organize a national market funded lending institution. Upon approval of the application, such national market funded lending institution shall be a body corporate, chartered under the laws of the United States by the Comptroller. All

national market funded lending institutions shall operate pursuant to the requirements of this section at the direction of a board of directors elected at an organizational meeting to be held as soon as practicable after issuance by the Comptroller of a charter by such company or such natural persons for the purpose of electing such board of directors and taking such other action necessary, pursuant to the charter and the regulations issued by the Comptroller, to complete the corporate organization of the national market funded lending institution. Immediately following their election, the board of directors shall meet to elect officers of the national market funded lending institution and to take such other action, as prescribed by the Comptroller, to complete the corporate organization of such national market funded lending institution.

''(2) UNAUTHORIZED ORGANIZATION PROHIBITED.—No company or person may organize a national market funded lending institution, collect money from others for such purpose, or represent itself, himself, or herself as authorized to do so and no national market funded lending institution shall

transact any business prior to completion of its organization except as provided in this Act and in implementing regulations of the Comptroller.

''(3) AUTHORIZED ACTIVITIES FOR NATIONAL MARKET-FUNDED LENDING INSTITUTION.—Subject to the provisions of paragraphs (4) and (5) of this subsection, and subsections (b) and (c) of this section, a national market funded lending institution may exercise, in accordance with its articles of organization and such regulations as are issued by the Comptroller, all of the powers and privileges of a national banking association formed in accordance with section 5133 of the Revised Statutes (12 U.S.C. 21).

''(4) PROHIBITION OF TAKING DEPOSITS OR RECEIVING FEDERAL DEPOSIT INSURANCE.—No national market funded lending institution may—

(A) become an ''insured depository institution'' within the meaning of section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)) or acquire, directly or indirectly through a subsidiary, control of such an insured depository institution;

(B) accept any deposits as defined in section (3)(l)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)(1);

(C) advertise or hold itself out as having deposits insured by the Federal Deposit Insurance Corporation.

''(5) PROHIBITION ON ACCESS TO DISCOUNT WINDOW.—No national market funded lending institution may exercise discount borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act.

''(6) PROHIBITION ON ACCESS TO PAYMENTS SYSTEM.—No national market funded lending institution may obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11A of the Federal Reserve Act.

''(7) CAPITAL.—The capital of national market funded lending institution shall be maintained at all times at such level and in such manner as may be prescribed by the Comptroller by regulation.

''(8) PROHIBITION ON IDENTIFICATION AS A BANK.—

''(A) In general.—Notwithstanding the requirement of section 5134 of the Revised Statutes of the United States—

''(i) the name of a national market lending institution may not include the term ''bank''; and

''(ii) such institution may not be identified as a bank on any sign displayed by the institution or in any advertisement or other publication of the institution.

''(B) DEPOSITORY INSTITUTION NOT LIABLE FOR FRAUDULENT MISREPRESENTATION FOR NOT REPRESENTING ITSELF AS A BANK.—A national market lending institution shall not be liable for any civil or criminal penalty under any Federal or State consumer protection law, or in any criminal or civil action, for falsely advertising the status of the institution, for making a false statement with respect to the status of the institution, or for any similar offense by reason of the institution's compliance with this paragraph.

''(9) IMPLEMENTING REGULATIONS.—The Comptroller shall promulgate such regulations as may be necessary to implement the provisions of this section.

''(b) REGULATION AND SUPERVISION OF NATIONAL MARKET FUNDED LENDING INSTITUTION.—

''(1) AUTHORITY VESTED IN COMPTROLLER OF THE CURRENCY.—Notwithstanding any other provision of law, the authority to regulate and supervise the activities of national market funding lending institutions shall be vested exclusively in the Comptroller of the Currency.

''(2) EXAMINATION.—Each national market funded lending institution and each subsidiary thereof shall be subject to such examinations and to such reporting and recordkeeping requirements as the Comptroller may prescribe. The cost of examinations shall be assessed against and paid by such national market funded lending institution. Examiners appointed by the Comptroller for the purposes of this Act shall be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under the Federal Reserve Act and title LXII of the Revised Statutes and shall have, in the exercise of functions under this Act, the same powers and privileges as are vested in such examiners by law. If any national market funded lending institution fails to pay any assessment required under this subsection within 60 days of such assessment, or refuses to permit any examiner appointed by the Comptroller to make an examination, or refuses to

provide any information required to be disclosed by regulation or in the course of any examination, or submits or publishes any false or misleading report or information, the Comptroller may assess against such national market funded lending institution civil penalty of not more than $5,000 for each day any such failure or refusal continues. And such civil penalty shall be assessed by the Comptroller in a manner prescribed in subparagraphs (E), (F), (G), (I) and (J) of section 8(i)(2) of the Federal Deposit Insurance Act, for penalties imposed by such section, and such assessment shall also be subject to the provisions of subparagraph (H) of that section and of section 8(h) of that Act.

''(3) ENFORCEMENT.—

''(A) CAPITAL.—If any national market funded lending institution fails to maintain capital at or above the minimum level prescribed by the Comptroller's regulations, the Comptroller may issue a directive requiring the national market funded lending institution to submit and adhere to a plan for increasing capital which is acceptable to the Comptroller. Any such directive, and such plan when approved by

the Comptroller, shall be enforceable as provided in this paragraph.

''(B) CEASE-AND-DESIST AUTHORITY.—If a national market funded lending institution subject to a capital directive issued pursuant to subparagraph (A) fails to submit or adhere to a plan for increasing capital which is acceptable to the Comptroller, or if the Comptroller has reasonable cause to believe that any national market funded lending institution has accepted any deposit or has taken action which has caused it to become an ''insured depository institution'' within the meaning of section 3(c)(2) of the Federal Deposit Insurance Act or has represented to any person that any amount accepted by such national market funded lending institution is an ''insured deposit'' within the meaning of section 3(m) of the Federal Deposit Insurance Act, the Comptroller may issue and serve upon such national market funded lending institution a notice of charges which shall contain a statement of the facts constituting the alleged violation or violations of this Act and shall fix a time and a place at which a hearing will be held to determine whether an order to

cease-and-desist therefrom should be issued against the national market funded lending institution. Such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of such notice unless an earlier or later date is set by the Comptroller at the request of the national market funded lending institution. Unless the institution so served shall appear at the hearing, it shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing the Comptroller shall find that any violation or violations specified in the notice of charges has or have been established, the Comptroller may issue an order to cease-and-desist from any such violation or violations and, in an appropriate case as determined by the Comptroller in his or her discretion, to take affirmative action to correct the conditions resulting from any such violation or violations. Such order shall become effective at the expiration of 30 days after service thereof upon the national market funded lending institution (except in the case of a cease-and-desist order issued upon consent,

which shall become effective at the time specified therein), and shall remain effective and enforceable, as provided therein except as stayed, modified, terminated or set aside by action of the Comptroller or reviewing court. Any hearing provided for in this subsection and judicial review of any final cease-and-desist order (other than a cease-and-desist order issued upon consent, which shall be unreviewable) shall be in accordance with the provisions of section 8(h) of the Federal Deposit Insurance Act.

''(C) CIVIL MONEY PENALTY.—Any person who violates, or has caused a national market funded lending institution to violate any cease-and-desist order issued pursuant to subparagraph (B) shall forfeit and pay a civil penalty of not more than $100,000 for each day during which such violation continues. Any such civil penalty shall be assessed and collected by the Comptroller in the manner provided in subparagraphs (E), (F), (G), (I), and (J) of section 8(i)(2) of the Federal Deposit Insurance Act, and any such assessment shall be subject to the provisions of subparagraph (H) of that section and of section 8(h) of that Act.

"(D) CHARTER REVOCATION.—If the Comptroller determines that any national market funded lending institution has violated any cease-and-desist order which was issued under subparagraph (B) of this paragraph and which has become final, the Comptroller may, in addition to or in lieu of any other remedies provided by law, issue an order revoking the charter of such national market funded lending institution. Any order revoking the charter of a national market funded lending institution shall be effected within 20 days of service upon such national market funded lending institution unless stayed, modified, terminated or set aside by a court in proceedings authorized in this subparagraph. The national market funded lending institution shall give notice of such revocation order to each of its depositors in such manner and at such times as the Comptroller may deem necessary and may order for the protection of the depositors. Any national market funded lending institution served with an order revoking its charter, may, within 10 days of the date of service of such order, apply to the United

States District Court for the District of Columbia or the United States District Court for the judicial district in which the home office of such national market funded lending institution is located for an injunction setting aside, limiting, modifying, or suspending the enforcement, operation, or effectiveness of such order, and such court shall have jurisdiction to issue such injunction. Failure to seek judicial review within such 10-day period shall constitute a waiver thereof and shall constitute consent by the national market funded lending institution or any company which controls such national market funded lending institution to the issuance of a final order of revocation of its charter.

''(c) CRIMINAL PENALTIES.—

''(1) UNAUTHORIZED ORGANIZATION.—Any person who violates the provisions of this title or any regulation or order issued by the Comptroller pursuant hereto by knowingly organizing a national market funded lending institution, collecting money from others for such purpose, or representing himself or herself as authorized to do so, or transacting business as a national market lending institution, without a validly issued and unrevoked charter from the

Comptroller of the Currency, or, in the case of a national market funded lending institution which has had its charter revoked, by failing to give notice to depositors of charter revocation when and as directed by the Comptroller under this section, shall be imprisoned not more than one year, fined not more than $100,000 for each day during which such violation continues, or both.

''(2) VIOLATION OF ACTIVITIES LIMITATION.—Whoever violates this section by knowingly causing a national market funded lending institution to accept any deposit or by representing to any person that any deposit accepted by such national market funded lending institution is an ''insured deposit'' within the meaning of section 3(m) of Federal Deposit Insurance Act (12 U.S.C. 1813(m)) shall be imprisoned not more than 5 years, fined not more than $500,000 per day for each day during which such violation continues, or both.

''(3) VIOLATION DEFINED.—For purposes of this section, the term ''violation'' includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling or aiding or abetting a violation.

''(d) VOLUNTARY LIQUIDATION.—A national market funded lending institution may go into voluntary liquidation and be closed by a vote of its shareholders owning two-thirds of its stock, pursuant to sections 5220 and 5221 of the Revised States (12 U.S.C. 181, 182).

''(e) CONSERVATORSHIP.—The Comptroller may appoint a conservator to take possession and control of a national market funded lending institution pursuant to the Bank Conservation Act (12 U.S.C. 201 et seq.).

''(f) CONVERSIONS OF DEPOSITORY INSTITUTIONS INTO NATIONAL MARKET FUNDED LENDING INSTITUTIONS.—Any depository institution (as defined in section 3(c)(1) of the Federal Deposit Insurance Act) may, by the vote of its shareholders owning not less than two-thirds of the stock of such depository institution, and with the approval of the Comptroller upon such terms as he or she shall determine are necessary to further the purposes of this section, be converted into a national market funded lending institution, provided, however that said conversion shall not be in contravention of any applicable State law. Such national market funded lending institution shall have the same powers and privileges and shall be subject to the same duties, liabilities and regulations in all respects, as national market funded lending institutions originally organized under this section.''.

TITLE VII—EFFECTIVE DATE

SEC. 701. EFFECTIVE DATE.

Except as otherwise provided, this Act shall take effect on January 1, 1998.

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