

105TH CONGRESS
2D SESSION

H. R. 4870

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

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 1998

Mr. LEACH (for himself, Mr. MCCOLLUM, Mrs. ROUKEMA, Mr. BAKER, Mr. LAZIO of New York, Mr. BACHUS, Mr. CASTLE, AND Mr. SOLOMON) introduced the following bill; which was referred to the Committee on Banking and Financial Services, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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

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

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

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Financial Services Act of 1998”.

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

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

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

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

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

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

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

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

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

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

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

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

Subtitle A—Affiliations

Sec. 101. Glass-Steagall Act reformed.

Sec. 102. Activity restrictions applicable to bank holding companies which are
not financial holding companies.

Sec. 103. Financial holding companies.

Sec. 104. Operation of State law.

Sec. 105. Mutual bank holding companies authorized.

Sec. 106. Prohibition on deposit production offices.

Sec. 107. Clarification of branch closure requirements.

Sec. 108. Amendments relating to limited purpose banks.

Sec. 109. Reports on ongoing FTC study of consumer privacy issues.

Sec. 110. GAO study of economic impact on community banks and other small
financial institutions.

Subtitle B—Streamlining Supervision of Financial Holding Companies

Sec. 111. Streamlining financial holding company supervision.

Sec. 112. Elimination of application requirement for financial holding compa-
nies.

Sec. 113. Authority of State insurance regulator and Securities and Exchange
Commission.

Sec. 114. Prudential safeguards.

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

Subtitle C—Subsidiaries of National Banks

- Sec. 121. Permissible activities for subsidiaries of national banks.
- Sec. 122. Misrepresentations regarding depository institution liability for obligations of affiliates.
- Sec. 123. Repeal of stock loan limit in Federal Reserve Act.

Subtitle D—Wholesale Financial Holding Companies; Wholesale Financial Institutions

CHAPTER 1—WHOLESALE FINANCIAL HOLDING COMPANIES

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

CHAPTER 2—WHOLESALE FINANCIAL INSTITUTIONS

- Sec. 136. Wholesale financial institutions.

Subtitle E—Preservation of FTC Authority

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

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

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

Subtitle G—Federal Home Loan Bank System Modernization

- Sec. 161. Short title.
- Sec. 162. Definitions.
- Sec. 163. Savings association membership.
- Sec. 164. Advances to members; collateral.
- Sec. 165. Eligibility criteria.
- Sec. 166. Management of banks.
- Sec. 167. Resolution Funding Corporation.

Subtitle H—Direct Activities of Banks

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

Subtitle I—Deposit Insurance Funds

Sec. 186. Study of safety and soundness of funds.

Sec. 187. Elimination of SAIF and DIF special reserves.

Subtitle J—Effective Date of Title

Sec. 191. Effective date.

TITLE II—FUNCTIONAL REGULATION

Subtitle A—Brokers and Dealers

Sec. 201. Definition of broker.

Sec. 202. Definition of dealer.

Sec. 203. Registration for sales of private securities offerings.

Sec. 204. Sales practices and complaint procedures.

Sec. 205. Information sharing.

Sec. 206. Definition and treatment of banking products.

Sec. 207. Derivative instrument and qualified investor defined.

Sec. 208. Government securities defined.

Sec. 209. Effective date.

Sec. 210. Rule of construction.

Subtitle B—Bank Investment Company Activities

Sec. 211. Custody of investment company assets by affiliated bank.

Sec. 212. Lending to an affiliated investment company.

Sec. 213. Independent directors.

Sec. 214. Additional SEC disclosure authority.

Sec. 215. Definition of broker under the Investment Company Act of 1940.

Sec. 216. Definition of dealer under the Investment Company Act of 1940.

Sec. 217. Removal of the exclusion from the definition of investment adviser for banks that advise investment companies.

Sec. 218. Definition of broker under the Investment Advisers Act of 1940.

Sec. 219. Definition of dealer under the Investment Advisers Act of 1940.

Sec. 220. Interagency consultation.

Sec. 221. Treatment of bank common trust funds.

Sec. 222. Investment advisers prohibited from having controlling interest in registered investment company.

Sec. 223. Conforming change in definition.

Sec. 224. Conforming amendment.

Sec. 225. Effective date.

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

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

Subtitle D—Studies

Sec. 241. Study of methods to inform investors and consumers of uninsured products.

Sec. 242. Study of limitation on fees associated with acquiring financial products.

TITLE III—INSURANCE

Subtitle A—State Regulation of Insurance

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

Subtitle B—Redomestication of Mutual Insurers

- Sec. 311. General application.
- Sec. 312. Redomestication of mutual insurers.
- Sec. 313. Effect on State laws restricting redomestication.
- Sec. 314. Other provisions.
- Sec. 315. Definitions.
- Sec. 316. Effective date.

Subtitle C—National Association of Registered Agents and Brokers

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

TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES

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

TITLE V—FINANCIAL INFORMATION PRIVACY

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

TITLE VI—MISCELLANEOUS

Sec. 601. Grand jury proceedings.

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

Sec. 603. Investments in Government sponsored enterprises.

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

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

Sec. 606. Provision of technical assistance to microenterprises.

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

6 Subtitle A—Affiliations

7 SEC. 101. GLASS-STEAGALL ACT REFORMED.

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

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

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

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

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

1 date of the enactment of the Financial Services Act
 2 of 1998, to be so closely related to banking as to be
 3 a proper incident thereto (subject to such terms and
 4 conditions contained in such regulation, unless modi-
 5 fied by the Board);”.

6 (b) CONFORMING CHANGES TO OTHER STATUTES.—

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

13 (2) AMENDMENT TO THE BANK SERVICE COM-
 14 PANY ACT.—Section 4(f) of the Bank Service Com-
 15 pany Act (12 U.S.C. 1864(f)) is amended by strik-
 16 ing the period and adding at the end the following:
 17 “as of the day before the date of enactment of the
 18 Financial Services Act of 1998.”.

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

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

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

24 **“(a) FINANCIAL HOLDING COMPANY DEFINED.—**

25 For purposes of this section, the term ‘financial holding

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 “(1) FINANCIAL ACTIVITIES.—

2 “(A) IN GENERAL.—Notwithstanding sec-
3 tion 4(a), a financial holding company and a
4 wholesale financial holding company may en-
5 gage in any activity, and acquire and retain the
6 shares of any company engaged in any activity,
7 that the Board has determined (by regulation
8 or order) to be financial in nature or incidental
9 to such financial activities.

10 “(B) COORDINATION BETWEEN THE
11 BOARD AND THE DEPARTMENT OF THE TREAS-
12 URY.—

13 “(i) PROPOSALS RAISED BEFORE THE
14 BOARD.—

15 “(I) CONSULTATION.—The
16 Board shall notify the Secretary of
17 the Treasury of, and consult with the
18 Secretary of the Treasury concerning,
19 any request, proposal, or application
20 under this subsection for a determina-
21 tion of whether an activity is financial
22 in nature or incidental to such a fi-
23 nancial activity.

24 “(II) TREASURY VIEW.—The
25 Board shall not determine that any

1 activity is financial in nature or inci-
2 dental to a financial activity under
3 this subsection if the Secretary of the
4 Treasury notifies the Board in writ-
5 ing, not later than 30 days after the
6 date of receipt of the notice described
7 in subclause (I) (or such longer period
8 as the Board determines to be appro-
9 priate in light of the circumstances)
10 that the Secretary of the Treasury be-
11 lieves that the activity is not financial
12 in nature or incidental to a financial
13 activity.

14 “(ii) PROPOSALS RAISED BY THE
15 TREASURY.—

16 “(I) TREASURY RECOMMENDA-
17 TION.—The Secretary of the Treasury
18 may, at any time, recommend in writ-
19 ing that the Board find an activity to
20 be financial in nature or incidental to
21 a financial activity.

22 “(II) TIME PERIOD FOR BOARD
23 ACTION.—Not later than 30 days
24 after the date of receipt of a written
25 recommendation from the Secretary of

1 the Treasury under subclause (I) (or
2 such longer period as the Secretary of
3 the Treasury and the Board deter-
4 mine to be appropriate in light of the
5 circumstances), the Board shall deter-
6 mine whether to initiate a public rule-
7 making proposing that the subject
8 recommended activity be found to be
9 financial in nature or incidental to a
10 financial activity under this sub-
11 section, and shall notify the Secretary
12 of the Treasury in writing of the de-
13 termination of the Board and, in the
14 event that the Board determines not
15 to seek public comment on the pro-
16 posal, the reasons for that determina-
17 tion.

18 “(2) FACTORS TO BE CONSIDERED.—In deter-
19 mining whether an activity is financial in nature or
20 incidental to financial activities, the Board shall take
21 into account—

22 “(A) the purposes of this Act and the Fi-
23 nancial Services Act of 1998;

1 “(B) changes or reasonably expected
2 changes in the marketplace in which bank hold-
3 ing companies compete;

4 “(C) changes or reasonably expected
5 changes in the technology for delivering finan-
6 cial services; and

7 “(D) whether such activity is necessary or
8 appropriate to allow a bank holding company
9 and the affiliates of a bank holding company
10 to—

11 “(i) compete effectively with any com-
12 pany seeking to provide financial services
13 in the United States;

14 “(ii) use any available or emerging
15 technological means, including any applica-
16 tion necessary to protect the security or ef-
17 ficacy of systems for the transmission of
18 data or financial transactions, in providing
19 financial services; and

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

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

1 “(A) Lending, exchanging, transferring, in-
2 vesting for others, or safeguarding money or se-
3 curities.

4 “(B) Insuring, guaranteeing, or indemnify-
5 ing against loss, harm, damage, illness, disabil-
6 ity, or death, or providing and issuing annu-
7 ities, and acting as principal, agent, or broker
8 for purposes of the foregoing.

9 “(C) Providing financial, investment, or
10 economic advisory services, including advising
11 an investment company (as defined in section 3
12 of the Investment Company Act of 1940).

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

16 “(E) Underwriting, dealing in, or making
17 a market in securities.

18 “(F) Engaging in any activity that the
19 Board has determined, by order or regulation
20 that is in effect on the date of enactment of the
21 Financial Services Act of 1998, to be so closely
22 related to banking or managing or controlling
23 banks as to be a proper incident thereto (sub-
24 ject to the same terms and conditions contained

1 in such order or regulation, unless modified by
2 the Board).

3 “(G) Engaging, in the United States, in
4 any activity that—

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

7 “(ii) the Board has determined, under
8 regulations issued pursuant to section
9 4(c)(13) of this Act (as in effect on the
10 day before the date of enactment of the Fi-
11 nancial Services Act of 1998) to be usual
12 in connection with the transaction of bank-
13 ing or other financial operations abroad.

14 “(H) Directly or indirectly acquiring or
15 controlling, whether as principal, on behalf of 1
16 or more entities (including entities, other than
17 a depository institution or subsidiary of a de-
18 pository institution, that the bank holding com-
19 pany controls) or otherwise, shares, assets, or
20 ownership interests (including without limita-
21 tion debt or equity securities, partnership inter-
22 ests, trust certificates or other instruments rep-
23 resenting ownership) of a company or other en-
24 tity, whether or not constituting control of such

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

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

7 “(ii) such shares, assets, or ownership
8 interests are acquired and held by a securi-
9 ties affiliate or an affiliate thereof as part
10 of a bona fide underwriting or merchant
11 banking activity, including investment ac-
12 tivities engaged in for the purpose of ap-
13 preciation and ultimate resale or disposi-
14 tion of the investment;

15 “(iii) such shares, assets, or owner-
16 ship interests are held only for such a pe-
17 riod of time as will permit the sale or dis-
18 position thereof on a reasonable basis con-
19 sistent with the nature of the activities de-
20 scribed in clause (ii); and

21 “(iv) during the period such shares,
22 assets, or ownership interests are held, the
23 bank holding company does not actively
24 participate in the day to day management
25 or operation of such company or entity, ex-

1 cept insofar as necessary to achieve the ob-
2 jectives of clause (ii).

3 “(I) Directly or indirectly acquiring or con-
4 trolling, whether as principal, on behalf of 1 or
5 more entities (including entities, other than a
6 depository institution or subsidiary of a depository
7 institution, that the bank holding company
8 controls) or otherwise, shares, assets, or owner-
9 ship interests (including without limitation debt
10 or equity securities, partnership interests, trust
11 certificates or other instruments representing
12 ownership) of a company or other entity, wheth-
13 er or not constituting control of such company
14 or entity, engaged in any activity not authorized
15 pursuant to this section if—

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

20 “(ii) such shares, assets, or ownership
21 interests are acquired and held by an in-
22 surance company that is predominantly en-
23 gaged in underwriting life, accident and
24 health, or property and casualty insurance
25 (other than credit-related insurance);

1 “(iii) such shares, assets, or owner-
2 ship interests represent an investment
3 made in the ordinary course of business of
4 such insurance company in accordance
5 with relevant State law governing such in-
6 vestments; and

7 “(iv) during the period such shares,
8 assets, or ownership interests are held, the
9 bank holding company does not directly or
10 indirectly participate in the day-to-day
11 management or operation of the company
12 or entity except insofar as necessary to
13 achieve the objectives of clauses (ii) and
14 (iii).

15 “(4) ACTIONS REQUIRED.—The Board shall, by
16 regulation or order, define, consistent with the pur-
17 poses of this Act, the following activities as, and the
18 extent to which such activities are, financial in na-
19 ture or incidental to activities which are financial in
20 nature:

21 “(A) Lending, exchanging, transferring, in-
22 vesting for others, or safeguarding financial as-
23 sets other than money or securities.

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

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

7 “(5) POST-CONSUMMATION NOTIFICATION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 “(1) IN GENERAL.—If the Board finds that a
12 financial holding company is not in compliance with
13 the requirements of subparagraph (A), (B), (C), or
14 (D) of subsection (b)(1), the Board shall give notice
15 of such finding to the company.

16 “(2) AGREEMENT TO CORRECT CONDITIONS RE-
17 QUIRED.—

18 “(A) IN GENERAL.—Not later than 45
19 days after receipt by a financial holding com-
20 pany of a notice given under paragraph (1) (or
21 such additional period as the Board may per-
22 mit), the company shall execute an agreement
23 acceptable to the Board to comply with the re-
24 quirements applicable to a financial holding
25 company.

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

7 “(3) BOARD MAY IMPOSE LIMITATIONS.—Until
8 the conditions described in a notice to a financial
9 holding company under paragraph (1) are corrected,
10 the Board may impose such limitations on the con-
11 duct or activities of the company or any affiliate of
12 the company as the Board determines to be appro-
13 priate under the circumstances.

14 “(4) FAILURE TO CORRECT.—If, after receiving
15 a notice under paragraph (1), a financial holding
16 company does not—

17 “(A) execute and implement an agreement
18 in accordance with paragraph (2);

19 “(B) comply with any limitations imposed
20 under paragraph (3);

21 “(C) in the case of a notice of failure to
22 comply with subsection (b)(1)(A), restore each
23 depository institution subsidiary to well capital-
24 ized status before the end of the 180-day period
25 beginning on the date such notice is received by

1 the company (or such other period permitted by
2 the Board); or

3 “(D) in the case of a notice of failure to
4 comply with subparagraph (B) or (D) of sub-
5 section (b)(1), restore compliance with any such
6 subparagraph on or before the date on which
7 the next examination of the depository institu-
8 tion subsidiary is completed or by the end of
9 such other period as the Board determines to
10 be appropriate,

11 the Board may require such company, under such
12 terms and conditions as may be imposed by the
13 Board and subject to such extension of time as may
14 be granted in the Board’s discretion, to divest con-
15 trol of any depository institution subsidiary or, at
16 the election of the financial holding company, in-
17 stead to cease to engage in any activity conducted by
18 such company or its subsidiaries pursuant to this
19 section.

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

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

1 “(1) the procedures of the holding company for
2 identifying and managing financial and operational
3 risks within the company, and the subsidiaries of
4 such company, adequately protect the subsidiaries of
5 such company which are insured depository institu-
6 tions from such risks;

7 “(2) the holding company has reasonable poli-
8 cies and procedures to preserve the separate cor-
9 porate identity and limited liability of such company
10 and the subsidiaries of such company, for the pro-
11 tection of the company’s subsidiary insured deposi-
12 tory institutions; and

13 “(3) the holding company complies with this
14 section.

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

17 “(1) IN GENERAL.—Notwithstanding section
18 4(a), a company that is not a bank holding company
19 or a foreign bank (as defined in section 1(b)(7) of
20 the International Banking Act of 1978) and becomes
21 a financial holding company after the date of the en-
22 actment of the Financial Services Act of 1998 may
23 continue to engage in any activity and retain direct
24 or indirect ownership or control of shares of a com-
25 pany engaged in any activity if—

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

4 “(B) the holding company is predomi-
5 nantly engaged in financial activities as defined
6 in paragraph (2); and

7 “(C) the company engaged in such activity
8 continues to engage only in the same activities
9 that such company conducted on September 30,
10 1997, and other activities permissible under
11 this Act.

12 “(2) PREDOMINANTLY FINANCIAL.—For pur-
13 poses of this subsection, a company is predominantly
14 engaged in financial activities if the annual gross
15 revenues derived by the holding company and all
16 subsidiaries of the holding company (excluding reve-
17 nues derived from subsidiary depository institu-
18 tions), on a consolidated basis, from engaging in ac-
19 tivities that are financial in nature or are incidental
20 to activities that are financial in nature under sub-
21 section (c) represent at least 85 percent of the con-
22 solidated annual gross revenues of the company.

23 “(3) NO EXPANSION OF GRANDFATHERED COM-
24 MERCIAL ACTIVITIES THROUGH MERGER OR CON-
25 SOLIDATION.—A financial holding company that en-

1 gages in activities or holds shares pursuant to this
2 subsection, or a subsidiary of such financial holding
3 company, may not acquire, in any merger, consolida-
4 tion, or other type of business combination, assets of
5 any other company which is engaged in any activity
6 which the Board has not determined to be financial
7 in nature or incidental to activities that are financial
8 in nature under subsection (c).

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

20 “(5) CROSS MARKETING RESTRICTIONS APPLI-
21 CABLE TO COMMERCIAL ACTIVITIES.—A depository
22 institution controlled by a financial holding company
23 shall not—

24 “(A) offer or market, directly or through
25 any arrangement, any product or service of a

1 company whose activities are conducted or
2 whose shares are owned or controlled by the fi-
3 nancial holding company pursuant to this sub-
4 section or subparagraph (H) or (I) of sub-
5 section (c)(3); or

6 “(B) permit any of its products or services
7 to be offered or marketed, directly or through
8 any arrangement, by or through any company
9 described in subparagraph (A).

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

19 “(7) SUNSET OF GRANDFATHER.—A financial
20 holding company engaged in any activity, or retain-
21 ing direct or indirect ownership or control of shares
22 of a company, pursuant to this subsection, shall ter-
23 minate such activity and divest ownership or control
24 of the shares of such company before the end of the
25 10-year period beginning on the date of the enact-

1 ment of the Financial Services Act of 1998. The
2 Board may, upon application by a financial holding
3 company, extend such 10-year period by a period not
4 to exceed an additional 5 years if such extension
5 would not be detrimental to the public interest.

6 “(g) DEVELOPING ACTIVITIES.—A financial holding
7 company and a wholesale financial holding company may
8 engage directly or indirectly, or acquire shares of any com-
9 pany engaged, in any activity that the Board has not de-
10 termined to be financial in nature or incidental to financial
11 activities under subsection (c) if—

12 “(1) the holding company reasonably concludes
13 that the activity is financial in nature or incidental
14 to financial activities;

15 “(2) the gross revenues from all activities con-
16 ducted under this subsection represent less than 5
17 percent of the consolidated gross revenues of the
18 holding company;

19 “(3) the aggregate total assets of all companies
20 the shares of which are held under this subsection
21 do not exceed 5 percent of the holding company’s
22 consolidated total assets;

23 “(4) the total capital invested in activities con-
24 ducted under this subsection represents less than 5

1 percent of the consolidated total capital of the hold-
 2 ing company;

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

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

9 “(7) the holding company provides written noti-
 10 fication to the Board describing the activity com-
 11 menced or conducted by the company acquired no
 12 later than 10 business days after commencing the
 13 activity or consummating the acquisition.”.

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

15 (a) AFFILIATIONS.—

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

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

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

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

21 (ii) if the acquiring party is an indi-
22 vidual, his or her principal occupation and
23 all offices and positions held during the 5
24 years preceding the date of notification,
25 and any conviction of crimes other than

1 minor traffic violations during the 10 years
2 preceding the date of notification;

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

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

11 (II) an informative description of
12 the business intended to be done by
13 the acquiring party and any subsidi-
14 ary thereof; and

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

23 (iv) the source, nature, and amount of
24 the consideration used, or to be used, in ef-
25 fecting the merger or other acquisition of

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

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

1 terminated by the insurance regulatory au-
2 thority of the State;

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

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

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

21 (ix) a full description of any contracts,
22 arrangements, or understandings with re-
23 spect to any security of the insurer in
24 which any acquiring party is involved, in-
25 cluding transfer of any of the securities,

1 joint ventures, loan or option arrange-
2 ments, puts or calls, guarantees of loans,
3 guarantees against loss or guarantees of
4 profits, division of losses or profits, or the
5 giving or withholding of proxies, and iden-
6 tification of the persons with whom such
7 contracts, arrangements, or understand-
8 ings have been entered into;

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

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

23 (xii) copies of all tender offers for, re-
24 quests or invitations for tenders of, ex-
25 change offers for and agreements to ac-

1 quire or exchange any securities of the in-
2 surer and, if distributed, of additional so-
3 liciting material relating thereto; and

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

11 (B) requiring an entity that is acquiring
12 control of an entity that is engaged in the busi-
13 ness of insurance and domiciled in that State to
14 maintain or restore the capital requirements of
15 that insurance entity to the level required under
16 the capital regulations of general applicability
17 in that State to avoid the requirement of pre-
18 paring and filing with the insurance regulatory
19 authority of that State a plan to increase the
20 capital of the entity, except that any determina-
21 tion by the State insurance regulatory authority
22 with respect to such requirement shall be made
23 not later than 60 days after the date of notifi-
24 cation under subparagraph (A);

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

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

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

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

23 (B) DEFINITION.—The term “antitrust
 24 laws” has the same meaning as in subsection
 25 (a) of the first section of the Clayton Act, and

1 includes section 5 of the Federal Trade Com-
2 mission Act to the extent that such section 5
3 relates to unfair methods of competition.

4 (b) ACTIVITIES.—

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

17 (2) INSURANCE SALES.—

18 (A) IN GENERAL.—In accordance with the
19 legal standards for preemption set forth in the
20 decision of the Supreme Court of the United
21 States in *Barnett Bank of Marion County N.A.*
22 *v. Nelson*, 116 S. Ct. 1103 (1996), no State
23 may, by statute, regulation, order, interpreta-
24 tion, or other action, prevent or significantly
25 interfere with the ability of an insured deposi-

1 tory institution or wholesale financial institu-
2 tion, or a subsidiary or affiliate thereof, to en-
3 gage, directly or indirectly, either by itself or
4 in conjunction with a subsidiary, affiliate, or
5 any other party, in any insurance sales, solicita-
6 tion, or cross-marketing activity.

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

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

22 (ii) Restrictions prohibiting a require-
23 ment for any debtor, insurer, or insurance
24 agent or broker to pay a separate charge
25 in connection with the handling of insur-

1 ance that is required in connection with a
2 loan or other extension of credit or the
3 provision of another traditional banking
4 product, unless such charge would be re-
5 quired when the insured depository institu-
6 tion or wholesale financial institution, or
7 any subsidiary or affiliate thereof, is the li-
8 censed insurance agent or broker providing
9 the insurance.

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

17 (I) a State or the Federal Gov-
18 ernment is responsible for the insur-
19 ance sales activities of, or stands be-
20 hind the credit of, the institution, af-
21 filiate, or subsidiary; or

22 (II) a State, or the Federal Gov-
23 ernment guarantees any returns on
24 insurance products, or is a source of
25 payment on any insurance obligation

1 of or sold by the institution, affiliate,
2 or subsidiary;

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

18 (v) Restrictions prohibiting any com-
19 pensation paid to or received by any indi-
20 vidual who is not licensed to sell insurance,
21 for the referral of a customer that seeks to
22 purchase, or seeks an opinion or advice on,
23 any insurance product to a person that
24 sells or provides opinions or advice on such

1 product, based on the purchase of insur-
2 ance by the customer.

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

20 (I) a transfer of insurance infor-
21 mation to an unaffiliated insurance
22 company, agent, or broker in connec-
23 tion with transferring insurance in
24 force on existing insureds of the in-
25 sured depository institution or whole-

1 sale financial institution, or subsidiary
2 or affiliate thereof, or in connection
3 with a merger with or acquisition of
4 an unaffiliated insurance company,
5 agent, or broker; or

6 (II) the release of information as
7 otherwise authorized by State or Fed-
8 eral law.

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

15 (viii) Restrictions prohibiting the ex-
16 tension of credit or any product or service
17 that is equivalent to an extension of credit,
18 lease or sale of property of any kind, or
19 furnishing of any services or fixing or vary-
20 ing the consideration for any of the fore-
21 going, on the condition or requirement that
22 the customer obtain insurance from the in-
23 sured depository institution, wholesale fi-
24 nancial institution, a subsidiary or affiliate
25 thereof, or a particular insurer, agent, or

1 broker, other than a prohibition that would
2 prevent any insured depository institution
3 or wholesale financial institution, or any
4 subsidiary or affiliate thereof—

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

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

22 (ix) Restrictions requiring, when an
23 application by a consumer for a loan or
24 other extension of credit from an insured
25 depository institution or wholesale financial

1 institution is pending, and insurance is of-
2 fered or sold to the consumer or is re-
3 quired in connection with the loan or ex-
4 tension of credit by the insured depository
5 institution or wholesale financial institu-
6 tion, that a written disclosure be provided
7 to the consumer or prospective customer
8 indicating that his or her choice of an in-
9 surance provider will not affect the credit
10 decision or credit terms in any way, except
11 that the insured depository institution or
12 wholesale financial institution, or subsidi-
13 ary or affiliate thereof, may impose reason-
14 able requirements concerning the credit-
15 worthiness of the insurance provider and
16 scope of coverage chosen.

17 (x) Restrictions requiring clear and
18 conspicuous disclosure, in writing, where
19 practicable, to the customer prior to the
20 sale of any insurance policy that such
21 policy—

22 (I) is not a deposit;

23 (II) is not insured by the Federal

24 Deposit Insurance Corporation;

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

8 (IV) where appropriate, involves
9 investment risk, including potential
10 loss of principal.

11 (xi) Restrictions requiring that, when
12 a customer obtains insurance (other than
13 credit insurance or flood insurance) and
14 credit from an insured depository institu-
15 tion or wholesale financial institution, or
16 any subsidiary or affiliate thereof, or any
17 person soliciting the purchase of or selling
18 insurance on the premises thereof, the
19 credit and insurance transactions be com-
20 pleted through separate documents.

21 (xii) Restrictions prohibiting, when a
22 customer obtains insurance (other than
23 credit insurance or flood insurance) and
24 credit from an insured depository institu-
25 tion or wholesale financial institution or its

1 subsidiaries or affiliates, or any person so-
2 liciting the purchase of or selling insurance
3 on the premises thereof, inclusion of the
4 expense of insurance premiums in the pri-
5 mary credit transaction without the ex-
6 press written consent of the customer.

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

16 (C) LIMITATIONS.—

17 (i) OCC DEFERENCE.—Section 306(e)
18 does not apply with respect to any State
19 statute, regulation, order, interpretation,
20 or other action regarding insurance sales,
21 solicitation, or cross marketing activities
22 described in subparagraph (A) that was
23 issued, adopted, or enacted before Septem-
24 ber 3, 1998, and that is not described in
25 subparagraph (B).

1 (ii) NONDISCRIMINATION.—Subsection
2 (c) does not apply with respect to any
3 State statute, regulation, order, interpreta-
4 tion, or other action regarding insurance
5 sales, solicitation, or cross marketing ac-
6 tivities described in subparagraph (A) that
7 was issued, adopted, or enacted before
8 September 3, 1998, and that is not de-
9 scribed in subparagraph (B).

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

18 (iv) LIMITATION ON INFERENCES.—
19 Nothing in this paragraph shall be con-
20 strued to create any inference with respect
21 to any State statute, regulation, order, in-
22 terpretation, or other action that is not re-
23 ferred to or described in this paragraph.

24 (3) INSURANCE ACTIVITIES OTHER THAN
25 SALES.—State statutes, regulations, interpretations,

1 orders, and other actions shall not be preempted
2 under subsection (b)(1) to the extent that they—

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

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

16 (C) do not relate to or directly or indirectly
17 regulate insurance sales, solicitations, or cross-
18 marketing activities; and

19 (D) are not prohibited under subsection
20 (c).

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

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

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

12 (C) it does not relate to securities inves-
13 tigations or enforcement actions referred to in
14 subsection (d); and

15 (D) it—

16 (i) does not distinguish by its terms
17 between insured depository institutions,
18 wholesale financial institutions, and sub-
19 sidiaries and affiliates thereof engaged in
20 the activity at issue and other persons or
21 entities engaged in the same activity in a
22 manner that is in any way adverse with re-
23 spect to the conduct of the activity by any
24 such insured depository institution, whole-
25 sale financial institution, or subsidiary or

1 affiliate thereof engaged in the activity at
2 issue;

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

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

22 (iv) does not conflict with the intent
23 of this Act generally to permit affiliations
24 that are authorized or permitted by Fed-
25 eral law.

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

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

17 (2) as interpreted or applied, has or will have
18 an impact on depository institutions or wholesale fi-
19 nancial institutions, or subsidiaries or affiliates
20 thereof, that is substantially more adverse than its
21 impact on other persons or entities providing the
22 same products or services or engaged in the same
23 activities that are not insured depository institu-
24 tions, wholesale financial institutions, or subsidiaries

1 or affiliates thereof, or persons or entities affiliated
2 therewith;

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

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

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

22 (e) DEFINITION.—For purposes of this section, the
23 term “State” means any State of the United States, the
24 District of Columbia, any territory of the United States,
25 Puerto Rico, Guam, American Samoa, the Trust Territory

1 of the Pacific Islands, the Virgin Islands, and the North-
 2 ern Mariana Islands.

3 **SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHOR-**
 4 **IZED.**

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

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

13 **SEC. 106. PROHIBITION ON DEPOSIT PRODUCTION OF-**
 14 **FICES.**

15 (a) IN GENERAL.—Section 109(d) of the Riegle-Neal
 16 Interstate Banking and Branching Efficiency Act of 1994
 17 (12 U.S.C. 1835a(d)) is amended—

18 (1) by inserting “, the Financial Services Act of
 19 1998,” after “pursuant to this title”; and

20 (2) by inserting “or such Act” after “made by
 21 this title”.

22 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 23 Section 109(e)(4) of the Riegle-Neal Interstate Banking
 24 and Branching Efficiency Act of 1994 (12 U.S.C.
 25 1835a(e)(4)) is amended by inserting “and any branch of

1 a bank controlled by an out-of-State bank holding com-
 2 pany (as defined in section 2(o)(7) of the Bank Holding
 3 Company Act of 1956)” before the period.

4 **SEC. 107. CLARIFICATION OF BRANCH CLOSURE REQUIRE-**
 5 **MENTS.**

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

11 **SEC. 108. AMENDMENTS RELATING TO LIMITED PURPOSE**
 12 **BANKS.**

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

15 (1) in paragraph (2)(A)(ii)—

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

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

20 (C) by inserting after subclause (X) the
 21 following new subclause:

22 “(XI) assets that are derived
 23 from, or are incidental to, activities in
 24 which institutions described in section
 25 2(c)(2)(F) are permitted to engage,”;

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

3 “(B) any bank subsidiary of such company
4 engages in any activity in which the bank was
5 not lawfully engaged as of March 5, 1987, un-
6 less the bank is well managed and well capital-
7 ized;

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

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

14 “(ii) engages in the business of mak-
15 ing commercial loans (and, for purposes of
16 this clause, loans made in the ordinary
17 course of a credit card operation shall not
18 be treated as commercial loans); or

19 “(D) after the date of the enactment of the
20 Competitive Equality Amendments of 1987, any
21 bank subsidiary of such company permits any
22 overdraft (including any intraday overdraft), or
23 incurs any such overdraft in such bank’s ac-
24 count at a Federal reserve bank, on behalf of

1 an affiliate, other than an overdraft described
2 in paragraph (3).”; and

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

5 “(3) PERMISSIBLE OVERDRAFTS DESCRIBED.—
6 For purposes of paragraph (2)(D), an overdraft is
7 described in this paragraph if—

8 “(A) such overdraft results from an inad-
9 vertent computer or accounting error that is be-
10 yond the control of both the bank and the affili-
11 ate; or

12 “(B) such overdraft—

13 “(i) is permitted or incurred on behalf
14 of an affiliate which is monitored by, re-
15 ports to, and is recognized as a primary
16 dealer by the Federal Reserve Bank of
17 New York; and

18 “(ii) is fully secured, as required by
19 the Board, by bonds, notes, or other obli-
20 gations which are direct obligations of the
21 United States or on which the principal
22 and interest are fully guaranteed by the
23 United States or by securities and obliga-
24 tions eligible for settlement on the Federal
25 Reserve book entry system.

1 “(4) DIVESTITURE IN CASE OF LOSS OF EX-
2 EMPTION.—If any company described in paragraph
3 (1) fails to qualify for the exemption provided under
4 such paragraph by operation of paragraph (2), such
5 exemption shall cease to apply to such company and
6 such company shall divest control of each bank it
7 controls before the end of the 180-day period begin-
8 ning on the date that the company receives notice
9 from the Board that the company has failed to con-
10 tinue to qualify for such exemption, unless before
11 the end of such 180-day period, the company has—

12 “(A) corrected the condition or ceased the
13 activity that caused the company to fail to con-
14 tinue to qualify for the exemption; and

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

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

1 **SEC. 109. REPORTS ON ONGOING FTC STUDY OF CON-**
2 **SUMER PRIVACY ISSUES.**

3 With respect to the ongoing multistage study being
4 conducted by the Federal Trade Commission on consumer
5 privacy issues, the Commission shall submit to the Con-
6 gress an interim report on the findings and conclusions
7 of the Commission, together with such recommendations
8 for legislative and administrative action as the Commis-
9 sion determines to be appropriate, at the conclusion of
10 each stage of such study and a final report at the conclu-
11 sion of the study.

12 **SEC. 110. GAO STUDY OF ECONOMIC IMPACT ON COMMU-**
13 **NITY BANKS AND OTHER SMALL FINANCIAL**
14 **INSTITUTIONS.**

15 (a) **STUDY REQUIRED.**—The Comptroller General of
16 the United States shall conduct a study of the projected
17 economic impact that the enactment of this Act will have
18 on financial institutions which have total assets of
19 \$100,000,000 or less.

20 (b) **REPORT TO THE CONGRESS.**—The Comptroller
21 General of the United States shall submit a report to the
22 Congress before the end of the 6-month period beginning
23 on the date of the date of the enactment of this Act con-
24 taining the findings and conclusions of the Comptroller
25 General with regard to the study required under sub-
26 section (a) and such recommendations for legislative or

1 administrative action as the Comptroller General may de-
 2 termine to be appropriate.

3 **Subtitle B—Streamlining Super-**
 4 **vision of Financial Holding**
 5 **Companies**

6 **SEC. 111. STREAMLINING FINANCIAL HOLDING COMPANY**
 7 **SUPERVISION.**

8 Section 5(c) of the Bank Holding Company Act of
 9 1956 (12 U.S.C. 1844(c)) is amended to read as follows:

10 “(c) REPORTS AND EXAMINATIONS.—

11 “(1) REPORTS.—

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

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

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

25 “(B) USE OF EXISTING REPORTS.—

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

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

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

23 “(iv) REPORTS FILED WITH OTHER
24 AGENCIES.—In the event the Board re-
25 quires a report from a functionally regu-

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

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

18 “(i) a broker or dealer registered
19 under the Securities Exchange Act of
20 1934;

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

1 investment adviser and activities incidental
2 to such investment advisory activities;

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

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

11 “(2) EXAMINATIONS.—

12 “(A) EXAMINATION AUTHORITY.—

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

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

24 “(I) the Board has reasonable
25 cause to believe that such subsidiary

1 is engaged in activities that pose a
2 material risk to an affiliated deposi-
3 tory institution, or

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

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

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

24 “(ii) inform the Board of—

1 “(I) the financial and operational
2 risks within the holding company sys-
3 tem that may pose a threat to the
4 safety and soundness of any subsidi-
5 ary depository institution of such
6 holding company; and

7 “(II) the systems for monitoring
8 and controlling such risks; and

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

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

18 “(i) the bank holding company; and

19 “(ii) any subsidiary of the holding
20 company that, because of—

21 “(I) the size, condition, or activi-
22 ties of the subsidiary;

23 “(II) the nature or size of trans-
24 actions between such subsidiary and
25 any depository institution which is

1 also a subsidiary of such holding com-
2 pany; or

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

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

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

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

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

1 “(ii) any registered investment adviser
2 properly registered by or on behalf of ei-
3 ther the Securities and Exchange Commis-
4 sion or any State;

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

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

12 “(3) CAPITAL.—

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

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

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

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

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

21 “(i) a bank holding company; or

22 “(ii) controlled by a bank holding
23 company by reason of ownership by the
24 bank holding company (including through
25 all of its affiliates) of 25 percent or more

1 of the shares of the investment company,
2 where the shares owned by the bank hold-
3 ing company have a market value equal to
4 more than \$1,000,000.

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

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

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

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

24 “(ii) approve or disapprove applica-
25 tions or transactions under section 3;

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

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

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

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

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

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

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

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

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

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

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

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

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

10 “(A) order”; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 “(h) PRUDENTIAL SAFEGUARDS.—

1 “(1) IN GENERAL.—The Board may, by regula-
2 tion or order, impose restrictions or requirements on
3 relationships or transactions between a depository
4 institution subsidiary of a bank holding company
5 and any affiliate of such depository institution (other
6 than a subsidiary of such institution) which the
7 Board finds is consistent with the public interest,
8 the purposes of this Act, the Financial Services Act
9 of 1998, the Federal Reserve Act, and other Federal
10 law applicable to depository institution subsidiaries
11 of bank holding companies and the standards in
12 paragraph (2).

13 “(2) STANDARDS.—The Board may exercise au-
14 thority under paragraph (1) if the Board finds that
15 such action would—

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

19 “(B) enhance the financial stability of
20 bank holding companies;

21 “(C) avoid conflicts of interest or other
22 abuses;

23 “(D) enhance the privacy of customers of
24 depository institutions; or

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

7 “(3) REVIEW.—The Board shall regularly—

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

14 “(B) modify or eliminate any restriction or
15 requirement the Board finds is no longer re-
16 quired for such purposes.

17 “(4) FOREIGN BANKS.—The Board may, by
18 regulation or order, impose restrictions or require-
19 ments on relationships or transactions between a
20 foreign bank and any affiliate in the United States
21 of such foreign bank that the Board finds are con-
22 sistent with the public interest, the purposes of this
23 Act, the Financial Services Act of 1998, the Federal
24 Reserve Act, and other Federal law applicable to for-

1 eign banks and their affiliates in the United States,
2 and the standards in paragraphs (2) and (3).”.

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

4 (a) EXCLUSIVE COMMISSION AUTHORITY.—

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

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

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

1 and the effect of such relationship on the depository
2 institution.

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

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

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

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

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

21 (4) REGISTERED INVESTMENT COMPANY.—The
22 term “registered investment company” means an in-
23 vestment company which is registered with the Com-
24 mission under the Investment Company Act of 1940.

1 (5) SAVINGS AND LOAN HOLDING COMPANY.—

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

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

8 The Bank Holding Company Act of 1956 (12 U.S.C.
9 1841 et seq.) is amended by inserting after section 10 the
10 following new section:

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

14 “(a) LIMITATION ON DIRECT ACTION.—

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

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

4 “(B) the domestic or international pay-
5 ment system.

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

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

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

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

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

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

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

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

24 “(5) an entity subject to regulation by the Com-
25 modity Futures Trading Commission, with respect

1 to the commodities activities of such entity and ac-
2 tivities incidental to such commodities activities.”.

3 **SEC. 117. INTERAGENCY CONSULTATION.**

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

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

6 (b) EXAMINATION RESULTS AND OTHER INFORMA-
7 TION.—

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

23 (2) BANKING AGENCY INFORMATION.—Upon
24 the request of the appropriate insurance regulator of
25 any State, the appropriate Federal banking agency

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

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

19 (A) is engaged in insurance activities and
20 regulated by such insurance regulator; and

21 (B) is an affiliate of an insured depository
22 institution, wholesale financial institution, or fi-
23 nancial holding company.

24 (c) CONSULTATION.—Before making any determina-
25 tion relating to the initial affiliation of, or the continuing

1 affiliation of, an insured depository institution, wholesale
2 financial institution, or financial holding company with a
3 company engaged in insurance activities, the appropriate
4 Federal banking agency shall consult with the appropriate
5 State insurance regulator of such company and take the
6 views of such insurance regulator into account in making
7 such determination.

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

14 (e) CONFIDENTIALITY AND PRIVILEGE.—

15 (1) CONFIDENTIALITY.—The appropriate Fed-
16 eral banking agency shall not provide any informa-
17 tion or material that is entitled to confidential treat-
18 ment under applicable Federal banking agency regu-
19 lations, or other applicable law, to a State insurance
20 regulator unless such regulator agrees to maintain
21 the information or material in confidence and to
22 take all reasonable steps to oppose any effort to se-
23 cure disclosure of the information or material by the
24 regulator. The appropriate Federal banking agency
25 shall treat as confidential any information or mate-

1 rial obtained from a State insurance regulator that
2 is entitled to confidential treatment under applicable
3 State regulations, or other applicable law, and take
4 all reasonable steps to oppose any effort to secure
5 disclosure of the information or material by the Fed-
6 eral banking agency.

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

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

15 (1) APPROPRIATE FEDERAL BANKING AGENCY;
16 INSURED DEPOSITORY INSTITUTION.—The terms
17 “appropriate Federal banking agency” and “insured
18 depository institution” have the same meanings as
19 in section 3 of the Federal Deposit Insurance Act.

20 (2) BOARD; FINANCIAL HOLDING COMPANY;
21 AND WHOLESALE FINANCIAL INSTITUTION.—The
22 terms “Board”, “financial holding company”, and
23 “wholesale financial institution” have the same
24 meanings as in section 2 of the Bank Holding Com-
25 pany Act of 1956.

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

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

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

11 (2) section 10A of the Bank Holding Company
12 Act of 1956 (as added by this Act) that limit what-
13 ever authority the Board might otherwise have to
14 take direct or indirect action with respect to bank
15 holding companies and their nonbank subsidiaries,
16 shall also limit whatever authority that the Federal De-
17 posit Insurance Corporation might otherwise have under
18 any statute to require reports, make examinations, impose
19 capital requirements or take any other direct or indirect
20 action with respect to bank holding companies and their
21 nonbank subsidiaries (including nonbank subsidiaries of
22 depository institutions), subject to the same standards and
23 requirements as are applicable to the Board under such
24 provisions.

25 (b) CERTAIN EXAMINATIONS AUTHORIZED.—Noth-
26 ing in this section shall prevent the Federal Deposit Insur-

1 ance Corporation, if the Corporation finds it necessary to
 2 determine the condition of an insured depository institu-
 3 tion for insurance purposes, from examining an affiliate
 4 of any insured depository institution, pursuant to its au-
 5 thority under section 10(b)(4) of the Federal Deposit In-
 6 surance Act, as may be necessary to disclose fully the rela-
 7 tionship between the depository institution and the affili-
 8 ate, and the effect of such relationship on the depository
 9 institution.

10 **SEC. 119. PROHIBITION ON FDIC ASSISTANCE TO AFFILI-**
 11 **ATES AND SUBSIDIARIES.**

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

18 **Subtitle C—Subsidiaries of**
 19 **National Banks**

20 **SEC. 121. PERMISSIBLE ACTIVITIES FOR SUBSIDIARIES OF**
 21 **NATIONAL BANKS.**

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

1 (1) by redesignating section 5136A as section
2 5136C; and

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

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

6 “(a) SUBSIDIARIES OF NATIONAL BANKS AUTHOR-
7 IZED TO ENGAGE IN FINANCIAL ACTIVITIES.—

8 “(1) EXCLUSIVE AUTHORITY.—No provision of
9 section 5136 or any other provision of this title
10 LXII of the Revised Statutes shall be construed as
11 authorizing a subsidiary of a national bank to en-
12 gage in, or own any share of or any other interest
13 in any company engaged in, any activity that—

14 “(A) is not permissible for a national bank
15 to engage in directly; or

16 “(B) is conducted under terms or condi-
17 tions other than those that would govern the
18 conduct of such activity by a national bank,

19 unless a national bank is specifically authorized by
20 the express terms of a Federal statute and not by
21 implication or interpretation to acquire shares of or
22 an interest in, or to control, such subsidiary, such as
23 by paragraph (2) of this subsection and section 25A
24 of the Federal Reserve Act.

1 “(2) SPECIFIC AUTHORIZATION TO CONDUCT
2 AGENCY ACTIVITIES WHICH ARE FINANCIAL IN NA-
3 TURE.—A national bank may control a company , or
4 hold an interest in a company that is wholly owned
5 by an insured depository institution or subsidiary
6 thereof, that engages in agency activities that have
7 been determined to be financial in nature or inciden-
8 tal to such financial activities pursuant to and in ac-
9 cordance with section 6(c) of the Bank Holding
10 Company Act of 1956 if—

11 “(A) the company engages in such activi-
12 ties solely as agent and not directly or indirectly
13 as principal;

14 “(B) the national bank is well capitalized
15 and well managed, and has achieved a rating of
16 satisfactory or better at the most recent exam-
17 ination of the bank under the Community Rein-
18 vestment Act of 1977;

19 “(C) all depository institution affiliates of
20 the national bank are well capitalized and well
21 managed, and have achieved a rating of satis-
22 factory or better at the most recent examina-
23 tion of each such depository institution under
24 the Community Reinvestment Act of 1977; and

1 “(D) the bank has received the approval of
2 the Comptroller of the Currency.

3 “(3) RATING DOES NOT REQUIRE DIVESTI-
4 TURE.—A national bank shall not be required to di-
5 vest any subsidiary held pursuant to paragraph (2)
6 solely based on a rating described in subparagraph
7 (B) or (C) of paragraph (2), other than a rating de-
8 scribed in paragraph (4)(C).

9 “(4) DEFINITIONS.—For purposes of this sec-
10 tion, the following definitions shall apply:

11 “(A) COMPANY; CONTROL; AFFILIATE;
12 SUBSIDIARY.—The terms ‘company’, ‘control’,
13 ‘affiliate’, and ‘subsidiary’ have the same mean-
14 ings as in section 2 of the Bank Holding Com-
15 pany Act of 1956.

16 “(B) WELL CAPITALIZED.—The term ‘well
17 capitalized’ has the same meaning as in section
18 38 of the Federal Deposit Insurance Act and,
19 for purposes of this section, the Comptroller
20 shall have exclusive jurisdiction to determine
21 whether a national bank is well capitalized.

22 “(C) WELL MANAGED.—The term ‘well
23 managed’ means—

24 “(i) in the case of a depository insti-
25 tution that has been examined, unless oth-

erwise determined in writing by the appropriate Federal banking agency—

“(I) the achievement of a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of the depository institution; and

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

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

“(D) INCORPORATED DEFINITIONS.—The terms ‘appropriate Federal banking agency’ and ‘depository institution’ have the same meanings as in section 3 of the Federal Deposit Insurance Act.

“(b) LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSI-

1 TORY INSTITUTIONS.—Any depository institution which
 2 becomes affiliated with a national bank during the 24-
 3 month period preceding the submission of an application
 4 to acquire a subsidiary under subsection (a)(2), and any
 5 depository institution which becomes so affiliated after the
 6 approval of such application, may be excluded for purposes
 7 of subsection (a)(2)(C) during the 24-month period begin-
 8 ning on the date of such acquisition if—

9 “(1) the depository institution has submitted an
 10 affirmative plan to the appropriate Federal banking
 11 agency (as defined in section 3 of the Federal De-
 12 posit Insurance Act) to take such action as may be
 13 necessary in order for such institution to achieve a
 14 ‘satisfactory record of meeting community credit
 15 needs’, or better, at the next examination of the in-
 16 stitution under the Community Reinvestment Act of
 17 1977; and

18 “(2) the plan has been approved by the appro-
 19 priate Federal banking agency.”.

20 (b) LIMITATION ON CERTAIN ACTIVITIES IN SUB-
 21 SIDIARIES.—Section 21(a)(1) of the Banking Act of 1933
 22 (12 U.S.C. 378(a)(1)) is amended—

23 (1) by inserting “, or to be a subsidiary of any
 24 person, firm, corporation, association, business trust,
 25 or similar organization engaged (unless such subsidi-

ary (A) was engaged in such securities activities as of September 15, 1997, or (B) is a nondepository subsidiary of (i) a foreign bank and is not also a subsidiary of a domestic depository institution, or (ii) an unincorporated private bank that is not insured under the Federal Deposit Insurance Act),” after “to engage at the same time”; and

(2) by inserting “or any subsidiary of such bank, company, or institution” after “or private bankers”.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) ANTITYING.—Section 106(a) of the Bank Holding Company Act Amendments of 1970 is amended by adding at the end the following new sentence: “For purposes of this section, a subsidiary of a national bank which engages in activities as an agent pursuant to section 5136A(a)(2) shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank.”.

(2) SECTION 23B.—Section 23B(a) of the Federal Reserve Act (12 U.S.C. 371c–1(a)) is amended by adding at the end the following new paragraph:

“(4) SUBSIDIARY OF NATIONAL BANK.—For purposes of this section, a subsidiary of a national bank which engages in activities as an agent pursu-

1 ant to section 5136A(a)(2) shall be deemed to be an
 2 affiliate of the national bank and not a subsidiary of
 3 the bank.”.

4 (d) CLERICAL AMENDMENT.—The table of sections
 5 for chapter one of title LXII of the Revised Statutes of
 6 the United States is amended—

7 (1) by redesignating the item relating to section
 8 5136A as section 5136C; and

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

“5136A. Financial subsidiaries of national banks.”.

11 **SEC. 122. MISREPRESENTATIONS REGARDING DEPOSITORY**
 12 **INSTITUTION LIABILITY FOR OBLIGATIONS**
 13 **OF AFFILIATES.**

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

17 **“§ 1008. Misrepresentations regarding financial insti-**
 18 **tution liability for obligations of affiliates**

19 “(a) IN GENERAL.—No institution-affiliated party of
 20 an insured depository institution or institution-affiliated
 21 party of a subsidiary or affiliate of an insured depository
 22 institution shall fraudulently represent that the institution
 23 is or will be liable for any obligation of a subsidiary or
 24 other affiliate of the institution.

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

4 “(c) INSTITUTION-AFFILIATED PARTY DEFINED.—
 5 For purposes of this section, the term ‘institution-affili-
 6 ated party’ with respect to a subsidiary or affiliate has
 7 the same meaning as in section 3 of the Federal Deposit
 8 Insurance Act, except that references to an insured deposi-
 9 tory institution shall be deemed to be references to a sub-
 10 sidiary or affiliate of an insured depository institution.

11 “(d) OTHER DEFINITIONS.—For purposes of this
 12 section, the terms ‘affiliate’, ‘insured depository institu-
 13 tion’, and ‘subsidiary’ have same meanings as in section
 14 3 of the Federal Deposit Insurance Act.”.

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

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

19 **SEC. 123. REPEAL OF STOCK LOAN LIMIT IN FEDERAL RE-**
 20 **SERVE ACT.**

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

1 **Subtitle D—Wholesale Financial**
 2 **Holding Companies; Wholesale**
 3 **Financial Institutions**

4 **CHAPTER 1—WHOLESALE FINANCIAL**
 5 **HOLDING COMPANIES**

6 **SEC. 131. WHOLESALE FINANCIAL HOLDING COMPANIES**
 7 **ESTABLISHED.**

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

11 **“SEC. 10. WHOLESALE FINANCIAL HOLDING COMPANIES.**

12 **“(a) COMPANIES THAT CONTROL WHOLESALE FI-**
 13 **NANCIAL INSTITUTIONS.—**

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

17 **“(A) is registered as a bank holding com-**
 18 **pany;**

19 **“(B) is predominantly engaged in financial**
 20 **activities as defined in section 6(f)(2);**

21 **“(C) controls 1 or more wholesale financial**
 22 **institutions;**

23 **“(D) does not control—**

24 **“(i) a bank other than a wholesale fi-**
 25 **nancial institution;**

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

4 “(iii) a savings association; and

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

8 “(2) SAVINGS ASSOCIATION TRANSITION PE-
 9 RIOD.—Notwithstanding paragraph (1)(D)(iii), the
 10 Board may permit a company that controls a sav-
 11 ings association and that otherwise meets the re-
 12 quirements of paragraph (1) to become supervised
 13 under paragraph (1), if the company divests control
 14 of any such savings association within such period,
 15 not to exceed 5 years after becoming supervised
 16 under paragraph (1), as permitted by the Board.

17 “(b) SUPERVISION BY THE BOARD.—

18 “(1) IN GENERAL.—The provisions of this sec-
 19 tion shall govern the reporting, examination, and
 20 capital requirements of wholesale financial holding
 21 companies.

22 “(2) REPORTS.—

23 “(A) IN GENERAL.—The Board from time
 24 to time may require any wholesale financial
 25 holding company and any subsidiary of such

1 company to submit reports under oath to keep
2 the Board informed as to—

3 “(i) the company’s or subsidiary’s ac-
4 tivities, financial condition, policies, sys-
5 tems for monitoring and controlling finan-
6 cial and operational risks, and transactions
7 with depository institution subsidiaries of
8 the holding company; and

9 “(ii) the extent to which the company
10 or subsidiary has complied with the provi-
11 sions of this Act and regulations prescribed
12 and orders issued under this Act.

13 “(B) USE OF EXISTING REPORTS.—

14 “(i) IN GENERAL.—The Board shall,
15 to the fullest extent possible, accept re-
16 ports in fulfillment of the Board’s report-
17 ing requirements under this paragraph
18 that the wholesale financial holding com-
19 pany or any subsidiary of such company
20 has provided or been required to provide to
21 other Federal and State supervisors or to
22 appropriate self-regulatory organizations.

23 “(ii) AVAILABILITY.—A wholesale fi-
24 nancial holding company or a subsidiary of
25 such company shall provide to the Board,

1 at the request of the Board, a report re-
2 ferred to in clause (i).

3 “(C) EXEMPTIONS FROM REPORTING RE-
4 QUIREMENTS.—

5 “(i) IN GENERAL.—The Board may,
6 by regulation or order, exempt any com-
7 pany or class of companies, under such
8 terms and conditions and for such periods
9 as the Board shall provide in such regula-
10 tion or order, from the provisions of this
11 paragraph and any regulation prescribed
12 under this paragraph.

13 “(ii) CRITERIA FOR CONSIDER-
14 ATION.—In making any determination
15 under clause (i) with regard to any exemp-
16 tion under such clause, the Board shall
17 consider, among such other factors as the
18 Board may determine to be appropriate,
19 the following factors:

20 “(I) Whether information of the
21 type required under this paragraph is
22 available from a supervisory agency
23 (as defined in section 1101(7) of the
24 Right to Financial Privacy Act of

1 1978) or a foreign regulatory author-
2 ity of a similar type.

3 “(II) The primary business of the
4 company.

5 “(III) The nature and extent of
6 the domestic and foreign regulation of
7 the activities of the company.

8 “(3) EXAMINATIONS.—

9 “(A) LIMITED USE OF EXAMINATION AU-
10 THORITY.—The Board may make examinations
11 of each wholesale financial holding company
12 and each subsidiary of such company in order
13 to—

14 “(i) inform the Board regarding the
15 nature of the operations and financial con-
16 dition of the wholesale financial holding
17 company and its subsidiaries;

18 “(ii) inform the Board regarding—

19 “(I) the financial and operational
20 risks within the wholesale financial
21 holding company system that may af-
22 fect any depository institution owned
23 by such holding company; and

24 “(II) the systems of the holding
25 company and its subsidiaries for mon-

1 itoring and controlling those risks;
2 and

3 “(iii) monitor compliance with the
4 provisions of this Act and those governing
5 transactions and relationships between any
6 depository institution controlled by the
7 wholesale financial holding company and
8 any of the company’s other subsidiaries.

9 “(B) RESTRICTED FOCUS OF EXAMINA-
10 TIONS.—The Board shall, to the fullest extent
11 possible, limit the focus and scope of any exam-
12 ination of a wholesale financial holding com-
13 pany under this paragraph to—

14 “(i) the holding company; and

15 “(ii) any subsidiary (other than an in-
16 sured depository institution subsidiary) of
17 the holding company that, because of the
18 size, condition, or activities of the subsidi-
19 ary, the nature or size of transactions be-
20 tween such subsidiary and any affiliated
21 depository institution, or the centralization
22 of functions within the holding company
23 system, could have a materially adverse ef-
24 fect on the safety and soundness of any de-

1 pository institution affiliate of the holding
2 company.

3 “(C) DEFERENCE TO BANK EXAMINA-
4 TIONS.—The Board shall, to the fullest extent
5 possible, use the reports of examination of de-
6 pository institutions made by the Comptroller of
7 the Currency, the Federal Deposit Insurance
8 Corporation, the Director of the Office of Thrift
9 Supervision or the appropriate State depository
10 institution supervisory authority for the pur-
11 poses of this section.

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

19 “(i) any registered broker or dealer or
20 any registered investment adviser by or on
21 behalf of the Commission; and

22 “(ii) any licensed insurance company
23 by or on behalf of any State government
24 insurance agency responsible for the super-
25 vision of the insurance company.

1 “(E) CONFIDENTIALITY OF REPORTED IN-
2 FORMATION.—

3 “(i) IN GENERAL.—Notwithstanding
4 any other provision of law, the Board shall
5 not be compelled to disclose any nonpublic
6 information required to be reported under
7 this paragraph, or any information sup-
8 plied to the Board by any domestic or for-
9 eign regulatory agency, that relates to the
10 financial or operational condition of any
11 wholesale financial holding company or any
12 subsidiary of such company.

13 “(ii) COMPLIANCE WITH REQUESTS
14 FOR INFORMATION.—No provision of this
15 subparagraph shall be construed as author-
16 izing the Board to withhold information
17 from the Congress, or preventing the
18 Board from complying with a request for
19 information from any other Federal de-
20 partment or agency for purposes within the
21 scope of such department’s or agency’s ju-
22 risdiction, or from complying with any
23 order of a court of competent jurisdiction
24 in an action brought by the United States
25 or the Board.

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

7 “(iv) DESIGNATION OF CONFIDENTIAL
8 INFORMATION.—In prescribing regulations
9 to carry out the requirements of this sub-
10 section, the Board shall designate informa-
11 tion described in or obtained pursuant to
12 this paragraph as confidential information.

13 “(F) COSTS.—The cost of any examination
14 conducted by the Board under this section may
15 be assessed against, and made payable by, the
16 wholesale financial holding company.

17 “(4) CAPITAL ADEQUACY GUIDELINES.—

18 “(A) CAPITAL ADEQUACY PROVISIONS.—
19 Subject to the requirements of, and solely in ac-
20 cordance with, the terms of this paragraph, the
21 Board may adopt capital adequacy rules or
22 guidelines for wholesale financial holding com-
23 panies.

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

4 “(i) FOCUS ON DOUBLE LEVERAGE.—
5 The Board shall focus on the use by whole-
6 sale financial holding companies of debt
7 and other liabilities to fund capital invest-
8 ments in subsidiaries.

9 “(ii) NO UNWEIGHTED CAPITAL
10 RATIO.—The Board shall not, by regula-
11 tion, guideline, order, or otherwise, impose
12 under this section a capital ratio that is
13 not based on appropriate risk-weighting
14 considerations.

15 “(iii) NO CAPITAL REQUIREMENT ON
16 REGULATED ENTITIES.—The Board shall
17 not, by regulation, guideline, order or oth-
18 erwise, prescribe or impose any capital or
19 capital adequacy rules, standards, guide-
20 lines, or requirements upon any subsidiary
21 that—

22 “(I) is not a depository institu-
23 tion; and

24 “(II) is in compliance with appli-
25 cable capital requirements of another

1 Federal regulatory authority (includ-
2 ing the Securities and Exchange Com-
3 mission) or State insurance authority.

4 “(iv) CERTAIN SUBSIDIARIES.—The
5 Board shall not, by regulation, guideline,
6 order or otherwise, prescribe or impose any
7 capital or capital adequacy rules, stand-
8 ards, guidelines, or requirements upon any
9 subsidiary that is not a depository institu-
10 tion and that is registered as an invest-
11 ment adviser under the Investment Advis-
12 ers Act of 1940, except that this clause
13 shall not be construed as preventing the
14 Board from imposing capital or capital
15 adequacy rules, guidelines, standards, or
16 requirements with respect to activities of a
17 registered investment adviser other than
18 investment advisory activities or activities
19 incidental to investment advisory activities.

20 “(v) LIMITATIONS ON INDIRECT AC-
21 TION.—In developing, establishing, or as-
22 sessing holding company capital or capital
23 adequacy rules, guidelines, standards, or
24 requirements for purposes of this para-
25 graph, the Board shall not take into ac-

1 count the activities, operations, or invest-
2 ments of an affiliated investment company
3 registered under the Investment Company
4 Act of 1940, if the investment company is
5 not—

6 “(I) a bank holding company; or

7 “(II) controlled by a bank hold-

8 ing company by reason of ownership

9 by the bank holding company (includ-

10 ing through all of its affiliates) of 25

11 percent or more of the shares of the

12 investment company, where the shares

13 owned by the bank holding company

14 have a market value equal to more

15 than \$1,000,000.

16 “(vi) APPROPRIATE EXCLUSIONS.—

17 The Board shall take full account of—

18 “(I) the capital requirements

19 made applicable to any subsidiary that

20 is not a depository institution by an-

21 other Federal regulatory authority or

22 State insurance authority; and

23 “(II) industry norms for capital-

24 ization of a company’s unregulated

25 subsidiaries and activities.

1 “(vii) INTERNAL RISK MANAGEMENT
2 MODELS.—The Board may incorporate in-
3 ternal risk management models of whole-
4 sale financial holding companies into its
5 capital adequacy guidelines or rules and
6 may take account of the extent to which
7 resources of a subsidiary depository insti-
8 tution may be used to service the debt or
9 other liabilities of the wholesale financial
10 holding company.

11 “(c) NONFINANCIAL ACTIVITIES AND INVEST-
12 MENTS.—

13 “(1) GRANDFATHERED ACTIVITIES.—

14 “(A) IN GENERAL.—Notwithstanding sec-
15 tion 4(a), a company that becomes a wholesale
16 financial holding company may continue to en-
17 gage, directly or indirectly, in any activity and
18 may retain ownership and control of shares of
19 a company engaged in any activity if—

20 “(i) on the date of the enactment of
21 the Financial Services Act of 1998, such
22 wholesale financial holding company was
23 lawfully engaged in that nonfinancial activ-
24 ity, held the shares of such company, or
25 had entered into a contract to acquire

1 shares of any company engaged in such ac-
2 tivity; and

3 “(ii) the company engaged in such ac-
4 tivity continues to engage only in the same
5 activities that such company conducted on
6 the date of the enactment of the Financial
7 Services Act of 1998, and other activities
8 permissible under this Act.

9 “(B) NO EXPANSION OF GRANDFATHERED
10 COMMERCIAL ACTIVITIES THROUGH MERGER OR
11 CONSOLIDATION.—A wholesale financial holding
12 company that engages in activities or holds
13 shares pursuant to this paragraph, or a subsidi-
14 ary of such wholesale financial holding com-
15 pany, may not acquire, in any merger, consoli-
16 dation, or other type of business combination,
17 assets of any other company which is engaged
18 in any activity which the Board has not deter-
19 mined to be financial in nature or incidental to
20 activities that are financial in nature under sec-
21 tion 6(c).

22 “(C) LIMITATION TO SINGLE EXEMP-
23 TION.—No company that engages in any activ-
24 ity or controls any shares under subsection (f)

1 of section 6 may engage in any activity or own
2 any shares pursuant to this paragraph.

3 “(2) COMMODITIES.—

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

21 “(B) LIMITATION.—The attributed aggre-
22 gate consolidated assets of a wholesale financial
23 holding company held under the authority
24 granted under this paragraph and not otherwise
25 permitted to be held by all wholesale financial

1 holding companies under this section may not
2 exceed 5 percent of the total consolidated assets
3 of the wholesale financial holding company, ex-
4 cept that the Board may increase such percent-
5 age of total consolidated assets by such
6 amounts and under such circumstances as the
7 Board considers appropriate, consistent with
8 the purposes of this Act.

9 “(3) CROSS MARKETING RESTRICTIONS.—A
10 wholesale financial holding company shall not
11 permit—

12 “(A) any company whose shares it owns or
13 controls pursuant to paragraph (1) or (2) to
14 offer or market any product or service of an af-
15 filiated wholesale financial institution; or

16 “(B) any affiliated wholesale financial in-
17 stitution to offer or market any product or serv-
18 ice of any company whose shares are owned or
19 controlled by such wholesale financial holding
20 company pursuant to such paragraphs.

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

23 “(1) IN GENERAL.—Any foreign bank, or any
24 company that owns or controls a foreign bank, that
25 operates a branch, agency, or commercial lending

1 company in the United States, including a foreign
2 bank or company that owns or controls a wholesale
3 financial institution, may request a determination
4 from the Board that such bank or company be treat-
5 ed as a wholesale financial holding company (other
6 than for purposes of subsection (c)), subject to such
7 conditions as the Board deems appropriate, giving
8 due regard to the principle of national treatment
9 and equality of competitive opportunity and the re-
10 quirements imposed on domestic banks and compa-
11 nies.

12 “(2) CONDITIONS FOR TREATMENT AS A
13 WHOLESALE FINANCIAL HOLDING COMPANY.—A for-
14 eign bank and a company that owns or controls a
15 foreign bank may not be treated as a wholesale fi-
16 nancial holding company unless the bank and com-
17 pany meet and continue to meet the following cri-
18 teria:

19 “(A) NO INSURED DEPOSITS.—No deposits
20 held directly by a foreign bank or through an
21 affiliate (other than an institution described in
22 subparagraph (D) or (F) of section 2(c)(2)) are
23 insured under the Federal Deposit Insurance
24 Act.

1 “(B) CAPITAL STANDARDS.—The foreign
2 bank meets risk-based capital standards com-
3 parable to the capital standards required for a
4 wholesale financial institution, giving due re-
5 gard to the principle of national treatment and
6 equality of competitive opportunity.

7 “(C) TRANSACTION WITH AFFILIATES.—
8 Transactions between a branch, agency, or com-
9 mercial lending company subsidiary of the for-
10 eign bank in the United States, and any securi-
11 ties affiliate or company in which the foreign
12 bank (or any company that owns or controls
13 such foreign bank), has invested and which en-
14 gages in any activity authorized only as a result
15 of the application of subsection (c) or (g) of
16 section 6, comply with the provisions of sections
17 23A and 23B of the Federal Reserve Act in the
18 same manner and to the same extent as such
19 transactions would be required to comply with
20 such sections if the foreign bank were a mem-
21 ber bank.

22 “(3) TREATMENT AS A WHOLESALE FINANCIAL
23 INSTITUTION.—Any foreign bank which is, or is af-
24 filiated with a company which is, treated as a whole-
25 sale financial holding company under this subsection

1 shall be treated as a wholesale financial institution
2 for purposes of paragraphs (1)(C) and (3) of section
3 9B(c) of the Federal Reserve Act, and any such for-
4 eign bank or company shall be subject to paragraphs
5 (3), (4), and (5) of section 9B(d) of the Federal Re-
6 serve Act, except that the Board may adopt such
7 modifications, conditions, or exemptions as the
8 Board deems appropriate, giving due regard to the
9 principle of national treatment and equality of com-
10 petitive opportunity.

11 “(4) SUPERVISION OF FOREIGN BANK WHICH
12 MAINTAINS NO BANKING PRESENCE OTHER THAN
13 CONTROL OF A WHOLESALE FINANCIAL INSTITU-
14 TION.—A foreign bank that owns or controls a
15 wholesale financial institution but does not operate
16 a branch, agency, or commercial lending company in
17 the United States (and any company that owns or
18 controls such foreign bank) may request a deter-
19 mination from the Board that such bank or com-
20 pany be treated as a wholesale financial holding
21 company, except that such bank or company shall be
22 subject to the restrictions of paragraphs (2)(A) and
23 (3) of this subsection.

24 “(5) NO EFFECT ON OTHER PROVISIONS.—This
25 section shall not be construed as limiting the author-

1 ity of the Board under the International Banking
 2 Act of 1978 with respect to the regulation, super-
 3 vision, or examination of foreign banks and their of-
 4 fices and affiliates in the United States.”.

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

8 “(24) ENFORCEMENT AUTHORITY OVER UNIN-
 9 SURED STATE MEMBER BANKS.—Section 3(u) of the
 10 Federal Deposit Insurance Act, subsections (j) and
 11 (k) of section 7 of such Act, and subsections (b)
 12 through (n), (s), (u), and (v) of section 8 of such
 13 Act shall apply to an uninsured State member bank
 14 in the same manner and to the same extent such
 15 provisions apply to an insured State member bank
 16 and any reference in any such provision to ‘insured
 17 depository institution’ shall be deemed to be a ref-
 18 erence to ‘uninsured State member bank’ for pur-
 19 poses of this paragraph.”.

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

21 (a) FEDERAL RESERVE ACT.—The last sentence of
 22 the eighth undesignated paragraph of section 9 of the
 23 Federal Reserve Act (12 U.S.C. 326) is amended to read
 24 as follows: “The Board of Governors of the Federal Re-
 25 serve System, at its discretion, may furnish reports of ex-

1 amination or other confidential supervisory information
 2 concerning State member banks or any other entities ex-
 3 amined under any other authority of the Board to any
 4 Federal or State authorities with supervisory or regulatory
 5 authority over the examined entity, to officers, directors,
 6 or receivers of the examined entity, and to any other per-
 7 son that the Board determines to be proper.”.

8 (b) COMMODITY FUTURES TRADING COMMISSION.—
 9 The Right to Financial Privacy Act of 1978 (12 U.S.C.
 10 3401 et seq.) is amended—

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

12 (A) by redesignating subparagraphs (G)
 13 and (H) as subparagraphs (H) and (I), respec-
 14 tively; and

15 (B) by inserting after subparagraph (F)
 16 the following new subparagraph:

17 “(G) the Commodity Futures Trading
 18 Commission; or”; and

19 (2) in section 1112(e) (12 U.S.C. 3412(e)), by
 20 striking “and the Securities and Exchange Commis-
 21 sion” and inserting “, the Securities and Exchange
 22 Commission, and the Commodity Futures Trading
 23 Commission”.

24 **SEC. 133. CONFORMING AMENDMENTS.**

25 (a) BANK HOLDING COMPANY ACT OF 1956.—

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

5 “(p) WHOLESALE FINANCIAL INSTITUTION.—The
 6 term ‘wholesale financial institution’ means a wholesale fi-
 7 nancial institution subject to section 9B of the Federal
 8 Reserve Act.

9 “(q) COMMISSION.—The term ‘Commission’ means
 10 the Securities and Exchange Commission.

11 “(r) DEPOSITORY INSTITUTION.—The term ‘deposi-
 12 tory institution’—

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

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

16 (2) DEFINITION OF BANK INCLUDES WHOLE-
 17 SALE FINANCIAL INSTITUTION.—Section 2(c)(1) of
 18 the Bank Holding Company Act of 1956 (12 U.S.C.
 19 1841(c)(1)) is amended by adding at the end the fol-
 20 lowing new subparagraph:

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

22 (3) INCORPORATED DEFINITIONS.—Section
 23 2(n) of the Bank Holding Company Act of 1956 (12
 24 U.S.C. 1841(n)) is amended by inserting “‘insured
 25 bank’,” after “‘in danger of default’,”.

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

7 (b) FEDERAL DEPOSIT INSURANCE ACT.—Section
 8 3(q)(2)(A) of the Federal Deposit Insurance Act (12
 9 U.S.C. 1813(q)(2)(A)) is amended to read as follows:

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

14 **CHAPTER 2—WHOLESALE FINANCIAL** 15 **INSTITUTIONS**

16 **SEC. 136. WHOLESALE FINANCIAL INSTITUTIONS.**

17 (a) NATIONAL WHOLESALE FINANCIAL INSTITU-
 18 TIONS.—

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

1 **“SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITU-**
2 **TIONS.**

3 “(a) AUTHORIZATION OF THE COMPTROLLER RE-
4 QUIRED.—A national bank may apply to the Comptroller
5 on such forms and in accordance with such regulations
6 as the Comptroller may prescribe, for permission to oper-
7 ate as a national wholesale financial institution.

8 “(b) REGULATION.—A national wholesale financial
9 institution may exercise, in accordance with such institu-
10 tion’s articles of incorporation and regulations issued by
11 the Comptroller, all the powers and privileges of a national
12 bank formed in accordance with section 5133 of the Re-
13 vised Statutes of the United States, subject to section 9B
14 of the Federal Reserve Act and the limitations and restric-
15 tions contained therein.

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

23 (2) CLERICAL AMENDMENT.—The table of sec-
24 tions for chapter one of title LXII of the Revised
25 Statutes of the United States is amended by insert-
26 ing after the item relating to section 5136A (as

1 added by section 121(d) of this title) the following
 2 new item:

“5136B. National wholesale financial institutions.”.

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

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

8 “(a) APPLICATION FOR MEMBERSHIP AS WHOLE-
 9 SALE FINANCIAL INSTITUTION.—

10 “(1) APPLICATION REQUIRED.—

11 “(A) IN GENERAL.—Any bank may apply
 12 to the Board of Governors of the Federal Re-
 13 serve System to become a wholesale financial
 14 institution and, as a wholesale financial institu-
 15 tion, to subscribe to the stock of the Federal re-
 16 serve bank organized within the district where
 17 the applying bank is located.

18 “(B) TREATMENT AS MEMBER BANK.—
 19 Any application under subparagraph (A) shall
 20 be treated as an application under, and shall be
 21 subject to the provisions of, section 9.

22 “(2) INSURANCE TERMINATION.—No bank the
 23 deposits of which are insured under the Federal De-
 24 posit Insurance Act may become a wholesale finan-
 25 cial institution unless it has met all requirements

1 under that Act for voluntary termination of deposit
2 insurance.

3 “(b) GENERAL REQUIREMENTS APPLICABLE TO
4 WHOLESALE FINANCIAL INSTITUTIONS.—

5 “(1) FEDERAL RESERVE ACT.—Except as oth-
6 erwise provided in this section, wholesale financial
7 institutions shall be member banks and shall be sub-
8 ject to the provisions of this Act that apply to mem-
9 ber banks to the same extent and in the same man-
10 ner as State member insured banks, except that a
11 wholesale financial institution may terminate mem-
12 bership under this Act only with the prior written
13 approval of the Board and on terms and conditions
14 that the Board determines are appropriate to carry
15 out the purposes of this Act.

16 “(2) PROMPT CORRECTIVE ACTION.—A whole-
17 sale financial institution shall be deemed to be an in-
18 sured depository institution for purposes of section
19 38 of the Federal Deposit Insurance Act except
20 that—

21 “(A) the relevant capital levels and capital
22 measures for each capital category shall be the
23 levels specified by the Board for wholesale fi-
24 nancial institutions; and

1 “(B) all references to the appropriate Fed-
2 eral banking agency or to the Corporation in
3 that section shall be deemed to be references to
4 the Board.

5 “(3) ENFORCEMENT AUTHORITY.—Subsections
6 (j) and (k) of section 7, subsections (b) through (n),
7 (s), and (v) of section 8, and section 19 of the Fed-
8 eral Deposit Insurance Act shall apply to a wholesale
9 financial institution in the same manner and to the
10 same extent as such provisions apply to State mem-
11 ber insured banks and any reference in such sections
12 to an insured depository institution shall be deemed
13 to include a reference to a wholesale financial insti-
14 tution.

15 “(4) CERTAIN OTHER STATUTES APPLICA-
16 BLE.—A wholesale financial institution shall be
17 deemed to be a banking institution, and the Board
18 shall be the appropriate Federal banking agency for
19 such bank and all such bank’s affiliates, for pur-
20 poses of the International Lending Supervision Act.

21 “(5) BANK MERGER ACT.—A wholesale finan-
22 cial institution shall be subject to sections 18(c) and
23 44 of the Federal Deposit Insurance Act in the same
24 manner and to the same extent the wholesale finan-

1 cial institution would be subject to such sections if
2 the institution were a State member insured bank.

3 “(6) BRANCHING.—Notwithstanding any other
4 provision of law, a wholesale financial institution
5 may establish and operate a branch at any location
6 on such terms and conditions as established by the
7 Board and, in the case of a State-chartered whole-
8 sale financial institution, with the approval of the
9 Board, and, in the case of a national bank wholesale
10 financial institution, with the approval of the Comp-
11 troller of the Currency.

12 “(7) ACTIVITIES OF OUT-OF-STATE BRANCHES
13 OF WHOLESALE FINANCIAL INSTITUTIONS.—

14 “(A) GENERAL.—A State-chartered whole-
15 sale financial institution shall be deemed to be
16 a State bank and an insured State bank for
17 purposes of paragraphs (1), (2), and (3) of sec-
18 tion 24(j) of the Federal Deposit Insurance
19 Act, and a national wholesale financial institu-
20 tion shall be deemed to be a national bank for
21 purposes of section 5155(f) of the Revised Stat-
22 utes of the United States.

23 “(B) DEFINITIONS.—The following defini-
24 tions shall apply solely for purposes of applying
25 paragraph (1):

1 “(i) HOME STATE.—The term ‘home
2 State’ means—

3 “(I) with respect to a national
4 wholesale financial institution, the
5 State in which the main office of the
6 institution is located; and

7 “(II) with respect to a State-
8 chartered wholesale financial institu-
9 tion, the State by which the institu-
10 tion is chartered.

11 “(ii) HOST STATE.—The term ‘host
12 State’ means a State, other than the home
13 State of the wholesale financial institution,
14 in which the institution maintains, or seeks
15 to establish and maintain, a branch.

16 “(iii) OUT-OF-STATE BANK.—The
17 term ‘out-of-State bank’ means, with re-
18 spect to any State, a wholesale financial
19 institution whose home State is another
20 State.

21 “(8) DISCRIMINATION REGARDING INTEREST
22 RATES.—Section 27 of the Federal Deposit Insur-
23 ance Act shall apply to State-chartered wholesale fi-
24 nancial institutions in the same manner and to the
25 same extent as such provisions apply to State mem-

1 ber insured banks and any reference in such section
2 to a State-chartered insured depository institution
3 shall be deemed to include a reference to a State-
4 chartered wholesale financial institution.

5 “(9) PREEMPTION OF STATE LAWS REQUIRING
6 DEPOSIT INSURANCE FOR WHOLESALE FINANCIAL
7 INSTITUTIONS.—The appropriate State banking au-
8 thority may grant a charter to a wholesale financial
9 institution notwithstanding any State constitution or
10 statute requiring that the institution obtain insur-
11 ance of its deposits and any such State constitution
12 or statute is hereby preempted solely for purposes of
13 this paragraph.

14 “(10) PARITY FOR WHOLESALE FINANCIAL IN-
15 STITUTIONS.—A State bank that is a wholesale fi-
16 nancial institution under this section shall have all
17 of the rights, powers, privileges, and immunities (in-
18 cluding those derived from status as a federally
19 chartered institution) of and as if it were a national
20 bank, subject to such terms and conditions as estab-
21 lished by the Board.

22 “(11) COMMUNITY REINVESTMENT ACT OF
23 1977.—A State wholesale financial institution shall
24 be subject to the Community Reinvestment Act of
25 1977, only if the wholesale financial institution has

1 an affiliate that is an insured depository institution
2 or that operates an insured branch, as those terms
3 are defined in section 3 of the Federal Deposit In-
4 surance Act.

5 “(c) SPECIFIC REQUIREMENTS APPLICABLE TO
6 WHOLESALE FINANCIAL INSTITUTIONS.—

7 “(1) LIMITATIONS ON DEPOSITS.—

8 “(A) MINIMUM AMOUNT.—

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

13 “(ii) LIMITATION ON DEPOSITS OF
14 LESS THAN \$100,000.—No wholesale finan-
15 cial institution may receive initial deposits
16 of \$100,000 or less if such deposits con-
17 stitute more than 5 percent of the institu-
18 tion’s total deposits.

19 “(B) NO DEPOSIT INSURANCE.—Except as
20 otherwise provided in section 8A(f) of the Fed-
21 eral Deposit Insurance Act, no deposits held by
22 a wholesale financial institution shall be insured
23 deposits under the Federal Deposit Insurance
24 Act.

1 “(C) ADVERTISING AND DISCLOSURE.—

2 The Board shall prescribe regulations pertain-
3 ing to advertising and disclosure by wholesale
4 financial institutions to ensure that each deposi-
5 tor is notified that deposits at the wholesale fi-
6 nancial institution are not federally insured or
7 otherwise guaranteed by the United States Gov-
8 ernment.

9 “(2) MINIMUM CAPITAL LEVELS APPLICABLE
10 TO WHOLESALE FINANCIAL INSTITUTIONS.—The
11 Board shall, by regulation, adopt capital require-
12 ments for wholesale financial institutions—

13 “(A) to account for the status of wholesale
14 financial institutions as institutions that accept
15 deposits that are not insured under the Federal
16 Deposit Insurance Act; and

17 “(B) to provide for the safe and sound op-
18 eration of the wholesale financial institution
19 without undue risk to creditors or other per-
20 sons, including Federal reserve banks, engaged
21 in transactions with the bank.

22 “(3) ADDITIONAL REQUIREMENTS APPLICABLE
23 TO WHOLESALE FINANCIAL INSTITUTIONS.—In addi-
24 tion to any requirement otherwise applicable to State
25 member insured banks or applicable, under this sec-

1 tion, to wholesale financial institutions, the Board
2 may impose, by regulation or order, upon wholesale
3 financial institutions—

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

6 “(i) the transfer of risk to the deposit
7 insurance funds; or

8 “(ii) an affiliate from gaining access
9 to, or the benefits of, credit from a Federal
10 reserve bank, including overdrafts at a
11 Federal reserve bank;

12 “(B) special clearing balance requirements;

13 and

14 “(C) any additional requirements that the
15 Board determines to be appropriate or nec-
16 essary to—

17 “(i) promote the safety and soundness
18 of the wholesale financial institution or any
19 insured depository institution affiliate of
20 the wholesale financial institution;

21 “(ii) prevent the transfer of risk to
22 the deposit insurance funds; or

23 “(iii) protect creditors and other per-
24 sons, including Federal reserve banks, en-

1 gaged in transactions with the wholesale fi-
2 nancial institution.

3 “(4) EXEMPTIONS FOR WHOLESALE FINANCIAL
4 INSTITUTIONS.—The Board may, by regulation or
5 order, exempt any wholesale financial institution
6 from any provision applicable to a member bank
7 that is not a wholesale financial institution, if the
8 Board finds that such exemption is not inconsistent
9 with—

10 “(A) the promotion of the safety and
11 soundness of the wholesale financial institution
12 or any insured depository institution affiliate of
13 the wholesale financial institution;

14 “(B) the protection of the deposit insur-
15 ance funds; and

16 “(C) the protection of creditors and other
17 persons, including Federal reserve banks, en-
18 gaged in transactions with the wholesale finan-
19 cial institution.

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

1 “(6) NO EFFECT ON OTHER PROVISIONS.—This
2 section shall not be construed as limiting the
3 Board’s authority over member banks under any
4 other provision of law, or to create any obligation for
5 any Federal Reserve bank to make, increase, renew,
6 or extend any advance or discount under this Act to
7 any member bank or other depository institution.

8 “(d) CAPITAL AND MANAGERIAL REQUIREMENTS.—

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

11 “(2) NOTICE TO COMPANY.—The Board shall
12 promptly provide notice to a company that controls
13 a wholesale financial institution whenever such
14 wholesale financial institution is not well capitalized
15 or well managed.

16 “(3) AGREEMENT TO RESTORE INSTITUTION.—
17 Not later than 45 days after the date of receipt of
18 a notice under paragraph (2) (or such additional pe-
19 riod not to exceed 90 days as the Board may per-
20 mit), the company shall execute an agreement ac-
21 ceptable to the Board to restore the wholesale finan-
22 cial institution to compliance with all of the require-
23 ments of paragraph (1).

24 “(4) LIMITATIONS UNTIL INSTITUTION RE-
25 STORED.—Until the wholesale financial institution is

1 restored to compliance with all of the requirements
2 of paragraph (1), the Board may impose such limi-
3 tations on the conduct or activities of the company
4 or any affiliate of the company as the Board deter-
5 mines to be appropriate under the circumstances.

6 “(5) FAILURE TO RESTORE.—If the company
7 does not execute and implement an agreement in ac-
8 cordance with paragraph (3), comply with any limi-
9 tation imposed under paragraph (4), restore the
10 wholesale financial institution to well capitalized sta-
11 tus not later than 180 days after the date of receipt
12 by the company of the notice described in paragraph
13 (2), or restore the wholesale financial institution to
14 well managed status within such period as the Board
15 may permit, the company shall, under such terms
16 and conditions as may be imposed by the Board and
17 subject to such extension of time as may be granted
18 in the Board’s discretion, divest control of its sub-
19 sidiary depository institutions.

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

24 “(e) RESOLUTION OF WHOLESALE FINANCIAL INSTI-
25 TUTIONS.—

1 “(1) CONSERVATORSHIP OR RECEIVERSHIP.—

2 “(A) APPOINTMENT.—The Board may ap-
3 point a conservator or receiver for a wholesale
4 financial institution to the same extent and in
5 the same manner as the Comptroller of the
6 Currency may appoint a conservator or receiver
7 for a national bank.

8 “(B) POWERS.—The conservator or re-
9 ceiver for a wholesale financial institution shall
10 exercise the same powers, functions, and duties,
11 subject to the same limitations, as a conserva-
12 tor or receiver for a national bank.

13 “(2) BOARD AUTHORITY.—The Board shall
14 have the same authority with respect to any con-
15 servator or receiver appointed for a wholesale finan-
16 cial institution under paragraph (1), and the whole-
17 sale financial institution for which it has been ap-
18 pointed, as the Comptroller of the Currency has with
19 respect to a conservator or receiver for a national
20 bank and the national bank for which the conserva-
21 tor or receiver has been appointed.

22 “(3) BANKRUPTCY PROCEEDINGS.—The Comp-
23 troller of the Currency (in the case of a national
24 wholesale financial institution) and the Board may
25 direct the conservator or receiver of a wholesale fi-

1 nancial institution to file a petition pursuant to title
 2 11, United States Code, in which case, title 11,
 3 United States Code, shall apply to the wholesale fi-
 4 nancial institution in lieu of otherwise applicable
 5 Federal or State insolvency law.

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

9 (c) VOLUNTARY TERMINATION OF INSURED STATUS
 10 BY CERTAIN INSTITUTIONS.—

11 (1) SECTION 8 DESIGNATIONS.—Section 8(a) of
 12 the Federal Deposit Insurance Act (12 U.S.C.
 13 1818(a)) is amended—

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

15 (B) by redesignating paragraphs (2)
 16 through (10) as paragraphs (1) through (9), re-
 17 spectively.

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

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

24 “(a) IN GENERAL.—Except as provided in subsection
 25 (b), an insured State bank or a national bank may volun-

1 tarily terminate such bank's status as an insured deposi-
2 tory institution in accordance with regulations of the Cor-
3 poration if—

4 “(1) the bank provides written notice of the
5 bank's intent to terminate such insured status—

6 “(A) to the Corporation and the Board of
7 Governors of the Federal Reserve System not
8 less than 6 months before the effective date of
9 such termination; and

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

13 “(2) either—

14 “(A) the deposit insurance fund of which
15 such bank is a member equals or exceeds the
16 fund's designated reserve ratio as of the date
17 the bank provides a written notice under para-
18 graph (1) and the Corporation determines that
19 the fund will equal or exceed the applicable des-
20 ignated reserve ratio for the 2 semiannual as-
21 sessment periods immediately following such
22 date; or

23 “(B) the Corporation and the Board of
24 Governors of the Federal Reserve System ap-
25 proved the termination of the bank's insured

1 status and the bank pays an exit fee in accord-
2 ance with subsection (e).

3 “(b) EXCEPTION.—Subsection (a) shall not apply
4 with respect to—

5 “(1) an insured savings association; or

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

9 “(c) ELIGIBILITY FOR INSURANCE TERMINATED.—
10 Any bank that voluntarily elects to terminate the bank’s
11 insured status under subsection (a) shall not be eligible
12 for insurance on any deposits or any assistance authorized
13 under this Act after the period specified in subsection
14 (f)(1).

15 “(d) INSTITUTION MUST BECOME WHOLESALE FI-
16 NANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING
17 ACTIVITIES.—Any depository institution which voluntarily
18 terminates such institution’s status as an insured deposi-
19 tory institution under this section may not, upon termi-
20 nation of insurance, accept any deposits unless the institu-
21 tion is a wholesale financial institution subject to section
22 9B of the Federal Reserve Act.

23 “(e) EXIT FEES.—

24 “(1) IN GENERAL.—Any bank that voluntarily
25 terminates such bank’s status as an insured deposi-

1 tory institution under this section shall pay an exit
2 fee in an amount that the Corporation determines is
3 sufficient to account for the institution's pro rata
4 share of the amount (if any) which would be re-
5 quired to restore the relevant deposit insurance fund
6 to the fund's designated reserve ratio as of the date
7 the bank provides a written notice under subsection
8 (a)(1).

9 “(2) PROCEDURES.—The Corporation shall pre-
10 scribe, by regulation, procedures for assessing any
11 exit fee under this subsection.

12 “(f) TEMPORARY INSURANCE OF DEPOSITS INSURED
13 AS OF TERMINATION.—

14 “(1) TRANSITION PERIOD.—The insured depos-
15 its of each depositor in a State bank or a national
16 bank on the effective date of the voluntary termi-
17 nation of the bank's insured status, less all subse-
18 quent withdrawals from any deposits of such deposi-
19 tor, shall continue to be insured for a period of not
20 less than 6 months and not more than 2 years, as
21 determined by the Corporation. During such period,
22 no additions to any such deposits, and no new de-
23 posits in the depository institution made after the ef-
24 fective date of such termination shall be insured by
25 the Corporation.

1 “(2) TEMPORARY ASSESSMENTS; OBLIGATIONS
2 AND DUTIES.—During the period specified in para-
3 graph (1) with respect to any bank, the bank shall
4 continue to pay assessments under section 7 as if
5 the bank were an insured depository institution. The
6 bank shall, in all other respects, be subject to the
7 authority of the Corporation and the duties and obli-
8 gations of an insured depository institution under
9 this Act during such period, and in the event that
10 the bank is closed due to an inability to meet the de-
11 mands of the bank’s depositors during such period,
12 the Corporation shall have the same powers and
13 rights with respect to such bank as in the case of
14 an insured depository institution.

15 “(g) ADVERTISEMENTS.—

16 “(1) IN GENERAL.—A bank that voluntarily
17 terminates the bank’s insured status under this sec-
18 tion shall not advertise or hold itself out as having
19 insured deposits, except that the bank may advertise
20 the temporary insurance of deposits under sub-
21 section (f) if, in connection with any such advertise-
22 ment, the advertisement also states with equal prom-
23 inence that additions to deposits and new deposits
24 made after the effective date of the termination are
25 not insured.

1 “(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS,
2 AND SECURITIES.—Any certificate of deposit or
3 other obligation or security issued by a State bank
4 or a national bank after the effective date of the vol-
5 untary termination of the bank’s insured status
6 under this section shall be accompanied by a con-
7 spicuous, prominently displayed notice that such cer-
8 tificate of deposit or other obligation or security is
9 not insured under this Act.

10 “(h) NOTICE REQUIREMENTS.—

11 “(1) NOTICE TO THE CORPORATION.—The no-
12 tice required under subsection (a)(1)(A) shall be in
13 such form as the Corporation may require.

14 “(2) NOTICE TO DEPOSITORS.—The notice re-
15 quired under subsection (a)(1)(B) shall be—

16 “(A) sent to each depositor’s last address
17 of record with the bank; and

18 “(B) in such manner and form as the Cor-
19 poration finds to be necessary and appropriate
20 for the protection of depositors.”.

21 “(3) DEFINITION.—Section 19(b)(1)(A)(i) of the
22 Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)) is
23 amended by inserting “, or any wholesale financial
24 institution subject to section 9B of this Act” after
25 “such Act”.

1 (d) TECHNICAL AND CONFORMING AMENDMENTS TO
2 THE BANKRUPTCY CODE.—

3 (1) BANKRUPTCY CODE DEBTORS.—Section
4 109(b)(2) of title 11, United States Code, is amend-
5 ed by striking “; or” and inserting the following: “,
6 except that—

7 “(A) a wholesale financial institution es-
8 tablished under section 5136B of the Revised
9 Statutes of the United States or section 9B of
10 the Federal Reserve Act may be a debtor if a
11 petition is filed at the direction of the Comp-
12 troller of the Currency (in the case of a whole-
13 sale financial institution established under sec-
14 tion 5136B of the Revised Statutes of the
15 United States) or the Board of Governors of
16 the Federal Reserve System (in the case of any
17 wholesale financial institution); and

18 “(B) a corporation organized under section
19 25A of the Federal Reserve Act may be a debt-
20 or if a petition is filed at the direction of the
21 Board of Governors of the Federal Reserve Sys-
22 tem; or”.

23 (2) CHAPTER 7 DEBTORS.—Section 109(d) of
24 title 11, United States Code, is amended to read as
25 follows:

1 “(d) Only a railroad and a person that may be a debt-
 2 or under chapter 7 of this title, except that a stockbroker,
 3 a wholesale financial institution established under section
 4 5136B of the Revised Statutes of the United States or
 5 section 9B of the Federal Reserve Act, a corporation orga-
 6 nized under section 25A of the Federal Reserve Act, or
 7 a commodity broker, may be a debtor under chapter 11
 8 of this title.”.

9 (3) DEFINITION OF FINANCIAL INSTITUTION.—
 10 Section 101(22) of title 11, United States Code, is
 11 amended to read as follows:

12 “(22) ‘financial institution’ means a person that
 13 is a commercial or savings bank, industrial savings
 14 bank, savings and loan association, trust company,
 15 wholesale financial institution established under sec-
 16 tion 5136B of the Revised Statutes of the United
 17 States or section 9B of the Federal Reserve Act, or
 18 corporation organized under section 25A of the Fed-
 19 eral Reserve Act and, when any such person is act-
 20 ing as agent or custodian for a customer in connec-
 21 tion with a securities contract, as defined in section
 22 741 of this title, such customer,”.

23 (4) SUBCHAPTER V OF CHAPTER 7.—

24 (A) IN GENERAL.—Section 103 of title 11,
 25 United States Code, is amended—

1 (i) by redesignating subsections (e)
 2 through (i) as subsections (f) through (j),
 3 respectively; and

4 (ii) by inserting after subsection (d)
 5 the following:

6 “(e) Subchapter V of chapter 7 of this title applies
 7 only in a case under such chapter concerning the liquida-
 8 tion of a wholesale financial institution established under
 9 section 5136B of the Revised Statutes of the United
 10 States or section 9B of the Federal Reserve Act, or a cor-
 11 poration organized under section 25A of the Federal Re-
 12 serve Act.”.

13 (B) WHOLESALE BANK LIQUIDATION.—
 14 Chapter 7 of title 11, United States Code, is
 15 amended by adding at the end the following:

16 “SUBCHAPTER V—WHOLESALE BANK
 17 LIQUIDATION

18 **“§ 781. Definitions for subchapter**

19 “In this subchapter—

20 “(1) the term ‘Board’ means the Board of Gov-
 21 ernors of the Federal Reserve System;

22 “(2) the term ‘depository institution’ has the
 23 same meaning as in section 3 of the Federal Deposit
 24 Insurance Act, and includes any wholesale bank;

1 “(3) the term ‘national wholesale financial insti-
 2 tution’ means a wholesale financial institution estab-
 3 lished under section 5136B of the Revised Statutes
 4 of the United States; and

5 “(4) the term ‘wholesale bank’ means a na-
 6 tional wholesale financial institution, a wholesale fi-
 7 nancial institution established under section 9B of
 8 the Federal Reserve Act, or a corporation organized
 9 under section 25A of the Federal Reserve Act.

10 **“§ 782. Selection of trustee**

11 “Notwithstanding any other provision of this title,
 12 the conservator or receiver who files the petition shall be
 13 the trustee under this chapter, unless the Comptroller of
 14 the Currency (in the case of a national wholesale financial
 15 institution for which it appointed the conservator or re-
 16 ceiver) or the Board (in the case of any wholesale bank
 17 for which it appointed the conservator or receiver) des-
 18 ignates an alternative trustee. The Comptroller of the Cur-
 19 rency or the Board (as applicable) may designate a succes-
 20 sor trustee, if required.

21 **“§ 783. Additional powers of trustee**

22 “(a) The trustee under this subchapter has power,
 23 with permission of the court—

24 “(1) to sell the wholesale bank to a depository
 25 institution or consortium of depository institutions

1 (which consortium may agree on the allocation of
2 the wholesale bank among the consortium);

3 “(2) to merge the wholesale bank with a deposi-
4 tory institution;

5 “(3) to transfer contracts to the same extent as
6 could a receiver for a depository institution under
7 paragraphs (9) and (10) of section 11(e) of the Fed-
8 eral Deposit Insurance Act;

9 “(4) to transfer assets or liabilities to a deposi-
10 tory institution;

11 “(5) to distribute property not of the estate, in-
12 cluding distributions to customers that are man-
13 dated by subchapters III and IV of this chapter; or

14 “(6) to transfer assets and liabilities to a bridge
15 bank as provided in paragraphs (1), (3)(A), (5), (6),
16 and (9) through (13), and subparagraphs (A)
17 through (H) and (K) of paragraph (4) of section
18 11(n) of the Federal Deposit Insurance Act, except
19 that—

20 “(A) the bridge bank shall be treated as a
21 wholesale bank for the purpose of this sub-
22 section; and

23 “(B) any references in any such provision
24 of law to the Federal Deposit Insurance Cor-
25 poration shall be construed to be references to

1 the appointing agency and that references to
2 deposit insurance shall be omitted.

3 “(b) Any reference in this section to transfers of li-
4 abilities includes a ratable transfer of liabilities within a
5 priority class.

6 **“§ 784. Right to be heard**

7 “The Comptroller of the Currency (in the case of a
8 national wholesale financial institution), the Board (in the
9 case of any wholesale bank), or a Federal Reserve bank
10 (in the case of a wholesale bank that is a member of that
11 bank) may raise and may appear and be heard on any
12 issue in a case under this subchapter.

13 **“§ 785. Expedited transfers**

14 “The trustee may make a transfer pursuant to sec-
15 tion 783 without prior judicial approval, if the Comptroller
16 of the Currency (in the case of a national wholesale finan-
17 cial institution for which it appointed the conservator or
18 receiver) or the Board (in the case of any wholesale bank
19 for which it appointed the conservator or receiver) deter-
20 mines that the transfer would be necessary to avert serious
21 adverse effects on economic conditions or financial stabil-
22 ity.”.

23 (C) CONFORMING AMENDMENT.—The
24 table of sections for chapter 7 of title 11,
25 United States Code, is amended by adding at

1 the end the following:

“781. Definitions for subchapter.

“782. Selection of trustee.

“783. Additional powers of trustee.

“784. Right to be heard.

“785. Expedited transfers.”.

2 (e) RESOLUTION OF EDGE CORPORATIONS.—Section
3 25A(16) of the Federal Reserve Act (12 U.S.C. 624(16))
4 is amended to read as follows:

5 “(16) APPOINTMENT OF RECEIVER OR CON-
6 SERVATOR.—

7 “(A) IN GENERAL.—The Board may ap-
8 point a conservator or receiver for a corporation
9 organized under the provisions of this section to
10 the same extent and in the same manner as the
11 Comptroller of the Currency may appoint a con-
12 servator or receiver for a national bank, and the
13 conservator or receiver for such corporation
14 shall exercise the same powers, functions, and
15 duties, subject to the same limitations, as a
16 conservator or receiver for a national bank.

17 “(B) EQUIVALENT AUTHORITY.—The
18 Board shall have the same authority with re-
19 spect to any conservator or receiver appointed
20 for a corporation organized under the provisions
21 of this section under this paragraph and any
22 such corporation as the Comptroller of the Cur-
23 rency has with respect to a conservator or re-

1 ceiver of a national bank and the national bank
 2 for which a conservator or receiver has been ap-
 3 pointed.

4 “(C) TITLE 11 PETITIONS.—The Board
 5 may direct the conservator or receiver of a cor-
 6 poration organized under the provisions of this
 7 section to file a petition pursuant to title 11,
 8 United States Code, in which case, title 11,
 9 United States Code, shall apply to the corpora-
 10 tion in lieu of otherwise applicable Federal or
 11 State insolvency law.”.

12 **Subtitle E—Preservation of FTC** 13 **Authority**

14 **SEC. 141. AMENDMENT TO THE BANK HOLDING COMPANY** 15 **ACT OF 1956 TO MODIFY NOTIFICATION AND** 16 **POST-APPROVAL WAITING PERIOD FOR SEC-** 17 **TION 3 TRANSACTIONS.**

18 Section 11(b)(1) of the Bank Holding Company Act
 19 of 1956 (12 U.S.C. 1849(b)(1)) is amended by inserting
 20 “and, if the transaction also involves an acquisition under
 21 section 4 or section 6, the Board shall also notify the Fed-
 22 eral Trade Commission of such approval” before the pe-
 23 riod at the end of the first sentence.

1 **SEC. 142. INTERAGENCY DATA SHARING.**

2 To the extent not prohibited by other law, the Comp-
3 troller of the Currency, the Director of the Office of Thrift
4 Supervision, the Federal Deposit Insurance Corporation,
5 and the Board of Governors of the Federal Reserve Sys-
6 tem shall make available to the Attorney General and the
7 Federal Trade Commission any data in the possession of
8 any such banking agency that the antitrust agency deems
9 necessary for antitrust review of any transaction requiring
10 notice to any such antitrust agency or the approval of such
11 agency under section 3, 4, or 6 of the Bank Holding Com-
12 pany Act of 1956, section 18(c) of the Federal Deposit
13 Insurance Act, the National Bank Consolidation and
14 Merger Act, section 10 of the Home Owners' Loan Act,
15 or the antitrust laws.

16 **SEC. 143. CLARIFICATION OF STATUS OF SUBSIDIARIES**
17 **AND AFFILIATES.**

18 (a) CLARIFICATION OF FEDERAL TRADE COMMIS-
19 SION JURISDICTION.—Any person which directly or indi-
20 rectly controls, is controlled directly or indirectly by, or
21 is directly or indirectly under common control with, any
22 bank or savings association (as such terms are defined in
23 section 3 of the Federal Deposit Insurance Act) and is
24 not itself a bank or savings association shall not be
25 deemed to be a bank or savings association for purposes

1 of the Federal Trade Commission Act or any other law
2 enforced by the Federal Trade Commission.

3 (b) SAVINGS PROVISION.—No provision of this sec-
4 tion shall be construed as restricting the authority of any
5 Federal banking agency (as defined in section 3 of the
6 Federal Deposit Insurance Act) under any Federal bank-
7 ing law, including section 8 of the Federal Deposit Insur-
8 ance Act.

9 (c) HART-SCOTT-RODINO AMENDMENT.—Section
10 7A(c)(7) of the Clayton Act (15 U.S.C. 18a(c)(7)) is
11 amended by inserting before the semicolon at the end
12 thereof the following: “, except that a portion of a trans-
13 action is not exempt under this paragraph if such portion
14 of the transaction (A) requires notice under section 6 of
15 the Bank Holding Company Act of 1956; and (B) does
16 not require approval under section 3 or 4 of the Bank
17 Holding Company Act of 1956”.

18 **SEC. 144. ANNUAL GAO REPORT.**

19 (a) IN GENERAL.—By the end of the 1-year period
20 beginning on the date of the enactment of this Act and
21 annually thereafter, the Comptroller General of the United
22 States shall submit a report to the Congress on market
23 concentration in the financial services industry and its im-
24 pact on consumers.

1 (b) ANALYSIS.—Each report submitted under sub-
2 section (a) shall contain an analysis of—

3 (1) the positive and negative effects of affili-
4 ations between various types of financial companies,
5 and of acquisitions pursuant to this Act and the
6 amendments made by this Act to other provisions of
7 law, including any positive or negative effects on
8 consumers, area markets, and submarkets thereof or
9 on registered securities brokers and dealers which
10 have been purchased by depository institutions or
11 depository institution holding companies;

12 (2) the changes in business practices and the
13 effects of any such changes on the availability of
14 venture capital, consumer credit, and other financial
15 services or products and the availability of capital
16 and credit for small businesses; and

17 (3) the acquisition patterns among depository
18 institutions, depository institution holding compa-
19 nies, securities firms, and insurance companies in-
20 cluding acquisitions among the largest 20 percent of
21 firms and acquisitions within regions or other lim-
22 ited geographical areas.

1 **Subtitle F—Applying the Principles**
 2 **of National Treatment and**
 3 **Equality of Competitive Oppor-**
 4 **tunity to Foreign Banks and**
 5 **Foreign Financial Institutions**

6 **SEC. 151. APPLYING THE PRINCIPLES OF NATIONAL TREAT-**
 7 **MENT AND EQUALITY OF COMPETITIVE OP-**
 8 **PORTUNITY TO FOREIGN BANKS THAT ARE**
 9 **FINANCIAL HOLDING COMPANIES.**

10 Section 8(c) of the International Banking Act of
 11 1978 (12 U.S.C. 3106(c)) is amended by adding at the
 12 end the following new paragraph:

13 “(3) **TERMINATION OF GRANDFATHERED**
 14 **RIGHTS.—**

15 “(A) **IN GENERAL.—**If any foreign bank or
 16 foreign company files a declaration under sec-
 17 tion 6(b)(1) (D) of the Bank Holding Company
 18 Act of 1956, or receives a determination under
 19 section 10(d)(1) of the Bank Holding Company
 20 Act of 1956, any authority conferred by this
 21 subsection on any foreign bank or company to
 22 engage in any activity which the Board has de-
 23 termined to be permissible for financial holding
 24 companies under section 6 of such Act shall ter-
 25minate immediately.

“(B) RESTRICTIONS AND REQUIREMENTS

AUTHORIZED.—If a foreign bank or company that engages, directly or through an affiliate pursuant to paragraph (1), in an activity which the Board has determined to be permissible for financial holding companies under section 6 of the Bank Holding Company Act of 1956 has not filed a declaration with the Board of its status as a financial holding company under such section or received a determination under section 10(d)(1) by the end of the 2-year period beginning on the date of enactment of the Financial Services Act of 1998, the Board, giving due regard to the principle of national treatment and equality of competitive opportunity, may impose such restrictions and requirements on the conduct of such activities by such foreign bank or company as are comparable to those imposed on a financial holding company organized under the laws of the United States, including a requirement to conduct such activities in compliance with any prudential safeguards established under section 5(h) of the Bank Holding Company Act of 1956.”.

1 **SEC. 152. APPLYING THE PRINCIPLES OF NATIONAL TREAT-**
 2 **MENT AND EQUALITY OF COMPETITIVE OP-**
 3 **PORTUNITY TO FOREIGN BANKS AND FOR-**
 4 **EIGN FINANCIAL INSTITUTIONS THAT ARE**
 5 **WHOLESALE FINANCIAL INSTITUTIONS.**

6 Section 8A of the Federal Deposit Insurance Act (as
 7 added by section 136(c)(2) of this Act) is amended by add-
 8 ing at the end the following new subsection:

9 “(i) **VOLUNTARY TERMINATION OF DEPOSIT INSUR-**
 10 **ANCE.**—The provisions on voluntary termination of insur-
 11 ance in this section shall apply to an insured branch of
 12 a foreign bank (including a Federal branch) in the same
 13 manner and to the same extent as they apply to an insured
 14 State bank or a national bank.”.

15 **SEC. 153. REPRESENTATIVE OFFICES.**

16 (a) **DEFINITION OF “REPRESENTATIVE OFFICE”.**—
 17 Section 1(b)(15) of the International Banking Act of 1978
 18 (12 U.S.C. 3101(15)) is amended by striking “State agen-
 19 cy, or subsidiary of a foreign bank” and inserting “or
 20 State agency”.

21 (b) **EXAMINATIONS.**—Section 10(c) of the Inter-
 22 national Banking Act of 1978 (12 U.S.C. 3107(c)) is
 23 amended by adding at the end the following: “The Board
 24 may also make examinations of any affiliate of a foreign
 25 bank conducting business in any State if the Board deems
 26 it necessary to determine and enforce compliance with this

1 Act, the Bank Holding Company Act of 1956 (12 U.S.C.
2 1841 et seq.), or other applicable Federal banking law.”.

3 **Subtitle G—Federal Home Loan** 4 **Bank System Modernization**

5 **SEC. 161. SHORT TITLE.**

6 This subtitle may be cited as the “Federal Home
7 Loan Bank System Modernization Act of 1998”.

8 **SEC. 162. DEFINITIONS.**

9 Section 2 of the Federal Home Loan Bank Act (12
10 U.S.C. 1422) is amended—

11 (1) in paragraph (1), by striking “term ‘Board’
12 means” and inserting “terms ‘Finance Board’ and
13 ‘Board’ mean”;

14 (2) by striking paragraph (3) and inserting the
15 following:

16 “(3) STATE.—The term ‘State’, in addition to
17 the States of the United States, includes the District
18 of Columbia, Guam, Puerto Rico, the United States
19 Virgin Islands, American Samoa, and the Common-
20 wealth of the Northern Mariana Islands.”; and

21 (3) by adding at the end the following new
22 paragraph:

23 “(13) COMMUNITY FINANCIAL INSTITUTION.—

24 “(A) IN GENERAL.—The term ‘community
25 financial institution’ means a member—

1 “(i) the deposits of which are insured
 2 under the Federal Deposit Insurance Act;
 3 and

4 “(ii) that has, as of the date of the
 5 transaction at issue, less than
 6 \$500,000,000 in average total assets,
 7 based on an average of total assets over
 8 the 3 years preceding that date.

9 “(B) ADJUSTMENTS.—The \$500,000,000
 10 limit referred to in subparagraph (A)(ii) shall
 11 be adjusted annually by the Finance Board,
 12 based on the annual percentage increase, if any,
 13 in the Consumer Price Index for all urban con-
 14 sumers, as published by the Department of
 15 Labor.”.

16 **SEC. 163. SAVINGS ASSOCIATION MEMBERSHIP.**

17 (a) FEDERAL HOME LOAN BANK MEMBERSHIP.—
 18 Section 5(f) of the Home Owners’ Loan Act (12 U.S.C.
 19 1464(f)) is amended to read as follows:

20 “(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—
 21 On and after January 1, 1999, a Federal savings associa-
 22 tion may become a member of the Federal Home Loan
 23 Bank System, and shall qualify for such membership in
 24 the manner provided by the Federal Home Loan Bank
 25 Act.”.

1 (b) WITHDRAWAL.—Section 6(e) of the Federal
 2 Home Loan Bank Act (12 U.S.C. 1426(e)) is amended
 3 by striking “Any member other than a Federal savings
 4 and loan association may withdraw” and inserting “Any
 5 member may withdraw”.

6 **SEC. 164. ADVANCES TO MEMBERS; COLLATERAL.**

7 (a) IN GENERAL.—Section 10(a) of the Federal
 8 Home Loan Bank Act (12 U.S.C. 1430(a)) is amended—
 9 (1) by redesignating paragraphs (1) through
 10 (4) as subparagraphs (A) through (D), respectively,
 11 and indenting appropriately;

12 (2) by striking “(a) Each” and inserting the
 13 following:

14 “(a) IN GENERAL.—

15 “(1) ALL ADVANCES.—Each”;

16 (3) by striking the second sentence and insert-
 17 ing the following:

18 “(2) PURPOSES OF ADVANCES.—A long-term
 19 advance may only be made for the purposes of—

20 “(A) providing funds to any member for
 21 residential housing finance; and

22 “(B) providing funds to any community fi-
 23 nancial institution for small businesses, agricul-
 24 tural, rural development, or low-income commu-
 25 nity development lending.”;

1 (4) by striking “A Bank” and inserting the fol-
2 lowing:

3 “(3) COLLATERAL.—A Bank”;

4 (5) in paragraph (3) (as so designated by para-
5 graph (4) of this subsection)—

6 (A) in subparagraph (C) (as so redesign-
7 dated by paragraph (1) of this subsection) by
8 striking “Deposits” and inserting “Cash or de-
9 posits”;

10 (B) in subparagraph (D) (as so redesign-
11 dated by paragraph (1) of this subsection), by
12 striking the second sentence; and

13 (C) by inserting after subparagraph (D)
14 (as so redesignated by paragraph (1) of this
15 subsection) the following new subparagraph:

16 “(E) Secured loans for small business, ag-
17 riculture, rural development, or low-income
18 community development, or securities represent-
19 ing a whole interest in such secured loans, in
20 the case of any community financial institu-
21 tion.”;

22 (6) in paragraph (5)—

23 (A) in the second sentence, by striking
24 “and the Board”;

1 (B) in the third sentence, by striking
2 “Board” and inserting “Federal home loan
3 bank”; and

4 (C) by striking “(5) Paragraphs (1)
5 through (4)” and inserting the following:

6 “(4) ADDITIONAL BANK AUTHORITY.—Subpara-
7 graphs (A) through (E) of paragraph (3)”; and

8 (7) by adding at the end the following:

9 “(5) REVIEW OF CERTAIN COLLATERAL STAND-
10 ARDS.—The Board may review the collateral stand-
11 ards applicable to each Federal home loan bank for
12 the classes of collateral described in subparagraphs
13 (D) and (E) of paragraph (3), and may, if necessary
14 for safety and soundness purposes, require an in-
15 crease in the collateral standards for any or all of
16 those classes of collateral.

17 “(6) DEFINITIONS.—For purposes of this sub-
18 section, the terms ‘small business’, ‘agriculture’,
19 ‘rural development’, and ‘low-income community de-
20 velopment’ shall have the meanings given those
21 terms by rule or regulation of the Finance Board.”.

22 (b) CLERICAL AMENDMENT.—The section heading
23 for section 10 of the Federal Home Loan Bank Act (12
24 U.S.C. 1430) is amended to read as follows:

1 **“SEC. 10. ADVANCES TO MEMBERS.”.**

2 (c) CONFORMING AMENDMENTS RELATING TO MEM-
3 BERS WHICH ARE NOT QUALIFIED THRIFT LENDERS—
4 Section 10(e)(1) of the Federal Home Loan Bank Act (12
5 U.S.C. 1430(e)(1)) is amended in the second sentence, by
6 inserting before the period “or, in the case of any commu-
7 nity financial institution, for the purposes described in
8 subsection (a)(2)”.

9 **SEC. 165. ELIGIBILITY CRITERIA.**

10 Section 4(a) of the Federal Home Loan Bank Act
11 (12 U.S.C. 1424(a)) is amended—

12 (1) in paragraph (2)(A), by inserting, “(other
13 than a community financial institution)” after “in-
14 stitution”; and

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

17 “(3) LIMITED EXEMPTION FOR COMMUNITY FI-
18 NANCIAL INSTITUTIONS.—A community financial in-
19 stitution that otherwise meets the requirements of
20 paragraph (2) may become a member without regard
21 to the percentage of its total assets that is rep-
22 resented by residential mortgage loans, as described
23 in subparagraph (A) of paragraph (2).”.

1 **SEC. 166. MANAGEMENT OF BANKS.**

2 (a) BOARD OF DIRECTORS.—Section 7(d) of the Fed-
3 eral Home Loan Bank Act (12 U.S.C. 1427(d)) is
4 amended—

5 (1) by striking “(d) The term” and inserting
6 the following:

7 “(d) TERMS OF OFFICE.—The term”; and

8 (2) by striking “shall be two years”.

9 (b) COMPENSATION.—Section 7(i) of the Federal
10 Home Loan Bank Act (12 U.S.C. 1427(i)) is amended by
11 striking “, subject to the approval of the board”.

12 (c) REPEAL OF SECTIONS 22A AND 27.—The Fed-
13 eral Home Loan Bank Act (12 U.S.C. 1421 et seq.) is
14 amended by striking sections 22A (12 U.S.C. 1442a) and
15 27 (12 U.S.C. 1447).

16 (d) SECTION 12.—Section 12 of the Federal Home
17 Loan Bank Act (12 U.S.C. 1432) is amended—

18 (1) in subsection (a)—

19 (A) by striking “, but, except” and all that
20 follows through “ten years”;

21 (B) by striking “, subject to the approval
22 of the Board” each place that term appears;

23 (C) by striking “and, by its Board of direc-
24 tors,” and all that follows through “agent of
25 such bank,” and inserting “and, by the board
26 of directors of the bank, to prescribe, amend,

1 and repeal by-laws governing the manner in
 2 which its affairs may be administered, consist-
 3 ent with applicable laws and regulations, as ad-
 4 ministered by the Finance Board. No officer,
 5 employee, attorney, or agent of a Federal home
 6 loan bank”; and

7 (D) by striking “Board of directors” each
 8 place that term appears and inserting “board of
 9 directors”; and

10 (2) in subsection (b), by striking “loans banks”
 11 and inserting “loan banks”.

12 (e) POWERS AND DUTIES OF FEDERAL HOUSING FI-
 13 NANCE BOARD.—

14 (1) ISSUANCE OF NOTICES OF VIOLATIONS.—

15 Section 2B(a) of the Federal Home Loan Bank Act
 16 (12 U.S.C. 1422b(a)) is amended by adding at the
 17 end the following new paragraphs:

18 “(5) To issue and serve a notice of charges
 19 upon a Federal home loan bank or upon any execu-
 20 tive officer or director of a Federal home loan bank
 21 if, in the determination of the Finance Board, the
 22 bank, executive officer, or director is engaging or
 23 has engaged in, or the Finance Board has reason-
 24 able cause to believe that the bank, executive officer,
 25 or director is about to engage in, any conduct that

1 violates any provision of this Act or any law, order,
2 rule, or regulation or any condition imposed in writ-
3 ing by the Finance Board in connection with the
4 granting of any application or other request by the
5 bank, or any written agreement entered into by the
6 bank with the agency, in accordance with the proce-
7 dures provided in section 1371(c) of the Federal
8 Housing Enterprises Financial Safety and Sound-
9 ness Act of 1992. Such authority includes the same
10 authority to take affirmative action to correct condi-
11 tions resulting from violations or practices or to
12 limit activities of a bank or any executive officer or
13 director of a bank as appropriate Federal banking
14 agencies have to take with respect to insured deposi-
15 tory institutions under paragraphs (6) and (7) of
16 section 8(b) of the Federal Deposit Insurance Act,
17 and to have all other powers, rights, and duties to
18 enforce this Act with respect to the Federal home
19 loan banks and their executive officers and directors
20 as the Office of Federal Housing Enterprise Over-
21 sight has to enforce the Federal Housing Enter-
22 prises Financial Safety and Soundness Act of 1992,
23 the Federal National Mortgage Association Charter
24 Act, or the Federal Home Loan Mortgage Corpora-
25 tion Act with respect to the Federal housing enter-

1 prises under the Federal Housing Enterprises Fi-
 2 nancial Safety and Soundness Act of 1992.

3 “(6) To address any insufficiencies in capital
 4 levels resulting from the application of section 5(f)
 5 of the Home Owners’ Loan Act.

6 “(7) To sue and be sued, by and through its
 7 own attorneys.”.

8 (2) TECHNICAL AMENDMENT.—Section 111 of
 9 Public Law 93–495 (12 U.S.C. 250) is amended by
 10 inserting “Federal Housing Finance Board,” after
 11 “Director of the Office of Thrift Supervision,”.

12 (f) ELIGIBILITY TO SECURE ADVANCES.—

13 (1) SECTION 9.—Section 9 of the Federal
 14 Home Loan Bank Act (12 U.S.C. 1429) is
 15 amended—

16 (A) in the second sentence, by striking
 17 “with the approval of the Board”; and

18 (B) in the third sentence, by striking “,
 19 subject to the approval of the Board,”.

20 (2) SECTION 10.—Section 10 of the Federal
 21 Home Loan Bank Act (12 U.S.C. 1430) is
 22 amended—

23 (A) in subsection (c)—

1 (i) in the first sentence, by striking
2 “Board” and inserting “Federal home loan
3 bank”; and

4 (ii) in the second sentence, by striking
5 “held by” and all that follows before the
6 period;

7 (B) in subsection (d)—

8 (i) in the first sentence, by striking
9 “and the approval of the Board”; and

10 (ii) by striking “Subject to the ap-
11 proval of the Board, any” and inserting
12 “Any”; and

13 (C) in subsection (j)(1)—

14 (i) by striking “to subsidize the inter-
15 est rate on advances” and inserting “to
16 provide subsidies, including subsidized in-
17 terest rates on advances”;

18 (ii) by striking “Pursuant” and in-
19 serting the following:

20 “(A) ESTABLISHMENT.—Pursuant”; and

21 (iii) by adding at the end the follow-
22 ing new subparagraph:

23 “(B) NONDELEGATION OF APPROVAL AU-
24 THORITY.—Subject to such regulations as the
25 Finance Board may prescribe, the board of di-

1 rectors of each Federal home loan bank may
 2 approve or disapprove requests from members
 3 for Affordable Housing Program subsidies, and
 4 may not delegate such authority.”.

5 (g) SECTION 16.—Section 16(a) of the Federal Home
 6 Loan Bank Act (12 U.S.C. 1436(a)) is amended—

7 (1) in the third sentence—

8 (A) by striking “net earnings” and insert-
 9 ing “previously retained earnings or current net
 10 earnings”; and

11 (B) by striking “, and then only with the
 12 approval of the Federal Housing Finance
 13 Board”; and

14 (2) by striking the fourth sentence.

15 (h) SECTION 18.—Section 18(b) of the Federal Home
 16 Loan Bank Act (12 U.S.C. 1438(b)) is amended by strik-
 17 ing paragraph (4).

18 **SEC. 167. RESOLUTION FUNDING CORPORATION.**

19 (a) IN GENERAL.—Section 21B(f)(2)(C) of the Fed-
 20 eral Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(C)) is
 21 amended to read as follows:

22 “(C) PAYMENTS BY FEDERAL HOME LOAN
 23 BANKS.—

24 “(i) IN GENERAL.—To the extent that
 25 the amounts available pursuant to sub-

1 paragraphs (A) and (B) are insufficient to
2 cover the amount of interest payments,
3 each Federal home loan bank shall pay to
4 the Funding Corporation in each calendar
5 year, 20.75 percent of the net earnings of
6 that bank (after deducting expenses relat-
7 ing to section 10(j) and operating ex-
8 penses).

9 “(ii) ANNUAL DETERMINATION.—The
10 Board annually shall determine the extent
11 to which the value of the aggregate
12 amounts paid by the Federal home loan
13 banks exceeds or falls short of the value of
14 an annuity of \$300,000,000 per year that
15 commences on the issuance date and ends
16 on the final scheduled maturity date of the
17 obligations, and shall select appropriate
18 present value factors for making such de-
19 terminations.

20 “(iii) PAYMENT TERM ALTER-
21 ATIONS.—The Board shall extend or short-
22 en the term of the payment obligations of
23 a Federal home loan bank under this sub-
24 paragraph as necessary to ensure that the
25 value of all payments made by the banks

1 is equivalent to the value of an annuity re-
2 ferred to in clause (ii).

3 “(iv) TERM BEYOND MATURITY.—If
4 the Board extends the term of payments
5 beyond the final scheduled maturity date
6 for the obligations, each Federal home loan
7 bank shall continue to pay 20.75 percent
8 of its net earnings (after deducting ex-
9 penses relating to section 10(j) and operat-
10 ing expenses) to the Treasury of the
11 United States until the value of all such
12 payments by the Federal home loan banks
13 is equivalent to the value of an annuity re-
14 ferred to in clause (ii). In the final year in
15 which the Federal home loan banks are re-
16 quired to make any payment to the Treas-
17 ury under this subparagraph, if the dollar
18 amount represented by 20.75 percent of
19 the net earnings of the Federal home loan
20 banks exceeds the remaining obligation of
21 the banks to the Treasury, the Finance
22 Board shall reduce the percentage pro rata
23 to a level sufficient to pay the remaining
24 obligation.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall become effective on January 1, 1999.
3 Payments made by a Federal home loan bank before that
4 effective date shall be counted toward the total obligation
5 of that bank under section 21B(f)(2)(C) of the Federal
6 Home Loan Bank Act, as amended by this section.

7 **Subtitle H—Direct Activities of**
8 **Banks**

9 **SEC. 181. AUTHORITY OF NATIONAL BANKS TO UNDER-**
10 **WRITE CERTAIN MUNICIPAL BONDS.**

11 The paragraph designated the Seventh of section
12 5136 of the Revised Statutes of the United States (12
13 U.S.C. 24(7)) is amended by adding at the end the follow-
14 ing new sentence: “In addition to the provisions in this
15 paragraph for dealing in, underwriting or purchasing secu-
16 rities, the limitations and restrictions contained in this
17 paragraph as to dealing in, underwriting, and purchasing
18 investment securities for the national bank’s own account
19 shall not apply to obligations (including limited obligation
20 bonds, revenue bonds, and obligations that satisfy the re-
21 quirements of section 142(b)(1) of the Internal Revenue
22 Code of 1986) issued by or on behalf of any state or politi-
23 cal subdivision of a state, including any municipal cor-
24 porate instrumentality of 1 or more states, or any public
25 agency or authority of any state or political subdivision

1 of a state, if the national banking association is well cap-
2 italized (as defined in section 38 of the Federal Deposit
3 Insurance Act).”.

4 **Subtitle I—Deposit Insurance** 5 **Funds**

6 **SEC. 186. STUDY OF SAFETY AND SOUNDNESS OF FUNDS.**

7 (a) STUDY REQUIRED.—The Board of Directors of
8 the Federal Deposit Insurance Corporation shall conduct
9 a study of the following issues with regard to the Bank
10 Insurance Fund and the Savings Association Insurance
11 Fund:

12 (1) SAFETY AND SOUNDNESS.—The safety and
13 soundness of the funds and the adequacy of the re-
14 serve requirements applicable to the funds in light
15 of—

16 (A) the size of the insured depository insti-
17 tutions which are resulting from mergers and
18 consolidations since the effective date of the
19 Riegle-Neal Interstate Banking and Branching
20 Efficiency Act of 1994; and

21 (B) the affiliation of insured depository in-
22 stitutions with other financial institutions pur-
23 suant to this Act and the amendments made by
24 this Act.

1 (2) CONCENTRATION LEVELS.—The concentra-
2 tion levels of the funds, taking into account the
3 number of members of each fund and the geographic
4 distribution of such members, and the extent to
5 which either fund is exposed to higher risks due to
6 a regional concentration of members or an insuffi-
7 cient membership base relative to the size of member
8 institutions.

9 (3) MERGER ISSUES.—Issues relating to the
10 planned merger of the funds, including the cost of
11 merging the funds and the manner in which such
12 costs will be distributed among the members of the
13 respective funds.

14 (b) REPORT REQUIRED.—

15 (1) IN GENERAL.—Before the end of the 9-
16 month period beginning on the date of the enact-
17 ment of this Act, the Board of Directors of the Fed-
18 eral Deposit Insurance Corporation shall submit a
19 report to the Congress on the study conducted pur-
20 suant to subsection (a).

21 (2) CONTENTS OF REPORT.—The report shall
22 include—

23 (A) detailed findings of the Board of Di-
24 rectors with regard to the issues described in
25 subsection (a);

1 (B) a description of the plans developed by
2 the Board of Directors for merging the Bank
3 Insurance Fund and the Savings Association
4 Insurance Fund, including an estimate of the
5 amount of the cost of such merger which would
6 be borne by Savings Association Insurance
7 Fund members; and

8 (C) such recommendations for legislative
9 and administrative action as the Board of Di-
10 rectors determines to be necessary or appro-
11 priate to preserve the safety and soundness of
12 the deposit insurance funds, reduce the risks to
13 such funds, provide for an efficient merger of
14 such funds, and for other purposes.

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

17 (1) INSURED DEPOSITORY INSTITUTION.—The
18 term “insured depository institution” has the same
19 meaning as in section 3(c) of the Federal Deposit
20 Insurance Act.

21 (2) BIF AND SAIF MEMBERS.—The terms
22 “Bank Insurance Fund member” and “Savings As-
23 sociation Insurance Fund member” have the same
24 meanings as in section 7(l) of the Federal Deposit
25 Insurance Act.

1 **SEC. 187. ELIMINATION OF SAIF AND DIF SPECIAL RE-**
 2 **SERVES.**

3 (a) SAIF SPECIAL RESERVES.—Section 11(a)(6) of
 4 the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6))
 5 is amended by striking subparagraph (L).

6 (b) DIF SPECIAL RESERVES.—Section 2704 of the
 7 Deposit Insurance Funds Act of 1996 (12 U.S.C. 1821
 8 note) is amended—

9 (1) by striking subsection (b); and

10 (2) in subsection (d)—

11 (A) by striking paragraph (4);

12 (B) in paragraph (6)(C)(i), by striking
 13 “(6) and (7)” and inserting “(5), (6), and (7)”;

14 and

15 (C) in paragraph (6)(C), by striking clause

16 (ii) and inserting the following:

17 “(ii) by redesignating paragraph (8)
 18 as paragraph (5).”.

19 **Subtitle J—Effective Date of Title**

20 **SEC. 191. EFFECTIVE DATE.**

21 Except with regard to any subtitle or other provision
 22 of this title for which a specific effective date is provided,
 23 this title and the amendments made by this title shall take
 24 effect at the end of the 270-day period beginning on the
 25 date of the enactment of this Act.

1 **TITLE II—FUNCTIONAL**
2 **REGULATION**
3 **Subtitle A—Brokers and Dealers**

4 **SEC. 201. DEFINITION OF BROKER.**

5 Section 3(a)(4) of the Securities Exchange Act of
6 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

7 “(4) BROKER.—

8 “(A) IN GENERAL.—The term ‘broker’
9 means any person engaged in the business of
10 effecting transactions in securities for the ac-
11 count of others.

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

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

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

4 “(II) the broker or dealer per-
5 forms brokerage services in an area
6 that is clearly marked and, to the ex-
7 tent practicable, physically separate
8 from the routine deposit-taking activi-
9 ties of the bank;

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

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

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

16 “(VI) bank employees do not di-
17 rectly receive incentive compensation
18 for any brokerage transaction unless
19 such employees are associated persons
20 of a broker or dealer and are qualified
21 pursuant to the rules of a self-regu-
22 latory organization, except that the
23 bank employees may receive com-
24 pensation for the referral of any cus-
25 tomer if the compensation is a nomi-

1 nal one-time cash fee of a fixed dollar
2 amount and the payment of the fee is
3 not contingent on whether the referral
4 results in a transaction;

5 “(VII) such services are provided
6 by the broker or dealer on a basis in
7 which all customers which receive any
8 services are fully disclosed to the
9 broker or dealer;

10 “(VIII) the bank does not carry
11 a securities account of the customer
12 except in a customary custodian or
13 trustee capacity; and

14 “(IX) the bank, broker, or dealer
15 informs each customer that the bro-
16 kerage services are provided by the
17 broker or dealer and not by the bank
18 and that the securities are not depos-
19 its or other obligations of the bank,
20 are not guaranteed by the bank, and
21 are not insured by the Federal De-
22 posit Insurance Corporation.

23 “(ii) TRUST ACTIVITIES.—The bank
24 effects transactions in a trustee capacity,
25 or effects transactions in a fiduciary capac-

1 ity in its trust department or other depart-
2 ment that is regularly examined by bank
3 examiners for compliance with fiduciary
4 principles and standards, and (in either
5 case)—

6 “(I) is primarily compensated for
7 such transactions on the basis of an
8 administration or annual fee (payable
9 on a monthly, quarterly, or other
10 basis), a percentage of assets under
11 management, or a flat or capped per
12 order processing fee equal to not more
13 than the cost incurred by the bank in
14 connection with executing securities
15 transactions for trustee and fiduciary
16 customers, or any combination of such
17 fees, consistent with fiduciary prin-
18 ciples and standards; and

19 “(II) does not publicly solicit bro-
20 kerage business, other than by adver-
21 tising that it effects transactions in
22 securities in conjunction with advertis-
23 ing its other trust activities.

1 “(iii) PERMISSIBLE SECURITIES
2 TRANSACTIONS.—The bank effects trans-
3 actions in—

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

6 “(II) exempted securities;

7 “(III) qualified Canadian govern-
8 ment obligations as defined in section
9 5136 of the Revised Statutes, in con-
10 formity with section 15C of this title
11 and the rules and regulations there-
12 under, or obligations of the North
13 American Development Bank; or

14 “(IV) any standardized, credit
15 enhanced debt security issued by a
16 foreign government pursuant to the
17 March 1989 plan of then Secretary of
18 the Treasury Brady, used by such for-
19 eign government to retire outstanding
20 commercial bank loans.

21 “(iv) CERTAIN STOCK PURCHASE
22 PLANS.—

23 “(I) EMPLOYEE BENEFIT
24 PLANS.—The bank effects trans-
25 actions, as part of its transfer agency

1 activities, in the securities of an issuer
2 as part of any pension, retirement,
3 profit-sharing, bonus, thrift, savings,
4 incentive, or other similar benefit plan
5 for the employees of that issuer or its
6 subsidiaries, if—

7 (aa) the bank does not so-
8 licit transactions or provide in-
9 vestment advice with respect to
10 the purchase or sale of securities
11 in connection with the plan; and

12 “(bb) the bank’s compensa-
13 tion for such plan or program
14 consists primarily of administra-
15 tion fees, or flat or capped per
16 order processing fees, or both.

17 “(II) DIVIDEND REINVESTMENT
18 PLANS.—The bank effects trans-
19 actions, as part of its transfer agency
20 activities, in the securities of an issuer
21 as part of that issuer’s dividend rein-
22 vestment plan, if—

23 “(aa) the bank does not so-
24 licit transactions or provide in-
25 vestment advice with respect to

1 the purchase or sale of securities
2 in connection with the plan;

3 “(bb) the bank does not net
4 shareholders’ buy and sell orders,
5 other than for programs for odd-
6 lot holders or plans registered
7 with the Commission; and

8 “(cc) the bank’s compensa-
9 tion for such plan or program
10 consists primarily of administra-
11 tion fees, or flat or capped per
12 order processing fees, or both.

13 “(III) ISSUER PLANS.—The bank
14 effects transactions, as part of its
15 transfer agency activities, in the secu-
16 rities of an issuer as part of a plan or
17 program for the purchase or sale of
18 that issuer’s shares, if—

19 “(aa) the bank does not so-
20 licit transactions or provide in-
21 vestment advice with respect to
22 the purchase or sale of securities
23 in connection with the plan or
24 program;

1 “(bb) the bank does not net
2 shareholders’ buy and sell orders,
3 other than for programs for odd-
4 lot holders or plans registered
5 with the Commission; and

6 “(cc) the bank’s compensa-
7 tion for such plan or program
8 consists primarily of administra-
9 tion fees, or flat or capped per
10 order processing fees, or both.

11 “(IV) PERMISSIBLE DELIVERY
12 OF MATERIALS.—The exception to
13 being considered a broker for a bank
14 engaged in activities described in sub-
15 clauses (I), (II), and (III) will not be
16 affected by a bank’s delivery of writ-
17 ten or electronic plan materials to em-
18 ployees of the issuer, shareholders of
19 the issuer, or members of affinity
20 groups of the issuer, so long as such
21 materials are—

22 “(aa) comparable in scope or
23 nature to that permitted by the
24 Commission as of the date of the

1 enactment of the Financial Serv-
2 ices Act of 1998; or

3 “(bb) otherwise permitted by
4 the Commission.

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

13 “(vi) AFFILIATE TRANSACTIONS.—
14 The bank effects transactions for the ac-
15 count of any affiliate of the bank (as de-
16 fined in section 2 of the Bank Holding
17 Company Act of 1956) other than—

18 “(I) a registered broker or deal-
19 er; or

20 “(II) an affiliate that is engaged
21 in merchant banking, as described in
22 section 6(c)(3)(H) of the Bank Hold-
23 ing Company Act of 1956.

24 “(vii) PRIVATE SECURITIES OFFER-
25 INGS.—The bank—

1 “(I) effects sales as part of a pri-
2 mary offering of securities not involv-
3 ing a public offering, pursuant to sec-
4 tion 3(b), 4(2), or 4(6) of the Securi-
5 ties Act of 1933 or the rules and reg-
6 ulations issued thereunder;

7 “(II) at any time after the date
8 that is 1 year after the date of enact-
9 ment of the Financial Services Act of
10 1998, is not affiliated with a broker
11 or dealer that has been registered for
12 more than 1 year in accordance with
13 this Act, and engages in dealing, mar-
14 ket making, or underwriting activities,
15 other than with respect to exempted
16 securities; and

17 “(III) effects transactions exclu-
18 sively with qualified investors.

19 “(viii) SAFEKEEPING AND CUSTODY
20 ACTIVITIES.—

21 “(I) IN GENERAL.—The bank, as
22 part of customary banking activities—

23 “(aa) provides safekeeping
24 or custody services with respect
25 to securities, including the exer-

1 cise of warrants and other rights
2 on behalf of customers;

3 “(bb) facilitates the transfer
4 of funds or securities, as a custo-
5 dian or a clearing agency, in con-
6 nection with the clearance and
7 settlement of its customers’
8 transactions in securities;

9 “(cc) effects securities lend-
10 ing or borrowing transactions
11 with or on behalf of customers as
12 part of services provided to cus-
13 tomers pursuant to division (aa)
14 or (bb) or invests cash collateral
15 pledged in connection with such
16 transactions; or

17 “(dd) holds securities
18 pledged by a customer to another
19 person or securities subject to
20 purchase or resale agreements in-
21 volving a customer, or facilitates
22 the pledging or transfer of such
23 securities by book entry or as
24 otherwise provided under applica-
25 ble law.

1 “(II) EXCEPTION FOR CARRYING
2 BROKER ACTIVITIES.—The exception
3 to being considered a broker for a
4 bank engaged in activities described in
5 subclause (I) shall not apply if the
6 bank, in connection with such activi-
7 ties, acts in the United States as a
8 carrying broker (as such term, and
9 different formulations thereof, are
10 used in section 15(c)(3) and the rules
11 and regulations thereunder) for any
12 broker or dealer, unless such carrying
13 broker activities are engaged in with
14 respect to government securities (as
15 defined in paragraph (42) of this sub-
16 section).

17 “(ix) BANKING PRODUCTS.—The bank
18 effects transactions in traditional banking
19 products, as defined in section 206(a) of
20 the Financial Services Act of 1998.

21 “(x) DE MINIMIS EXCEPTION.—The
22 bank effects, other than in transactions re-
23 ferred to in clauses (i) through (ix), not
24 more than 500 transactions in securities in
25 any calendar year, and such transactions

1 are not effected by an employee of the
2 bank who is also an employee of a broker
3 or dealer.

4 “(C) BROKER DEALER EXECUTION.—The
5 exception to being considered a broker for a
6 bank engaged in activities described in clauses
7 (ii), (iv), and (viii) of subparagraph (B) shall
8 not apply if the activities described in such pro-
9 visions result in the trade in the United States
10 of any security that is a publicly traded security
11 in the United States, unless—

12 “(i) the bank directs such trade to a
13 registered broker or dealer for execution;

14 “(ii) the trade is a cross trade or
15 other substantially similar trade of a secu-
16 rity that—

17 “(I) is made by the bank or be-
18 tween the bank and an affiliated fidu-
19 ciary; and

20 “(II) is not in contravention of
21 fiduciary principles established under
22 applicable Federal or State law; or

23 “(iii) the trade is conducted in some
24 other manner permitted under rules, regu-

1 lations, or orders as the Commission may
2 prescribe or issue.

3 “(D) NO EFFECT OF BANK EXEMPTIONS
4 ON OTHER COMMISSION AUTHORITY.—The ex-
5 ception to being considered a broker for a bank
6 engaged in activities described in subpara-
7 graphs (B) and (C) shall not affect the author-
8 ity of the Commission under any other provi-
9 sion of this Act or any other securities law.

10 “(E) FIDUCIARY CAPACITY.—For purposes
11 of subparagraph (B)(ii), the term ‘fiduciary ca-
12 pacity’ means—

13 “(i) in the capacity as trustee, execu-
14 tor, administrator, registrar of stocks and
15 bonds, transfer agent, guardian, assignee,
16 receiver, or custodian under a uniform gift
17 to minor act, or as an investment adviser
18 if the bank receives a fee for its investment
19 advice;

20 “(ii) in any capacity in which the
21 bank possesses investment discretion on
22 behalf of another; or

23 “(iii) in any other similar capacity.

1 “(F) EXCEPTION FOR ENTITIES SUBJECT
2 TO SECTION 15(e).—The term ‘broker’ does not
3 include a bank that—

4 “(i) was, immediately prior to the en-
5 actment of the Financial Services Act of
6 1998, subject to section 15(e); and

7 “(ii) is subject to such restrictions
8 and requirements as the Commission con-
9 siders appropriate.”.

10 **SEC. 202. DEFINITION OF DEALER.**

11 Section 3(a)(5) of the Securities Exchange Act of
12 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

13 “(5) DEALER.—

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

18 “(B) EXCEPTION FOR PERSON NOT EN-
19 GAGED IN THE BUSINESS OF DEALING.—The
20 term ‘dealer’ does not include a person that
21 buys or sells securities for such person’s own
22 account, either individually or in a fiduciary ca-
23 pacity, but not as a part of a regular business.

24 “(C) EXCEPTION FOR CERTAIN BANK AC-
25 TIVITIES.—A bank shall not be considered to be

1 a dealer because the bank engages in any of the
2 following activities under the conditions de-
3 scribed:

4 “(i) PERMISSIBLE SECURITIES TRANS-
5 ACTIONS.—The bank buys or sells—

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

8 “(II) exempted securities;

9 “(III) qualified Canadian govern-
10 ment obligations as defined in section
11 5136 of the Revised Statutes of the
12 United States, in conformity with sec-
13 tion 15C of this title and the rules
14 and regulations thereunder, or obliga-
15 tions of the North American Develop-
16 ment Bank; or

17 “(IV) any standardized, credit
18 enhanced debt security issued by a
19 foreign government pursuant to the
20 March 1989 plan of then Secretary of
21 the Treasury Brady, used by such for-
22 eign government to retire outstanding
23 commercial bank loans.

24 “(ii) INVESTMENT, TRUSTEE, AND FI-
25 DUCIARY TRANSACTIONS.—The bank buys

1 or sells securities for investment
2 purposes—

3 “(I) for the bank; or

4 “(II) for accounts for which the
5 bank acts as a trustee or fiduciary.

6 “(iii) ASSET-BACKED TRANS-
7 ACTIONS.—The bank engages in the
8 issuance or sale to qualified investors,
9 through a grantor trust or otherwise, of se-
10 curities backed by or representing an inter-
11 est in notes, drafts, acceptances, loans,
12 leases, receivables, other obligations, or
13 pools of any such obligations predomi-
14 nantly originated by the bank, or a syn-
15 dicate of banks of which the bank is a
16 member, or an affiliate of any such bank
17 other than a broker or dealer.

18 “(iv) BANKING PRODUCTS.—The bank
19 buys or sells traditional banking products,
20 as defined in section 206(a) of the Finan-
21 cial Services Act of 1998.

22 “(v) DERIVATIVE INSTRUMENTS.—
23 The bank issues, buys, or sells any deriva-
24 tive instrument to which the bank is a
25 party—

1 “(I) to or from a qualified inves-
2 tor, except that if the instrument pro-
3 vides for the delivery of one or more
4 securities (other than a derivative in-
5 strument or government security), the
6 transaction shall be effected with or
7 through a registered broker or dealer;

8 “(II) to or from other persons,
9 except that if the derivative instru-
10 ment provides for the delivery of one
11 or more securities (other than a deriv-
12 ative instrument or government secu-
13 rity), or is a security (other than a
14 government security), the transaction
15 shall be effected with or through a
16 registered broker or dealer; or

17 “(III) to or from any person if
18 the instrument is neither a security
19 nor provides for the delivery of one or
20 more securities (other than a deriva-
21 tive instrument).”.

1 **SEC. 203. REGISTRATION FOR SALES OF PRIVATE SECURI-**
2 **TIES OFFERINGS.**

3 Section 15A of the Securities Exchange Act of 1934
4 (15 U.S.C. 78o-3) is amended by inserting after sub-
5 section (i) the following new subsection:

6 “(j) REGISTRATION FOR SALES OF PRIVATE SECURI-
7 TIES OFFERINGS.—A registered securities association
8 shall create a limited qualification category for any associ-
9 ated person of a member who effects sales as part of a
10 primary offering of securities not involving a public offer-
11 ing, pursuant to section 3(b), 4(2), or 4(6) of the Securi-
12 ties Act of 1933 and the rules and regulations thereunder,
13 and shall deem qualified in such limited qualification cat-
14 egory, without testing, any bank employee who, in the six
15 month period preceding the date of enactment of this Act,
16 engaged in effecting such sales.”.

17 **SEC. 204. SALES PRACTICES AND COMPLAINT PROCE-**
18 **DURES.**

19 Section 18 of the Federal Deposit Insurance Act is
20 amended by adding at the end the following new sub-
21 section:

22 “(s) SALES PRACTICES AND COMPLAINT PROCE-
23 DURES WITH RESPECT TO BANK SECURITIES ACTIVI-
24 TIES.—

25 “(1) REGULATIONS REQUIRED.—Each Federal
26 banking agency shall prescribe and publish in final

1 form, not later than 6 months after the date of en-
2 actment of the Financial Services Act of 1998, regu-
3 lations which apply to retail transactions, sollicita-
4 tions, advertising, or offers of any security by any
5 insured depository institution or any affiliate thereof
6 other than a registered broker or dealer or an indi-
7 vidual acting on behalf of such a broker or dealer
8 who is an associated person of such broker or dealer.
9 Such regulations shall include—

10 “(A) requirements that sales practices
11 comply with just and equitable principles of
12 trade that are substantially similar to the Rules
13 of Fair Practice of the National Association of
14 Securities Dealers; and

15 “(B) requirements prohibiting (i) condi-
16 tioning an extension of credit on the purchase
17 or sale of a security; and (ii) any conduct lead-
18 ing a customer to believe that an extension of
19 credit is conditioned upon the purchase or sale
20 of a security.

21 “(2) PROCEDURES REQUIRED.—The appro-
22 priate Federal banking agencies shall jointly estab-
23 lish procedures and facilities for receiving and expe-
24 ditiously processing complaints against any bank or
25 employee of a bank arising in connection with the

1 purchase or sale of a security by a customer, includ-
2 ing a complaint alleging a violation of the regula-
3 tions prescribed under paragraph (1), but excluding
4 a complaint involving an individual acting on behalf
5 of such a broker or dealer who is an associated per-
6 son of such broker or dealer. The use of any such
7 procedures and facilities by such a customer shall be
8 at the election of the customer. Such procedures
9 shall include provisions to refer a complaint alleging
10 fraud to the Securities and Exchange Commission
11 and appropriate State securities commissions.

12 “(3) REQUIRED ACTIONS.—The actions re-
13 quired by the Federal banking agencies under para-
14 graph (2) shall include the following:

15 “(A) establishing a group, unit, or bureau
16 within each such agency to receive such com-
17 plaints;

18 “(B) developing and establishing proce-
19 dures for investigating, and permitting cus-
20 tomers to investigate, such complaints;

21 “(C) developing and establishing proce-
22 dures for informing customers of the rights
23 they may have in connection with such com-
24 plaints;

1 “(D) developing and establishing proce-
2 dures that allow customers a period of at least
3 6 years to make complaints and that do not re-
4 quire customers to pay the costs of the proceed-
5 ing; and

6 “(E) developing and establishing proce-
7 dures for resolving such complaints, including
8 procedures for the recovery of losses to the ex-
9 tent appropriate.

10 “(4) CONSULTATION AND JOINT REGULA-
11 TIONS.—The Federal banking agencies shall consult
12 with each other and prescribe joint regulations pur-
13 suant to paragraphs (1) and (2), after consultation
14 with the Securities and Exchange Commission.

15 “(5) PROCEDURES IN ADDITION TO OTHER
16 REMEDIES.—The procedures and remedies provided
17 under this subsection shall be in addition to, and not
18 in lieu of, any other remedies available under law.

19 “(6) DEFINITION.—As used in this
20 subsection—

21 “(A) the term ‘security’ has the same
22 meaning as in section 3(a)(10) of the Securities
23 Exchange Act of 1934;

1 “(B) the term ‘registered broker or dealer’
2 has the same meaning as in section 3(a)(48) of
3 the Securities Exchange Act of 1934; and

4 “(C) the term ‘associated person’ has the
5 same meaning as in section 3(a)(18) of the Se-
6 curities Exchange Act of 1934.”.

7 **SEC. 205. INFORMATION SHARING.**

8 Section 18 of the Federal Deposit Insurance Act is
9 amended by adding at the end the following new sub-
10 section:

11 “(t) RECORDKEEPING REQUIREMENTS.—

12 “(1) REQUIREMENTS.—Each appropriate Fed-
13 eral banking agency, after consultation with and
14 consideration of the views of the Commission, shall
15 establish recordkeeping requirements for banks rely-
16 ing on exceptions contained in paragraphs (4) and
17 (5) of section 3(a) of the Securities Exchange Act of
18 1934. Such recordkeeping requirements shall be suf-
19 ficient to demonstrate compliance with the terms of
20 such exceptions and be designed to facilitate compli-
21 ance with such exceptions. Each appropriate Federal
22 banking agency shall make any such information
23 available to the Commission upon request.

1 “(2) DEFINITIONS.—As used in this subsection
2 the term ‘Commission’ means the Securities and Ex-
3 change Commission.”.

4 **SEC. 206. DEFINITION AND TREATMENT OF BANKING PROD-**
5 **UCTS.**

6 (a) DEFINITION OF TRADITIONAL BANKING PROD-
7 UCT.—For purposes of paragraphs (4) and (5) of section
8 3(a) of the Securities Exchange Act of 1934 (15 U.S.C.
9 78c(a) (4), (5)), the term “traditional banking product”
10 means—

11 (1) a deposit account, savings account, certifi-
12 cate of deposit, or other deposit instrument issued
13 by a bank;

14 (2) a banker’s acceptance;

15 (3) a letter of credit issued or loan made by a
16 bank;

17 (4) a debit account at a bank arising from a
18 credit card or similar arrangement;

19 (5) a participation in a loan which the bank or
20 an affiliate of the bank (other than a broker or deal-
21 er) funds, participates in, or owns that is sold—

22 (A) to qualified investors; or

23 (B) to other persons that—

24 (i) have the opportunity to review and
25 assess any material information, including

1 information regarding the borrower's cred-
2 itworthiness; and

3 (ii) based on such factors as financial
4 sophistication, net worth, and knowledge
5 and experience in financial matters, have
6 the capability to evaluate the information
7 available, as determined under generally
8 applicable banking standards or guidelines;
9 and

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

12 (A) foreign currencies, except options on
13 foreign currencies that trade on a national se-
14 curities exchange;

15 (B) interest rates, except interest rate de-
16 rivative instruments that—

17 (i) are based on a security or a group
18 or index of securities (other than govern-
19 ment securities or a group or index of gov-
20 ernment securities);

21 (ii) provide for the delivery of one or
22 more securities (other than government se-
23 curities); or

24 (iii) trade on a national securities ex-
25 change; or

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

4 (i) are securities or that are based on
5 a group or index of securities (other than
6 government securities or a group or index
7 of government securities);

8 (ii) provide for the delivery of one or
9 more securities (other than government se-
10 curities); or

11 (iii) trade on a national securities ex-
12 change.

13 (b) AMENDMENT TO THE SECURITIES EXCHANGE
14 ACT OF 1934.—Section 15 of the Securities Exchange Act
15 of 1934 (15 U.S.C. 78o) is amended by adding at the end
16 the following new subsection:

17 “(i) TRANSACTIONS INVOLVING HYBRID PROD-
18 UCTS.—

19 “(1) COMMISSION AUTHORITY.—

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

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

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

9 “(ii) the subject product is a security;
10 and

11 “(iii) imposing the registration re-
12 quirements of this section is necessary or
13 appropriate in the public interest and for
14 the protection of investors.

15 “(2) OBJECTION TO COMMISSION REGULA-
16 TION.—

17 “(A) FILING OF PETITION FOR REVIEW.—

18 The Board, or any aggrieved party, may obtain
19 review of any final regulation described in para-
20 graph (1) in the United States Court of Ap-
21 peals for the District of Columbia Circuit by fil-
22 ing in such court, not later than 60 days after
23 the date of publication of the final regulation,
24 a written petition requesting that the regulation
25 be set aside.

1 “(B) TRANSMITTAL OF PETITION AND
2 RECORD.—A copy of a petition described in
3 subparagraph (A) shall be transmitted as soon
4 as possible by the Clerk of the Court to an offi-
5 cer or employee of the Commission designated
6 for that purpose. Upon receipt of the petition,
7 the Commission shall file with the court the
8 regulation under review and any documents re-
9 ferred to therein, and any other relevant mate-
10 rials prescribed by the court.

11 “(C) EXCLUSIVE JURISDICTION.—On the
12 date of the filing of the petition under subpara-
13 graph (A), the court has jurisdiction, which be-
14 comes exclusive on the filing of the materials
15 set forth in subparagraph (B), to affirm and
16 enforce or to set aside the regulation at issue.

17 “(D) STANDARD OF REVIEW.—

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

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

1 “(II) is a security; and

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

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

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

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

17 “(III) the history, purpose, ex-
18 tent, and appropriateness of the regu-
19 lation of the new product under the
20 Federal banking laws.

21 “(E) JUDICIAL STAY.—The filing of a peti-
22 tion by the Board or an aggrieved party pursu-
23 ant to subparagraph (A) shall operate as a judi-
24 cial stay, until the date on which the court

1 makes a final determination under this para-
2 graph, of—

3 “(i) any Commission requirement that
4 a bank register as a broker or dealer under
5 this section, because the bank engages in
6 any transaction in, or buys or sells, the
7 new product that is the subject of the peti-
8 tion; and

9 “(ii) any Commission action against a
10 bank for a failure to comply with a re-
11 quirement described in clause (i).

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

14 “(A) the term ‘Board’ means the Board of
15 Governors of the Federal Reserve System; and

16 “(B) the term ‘new product’ means a prod-
17 uct or instrument offered or provided by a bank
18 that—

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

23 “(ii) is not a traditional banking prod-
24 uct, as defined in paragraphs (1) through

1 (6) of section 206(a) of the Financial Serv-
2 ices Act of 1998.”.

3 (c) CLASSIFICATION LIMITED.—Classification of a
4 particular product or instrument as a traditional banking
5 product pursuant to this section or the amendments made
6 by this section shall not be construed as finding or imply-
7 ing that such product or instrument is or is not a security
8 for any purpose under the securities laws, or is or is not
9 an account, agreement, contract, or transaction for any
10 purpose under the Commodity Exchange Act.

11 (d) NO LIMITATION ON OTHER AUTHORITY TO
12 CHALLENGE.—Nothing in this section or the amendments
13 made by this section shall affect the right or authority
14 of the Board of Governors of the Federal Reserve System,
15 any appropriate Federal banking agency, or any interested
16 party under any other provision of law to object to or seek
17 judicial review as to whether a product or instrument is
18 or is not appropriately classified as a traditional banking
19 product under paragraphs (1) through (6) of section
20 206(a).

21 (e) INCORPORATED DEFINITIONS.—For purposes of
22 this section—

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

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

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

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

12 (5) the term “qualified investor” has the same
13 meaning as in section 3(a)(55) of the Securities Ex-
14 change Act of 1934, as amended by this Act.

15 **SEC. 207. DERIVATIVE INSTRUMENT AND QUALIFIED IN-**
16 **VESTOR DEFINED.**

17 Section 3(a) of the Securities Exchange Act of 1934
18 (15 U.S.C. 78c(a)) is amended by adding at the end the
19 following new paragraphs:

20 “(54) DERIVATIVE INSTRUMENT.—

21 “(A) DEFINITION.—The term ‘derivative
22 instrument’ means any individually negotiated
23 contract, agreement, warrant, note, or option
24 that is based, in whole or in part, on the value
25 of, any interest in, or any quantitative measure

1 or the occurrence of any event relating to, one
2 or more commodities, securities, currencies, in-
3 terest or other rates, indices, or other assets,
4 but does not include a traditional banking prod-
5 uct, as defined in section 206(a) of the Finan-
6 cial Services Act of 1998.

7 “(B) CLASSIFICATION LIMITED.— Classi-
8 fication of a particular contract as a derivative
9 instrument pursuant to this paragraph shall not
10 be construed as finding or implying that such
11 instrument is or is not a security for any pur-
12 pose under the securities laws, or is or is not
13 an account, agreement, contract, or transaction
14 for any purpose under the Commodity Ex-
15 change Act.

16 “(55) QUALIFIED INVESTOR.—

17 “(A) DEFINITION.—For purposes of this
18 title, the term ‘qualified investor’ means—

19 “(i) any investment company reg-
20 istered with the Commission under section
21 8 of the Investment Company Act of 1940;

22 “(ii) any issuer eligible for an exclu-
23 sion from the definition of investment com-
24 pany pursuant to section 3(c)(7) of the In-
25 vestment Company Act of 1940;

1 “(iii) any bank (as defined in para-
2 graph (6) of this subsection), savings asso-
3 ciation (as defined in section 3(b) of the
4 Federal Deposit Insurance Act), broker,
5 dealer, insurance company (as defined in
6 section 2(a)(13) of the Securities Act of
7 1933), or business development company
8 (as defined in section 2(a)(48) of the In-
9 vestment Company Act of 1940);

10 “(iv) any small business investment
11 company licensed by the United States
12 Small Business Administration under sec-
13 tion 301 (c) or (d) of the Small Business
14 Investment Act of 1958;

15 “(v) any State sponsored employee
16 benefit plan, or any other employee benefit
17 plan, within the meaning of the Employee
18 Retirement Income Security Act of 1974,
19 other than an individual retirement ac-
20 count, if the investment decisions are made
21 by a plan fiduciary, as defined in section
22 3(21) of that Act, which is either a bank,
23 savings and loan association, insurance
24 company, or registered investment adviser;

1 “(vi) any trust whose purchases of se-
2 curities are directed by a person described
3 in clauses (i) through (v) of this subpara-
4 graph;

5 “(vii) any market intermediary ex-
6 empt under section 3(c)(2) of the Invest-
7 ment Company Act of 1940;

8 “(viii) any associated person of a
9 broker or dealer other than a natural per-
10 son;

11 “(ix) any foreign bank (as defined in
12 section 1(b)(7) of the International Bank-
13 ing Act of 1978);

14 “(x) the government of any foreign
15 country;

16 “(xi) any corporation, company, or
17 partnership that owns and invests on a dis-
18 cretionary basis, not less than \$10,000,000
19 in investments;

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

23 “(xiii) any government or political
24 subdivision, agency, or instrumentality of a
25 government who owns and invests on a dis-

1 cretionary basis not less than \$50,000,000
2 in investments; or

3 “(xiv) any multinational or supra-
4 national entity or any agency or instru-
5 mentality thereof.

6 “(B) ADDITIONAL AUTHORITY.—The Com-
7 mission may, by rule or order, define a ‘quali-
8 fied investor’ as any other person, taking into
9 consideration such factors as the financial so-
10 phistication of the person, net worth, and
11 knowledge and experience in financial mat-
12 ters.”.

13 **SEC. 208. GOVERNMENT SECURITIES DEFINED.**

14 Section 3(a)(42) of the Securities Exchange Act of
15 1934 (15 U.S.C. 78c(a)(42)) is amended—

16 (1) by striking “or” at the end of subparagraph
17 (C);

18 (2) by striking the period at the end of sub-
19 paragraph (D) and inserting “; or”; and

20 (3) by adding at the end the following new sub-
21 paragraph:

22 “(E) for purposes of section 15C as ap-
23 plied to a bank, a qualified Canadian govern-
24 ment obligation as defined in section 5136 of
25 the Revised Statutes.”.

1 **SEC. 209. EFFECTIVE DATE.**

2 This subtitle shall take effect at the end of the 270-
3 day period beginning on the date of the enactment of this
4 Act.

5 **SEC. 210. RULE OF CONSTRUCTION.**

6 Nothing in this Act shall supersede, affect, or other-
7 wise limit the scope and applicability of the Commodity
8 Exchange Act (7 U.S.C. 1 et seq.).

9 **Subtitle B—Bank Investment**
10 **Company Activities**

11 **SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY**
12 **AFFILIATED BANK.**

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

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

18 (2) by striking “(f) Every registered” and in-
19 serting the following:

20 “(f) CUSTODY OF SECURITIES.—

21 “(1) Every registered”;

22 (3) by redesignating the second, third, fourth,
23 and fifth sentences of such subsection as paragraphs
24 (2) through (5), respectively, and indenting the left
25 margin of such paragraphs appropriately; and

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

3 “(6) SERVICES AS TRUSTEE OR CUSTODIAN.—

4 The Commission may adopt rules and regulations,
5 and issue orders, consistent with the protection of
6 investors, prescribing the conditions under which a
7 bank, or an affiliated person of a bank, either of
8 which is an affiliated person, promoter, organizer, or
9 sponsor of, or principal underwriter for, a registered
10 management company may serve as custodian of
11 that registered management company.”.

12 (b) UNIT INVESTMENT TRUSTS.—Section 26 of the
13 Investment Company Act of 1940 (15 U.S.C. 80a–26) is
14 amended—

15 (1) by redesignating subsections (b) through (e)
16 as subsections (c) through (f), respectively; and

17 (2) by inserting after subsection (a) the follow-
18 ing new subsection:

19 “(b) The Commission may adopt rules and regula-
20 tions, and issue orders, consistent with the protection of
21 investors, prescribing the conditions under which a bank,
22 or an affiliated person of a bank, either of which is an
23 affiliated person of a principal underwriter for, or deposi-
24 tor of, a registered unit investment trust, may serve as
25 trustee or custodian under subsection (a)(1).”.

1 (c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a)
 2 of the Investment Company Act of 1940 (15 U.S.C. 80a–
 3 35(a)) is amended—

4 (1) in paragraph (1), by striking “or” at the
 5 end;

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

8 (3) by inserting after paragraph (2) the follow-
 9 ing:

10 “(3) as custodian.”.

11 **SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COM-**
 12 **PANY.**

13 Section 17(a) of the Investment Company Act of
 14 1940 (15 U.S.C. 80a–17(a)) is amended—

15 (1) by striking “or” at the end of paragraph
 16 (2);

17 (2) by striking the period at the end of para-
 18 graph (3) and inserting “; or”; and

19 (3) by adding at the end the following new
 20 paragraph:

21 “(4) to loan money or other property to such
 22 registered company, or to any company controlled by
 23 such registered company, in contravention of such
 24 rules, regulations, or orders as the Commission may

1 prescribe or issue consistent with the protection of
2 investors.”.

3 **SEC. 213. INDEPENDENT DIRECTORS.**

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

7 (1) by striking clause (v) and inserting the fol-
8 lowing new clause:

9 “(v) any person or any affiliated per-
10 son of a person (other than a registered in-
11 vestment company) that, at any time dur-
12 ing the 6-month period preceding the date
13 of the determination of whether that per-
14 son or affiliated person is an interested
15 person, has executed any portfolio trans-
16 actions for, engaged in any principal trans-
17 actions with, or distributed shares for—

18 “(I) the investment company;

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

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

5 (2) by redesignating clause (vi) as clause (vii);

6 and

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

9 “(vi) any person or any affiliated per-
10 son of a person (other than a registered in-
11 vestment company) that, at any time dur-
12 ing the 6-month period preceding the date
13 of the determination of whether that per-
14 son or affiliated person is an interested
15 person, has loaned money or other prop-
16 erty to—

17 “(I) the investment company;

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

1 “(III) any account for which the
2 investment company’s investment ad-
3 viser has borrowing authority,”.

4 (b) CONFORMING AMENDMENT.—Section
5 2(a)(19)(B) of the Investment Company Act of 1940 (15
6 U.S.C. 80a–2(a)(19)(B)) is amended—

7 (1) by striking clause (v) and inserting the fol-
8 lowing new clause:

9 “(v) any person or any affiliated per-
10 son of a person (other than a registered in-
11 vestment company) that, at any time dur-
12 ing the 6-month period preceding the date
13 of the determination of whether that per-
14 son or affiliated person is an interested
15 person, has executed any portfolio trans-
16 actions for, engaged in any principal trans-
17 actions with, or distributed shares for—

18 “(I) any investment company for
19 which the investment adviser or prin-
20 cipal underwriter serves as such;

21 “(II) any investment company
22 holding itself out to investors, for pur-
23 poses of investment or investor serv-
24 ices, as a company related to any in-
25 vestment company for which the in-

1 investment adviser or principal under-
2 writer serves as such; or

3 “(III) any account over which the
4 investment adviser has brokerage
5 placement discretion,”;

6 (2) by redesignating clause (vi) as clause (vii);

7 and

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

10 “(vi) any person or any affiliated per-
11 son of a person (other than a registered in-
12 vestment company) that, at any time dur-
13 ing the 6-month period preceding the date
14 of the determination of whether that per-
15 son or affiliated person is an interested
16 person, has loaned money or other prop-
17 erty to—

18 “(I) any investment company for
19 which the investment adviser or prin-
20 cipal underwriter serves as such;

21 “(II) any investment company
22 holding itself out to investors, for pur-
23 poses of investment or investor serv-
24 ices, as a company related to any in-
25 vestment company for which the in-

1 vestment adviser or principal under-
2 writer serves as such; or

3 “(III) any account for which the
4 investment adviser has borrowing au-
5 thority,”.

6 (c) AFFILIATION OF DIRECTORS.—Section 10(c) of
7 the Investment Company Act of 1940 (15 U.S.C. 80a–
8 10(c)) is amended by striking “bank, except” and insert-
9 ing “bank (together with its affiliates and subsidiaries) or
10 any one bank holding company (together with its affiliates
11 and subsidiaries) (as such terms are defined in section 2
12 of the Bank Holding Company Act of 1956), except”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall take effect at the end of the 1-year period
15 beginning on the date of enactment of this subtitle.

16 **SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

17 Section 35(a) of the Investment Company Act of
18 1940 (15 U.S.C. 80a–34(a)) is amended to read as fol-
19 lows:

20 “(a) MISREPRESENTATION OF GUARANTEES.—

21 “(1) IN GENERAL.—It shall be unlawful for any
22 person, issuing or selling any security of which a
23 registered investment company is the issuer, to rep-
24 resent or imply in any manner whatsoever that such
25 security or company—

1 “(A) has been guaranteed, sponsored, rec-
2 ommended, or approved by the United States,
3 or any agency, instrumentality or officer of the
4 United States;

5 “(B) has been insured by the Federal De-
6 posit Insurance Corporation; or

7 “(C) is guaranteed by or is otherwise an
8 obligation of any bank or insured depository in-
9 stitution.

10 “(2) DISCLOSURES.—Any person issuing or
11 selling the securities of a registered investment com-
12 pany that is advised by, or sold through, a bank
13 shall prominently disclose that an investment in the
14 company is not insured by the Federal Deposit In-
15 surance Corporation or any other government agen-
16 cy. The Commission may adopt rules and regula-
17 tions, and issue orders, consistent with the protec-
18 tion of investors, prescribing the manner in which
19 the disclosure under this paragraph shall be pro-
20 vided.

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

1 **SEC. 215. DEFINITION OF BROKER UNDER THE INVEST-**
2 **MENT COMPANY ACT OF 1940.**

3 Section 2(a)(6) of the Investment Company Act of
4 1940 (15 U.S.C. 80a-2(a)(6)) is amended to read as fol-
5 lows:

6 “(6) The term ‘broker’ has the same meaning
7 as in section 3 of the Securities Exchange Act of
8 1934, except that such term does not include any
9 person solely by reason of the fact that such person
10 is an underwriter for one or more investment compa-
11 nies.”.

12 **SEC. 216. DEFINITION OF DEALER UNDER THE INVEST-**
13 **MENT COMPANY ACT OF 1940.**

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

17 “(11) The term ‘dealer’ has the same meaning
18 as in section 3 of the Securities Exchange Act of
19 1934, but does not include an insurance company or
20 investment company.”.

21 **SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINI-**
22 **TION OF INVESTMENT ADVISER FOR BANKS**
23 **THAT ADVISE INVESTMENT COMPANIES.**

24 (a) INVESTMENT ADVISER.—Section 202(a)(11) of
25 the Investment Advisers Act of 1940 (15 U.S.C. 80b-
26 2(a)(11)) is amended in subparagraph (A), by striking

1 “investment company” and inserting “investment com-
2 pany, except that the term ‘investment adviser’ includes
3 any bank or bank holding company to the extent that such
4 bank or bank holding company serves or acts as an invest-
5 ment adviser to a registered investment company, but if,
6 in the case of a bank, such services or actions are per-
7 formed through a separately identifiable department or di-
8 vision, the department or division, and not the bank itself,
9 shall be deemed to be the investment adviser”.

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

14 “(26) The term ‘separately identifiable depart-
15 ment or division’ of a bank means a unit—

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

24 “(B) for which all of the records relating
25 to its investment adviser activities are sepa-

1 rately maintained in or extractable from such
2 unit's own facilities or the facilities of the bank,
3 and such records are so maintained or other-
4 wise accessible as to permit independent exam-
5 ination and enforcement by the Commission of
6 this Act or the Investment Company Act of
7 1940 and rules and regulations promulgated
8 under this Act or the Investment Company Act
9 of 1940.”.

10 **SEC. 218. DEFINITION OF BROKER UNDER THE INVEST-**
11 **MENT ADVISERS ACT OF 1940.**

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

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

18 **SEC. 219. DEFINITION OF DEALER UNDER THE INVEST-**
19 **MENT ADVISERS ACT OF 1940.**

20 Section 202(a)(7) of the Investment Advisers Act of
21 1940 (15 U.S.C. 80b-2(a)(7)) is amended to read as fol-
22 lows:

23 “(7) The term ‘dealer’ has the same meaning as
24 in section 3 of the Securities Exchange Act of 1934,

1 but does not include an insurance company or in-
2 vestment company.”.

3 **SEC. 220. INTERAGENCY CONSULTATION.**

4 The Investment Advisers Act of 1940 (15 U.S.C.
5 80b–1 et seq.) is amended by inserting after section 210
6 the following new section:

7 **“SEC. 210A. CONSULTATION.**

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

10 “(1) The appropriate Federal banking agency
11 shall provide the Commission upon request the re-
12 sults of any examination, reports, records, or other
13 information to which such agency may have access
14 with respect to the investment advisory activities—

15 “(A) of any—

16 “(i) bank holding company;

17 “(ii) bank; or

18 “(iii) separately identifiable depart-
19 ment or division of a bank, that is reg-
20 istered under section 203 of this title; and

21 “(B) in the case of a bank holding com-
22 pany or bank that has a subsidiary or a sepa-
23 rately identifiable department or division reg-
24 istered under that section, of such bank or bank
25 holding company.

1 “(2) The Commission shall provide to the ap-
2 propriate Federal banking agency upon request the
3 results of any examination, reports, records, or other
4 information with respect to the investment advisory
5 activities of any bank holding company, bank, or
6 separately identifiable department or division of a
7 bank, any of which is registered under section 203
8 of this title.

9 “(b) EFFECT ON OTHER AUTHORITY.—Nothing in
10 this section shall limit in any respect the authority of the
11 appropriate Federal banking agency with respect to such
12 bank holding company, bank, or department or division
13 under any provision of law.

14 “(c) DEFINITION.—For purposes of this section, the
15 term ‘appropriate Federal banking agency’ has the same
16 meaning as in section 3 of the Federal Deposit Insurance
17 Act.”.

18 **SEC. 221. TREATMENT OF BANK COMMON TRUST FUNDS.**

19 (a) SECURITIES ACT OF 1933.—Section 3(a)(2) of
20 the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is
21 amended by striking “or any interest or participation in
22 any common trust fund or similar fund maintained by a
23 bank exclusively for the collective investment and reinvest-
24 ment of assets contributed thereto by such bank in its ca-
25 pacity as trustee, executor, administrator, or guardian”

1 and inserting “or any interest or participation in any com-
 2 mon trust fund or similar fund that is excluded from the
 3 definition of the term ‘investment company’ under section
 4 3(c)(3) of the Investment Company Act of 1940”.

5 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
 6 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934
 7 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as fol-
 8 lows:

9 “(iii) any interest or participation in any
 10 common trust fund or similar fund that is ex-
 11 cluded from the definition of the term ‘invest-
 12 ment company’ under section 3(c)(3) of the In-
 13 vestment Company Act of 1940;”.

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

18 “(A) such fund is employed by the bank
 19 solely as an aid to the administration of trusts,
 20 estates, or other accounts created and main-
 21 tained for a fiduciary purpose;

22 “(B) except in connection with the ordi-
 23 nary advertising of the bank’s fiduciary serv-
 24 ices, interests in such fund are not—

25 “(i) advertised; or

1 “(ii) offered for sale to the general
2 public; and

3 “(C) fees and expenses charged by such
4 fund are not in contravention of fiduciary prin-
5 ciples established under applicable Federal or
6 State law”.

7 **SEC. 222. INVESTMENT ADVISERS PROHIBITED FROM HAV-**
8 **ING CONTROLLING INTEREST IN REG-**
9 **ISTERED INVESTMENT COMPANY.**

10 Section 15 of the Investment Company Act of 1940
11 (15 U.S.C. 80a–15) is amended by adding at the end the
12 following new subsection:

13 “(g) CONTROLLING INTEREST IN INVESTMENT COM-
14 PANY PROHIBITED.—

15 “(1) IN GENERAL.—If an investment adviser to
16 a registered investment company, or an affiliated
17 person of that investment adviser, holds a control-
18 ling interest in that registered investment company
19 in a trustee or fiduciary capacity, such person
20 shall—

21 “(A) if it holds the shares in a trustee or
22 fiduciary capacity with respect to any employee
23 benefit plan subject to the Employee Retirement
24 Income Security Act of 1974, transfer the
25 power to vote the shares of the investment com-

pany through to another person acting in a fiduciary capacity with respect to the plan who is not an affiliated person of that investment adviser or any affiliated person thereof; or

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

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

“(I) the beneficial owners of the shares;

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

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

1 “(ii) vote the shares of the investment
2 company held by it in the same proportion
3 as shares held by all other shareholders of
4 the investment company; or

5 “(iii) vote the shares of the invest-
6 ment company as otherwise permitted
7 under such rules, regulations, or orders as
8 the Commission may prescribe or issue
9 consistent with the protection of investors.

10 “(2) EXEMPTION.—Paragraph (1) shall not
11 apply to any investment adviser to a registered in-
12 vestment company, or any affiliated person of that
13 investment adviser, that holds shares of the invest-
14 ment company in a trustee or fiduciary capacity if
15 that registered investment company consists solely of
16 assets held in such capacities.

17 “(3) SAFE HARBOR.—No investment adviser to
18 a registered investment company or any affiliated
19 person of such investment adviser shall be deemed to
20 have acted unlawfully or to have breached a fidu-
21 ciary duty under State or Federal law solely by rea-
22 son of acting in accordance with clause (i), (ii), or
23 (iii) of paragraph (1)(B).”.

1 **SEC. 223. CONFORMING CHANGE IN DEFINITION.**

2 Section 2(a)(5) of the Investment Company Act of
3 1940 (15 U.S.C. 80a–2(a)(5)) is amended by striking
4 “(A) a banking institution organized under the laws of the
5 United States” and inserting “(A) a depository institution
6 (as defined in section 3 of the Federal Deposit Insurance
7 Act) or a branch or agency of a foreign bank (as such
8 terms are defined in section 1(b) of the International
9 Banking Act of 1978)”.

10 **SEC. 224. CONFORMING AMENDMENT.**

11 Section 202 of the Investment Advisers Act of 1940
12 (15 U.S.C. 80b–2) is amended by adding at the end the
13 following new subsection:

14 “(c) CONSIDERATION OF PROMOTION OF EFFI-
15 CIENCY, COMPETITION, AND CAPITAL FORMATION.—
16 Whenever pursuant to this title the Commission is en-
17 gaged in rulemaking and is required to consider or deter-
18 mine whether an action is necessary or appropriate in the
19 public interest, the Commission shall also consider, in ad-
20 dition to the protection of investors, whether the action
21 will promote efficiency, competition, and capital forma-
22 tion.”.

23 **SEC. 225. EFFECTIVE DATE.**

24 This subtitle shall take effect 90 days after the date
25 of the enactment of this Act.

1 **Subtitle C—Securities and Ex-**
 2 **change Commission Supervision**
 3 **of Investment Bank Holding**
 4 **Companies**

5 **SEC. 231. SUPERVISION OF INVESTMENT BANK HOLDING**
 6 **COMPANIES BY THE SECURITIES AND EX-**
 7 **CHANGE COMMISSION.**

8 (a) AMENDMENT.—Section 17 of the Securities Ex-
 9 change Act of 1934 (15 U.S.C. 78q) is amended—

10 (1) by redesignating subsection (i) as subsection
 11 (l); and

12 (2) by inserting after subsection (h) the follow-
 13 ing new subsections:

14 “(i) INVESTMENT BANK HOLDING COMPANIES.—

15 “(1) ELECTIVE SUPERVISION OF AN INVEST-
 16 MENT BANK HOLDING COMPANY NOT HAVING A
 17 BANK OR SAVINGS ASSOCIATION AFFILIATE.—

18 “(A) IN GENERAL.—An investment bank
 19 holding company that is not—

20 “(i) an affiliate of a wholesale finan-
 21 cial institution, an insured bank (other
 22 than an institution described in subpara-
 23 graph (D), (F), or (G) of section 2(c)(2),
 24 or held under section 4(f), of the Bank

1 Holding Company Act of 1956), or a sav-
2 ings association;

3 “(ii) a foreign bank, foreign company,
4 or company that is described in section
5 8(a) of the International Banking Act of
6 1978; or

7 “(iii) a foreign bank that controls, di-
8 rectly or indirectly, a corporation chartered
9 under section 25A of the Federal Reserve
10 Act,

11 may elect to become supervised by filing with
12 the Commission a notice of intention to become
13 supervised, pursuant to subparagraph (B) of
14 this paragraph. Any investment bank holding
15 company filing such a notice shall be supervised
16 in accordance with this section and comply with
17 the rules promulgated by the Commission appli-
18 cable to supervised investment bank holding
19 companies.

20 “(B) NOTIFICATION OF STATUS AS A SU-
21 PERVISED INVESTMENT BANK HOLDING COM-
22 PANY.—An investment bank holding company
23 that elects under subparagraph (A) to become
24 supervised by the Commission shall file with the
25 Commission a written notice of intention to be-

1 come supervised by the Commission in such
2 form and containing such information and doc-
3 uments concerning such investment bank hold-
4 ing company as the Commission, by rule, may
5 prescribe as necessary or appropriate in fur-
6 therance of the purposes of this section. Unless
7 the Commission finds that such supervision is
8 not necessary or appropriate in furtherance of
9 the purposes of this section, such supervision
10 shall become effective 45 days after the date of
11 receipt of such written notice by the Commis-
12 sion, or within such shorter time period as the
13 Commission, by rule or order, may determine.

14 “(2) ELECTION NOT TO BE SUPERVISED BY
15 THE COMMISSION AS AN INVESTMENT BANK HOLD-
16 ING COMPANY.—

17 “(A) VOLUNTARY WITHDRAWAL.—A su-
18 pervised investment bank holding company that
19 is supervised pursuant to paragraph (1) may,
20 upon such terms and conditions as the Commis-
21 sion deems necessary or appropriate, elect not
22 to be supervised by the Commission by filing a
23 written notice of withdrawal from Commission
24 supervision. Such notice shall not become effec-
25 tive until one year after receipt by the Commis-

1 sion, or such shorter or longer period as the
2 Commission deems necessary or appropriate to
3 ensure effective supervision of the material
4 risks to the supervised investment bank holding
5 company and to the affiliated broker or dealer,
6 or to prevent evasion of the purposes of this
7 section.

8 “(B) DISCONTINUATION OF COMMISSION
9 SUPERVISION.—If the Commission finds that
10 any supervised investment bank holding com-
11 pany that is supervised pursuant to paragraph
12 (1) is no longer in existence or has ceased to be
13 an investment bank holding company, or if the
14 Commission finds that continued supervision of
15 such a supervised investment bank holding com-
16 pany is not consistent with the purposes of this
17 section, the Commission may discontinue the
18 supervision pursuant to a rule or order, if any,
19 promulgated by the Commission under this sec-
20 tion.

21 “(3) SUPERVISION OF INVESTMENT BANK
22 HOLDING COMPANIES.—

23 “(A) RECORDKEEPING AND REPORTING.—

24 “(i) IN GENERAL.—Every supervised
25 investment bank holding company and

1 each affiliate thereof shall make and keep
2 for prescribed periods such records, furnish
3 copies thereof, and make such reports, as
4 the Commission may require by rule, in
5 order to keep the Commission informed as
6 to—

7 “(I) the company’s or affiliate’s
8 activities, financial condition, policies,
9 systems for monitoring and control-
10 ling financial and operational risks,
11 and transactions and relationships be-
12 tween any broker or dealer affiliate of
13 the supervised investment bank hold-
14 ing company; and

15 “(II) the extent to which the
16 company or affiliate has complied with
17 the provisions of this Act and regula-
18 tions prescribed and orders issued
19 under this Act.

20 “(ii) FORM AND CONTENTS.—Such
21 records and reports shall be prepared in
22 such form and according to such specifica-
23 tions (including certification by an inde-
24 pendent public accountant), as the Com-
25 mission may require and shall be provided

1 promptly at any time upon request by the
2 Commission. Such records and reports may
3 include—

4 “(I) a balance sheet and income
5 statement;

6 “(II) an assessment of the con-
7 solidated capital of the supervised in-
8 vestment bank holding company;

9 “(III) an independent auditor’s
10 report attesting to the supervised in-
11 vestment bank holding company’s
12 compliance with its internal risk man-
13 agement and internal control objec-
14 tives; and

15 “(IV) reports concerning the ex-
16 tent to which the company or affiliate
17 has complied with the provisions of
18 this title and any regulations pre-
19 scribed and orders issued under this
20 title.

21 “(B) USE OF EXISTING REPORTS.—

22 “(i) IN GENERAL.—The Commission
23 shall, to the fullest extent possible, accept
24 reports in fulfillment of the requirements
25 under this paragraph that the supervised

1 investment bank holding company or its af-
2 filiates have been required to provide to
3 another appropriate regulatory agency or
4 self-regulatory organization.

5 “(ii) AVAILABILITY.—A supervised in-
6 vestment bank holding company or an af-
7 filiate of such company shall provide to the
8 Commission, at the request of the Commis-
9 sion, any report referred to in clause (i).

10 “(C) EXAMINATION AUTHORITY.—

11 “(i) FOCUS OF EXAMINATION AU-
12 THORITY.—The Commission may make ex-
13 aminations of any supervised investment
14 bank holding company and any affiliate of
15 such company in order to—

16 “(I) inform the Commission
17 regarding—

18 “(aa) the nature of the oper-
19 ations and financial condition of
20 the supervised investment bank
21 holding company and its affili-
22 ates;

23 “(bb) the financial and oper-
24 ational risks within the super-
25 vised investment bank holding

1 company that may affect any
2 broker or dealer controlled by
3 such supervised investment bank
4 holding company; and

5 “(cc) the systems of the su-
6 pervised investment bank holding
7 company and its affiliates for
8 monitoring and controlling those
9 risks; and

10 “(II) monitor compliance with
11 the provisions of this subsection, pro-
12 visions governing transactions and re-
13 lationships between any broker or
14 dealer affiliated with the supervised
15 investment bank holding company and
16 any of the company’s other affiliates,
17 and applicable provisions of sub-
18 chapter II of chapter 53, title 31,
19 United States Code (commonly re-
20 ferred to as the ‘Bank Secrecy Act’)
21 and regulations thereunder.

22 “(ii) RESTRICTED FOCUS OF EXAMI-
23 NATIONS.—The Commission shall limit the
24 focus and scope of any examination of a

1 supervised investment bank holding com-
2 pany to—

3 “(I) the company; and

4 “(II) any affiliate of the company
5 that, because of its size, condition, or
6 activities, the nature or size of the
7 transactions between such affiliate
8 and any affiliated broker or dealer, or
9 the centralization of functions within
10 the holding company system, could, in
11 the discretion of the Commission,
12 have a materially adverse effect on the
13 operational or financial condition of
14 the broker or dealer.

15 “(iii) DEFERENCE TO OTHER EXAMI-
16 NATIONS.—For purposes of this subpara-
17 graph, the Commission shall, to the fullest
18 extent possible, use the reports of examina-
19 tion of an institution described in subpara-
20 graph (D), (F), or (G) of section 2(c)(2),
21 or held under section 4(f), of the Bank
22 Holding Company Act of 1956 made by
23 the appropriate regulatory agency, or of a
24 licensed insurance company made by the
25 appropriate State insurance regulator.

1 “(4) HOLDING COMPANY CAPITAL.—

2 “(A) AUTHORITY.—If the Commission
3 finds that it is necessary to adequately super-
4 vise investment bank holding companies and
5 their broker or dealer affiliates consistent with
6 the purposes of this subsection, the Commission
7 may adopt capital adequacy rules for supervised
8 investment bank holding companies.

9 “(B) METHOD OF CALCULATION.—In de-
10 veloping rules under this paragraph:

11 “(i) DOUBLE LEVERAGE.—The Com-
12 mission shall consider the use by the su-
13 pervised investment bank holding company
14 of debt and other liabilities to fund capital
15 investments in affiliates.

16 “(ii) NO UNWEIGHTED CAPITAL
17 RATIO.—The Commission shall not impose
18 under this section a capital ratio that is
19 not based on appropriate risk-weighting
20 considerations.

21 “(iii) NO CAPITAL REQUIREMENT ON
22 REGULATED ENTITIES.—The Commission
23 shall not, by rule, regulation, guideline,
24 order or otherwise, impose any capital ade-
25 quacy provision on a nonbanking affiliate

(other than a broker or dealer) that is in compliance with applicable capital requirements of another Federal regulatory authority or State insurance authority.

“(iv) APPROPRIATE EXCLUSIONS.—The Commission shall take full account of the applicable capital requirements of another Federal regulatory authority or State insurance regulator.

“(C) INTERNAL RISK MANAGEMENT MODELS.—The Commission may incorporate internal risk management models into its capital adequacy rules for supervised investment bank holding companies.

“(5) FUNCTIONAL REGULATION OF BANKING AND INSURANCE ACTIVITIES OF SUPERVISED INVESTMENT BANK HOLDING COMPANIES.—The Commission shall defer to—

“(A) the appropriate regulatory agency with regard to all interpretations of, and the enforcement of, applicable banking laws relating to the activities, conduct, ownership, and operations of banks, and institutions described in subparagraph (D), (F), and (G) of section

1 2(c)(2), or held under section 4(f), of the Bank
2 Holding Company Act of 1956; and

3 “(B) the appropriate State insurance regu-
4 lators with regard to all interpretations of, and
5 the enforcement of, applicable State insurance
6 laws relating to the activities, conduct, and op-
7 erations of insurance companies and insurance
8 agents.

9 “(6) DEFINITIONS.—For purposes of this sub-
10 section and subsection (j)—

11 “(A) the term ‘investment bank holding
12 company’ means—

13 “(i) any person other than a natural
14 person that owns or controls one or more
15 brokers or dealers; and

16 “(ii) the associated persons of the in-
17 vestment bank holding company;

18 “(B) the term ‘supervised investment bank
19 holding company’ means any investment bank
20 holding company that is supervised by the Com-
21 mission pursuant to this subsection;

22 “(C) the terms ‘affiliate’, ‘bank’, ‘bank
23 holding company’, ‘company’, ‘control’, and
24 ‘savings association’ have the same meanings as

1 in section 2 of the Bank Holding Company Act
2 of 1956;

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

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

9 “(F) the terms ‘person associated with an
10 investment bank holding company’ and ‘associ-
11 ated person of an investment bank holding com-
12 pany’ mean any person directly or indirectly
13 controlling, controlled by, or under common
14 control with, an investment bank holding com-
15 pany.

16 “(j) COMMISSION BACKUP AUTHORITY.—

17 “(1) AUTHORITY.—The Commission may make
18 inspections of any wholesale financial holding com-
19 pany that—

20 “(A) controls a wholesale financial institu-
21 tion;

22 “(B) is not a foreign bank; and

23 “(C) does not control an insured bank
24 (other than an institution permitted under sub-
25 paragraph (D), (F), or (G) of section 2(c)(2),

1 or held under section 4(f), of the Bank Holding
2 Company Act of 1956) or a savings association,
3 and any affiliate of such company, for the purpose
4 of monitoring and enforcing compliance by the
5 wholesale financial holding company with the Fed-
6 eral securities laws.

7 “(2) LIMITATION.—The Commission shall limit
8 the focus and scope of any inspection under para-
9 graph (1) to those transactions, policies, procedures,
10 or records that are reasonably necessary to monitor
11 and enforce compliance by the wholesale financial
12 holding company or any affiliate with the Federal
13 securities laws.

14 “(3) DEFERENCE TO EXAMINATIONS.—To the
15 fullest extent possible, the Commission shall use, for
16 the purposes of this subsection, the reports of
17 examinations—

18 “(A) made by the Board of Governors of
19 the Federal Reserve System of any wholesale fi-
20 nancial holding company that is supervised by
21 the Board;

22 “(B) made by or on behalf of any State
23 regulatory agency responsible for the super-
24 vision of an insurance company of any licensed
25 insurance company; and

1 “(C) made by any Federal or State bank-
2 ing agency of any bank or institution described
3 in subparagraph (D), (F), or (G) of section
4 2(c)(2), or held under section 4(f), of the Bank
5 Holding Company Act of 1956.

6 “(4) NOTICE.—To the fullest extent possible,
7 the Commission shall notify the appropriate regu-
8 latory agency prior to conducting an inspection of a
9 wholesale financial institution or institution de-
10 scribed in subparagraph (D), (F), or (G) of section
11 2(c)(2), or held under section 4(f), of the Bank
12 Holding Company Act of 1956.

13 “(k) AUTHORITY TO LIMIT DISCLOSURE OF INFOR-
14 MATION.—Notwithstanding any other provision of law, the
15 Commission shall not be compelled to disclose any infor-
16 mation required to be reported under subsection (h) or
17 (i) or any information supplied to the Commission by any
18 domestic or foreign regulatory agency that relates to the
19 financial or operational condition of any associated person
20 of a broker or dealer, investment bank holding company,
21 or any affiliate of an investment bank holding company.
22 Nothing in this subsection shall authorize the Commission
23 to withhold information from Congress, or prevent the
24 Commission from complying with a request for informa-
25 tion from any other Federal department or agency or any

1 self-regulatory organization requesting the information for
 2 purposes within the scope of its jurisdiction, or complying
 3 with an order of a court of the United States in an action
 4 brought by the United States or the Commission. For pur-
 5 poses of section 552 of title 5, United States Code, this
 6 subsection shall be considered a statute described in sub-
 7 section (b)(3)(B) of such section 552. In prescribing regu-
 8 lations to carry out the requirements of this subsection,
 9 the Commission shall designate information described in
 10 or obtained pursuant to subparagraphs (A), (B), and (C)
 11 of subsection (i)(5) as confidential information for pur-
 12 poses of section 24(b)(2) of this title.”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) Section 3(a)(34) of the Securities Exchange
 15 Act of 1934 (15 U.S.C. 78c(a)(34)) is amended by
 16 adding at the end the following new subparagraphs:

17 “(H) When used with respect to an institu-
 18 tion described in subparagraph (D), (F), or (G)
 19 of section 2(c)(2), or held under section 4(f), of
 20 the Bank Holding Company Act of 1956—

21 “(i) the Comptroller of the Currency,
 22 in the case of a national bank or a bank
 23 in the District of Columbia examined by
 24 the Comptroller of the Currency;

1 “(ii) the Board of Governors of the
 2 Federal Reserve System, in the case of a
 3 State member bank of the Federal Reserve
 4 System or any corporation chartered under
 5 section 25A of the Federal Reserve Act;

6 “(iii) the Federal Deposit Insurance
 7 Corporation, in the case of any other bank
 8 the deposits of which are insured in ac-
 9 cordance with the Federal Deposit Insur-
 10 ance Act; or

11 “(iv) the Commission in the case of all
 12 other such institutions.”.

13 (2) Section 1112(e) of the Right to Financial
 14 Privacy Act of 1978 (12 U.S.C. 3412(e)) is
 15 amended—

16 (A) by striking “this title” and inserting
 17 “law”; and

18 (B) by inserting “, examination reports”
 19 after “financial records”.

20 **Subtitle D—Studies**

21 **SEC. 241. STUDY OF METHODS TO INFORM INVESTORS AND** 22 **CONSUMERS OF UNINSURED PRODUCTS.**

23 Not later than 1 year after the date of enactment
 24 of this Act, the Comptroller General of the United States
 25 shall submit a report to the Congress regarding the effi-

1 cacy, costs, and benefits of requiring that any depository
2 institution that accepts federally insured deposits and
3 that, directly or through a contractual or other arrange-
4 ment with a broker, dealer, or agent, buys from, sells to,
5 or effects transactions for retail investors in securities or
6 consumers of insurance to inform such investors and con-
7 sumers through the use of a logo or seal that the security
8 or insurance is not insured by the Federal Deposit Insur-
9 ance Corporation.

10 **SEC. 242. STUDY OF LIMITATION ON FEES ASSOCIATED**
11 **WITH ACQUIRING FINANCIAL PRODUCTS.**

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

18 **TITLE III—INSURANCE**
19 **Subtitle A—State Regulation of**
20 **Insurance**

21 **SEC. 301. STATE REGULATION OF THE BUSINESS OF INSUR-**
22 **ANCE.**

23 The Act entitled “An Act to express the intent of the
24 Congress with reference to the regulation of the business
25 of insurance” and approved March 9, 1945 (15 U.S.C.

1 1011 et seq.), commonly referred to as the “McCarran-
2 Ferguson Act” remains the law of the United States.

3 **SEC. 302. MANDATORY INSURANCE LICENSING REQUIRE-**
4 **MENTS.**

5 No person or entity shall provide insurance in a State
6 as principal or agent unless such person or entity is li-
7 censed as required by the appropriate insurance regulator
8 of such State in accordance with the relevant State insur-
9 ance law, subject to section 104.

10 **SEC. 303. FUNCTIONAL REGULATION OF INSURANCE.**

11 The insurance sales activity of any person or entity
12 shall be functionally regulated by the States, subject to
13 section 104.

14 **SEC. 304. INSURANCE UNDERWRITING IN NATIONAL**
15 **BANKS.**

16 (a) IN GENERAL.—Except as provided in section 305,
17 a national bank and the subsidiaries of a national bank
18 may not provide insurance in a State as principal except
19 that this prohibition shall not apply to authorized prod-
20 ucts.

21 (b) AUTHORIZED PRODUCTS.—For the purposes of
22 this section, a product is authorized if—

23 (1) as of January 1, 1997, the Comptroller of
24 the Currency had determined in writing that na-
25 tional banks may provide such product as principal,

1 or national banks were in fact lawfully providing
2 such product as principal;

3 (2) no court of relevant jurisdiction had, by
4 final judgment, overturned a determination of the
5 Comptroller of the Currency that national banks
6 may provide such product as principal; and

7 (3) the product is not title insurance, or an an-
8 nuity contract the income of which is subject to tax
9 treatment under section 72 of the Internal Revenue
10 Code of 1986.

11 (c) DEFINITION.—For purposes of this section, the
12 term “insurance” means—

13 (1) any product regulated as insurance as of
14 January 1, 1997, in accordance with the relevant
15 State insurance law, in the State in which the prod-
16 uct is provided;

17 (2) any product first offered after January 1,
18 1997, which—

19 (A) a State insurance regulator determines
20 shall be regulated as insurance in the State in
21 which the product is provided because the prod-
22 uct insures, guarantees, or indemnifies against
23 liability, loss of life, loss of health, or loss
24 through damage to or destruction of property,
25 including, but not limited to, surety bonds, life

1 insurance, health insurance, title insurance, and
2 property and casualty insurance (such as pri-
3 vate passenger or commercial automobile,
4 homeowners, mortgage, commercial multiperil,
5 general liability, professional liability, workers'
6 compensation, fire and allied lines, farm owners
7 multiperil, aircraft, fidelity, surety, medical
8 malpractice, ocean marine, inland marine, and
9 boiler and machinery insurance); and

10 (B) is not a product or service of a bank
11 that is—

12 (i) a deposit product;

13 (ii) a loan, discount, letter of credit,
14 or other extension of credit;

15 (iii) a trust or other fiduciary service;

16 (iv) a qualified financial contract (as
17 defined in or determined pursuant to sec-
18 tion 11(e)(8)(D)(i) of the Federal Deposit
19 Insurance Act); or

20 (v) a financial guaranty, except that
21 this subparagraph (B) shall not apply to a
22 product that includes an insurance compo-
23 nent such that if the product is offered or
24 proposed to be offered by the bank as
25 principal—

1 (I) it would be treated as a life
 2 insurance contract under section 7702
 3 of the Internal Revenue Code of 1986;
 4 or

5 (II) in the event that the product
 6 is not a letter of credit or other simi-
 7 lar extension of credit, a qualified fi-
 8 nancial contract, or a financial guar-
 9 anty, it would qualify for treatment
 10 for losses incurred with respect to
 11 such product under section 832(b)(5)
 12 of the Internal Revenue Code of 1986,
 13 if the bank were subject to tax as an
 14 insurance company under section 831
 15 of that Code; or

16 (3) any annuity contract, the income on which
 17 is subject to tax treatment under section 72 of the
 18 Internal Revenue Code of 1986.

19 **SEC. 305. TITLE INSURANCE ACTIVITIES OF NATIONAL**
 20 **BANKS AND THEIR AFFILIATES.**

21 (a) **AUTHORITY.**—Notwithstanding any other provi-
 22 sion of this Act or any other law, no national bank, and
 23 no subsidiary of a national bank, may engage in any activ-
 24 ity involving the underwriting of title insurance, other
 25 than title insurance underwriting activities in which such

1 national bank or subsidiary was actively and lawfully en-
2 gaged before the date of the enactment of this Act.

3 (b) INSURANCE AFFILIATE.—In the case of a na-
4 tional bank which has an affiliate which provides insur-
5 ance as principal and is not a subsidiary of the bank, the
6 national bank and any subsidiary of the national bank
7 may not engage in any activity involving the underwriting
8 of title insurance pursuant to subsection (a).

9 (c) INSURANCE SUBSIDIARY.—In the case of a na-
10 tional bank which has a subsidiary which provides insur-
11 ance as principal and has no affiliate which provides insur-
12 ance as principal and is not a subsidiary, the national
13 bank may not engage in any activity involving the under-
14 writing of title insurance pursuant to subsection (a).

15 (d) “AFFILIATE” AND “SUBSIDIARY” DEFINED.—
16 For purposes of this section, the terms “affiliate” and
17 “subsidiary” have the same meanings as in section 2 of
18 the Bank Holding Company Act of 1956.

19 **SEC. 306. EXPEDITED AND EQUALIZED DISPUTE RESOLU-**
20 **TION FOR FEDERAL REGULATORS.**

21 (a) FILING IN COURT OF APPEALS.—In the case of
22 a regulatory conflict between a State insurance regulator
23 and a Federal regulator as to whether any product is or
24 is not insurance, as defined in section 304(c) of this Act,
25 or whether a State statute, regulation, order, or interpre-

1 tation regarding any insurance sales or solicitation activity
2 is properly treated as preempted under Federal law, either
3 regulator may seek expedited judicial review of such deter-
4 mination by the United States Court of Appeals for the
5 circuit in which the State is located or in the United
6 States Court of Appeals for the District of Columbia Cir-
7 cuit by filing a petition for review in such court.

8 (b) EXPEDITED REVIEW.—The United States Court
9 of Appeals in which a petition for review is filed in accord-
10 ance with subsection (a) shall complete all action on such
11 petition, including rendering a judgment, before the end
12 of the 60-day period beginning on the date on which such
13 petition is filed, unless all parties to such proceeding agree
14 to any extension of such period.

15 (c) SUPREME COURT REVIEW.—Any request for cer-
16 tiorari to the Supreme Court of the United States of any
17 judgment of a United States Court of Appeals with respect
18 to a petition for review under this section shall be filed
19 with the Supreme Court of the United States as soon as
20 practicable after such judgment is issued.

21 (d) STATUTE OF LIMITATION.—No action may be
22 filed under this section challenging an order, ruling, deter-
23 mination, or other action of a Federal regulator or State
24 insurance regulator after the later of—

1 (1) the end of the 12-month period beginning
2 on the date on which the first public notice is made
3 of such order, ruling, determination or other action
4 in its final form; or

5 (2) the end of the 6-month period beginning on
6 the date on which such order, ruling, determination,
7 or other action takes effect.

8 (e) STANDARD OF REVIEW.—The court shall decide
9 an action filed under this section based on its review on
10 the merits of all questions presented under State and Fed-
11 eral law, including the nature of the product or activity
12 and the history and purpose of its regulation under State
13 and Federal law, without unequal deference.

14 **SEC. 307. CONSUMER PROTECTION REGULATIONS.**

15 The Federal Deposit Insurance Act (12 U.S.C. 1811
16 et seq.) is amended by adding at the end the following
17 new section:

18 **“SEC. 45. CONSUMER PROTECTION REGULATIONS.**

19 “(a) REGULATIONS REQUIRED.—

20 “(1) IN GENERAL.—The Federal banking agen-
21 cies shall prescribe and publish in final form, before
22 the end of the 1-year period beginning on the date
23 of enactment of the Financial Services Act of 1998,
24 consumer protection regulations (which the agencies
25 jointly determine to be appropriate) that—

1 “(A) apply to retail sales practices, solici-
2 tations, advertising, or offers of any insurance
3 product by any insured depository institution or
4 wholesale financial institution or any person
5 who is engaged in such activities at an office of
6 the institution or on behalf of the institution;
7 and

8 “(B) are consistent with the requirements
9 of this Act and provide such additional protec-
10 tions for consumers to whom such sales, solici-
11 tations, advertising, or offers are directed as
12 the agency determines to be appropriate.

13 “(2) APPLICABILITY TO SUBSIDIARIES.—The
14 regulations prescribed pursuant to paragraph (1)
15 shall extend such protections to any subsidiaries of
16 an insured depository institution, as deemed appro-
17 priate by the regulators referred to in paragraph (3),
18 where such extension is determined to be necessary
19 to ensure the consumer protections provided by this
20 section.

21 “(3) CONSULTATION AND JOINT REGULA-
22 TIONS.—The Federal banking agencies shall consult
23 with each other and prescribe joint regulations pur-
24 suant to paragraph (1), after consultation with the
25 State insurance regulators, as appropriate.

1 “(b) SALES PRACTICES.—The regulations prescribed
2 pursuant to subsection (a) shall include anticoercion rules
3 applicable to the sale of insurance products which prohibit
4 an insured depository institution from engaging in any
5 practice that would lead a consumer to believe an exten-
6 sion of credit, in violation of section 106(b) of the Bank
7 Holding Company Act Amendments of 1970, is condi-
8 tional upon—

9 “(1) the purchase of an insurance product from
10 the institution or any of its affiliates or subsidiaries;
11 or

12 “(2) an agreement by the consumer not to ob-
13 tain, or a prohibition on the consumer from obtain-
14 ing, an insurance product from an unaffiliated en-
15 tity.

16 “(c) DISCLOSURES AND ADVERTISING.—The regula-
17 tions prescribed pursuant to subsection (a) shall include
18 the following provisions relating to disclosures and adver-
19 tising in connection with the initial purchase of an insur-
20 ance product:

21 “(1) DISCLOSURES.—

22 “(A) IN GENERAL.—Requirements that the
23 following disclosures be made orally and in writ-
24 ing before the completion of the initial sale and,

1 in the case of clause (iii), at the time of applica-
2 tion for an extension of credit:

3 “(i) UNINSURED STATUS.—As appro-
4 priate, the product is not insured by the
5 Federal Deposit Insurance Corporation,
6 the United States Government, or the in-
7 sured depository institution.

8 “(ii) INVESTMENT RISK.—In the case
9 of a variable annuity or other insurance
10 product which involves an investment risk,
11 that there is an investment risk associated
12 with the product, including possible loss of
13 value.

14 “(iii) COERCION.—The approval of an
15 extension of credit may not be conditioned
16 on—

17 “(I) the purchase of an insurance
18 product from the institution in which
19 the application for credit is pending or
20 any of its affiliates or subsidiaries; or

21 “(II) an agreement by the con-
22 sumer not to obtain, or a prohibition
23 on the consumer from obtaining, an
24 insurance product from an unaffili-
25 ated entity.

1 “(B) MAKING DISCLOSURE READILY UN-
2 DERSTANDABLE.—Regulations prescribed under
3 subparagraph (A) shall encourage the use of
4 disclosure that is conspicuous, simple, direct,
5 and readily understandable, such as the follow-
6 ing:

7 “(i) ‘NOT FDIC–INSURED’.

8 “(ii) ‘NOT GUARANTEED BY THE
9 BANK’.

10 “(iii) ‘MAY GO DOWN IN VALUE’.

11 “(C) ADJUSTMENTS FOR ALTERNATIVE
12 METHODS OF PURCHASE.—In prescribing the
13 requirements under subparagraphs (A) and
14 (D), necessary adjustments shall be made for
15 purchase in person, by telephone, or by elec-
16 tronic media to provide for the most appro-
17 priate and complete form of disclosure and ac-
18 knowledgments.

19 “(D) CONSUMER ACKNOWLEDGMENT.—A
20 requirement that an insured depository institu-
21 tion shall require any person selling an insur-
22 ance product at any office of, or on behalf of,
23 the institution to obtain, at the time a con-
24 sumer receives the disclosures required under
25 this paragraph or at the time of the initial pur-

1 chase by the consumer of such product, an ac-
2 knowledge by such consumer of the receipt
3 of the disclosure required under this paragraph
4 with respect to such product.

5 “(2) PROHIBITION ON MISREPRESENTA-
6 TIONS.—A prohibition on any practice, or any adver-
7 tising, at any office of, or on behalf of, the insured
8 depository institution, or any subsidiary as appro-
9 priate, which could mislead any person or otherwise
10 cause a reasonable person to reach an erroneous be-
11 lief with respect to—

12 “(A) the uninsured nature of any insur-
13 ance product sold, or offered for sale, by the in-
14 stitution or any subsidiary of the institution; or

15 “(B) in the case of a variable annuity or
16 other insurance product that involves an invest-
17 ment risk, the investment risk associated with
18 any such product.

19 “(d) SEPARATION OF BANKING AND NONBANKING
20 ACTIVITIES.—

21 “(1) REGULATIONS REQUIRED.—The regula-
22 tions prescribed pursuant to subsection (a) shall in-
23 clude such provisions as the Federal banking agen-
24 cies consider appropriate to ensure that the routine
25 acceptance of deposits is kept, to the extent prac-

1 ticable, physically segregated from insurance product
2 activity.

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

6 “(A) SEPARATE SETTING.—A clear delin-
7 eation of the setting in which, and the cir-
8 cumstances under which, transactions involving
9 insurance products should be conducted in a lo-
10 cation physically segregated from an area where
11 retail deposits are routinely accepted.

12 “(B) REFERRALS.—Standards which per-
13 mit any person accepting deposits from the
14 public in an area where such transactions are
15 routinely conducted in an insured depository in-
16 stitution to refer a customer who seeks to pur-
17 chase any insurance product to a qualified per-
18 son who sells such product, only if the person
19 making the referral receives no more than a
20 one-time nominal fee of a fixed dollar amount
21 for each referral that does not depend on
22 whether the referral results in a transaction.

23 “(C) QUALIFICATION AND LICENSING RE-
24 QUIREMENTS.—Standards prohibiting any in-
25 sured depository institution from permitting

1 any person to sell or offer for sale any insur-
2 ance product in any part of any office of the in-
3 stitution, or on behalf of the institution, unless
4 such person is appropriately qualified and li-
5 censed.

6 “(e) DOMESTIC VIOLENCE DISCRIMINATION PROHI-
7 BITION.—

8 “(1) IN GENERAL.—In the case of an applicant
9 for, or an insured under, any insurance product de-
10 scribed in paragraph (2), the status of the applicant
11 or insured as a victim of domestic violence, or as a
12 provider of services to victims of domestic violence,
13 shall not be considered as a criterion in any decision
14 with regard to insurance underwriting, pricing, re-
15 newal, or scope of coverage of insurance policies, or
16 payment of insurance claims, except as required or
17 expressly permitted under State law.

18 “(2) SCOPE OF APPLICATION.—The prohibition
19 contained in paragraph (1) shall apply to any insur-
20 ance product which is sold or offered for sale, as
21 principal, agent, or broker, by any insured deposi-
22 tory institution or any person who is engaged in
23 such activities at an office of the institution or on
24 behalf of the institution.

1 “(3) SENSE OF THE CONGRESS.—It is the sense
2 of the Congress that, by the end of the 30-month pe-
3 riod beginning on the date of the enactment of the
4 Financial Services Act of 1998, the States should
5 enact prohibitions against discrimination with re-
6 spect to insurance products that are at least as
7 strict as the prohibitions contained in paragraph (1).

8 “(4) DOMESTIC VIOLENCE DEFINED.—For pur-
9 poses of this subsection, the term ‘domestic violence’
10 means the occurrence of 1 or more of the following
11 acts by a current or former family member, house-
12 hold member, intimate partner, or caretaker:

13 “(A) Attempting to cause or causing or
14 threatening another person with physical harm,
15 severe emotional distress, psychological trauma,
16 rape, or sexual assault.

17 “(B) Engaging in a course of conduct or
18 repeatedly committing acts toward another per-
19 son, including following the person without
20 proper authority, under circumstances that
21 place the person in reasonable fear of bodily in-
22 jury or physical harm.

23 “(C) Subjecting another person to false
24 imprisonment.

1 “(D) Attempting to cause or causing dam-
2 age to property so as to intimidate or attempt
3 to control the behavior of another person.

4 “(f) CONSUMER GRIEVANCE PROCESS.—The Federal
5 banking agencies shall jointly establish a consumer com-
6 plaint mechanism, for receiving and expeditiously address-
7 ing consumer complaints alleging a violation of regulations
8 issued under this section, which mechanism shall—

9 “(1) establish a group within each regulatory
10 agency to receive such complaints;

11 “(2) develop procedures for investigating such
12 complaints;

13 “(3) develop procedures for informing consum-
14 ers of rights they may have in connection with such
15 complaints; and

16 “(4) develop procedures for addressing concerns
17 raised by such complaints, as appropriate, including
18 procedures for the recovery of losses to the extent
19 appropriate.

20 “(g) EFFECT ON OTHER AUTHORITY.—

21 “(1) IN GENERAL.—No provision of this section
22 shall be construed as granting, limiting, or otherwise
23 affecting—

24 “(A) any authority of the Securities and
25 Exchange Commission, any self-regulatory or-

ganization, the Municipal Securities Rule-making Board, or the Secretary of the Treasury under any Federal securities law; or

“(B) except as provided in paragraph (2), any authority of any State insurance commissioner or other State authority under any State law.

“(2) COORDINATION WITH STATE LAW.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), regulations prescribed by a Federal banking agency under this section shall not apply to retail sales, solicitations, advertising, or offers of any insurance product by any insured depository institution or wholesale financial institution or to any person who is engaged in such activities at an office of such institution or on behalf of the institution, in a State where the State has in effect statutes, regulations, orders, or interpretations, that are inconsistent with or contrary to the regulations prescribed by the Federal banking agencies.

“(B) PREEMPTION.—If, with respect to any provision of the regulations prescribed under this section, the Board of Governors of the Federal Reserve System, the Comptroller of

1 the Currency, and the Board of Directors of the
2 Federal Deposit Insurance Corporation deter-
3 mine jointly that the protection afforded by
4 such provision for consumers is greater than
5 the protection provided by a comparable provi-
6 sion of the statutes, regulations, orders, or in-
7 terpretations referred to in subparagraph (A) of
8 any State, such provision of the regulations pre-
9 scribed under this section shall supersede the
10 comparable provision of such State statute, reg-
11 ulation, order, or interpretation.

12 “(h) INSURANCE PRODUCT DEFINED.—For purposes
13 of this section, the term ‘insurance product’ includes an
14 annuity contract the income of which is subject to tax
15 treatment under section 72 of the Internal Revenue Code
16 of 1986.”.

17 **SEC. 308. CERTAIN STATE AFFILIATION LAWS PREEMPTED**
18 **FOR INSURANCE COMPANIES AND AFFILI-**
19 **ATES.**

20 Except as provided in section 104(a)(2), no State
21 may, by law, regulation, order, interpretation, or
22 otherwise—

23 (1) prevent or significantly interfere with the
24 ability of any insurer, or any affiliate of an insurer
25 (whether such affiliate is organized as a stock com-

pany, mutual holding company, or otherwise), to become a financial holding company or to acquire control of an insured depository institution;

(2) limit the amount of an insurer's assets that may be invested in the voting securities of an insured depository institution (or any company which controls such institution), except that the laws of an insurer's State of domicile may limit the amount of such investment to an amount that is not less than 5 percent of the insurer's admitted assets; or

(3) prevent, significantly interfere with, or have the authority to review, approve, or disapprove a plan of reorganization by which an insurer proposes to reorganize from mutual form to become a stock insurer (whether as a direct or indirect subsidiary of a mutual holding company or otherwise) unless such State is the State of domicile of the insurer.

SEC. 309. PUBLICATION OF PREEMPTION OF STATE LAWS.

Section 5244 of the Revised Statutes of the United States (12 U.S.C. 43) is amended—

(1) by inserting “or Federal savings association” after “national bank” each place that term appears; and

(2) in subsection (c)(3)(B)(i), by inserting “or savings associations” after “banks”.

1 **Subtitle B—Redomestication of**
2 **Mutual Insurers**

3 **SEC. 311. GENERAL APPLICATION.**

4 This subtitle shall only apply to a mutual insurance
5 company in a State which has not enacted a law which
6 expressly establishes reasonable terms and conditions for
7 a mutual insurance company domiciled in such State to
8 reorganize into a mutual holding company.

9 **SEC. 312. REDOMESTICATION OF MUTUAL INSURERS.**

10 (a) REDOMESTICATION.—A mutual insurer organized
11 under the laws of any State may transfer its domicile to
12 a transferee domicile as a step in a reorganization in
13 which, pursuant to the laws of the transferee domicile and
14 consistent with the standards in subsection (f), the mutual
15 insurer becomes a stock insurer that is a direct or indirect
16 subsidiary of a mutual holding company.

17 (b) RESULTING DOMICILE.—Upon complying with
18 the applicable law of the transferee domicile governing
19 transfers of domicile and completion of a transfer pursu-
20 ant to this section, the mutual insurer shall cease to be
21 a domestic insurer in the transferor domicile and, as a
22 continuation of its corporate existence, shall be a domestic
23 insurer of the transferee domicile.

24 (c) LICENSES PRESERVED.—The certificate of au-
25 thority, agents' appointments and licenses, rates, approv-

1 als and other items that a licensed State allows and that
2 are in existence immediately prior to the date that a re-
3 domesticating insurer transfers its domicile pursuant to
4 this subtitle shall continue in full force and effect upon
5 transfer, if the insurer remains duly qualified to transact
6 the business of insurance in such licensed State.

7 (d) EFFECTIVENESS OF OUTSTANDING POLICIES
8 AND CONTRACTS.—

9 (1) IN GENERAL.—All outstanding insurance
10 policies and annuities contracts of a redomesticating
11 insurer shall remain in full force and effect and need
12 not be endorsed as to the new domicile of the in-
13 surer, unless so ordered by the State insurance regu-
14 lator of a licensed State, and then only in the case
15 of outstanding policies and contracts whose owners
16 reside in such licensed State.

17 (2) FORMS.—

18 (A) Applicable State law may require a re-
19 domesticating insurer to file new policy forms
20 with the State insurance regulator of a licensed
21 State on or before the effective date of the
22 transfer.

23 (B) Notwithstanding subparagraph (A), a
24 redomesticating insurer may use existing policy
25 forms with appropriate endorsements to reflect

1 the new domicile of the redomesticating insurer
2 until the new policy forms are approved for use
3 by the State insurance regulator of such li-
4 censed State.

5 (e) NOTICE.—A redomesticating insurer shall give
6 notice of the proposed transfer to the State insurance reg-
7 ulator of each licensed State and shall file promptly any
8 resulting amendments to corporate documents required to
9 be filed by a foreign licensed mutual insurer with the in-
10 surance regulator of each such licensed State.

11 (f) PROCEDURAL REQUIREMENTS.—No mutual in-
12 surer may redomesticate to another State and reorganize
13 into a mutual holding company pursuant to this section
14 unless the State insurance regulator of the transferee
15 domicile determines that the plan of reorganization of the
16 insurer includes the following requirements:

17 (1) APPROVAL BY BOARD OF DIRECTORS AND
18 POLICYHOLDERS.—The reorganization is approved
19 by at least a majority of the board of directors of
20 the mutual insurer and at least a majority of the
21 policyholders who vote after notice, disclosure of the
22 reorganization and the effects of the transaction on
23 policyholder contractual rights, and reasonable op-
24 portunity to vote, in accordance with such notice,
25 disclosure, and voting procedures as are approved by

1 the State insurance regulator of the transferee domi-
2 cile.

3 (2) CONTINUED VOTING CONTROL BY POLICY-
4 HOLDERS; REVIEW OF PUBLIC STOCK OFFERING.—
5 After the consummation of a reorganization, the pol-
6 icyholders of the reorganized insurer shall have the
7 same voting rights with respect to the mutual hold-
8 ing company as they had before the reorganization
9 with respect to the mutual insurer. With respect to
10 an initial public offering of stock, the offering shall
11 be conducted in compliance with applicable securities
12 laws and in a manner approved by the State insur-
13 ance regulator of the transferee domicile.

14 (3) AWARD OF STOCK OR GRANT OF OPTIONS
15 TO OFFICERS AND DIRECTORS.—For a period of 6
16 months after completion of an initial public offering,
17 neither a stock holding company nor the converted
18 insurer shall award any stock options or stock
19 grants to persons who are elected officers or direc-
20 tors of the mutual holding company, the stock hold-
21 ing company, or the converted insurer, except with
22 respect to any such awards or options to which a
23 person is entitled as a policyholder and as approved
24 by the State insurance regulator of the transferee
25 domicile.

1 (4) CONTRACTUAL RIGHTS.—Upon reorganiza-
 2 tion into a mutual holding company, the contractual
 3 rights of the policyholders are preserved.

4 (5) FAIR AND EQUITABLE TREATMENT OF POL-
 5 ICYHOLDERS.—The reorganization is approved as
 6 fair and equitable to the policyholders by the insur-
 7 ance regulator of the transferee domicile.

8 **SEC. 313. EFFECT ON STATE LAWS RESTRICTING REDOMES-**
 9 **TICATION.**

10 (a) IN GENERAL.—Unless otherwise permitted by
 11 this subtitle, State laws of any transferor domicile that
 12 conflict with the purposes and intent of this subtitle are
 13 preempted, including but not limited to—

14 (1) any law that has the purpose or effect of
 15 impeding the activities of, taking any action against,
 16 or applying any provision of law or regulation to,
 17 any insurer or an affiliate of such insurer because
 18 that insurer or any affiliate plans to redomesticate,
 19 or has redomesticated, pursuant to this subtitle;

20 (2) any law that has the purpose or effect of
 21 impeding the activities of, taking action against, or
 22 applying any provision of law or regulation to, any
 23 insured or any insurance licensee or other inter-
 24 mediary because such person or entity has procured
 25 insurance from or placed insurance with any insurer

1 or affiliate of such insurer that plans to redomes-
2 ticate, or has redomesticated, pursuant to this sub-
3 title, but only to the extent that such law would
4 treat such insured licensee or other intermediary dif-
5 ferently than if the person or entity procured insur-
6 ance from, or placed insurance with, an insured li-
7 censee or other intermediary which had not redomes-
8 ticated;

9 (3) any law that has the purpose or effect of
10 terminating, because of the redomestication of a mu-
11 tual insurer pursuant to this subtitle, any certificate
12 of authority, agent appointment or license, rate ap-
13 proval, or other approval, of any State insurance
14 regulator or other State authority in existence imme-
15 diately prior to the redomestication in any State
16 other than the transferee domicile.

17 (b) DIFFERENTIAL TREATMENT PROHIBITED.—No
18 State law, regulation, interpretation, or functional equiva-
19 lent thereof, of a State other than a transferee domicile
20 may treat a redomesticating or redomesticated insurer or
21 any affiliate thereof any differently than an insurer oper-
22 ating in that State that is not a redomesticating or re-
23 domesticated insurer.

24 (c) LAWS PROHIBITING OPERATIONS.—If any li-
25 censed State fails to issue, delays the issuance of, or seeks

1 to revoke an original or renewal certificate of authority
2 of a redomesticated insurer immediately following re-
3 domestication, except on grounds and in a manner consist-
4 ent with its past practices regarding the issuance of cer-
5 tificates of authority to foreign insurers that are not re-
6 domesticating, then the redomesticating insurer shall be
7 exempt from any State law of the licensed State to the
8 extent that such State law or the operation of such State
9 law would make unlawful, or regulate, directly or indi-
10 rectly, the operation of the redomesticated insurer, except
11 that such licensed State may require the redomesticated
12 insurer to—

13 (1) comply with the unfair claim settlement
14 practices law of the licensed State;

15 (2) pay, on a nondiscriminatory basis, applica-
16 ble premium and other taxes which are levied on li-
17 censed insurers or policyholders under the laws of
18 the licensed State;

19 (3) register with and designate the State insur-
20 ance regulator as its agent solely for the purpose of
21 receiving service of legal documents or process;

22 (4) submit to an examination by the State in-
23 surance regulator in any licensed state in which the
24 redomesticated insurer is doing business to deter-
25 mine the insurer's financial condition, if—

1 (A) the State insurance regulator of the
2 transferee domicile has not begun an examina-
3 tion of the redomesticated insurer and has not
4 scheduled such an examination to begin before
5 the end of the 1-year period beginning on the
6 date of the redomestication; and

7 (B) any such examination is coordinated to
8 avoid unjustified duplication and repetition;

9 (5) comply with a lawful order issued in—

10 (A) a delinquency proceeding commenced
11 by the State insurance regulator of any licensed
12 State if there has been a judicial finding of fi-
13 nancial impairment under paragraph (7); or

14 (B) a voluntary dissolution proceeding;

15 (6) comply with any State law regarding decep-
16 tive, false, or fraudulent acts or practices, except
17 that if the licensed State seeks an injunction regard-
18 ing the conduct described in this paragraph, such in-
19 junction must be obtained from a court of competent
20 jurisdiction as provided in section 314(a);

21 (7) comply with an injunction issued by a court
22 of competent jurisdiction, upon a petition by the
23 State insurance regulator alleging that the redomes-
24 ticating insurer is in hazardous financial condition
25 or is financially impaired;

1 (8) participate in any insurance insolvency
2 guaranty association on the same basis as any other
3 insurer licensed in the licensed State; and

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

10 **SEC. 314. OTHER PROVISIONS.**

11 (a) JUDICIAL REVIEW.—The appropriate United
12 States district court shall have exclusive jurisdiction over
13 litigation arising under this section involving any redomes-
14 ticating or redomesticated insurer.

15 (b) SEVERABILITY.—If any provision of this section,
16 or the application thereof to any person or circumstances,
17 is held invalid, the remainder of the section, and the appli-
18 cation of such provision to other persons or circumstances,
19 shall not be affected thereby.

20 **SEC. 315. DEFINITIONS.**

21 For purposes of this subtitle, the following definitions
22 shall apply:

23 (1) COURT OF COMPETENT JURISDICTION.—

24 The term “court of competent jurisdiction” means a

1 court authorized pursuant to section 314(a) to adju-
2 dicate litigation arising under this subtitle.

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

6 (3) INSURANCE LICENSEE.—The term “insur-
7 ance licensee” means any person holding a license
8 under State law to act as insurance agent, subagent,
9 broker, or consultant.

10 (4) INSTITUTION.—The term “institution”
11 means a corporation, joint stock company, limited li-
12 ability company, limited liability partnership, asso-
13 ciation, trust, partnership, or any similar entity.

14 (5) LICENSED STATE.—The term “licensed
15 State” means any State, the District of Columbia,
16 American Samoa, Guam, Puerto Rico, or the United
17 States Virgin Islands in which the redomesticating
18 insurer has a certificate of authority in effect imme-
19 diately prior to the redomestication.

20 (6) MUTUAL INSURER.—The term “mutual in-
21 surer” means a mutual insurer organized under the
22 laws of any State.

23 (7) PERSON.—The term “person” means an in-
24 dividual, institution, government or governmental
25 agency, State or political subdivision of a State, pub-

1 lic corporation, board, association, estate, trustee, or
2 fiduciary, or other similar entity.

3 (8) POLICYHOLDER.—The term “policyholder”
4 means the owner of a policy issued by a mutual in-
5 surer, except that, with respect to voting rights, the
6 term means a member of a mutual insurer or mu-
7 tual holding company granted the right to vote, as
8 determined under applicable State law.

9 (9) REDOMESTICATED INSURER.—The term
10 “redomesticated insurer” means a mutual insurer
11 that has redomesticated pursuant to this subtitle.

12 (10) REDOMESTICATING INSURER.—The term
13 “redomesticating insurer” means a mutual insurer
14 that is redomesticating pursuant to this subtitle.

15 (11) REDOMESTICATION OR TRANSFER.—The
16 terms “redomestication” and “transfer” mean the
17 transfer of the domicile of a mutual insurer from
18 one State to another State pursuant to this subtitle.

19 (12) STATE INSURANCE REGULATOR.—The
20 term “State insurance regulator” means the prin-
21 cipal insurance regulatory authority of a State, the
22 District of Columbia, American Samoa, Guam,
23 Puerto Rico, or the United States Virgin Islands.

24 (13) STATE LAW.—The term “State law”
25 means the statutes of any State, the District of Co-

1 lumbia, American Samoa, Guam, Puerto Rico, or the
2 United States Virgin Islands and any regulation,
3 order, or requirement prescribed pursuant to any
4 such statute.

5 (14) TRANSFEREE DOMICILE.—The term
6 “transferee domicile” means the State to which a
7 mutual insurer is redomesticating pursuant to this
8 subtitle.

9 (15) TRANSFEROR DOMICILE.—The term
10 “transferor domicile” means the State from which a
11 mutual insurer is redomesticating pursuant to this
12 subtitle.

13 **SEC. 316. EFFECTIVE DATE.**

14 This subtitle shall take effect on the date of the en-
15 actment of this Act.

16 **Subtitle C—National Association of**
17 **Registered Agents and Brokers**

18 **SEC. 321. STATE FLEXIBILITY IN MULTISTATE LICENSING**
19 **REFORMS.**

20 (a) IN GENERAL.—The provisions of this subtitle
21 shall take effect unless, not later than 3 years after the
22 date of enactment of this Act, at least a majority of the
23 States—

24 (1) have enacted uniform laws and regulations
25 governing the licensure of individuals and entities

1 authorized to sell and solicit the purchase of insur-
2 ance within the State; or

3 (2) have enacted reciprocity laws and regula-
4 tions governing the licensure of nonresident individ-
5 uals and entities authorized to sell and solicit insur-
6 ance within those States.

7 (b) UNIFORMITY REQUIRED.—States shall be deemed
8 to have established the uniformity necessary to satisfy
9 subsection (a)(1) if the States—

10 (1) establish uniform criteria regarding the in-
11 tegrity, personal qualifications, education, training,
12 and experience of licensed insurance producers, in-
13 cluding the qualification and training of sales per-
14 sonnel in ascertaining the appropriateness of a par-
15 ticular insurance product for a prospective customer;

16 (2) establish uniform continuing education re-
17 quirements for licensed insurance producers;

18 (3) establish uniform ethics course require-
19 ments for licensed insurance producers in conjunc-
20 tion with the continuing education requirements
21 under paragraph (2);

22 (4) establish uniform criteria to ensure that an
23 insurance product, including any annuity contract,
24 sold to a consumer is suitable and appropriate for

1 the consumer based on financial information dis-
2 closed by the consumer; and

3 (5) do not impose any requirement upon any in-
4 surance producer to be licensed or otherwise quali-
5 fied to do business as a nonresident that has the ef-
6 fect of limiting or conditioning that producer's ac-
7 tivities because of its residence or place of oper-
8 ations, except that counter-signature requirements
9 imposed on nonresident producers shall not be
10 deemed to have the effect of limiting or conditioning
11 a producer's activities because of its residence or
12 place of operations under this section.

13 (c) RECIPROCITY REQUIRED.—States shall be
14 deemed to have established the reciprocity required to sat-
15 isfy subsection (a)(2) if the following conditions are met:

16 (1) ADMINISTRATIVE LICENSING PROCEDURE.—At least a majority of the States permit a
17 producer that has a resident license for selling or so-
18 liciting the purchase of insurance in its home State
19 to receive a license to sell or solicit the purchase of
20 insurance in such majority of States as a non-
21 resident to the same extent that such producer is
22 permitted to sell or solicit the purchase of insurance
23 in its State, if the producer's home State also
24 awards such licenses on such a reciprocal basis,
25

1 without satisfying any additional requirements other
2 than submitting—

3 (A) a request for licensure;

4 (B) the application for licensure that the
5 producer submitted to its home State;

6 (C) proof that the producer is licensed and
7 in good standing in its home State; and

8 (D) the payment of any requisite fee to the
9 appropriate authority.

10 (2) CONTINUING EDUCATION REQUIRE-
11 MENTS.—A majority of the States accept an insur-
12 ance producer's satisfaction of its home State's con-
13 tinuing education requirements for licensed insur-
14 ance producers to satisfy the States' own continuing
15 education requirements if the producer's home State
16 also recognizes the satisfaction of continuing edu-
17 cation requirements on such a reciprocal basis.

18 (3) NO LIMITING NONRESIDENT REQUIRE-
19 MENTS.—A majority of the States do not impose
20 any requirement upon any insurance producer to be
21 licensed or otherwise qualified to do business as a
22 nonresident that has the effect of limiting or condi-
23 tioning that producer's activities because of its resi-
24 dence or place of operations, except that
25 countersignature requirements imposed on non-

1 resident producers shall not be deemed to have the
2 effect of limiting or conditioning a producer's activi-
3 ties because of its residence or place of operations
4 under this section.

5 (4) RECIPROCAL RECIPROCITY.—Each of the
6 States that satisfies paragraphs (1), (2), and (3)
7 grants reciprocity to residents of all of the other
8 States that satisfy such paragraphs.

9 (d) DETERMINATION.—

10 (1) NAIC DETERMINATION.—At the end of the
11 3-year period beginning on the date of the enact-
12 ment of this Act, the National Association of Insur-
13 ance Commissioners shall determine, in consultation
14 with the insurance commissioners or chief insurance
15 regulatory officials of the States, whether the uni-
16 formity or reciprocity required by subsections (b)
17 and (c) has been achieved.

18 (2) JUDICIAL REVIEW.—The appropriate
19 United States district court shall have exclusive ju-
20 risdiction over any challenge to the National Asso-
21 ciation of Insurance Commissioners' determination
22 under this section and such court shall apply the
23 standards set forth in section 706 of title 5, United
24 States Code, when reviewing any such challenge.

1 (e) CONTINUED APPLICATION.—If, at any time, the
2 uniformity or reciprocity required by subsections (b) and
3 (c) no longer exists, the provisions of this subtitle shall
4 take effect 2 years after the date on which such uniformity
5 or reciprocity ceases to exist, unless the uniformity or reci-
6 procity required by those provisions is satisfied before the
7 expiration of that 2-year period.

8 (f) SAVINGS PROVISION.—No provision of this sec-
9 tion shall be construed as requiring that any law, regula-
10 tion, provision, or action of any State which purports to
11 regulate insurance producers, including any such law, reg-
12 ulation, provision, or action which purports to regulate un-
13 fair trade practices or establish consumer protections, in-
14 cluding countersignature laws, be altered or amended in
15 order to satisfy the uniformity or reciprocity required by
16 subsections (b) and (c), unless any such law, regulation,
17 provision, or action is inconsistent with a specific require-
18 ment of any such subsection and then only to the extent
19 of such inconsistency.

20 (g) UNIFORM LICENSING.—Nothing in this section
21 shall be construed to require any State to adopt new or
22 additional licensing requirements to achieve the uniformity
23 necessary to satisfy subsection (a)(1).

1 **SEC. 322. NATIONAL ASSOCIATION OF REGISTERED**
2 **AGENTS AND BROKERS.**

3 (a) ESTABLISHMENT.—There is established the Na-
4 tional Association of Registered Agents and Brokers
5 (hereafter in this subtitle referred to as the “Associa-
6 tion”).

7 (b) STATUS.—The Association shall—

8 (1) be a nonprofit corporation;

9 (2) have succession until dissolved by an Act of
10 Congress;

11 (3) not be an agent or instrumentality of the
12 United States Government; and

13 (4) except as otherwise provided in this Act, be
14 subject to, and have all the powers conferred upon
15 a nonprofit corporation by the District of Columbia
16 Nonprofit Corporation Act (D.C. Code, sec. 29y–
17 1001 et seq.).

18 **SEC. 323. PURPOSE.**

19 The purpose of the Association shall be to provide
20 a mechanism through which uniform licensing, appoint-
21 ment, continuing education, and other insurance producer
22 sales qualification requirements and conditions can be
23 adopted and applied on a multistate basis, while preserv-
24 ing the right of States to license, supervise, and discipline
25 insurance producers and to prescribe and enforce laws and

1 regulations with regard to insurance-related consumer
2 protection and unfair trade practices.

3 **SEC. 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT.**

4 The Association shall be subject to the supervision
5 and oversight of the National Association of Insurance
6 Commissioners (hereafter in this subtitle referred to as the
7 “NAIC”).

8 **SEC. 325. MEMBERSHIP.**

9 (a) ELIGIBILITY.—

10 (1) IN GENERAL.—Any State-licensed insurance
11 producer shall be eligible to become a member in the
12 Association.

13 (2) INELIGIBILITY FOR SUSPENSION OR REV-
14 OCATION OF LICENSE.—Notwithstanding paragraph
15 (1), a State-licensed insurance producer shall not be
16 eligible to become a member if a State insurance
17 regulator has suspended or revoked such producer’s
18 license in that State during the 3-year period pre-
19 ceding the date on which such producer applies for
20 membership.

21 (3) RESUMPTION OF ELIGIBILITY.—Paragraph
22 (2) shall cease to apply to any insurance producer
23 if—

1 (A) the State insurance regulator renews
2 the license of such producer in the State in
3 which the license was suspended or revoked; or

4 (B) the suspension or revocation is subse-
5 quently overturned.

6 (b) AUTHORITY TO ESTABLISH MEMBERSHIP CRI-
7 TERIA.—The Association shall have the authority to estab-
8 lish membership criteria that—

9 (1) bear a reasonable relationship to the pur-
10 poses for which the Association was established; and

11 (2) do not unfairly limit the access of smaller
12 agencies to the Association membership.

13 (c) ESTABLISHMENT OF CLASSES AND CAT-
14 EGORIES.—

15 (1) CLASSES OF MEMBERSHIP.—The Associa-
16 tion may establish separate classes of membership,
17 with separate criteria, if the Association reasonably
18 determines that performance of different duties re-
19 quires different levels of education, training, or expe-
20 rience.

21 (2) CATEGORIES.—The Association may estab-
22 lish separate categories of membership for individ-
23 uals and for other persons. The establishment of any
24 such categories of membership shall be based either
25 on the types of licensing categories that exist under

1 State laws or on the aggregate amount of business
2 handled by an insurance producer. No special cat-
3 egories of membership, and no distinct membership
4 criteria, shall be established for members which are
5 insured depository institutions or wholesale financial
6 institutions or for their employees, agents, or affili-
7 ates.

8 (d) MEMBERSHIP CRITERIA.—

9 (1) IN GENERAL.—The Association may estab-
10 lish criteria for membership which shall include
11 standards for integrity, personal qualifications, edu-
12 cation, training, and experience.

13 (2) MINIMUM STANDARD.—In establishing cri-
14 teria under paragraph (1), the Association shall con-
15 sider the highest levels of insurance producer quali-
16 fications established under the licensing laws of the
17 States.

18 (e) EFFECT OF MEMBERSHIP.—Membership in the
19 Association shall entitle the member to licensure in each
20 State for which the member pays the requisite fees, includ-
21 ing licensing fees and, where applicable, bonding require-
22 ments, set by such State.

23 (f) ANNUAL RENEWAL.—Membership in the Associa-
24 tion shall be renewed on an annual basis.

1 (g) CONTINUING EDUCATION.—The Association shall
2 establish, as a condition of membership, continuing edu-
3 cation requirements which shall be comparable to or great-
4 er than the continuing education requirements under the
5 licensing laws of a majority of the States.

6 (h) SUSPENSION AND REVOCATION.—The Associa-
7 tion may—

8 (1) inspect and examine the records and offices
9 of the members of the Association to determine com-
10 pliance with the criteria for membership established
11 by the Association; and

12 (2) suspend or revoke the membership of an in-
13 surance producer if—

14 (A) the producer fails to meet the applica-
15 ble membership criteria of the Association; or

16 (B) the producer has been subject to dis-
17 ciplinary action pursuant to a final adjudicatory
18 proceeding under the jurisdiction of a State in-
19 surance regulator, and the Association con-
20 cludes that retention of membership in the As-
21 sociation would not be in the public interest.

22 (i) OFFICE OF CONSUMER COMPLAINTS.—

23 (1) IN GENERAL.—The Association shall estab-
24 lish an office of consumer complaints that shall—

1 (A) receive and investigate complaints
2 from both consumers and State insurance regu-
3 lators related to members of the Association;
4 and

5 (B) recommend to the Association any dis-
6 ciplinary actions that the office considers appro-
7 priate, to the extent that any such rec-
8 ommendation is not inconsistent with State law.

9 (2) RECORDS AND REFERRALS.—The office of
10 consumer complaints of the Association shall—

11 (A) maintain records of all complaints re-
12 ceived in accordance with paragraph (1) and
13 make such records available to the NAIC and
14 to each State insurance regulator for the State
15 of residence of the consumer who filed the com-
16 plaint; and

17 (B) refer, when appropriate, any such com-
18 plaint to any appropriate State insurance regu-
19 lator.

20 (3) TELEPHONE AND OTHER ACCESS.—The of-
21 fice of consumer complaints shall maintain a toll-free
22 telephone number for the purpose of this subsection
23 and, as practicable, other alternative means of com-
24 munication with consumers, such as an Internet
25 home page.

1 **SEC. 326. BOARD OF DIRECTORS.**

2 (a) ESTABLISHMENT.—There is established the
3 board of directors of the Association (hereafter in this sub-
4 title referred to as the “Board”) for the purpose of govern-
5 ing and supervising the activities of the Association and
6 the members of the Association.

7 (b) POWERS.—The Board shall have such powers and
8 authority as may be specified in the bylaws of the Associa-
9 tion.

10 (c) COMPOSITION.—

11 (1) MEMBERS.—The Board shall be composed
12 of 7 members appointed by the NAIC.

13 (2) REQUIREMENT.—At least 4 of the members
14 of the Board shall have significant experience with
15 the regulation of commercial lines of insurance in at
16 least 1 of the 20 States in which the greatest total
17 dollar amount of commercial-lines insurance is
18 placed in the United States.

19 (3) INITIAL BOARD MEMBERSHIP.—

20 (A) IN GENERAL.—If, by the end of the 2-
21 year period beginning on the date of enactment
22 of this Act, the NAIC has not appointed the
23 initial 7 members of the Board of the Associa-
24 tion, the initial Board shall consist of the 7
25 State insurance regulators of the 7 States with
26 the greatest total dollar amount of commercial-

1 lines insurance in place as of the end of such
2 period.

3 (B) ALTERNATE COMPOSITION.—If any of
4 the State insurance regulators described in sub-
5 paragraph (A) declines to serve on the Board,
6 the State insurance regulator with the next
7 greatest total dollar amount of commercial-lines
8 insurance in place, as determined by the NAIC
9 as of the end of such period, shall serve as a
10 member of the Board.

11 (C) INOPERABILITY.—If fewer than 7
12 State insurance regulators accept appointment
13 to the Board, the Association shall be estab-
14 lished without NAIC oversight pursuant to sec-
15 tion 332.

16 (d) TERMS.—The term of each director shall, after
17 the initial appointment of the members of the Board, be
18 for 3 years, with $\frac{1}{3}$ of the directors to be appointed each
19 year.

20 (e) BOARD VACANCIES.—A vacancy on the Board
21 shall be filled in the same manner as the original appoint-
22 ment of the initial Board for the remainder of the term
23 of the vacating member.

1 (f) MEETINGS.—The Board shall meet at the call of
2 the chairperson, or as otherwise provided by the bylaws
3 of the Association.

4 **SEC. 327. OFFICERS.**

5 (a) IN GENERAL.—

6 (1) POSITIONS.—The officers of the Association
7 shall consist of a chairperson and a vice chairperson
8 of the Board, a president, secretary, and treasurer
9 of the Association, and such other officers and as-
10 sistant officers as may be deemed necessary.

11 (2) MANNER OF SELECTION.—Each officer of
12 the Board and the Association shall be elected or ap-
13 pointed at such time and in such manner and for
14 such terms not exceeding 3 years as may be pre-
15 scribed in the bylaws of the Association.

16 (b) CRITERIA FOR CHAIRPERSON.—Only individuals
17 who are members of the NAIC shall be eligible to serve
18 as the chairperson of the board of directors.

19 **SEC. 328. BYLAWS, RULES, AND DISCIPLINARY ACTION.**

20 (a) ADOPTION AND AMENDMENT OF BYLAWS.—

21 (1) COPY REQUIRED TO BE FILED WITH THE
22 NAIC.—The board of directors of the Association
23 shall file with the NAIC a copy of the proposed by-
24 laws or any proposed amendment to the bylaws, ac-

1 accompanied by a concise general statement of the
2 basis and purpose of such proposal.

3 (2) EFFECTIVE DATE.—Except as provided in
4 paragraph (3), any proposed bylaw or proposed
5 amendment shall take effect—

6 (A) 30 days after the date of the filing of
7 a copy with the NAIC;

8 (B) upon such later date as the Associa-
9 tion may designate; or

10 (C) upon such earlier date as the NAIC
11 may determine.

12 (3) DISAPPROVAL BY THE NAIC.—Notwith-
13 standing paragraph (2), a proposed bylaw or amend-
14 ment shall not take effect if, after public notice and
15 opportunity to participate in a public hearing—

16 (A) the NAIC disapproves such proposal as
17 being contrary to the public interest or contrary
18 to the purposes of this subtitle and provides no-
19 tice to the Association setting forth the reasons
20 for such disapproval; or

21 (B) the NAIC finds that such proposal in-
22 volves a matter of such significant public inter-
23 est that public comment should be obtained, in
24 which case it may, after notifying the Associa-
25 tion in writing of such finding, require that the

1 procedures set forth in subsection (b) be fol-
2 lowed with respect to such proposal, in the
3 same manner as if such proposed bylaw change
4 were a proposed rule change within the mean-
5 ing of such subsection.

6 (b) ADOPTION AND AMENDMENT OF RULES.—

7 (1) FILING PROPOSED REGULATIONS WITH THE
8 NAIC.—

9 (A) IN GENERAL.—The board of directors
10 of the Association shall file with the NAIC a
11 copy of any proposed rule or any proposed
12 amendment to a rule of the Association which
13 shall be accompanied by a concise general state-
14 ment of the basis and purpose of such proposal.

15 (B) OTHER RULES AND AMENDMENTS IN-
16 EFFECTIVE.—No proposed rule or amendment
17 shall take effect unless approved by the NAIC
18 or otherwise permitted in accordance with this
19 paragraph.

20 (2) INITIAL CONSIDERATION BY THE NAIC.—

21 Not later than 35 days after the date of publication
22 of notice of filing of a proposal, or before the end
23 of such longer period not to exceed 90 days as the
24 NAIC may designate after such date, if the NAIC
25 finds such longer period to be appropriate and sets

1 forth its reasons for so finding, or as to which the
2 Association consents, the NAIC shall—

3 (A) by order approve such proposed rule or
4 amendment; or

5 (B) institute proceedings to determine
6 whether such proposed rule or amendment
7 should be modified or disapproved.

8 (3) NAIC PROCEEDINGS.—

9 (A) IN GENERAL.—Proceedings instituted
10 by the NAIC with respect to a proposed rule or
11 amendment pursuant to paragraph (2) shall—

12 (i) include notice of the grounds for
13 disapproval under consideration;

14 (ii) provide opportunity for hearing;
15 and

16 (iii) be concluded not later than 180
17 days after the date of the Association's fil-
18 ing of such proposed rule or amendment.

19 (B) DISPOSITION OF PROPOSAL.—At the
20 conclusion of any proceeding under subpara-
21 graph (A), the NAIC shall, by order, approve or
22 disapprove the proposed rule or amendment.

23 (C) EXTENSION OF TIME FOR CONSIDER-
24 ATION.—The NAIC may extend the time for

1 concluding any proceeding under subparagraph

2 (A) for—

3 (i) not more than 60 days if the
4 NAIC finds good cause for such extension
5 and sets forth its reasons for so finding; or

6 (ii) for such longer period as to which
7 the Association consents.

8 (4) STANDARDS FOR REVIEW.—

9 (A) GROUNDS FOR APPROVAL.—The NAIC
10 shall approve a proposed rule or amendment if
11 the NAIC finds that the rule or amendment is
12 in the public interest and is consistent with the
13 purposes of this Act.

14 (B) APPROVAL BEFORE END OF NOTICE
15 PERIOD.—The NAIC shall not approve any pro-
16 posed rule before the end of the 30-day period
17 beginning on the date on which the Association
18 files proposed rules or amendments in accord-
19 ance with paragraph (1), unless the NAIC finds
20 good cause for so doing and sets forth the rea-
21 sons for so finding.

22 (5) ALTERNATE PROCEDURE.—

23 (A) IN GENERAL.—Notwithstanding any
24 provision of this subsection other than subpara-
25 graph (B), a proposed rule or amendment relat-

1 ing to the administration or organization of the
2 Association shall take effect—

3 (i) upon the date of filing with the
4 NAIC, if such proposed rule or amendment
5 is designated by the Association as relating
6 solely to matters which the NAIC, consist-
7 ent with the public interest and the pur-
8 poses of this subsection, determines by rule
9 do not require the procedures set forth in
10 this paragraph; or

11 (ii) upon such date as the NAIC shall
12 for good cause determine.

13 (B) ABROGATION BY THE NAIC.—

14 (i) IN GENERAL.—At any time within
15 60 days after the date of filing of any pro-
16 posed rule or amendment under subpara-
17 graph (A)(i) or clause (ii) of this subpara-
18 graph, the NAIC may repeal such rule or
19 amendment and require that the rule or
20 amendment be refiled and reviewed in ac-
21 cordance with this paragraph, if the NAIC
22 finds that such action is necessary or ap-
23 propriate in the public interest, for the
24 protection of insurance producers or policy-

1 holders, or otherwise in furtherance of the
2 purposes of this subtitle.

3 (ii) EFFECT OF RECONSIDERATION BY
4 THE NAIC.—Any action of the NAIC pur-
5 suant to clause (i) shall—

6 (I) not affect the validity or force
7 of a rule change during the period
8 such rule or amendment was in effect;
9 and

10 (II) not be considered to be a
11 final action.

12 (c) ACTION REQUIRED BY THE NAIC.—The NAIC
13 may, in accordance with such rules as the NAIC deter-
14 mines to be necessary or appropriate to the public interest
15 or to carry out the purposes of this subtitle, require the
16 Association to adopt, amend, or repeal any bylaw, rule or
17 amendment of the Association, whenever adopted.

18 (d) DISCIPLINARY ACTION BY THE ASSOCIATION.—

19 (1) SPECIFICATION OF CHARGES.—In any pro-
20 ceeding to determine whether membership shall be
21 denied, suspended, revoked, or not renewed (here-
22 after in this section referred to as a “disciplinary ac-
23 tion”), the Association shall bring specific charges,
24 notify such member of such charges, give the mem-

1 ber an opportunity to defend against the charges,
2 and keep a record.

3 (2) SUPPORTING STATEMENT.—A determina-
4 tion to take disciplinary action shall be supported by
5 a statement setting forth—

6 (A) any act or practice in which such
7 member has been found to have been engaged;

8 (B) the specific provision of this subtitle,
9 the rules or regulations under this subtitle, or
10 the rules of the Association which any such act
11 or practice is deemed to violate; and

12 (C) the sanction imposed and the reason
13 for such sanction.

14 (e) NAIC REVIEW OF DISCIPLINARY ACTION.—

15 (1) NOTICE TO THE NAIC.—If the Association
16 orders any disciplinary action, the Association shall
17 promptly notify the NAIC of such action.

18 (2) REVIEW BY THE NAIC.—Any disciplinary
19 action taken by the Association shall be subject to
20 review by the NAIC—

21 (A) on the NAIC's own motion; or

22 (B) upon application by any person ag-
23 grieved by such action if such application is
24 filed with the NAIC not more than 30 days
25 after the later of—

- 1 (i) the date the notice was filed with
2 the NAIC pursuant to paragraph (1); or
3 (ii) the date the notice of the discipli-
4 nary action was received by such aggrieved
5 person.

6 (f) EFFECT OF REVIEW.—The filing of an applica-
7 tion to the NAIC for review of a disciplinary action, or
8 the institution of review by the NAIC on the NAIC's own
9 motion, shall not operate as a stay of disciplinary action
10 unless the NAIC otherwise orders.

11 (g) SCOPE OF REVIEW.—

12 (1) IN GENERAL.—In any proceeding to review
13 such action, after notice and the opportunity for
14 hearing, the NAIC shall—

15 (A) determine whether the action should be
16 taken;

17 (B) affirm, modify, or rescind the discipli-
18 nary sanction; or

19 (C) remand to the Association for further
20 proceedings.

21 (2) DISMISSAL OF REVIEW.—The NAIC may
22 dismiss a proceeding to review disciplinary action if
23 the NAIC finds that—

24 (A) the specific grounds on which the ac-
25 tion is based exist in fact;

1 (B) the action is in accordance with appli-
2 cable rules and regulations; and

3 (C) such rules and regulations are, and
4 were, applied in a manner consistent with the
5 purposes of this subtitle.

6 **SEC. 329. ASSESSMENTS.**

7 (a) INSURANCE PRODUCERS SUBJECT TO ASSESS-
8 MENT.—The Association may establish such application
9 and membership fees as the Association finds necessary
10 to cover the costs of its operations, including fees made
11 reimbursable to the NAIC under subsection (b), except
12 that, in setting such fees, the Association may not dis-
13 criminate against smaller insurance producers.

14 (b) NAIC ASSESSMENTS.—The NAIC may assess the
15 Association for any costs that the NAIC incurs under this
16 subtitle.

17 **SEC. 330. FUNCTIONS OF THE NAIC.**

18 (a) ADMINISTRATIVE PROCEDURE.—Determinations
19 of the NAIC, for purposes of making rules pursuant to
20 section 328, shall be made after appropriate notice and
21 opportunity for a hearing and for submission of views of
22 interested persons.

23 (b) EXAMINATIONS AND REPORTS.—

24 (1) EXAMINATIONS.—The NAIC may make
25 such examinations and inspections of the Association

1 and require the Association to furnish to the NAIC
2 such reports and records or copies thereof as the
3 NAIC may consider necessary or appropriate in the
4 public interest or to effectuate the purposes of this
5 subtitle.

6 (2) REPORT BY ASSOCIATION.—As soon as
7 practicable after the close of each fiscal year, the As-
8 sociation shall submit to the NAIC a written report
9 regarding the conduct of its business, and the exer-
10 cise of the other rights and powers granted by this
11 subtitle, during such fiscal year. Such report shall
12 include financial statements setting forth the finan-
13 cial position of the Association at the end of such
14 fiscal year and the results of its operations (includ-
15 ing the source and application of its funds) for such
16 fiscal year. The NAIC shall transmit such report to
17 the President and the Congress with such comment
18 thereon as the NAIC determines to be appropriate.

19 **SEC. 331. LIABILITY OF THE ASSOCIATION AND THE DIREC-**
20 **TORS, OFFICERS, AND EMPLOYEES OF THE**
21 **ASSOCIATION.**

22 (a) IN GENERAL.—The Association shall not be
23 deemed to be an insurer or insurance producer within the
24 meaning of any State law, rule, regulation, or order regu-
25 lating or taxing insurers, insurance producers, or other en-

1 titles engaged in the business of insurance, including pro-
2 visions imposing premium taxes, regulating insurer sol-
3 vency or financial condition, establishing guaranty funds
4 and levying assessments, or requiring claims settlement
5 practices.

6 (b) LIABILITY OF THE ASSOCIATION, ITS DIREC-
7 TORS, OFFICERS, AND EMPLOYEES.—Neither the Associa-
8 tion nor any of its directors, officers, or employees shall
9 have any liability to any person for any action taken or
10 omitted in good faith under or in connection with any mat-
11 ter subject to this subtitle.

12 **SEC. 332. ELIMINATION OF NAIC OVERSIGHT.**

13 (a) IN GENERAL.—The Association shall be estab-
14 lished without NAIC oversight and the provisions set forth
15 in section 324, subsections (a), (b), (c), and (e) of section
16 328, and sections 329(b) and 330 of this subtitle shall
17 cease to be effective if, at the end of the 2-year period
18 beginning on the date on which the provisions of this sub-
19 title take effect pursuant to section 321—

20 (1) at least a majority of the States represent-
21 ing at least 50 percent of the total United States
22 commercial-lines insurance premiums have not satis-
23 fied the uniformity or reciprocity requirements of
24 subsections (a), (b), and (c) of section 321; and

1 (2) the NAIC has not approved the Associa-
2 tion's bylaws as required by section 328 or is unable
3 to operate or supervise the Association, or the Asso-
4 ciation is not conducting its activities as required
5 under this Act.

6 (b) BOARD APPOINTMENTS.—If the repeals required
7 by subsection (a) are implemented, the following shall
8 apply:

9 (1) GENERAL APPOINTMENT POWER.—The
10 President, with the advice and consent of the Sen-
11 ate, shall appoint the members of the Association's
12 Board established under section 326 from lists of
13 candidates recommended to the President by the
14 National Association of Insurance Commissioners.

15 (2) PROCEDURES FOR OBTAINING NATIONAL
16 ASSOCIATION OF INSURANCE COMMISSIONERS AP-
17 POINTMENT RECOMMENDATIONS.—

18 (A) INITIAL DETERMINATION AND REC-
19 ommendations.—After the date on which the
20 provisions of subsection (a) take effect, the
21 NAIC shall, not later than 60 days thereafter,
22 provide a list of recommended candidates to the
23 President. If the NAIC fails to provide a list by
24 that date, or if any list that is provided does
25 not include at least 14 recommended candidates

1 or comply with the requirements of section
2 326(c), the President shall, with the advice and
3 consent of the Senate, make the requisite ap-
4 pointments without considering the views of the
5 NAIC.

6 (B) SUBSEQUENT APPOINTMENTS.—After
7 the initial appointments, the NAIC shall pro-
8 vide a list of at least 6 recommended candidates
9 for the Board to the President by January 15
10 of each subsequent year. If the NAIC fails to
11 provide a list by that date, or if any list that
12 is provided does not include at least 6 rec-
13 ommended candidates or comply with the re-
14 quirements of section 326(c), the President,
15 with the advice and consent of the Senate, shall
16 make the requisite appointments without con-
17 sidering the views of the NAIC.

18 (C) PRESIDENTIAL OVERSIGHT.—

19 (i) REMOVAL.—If the President deter-
20 mines that the Association is not acting in
21 the interests of the public, the President
22 may remove the entire existing Board for
23 the remainder of the term to which the
24 members of the Board were appointed and
25 appoint, with the advice and consent of the

1 Senate, new members to fill the vacancies
2 on the Board for the remainder of such
3 terms.

4 (ii) SUSPENSION OF RULES OR AC-
5 TIONS.—The President, or a person des-
6 ignated by the President for such purpose,
7 may suspend the effectiveness of any rule,
8 or prohibit any action, of the Association
9 which the President or the designee deter-
10 mines is contrary to the public interest.

11 (c) ANNUAL REPORT.—As soon as practicable after
12 the close of each fiscal year, the Association shall submit
13 to the President and to the Congress a written report rel-
14 ative to the conduct of its business, and the exercise of
15 the other rights and powers granted by this subtitle, dur-
16 ing such fiscal year. Such report shall include financial
17 statements setting forth the financial position of the Asso-
18 ciation at the end of such fiscal year and the results of
19 its operations (including the source and application of its
20 funds) for such fiscal year.

21 **SEC. 333. RELATIONSHIP TO STATE LAW.**

22 (a) PREEMPTION OF STATE LAWS.—State laws, reg-
23 ulations, provisions, or other actions purporting to regu-
24 late insurance producers shall be preempted as provided
25 in subsection (b).

1 (b) PROHIBITED ACTIONS.—No State shall—

2 (1) impede the activities of, take any action
3 against, or apply any provision of law or regulation
4 to, any insurance producer because that insurance
5 producer or any affiliate plans to become, has ap-
6 plied to become, or is a member of the Association;

7 (2) impose any requirement upon a member of
8 the Association that it pay different fees to be li-
9 censed or otherwise qualified to do business in that
10 State, including bonding requirements, based on its
11 residency;

12 (3) impose any licensing, appointment, integ-
13 rity, personal or corporate qualifications, education,
14 training, experience, residency, or continuing edu-
15 cation requirement upon a member of the Associa-
16 tion that is different from the criteria for member-
17 ship in the Association or renewal of such member-
18 ship, except that counter-signature requirements im-
19 posed on nonresident producers shall not be deemed
20 to have the effect of limiting or conditioning a pro-
21 ducer's activities because of its residence or place of
22 operations under this section; or

23 (4) implement the procedures of such State's
24 system of licensing or renewing the licenses of insur-

1 ance producers in a manner different from the au-
2 thority of the Association under section 325.

3 (c) SAVINGS PROVISION.—Except as provided in sub-
4 sections (a) and (b), no provision of this section shall be
5 construed as altering or affecting the continuing effective-
6 ness of any law, regulation, provision, or other action of
7 any State which purports to regulate insurance producers,
8 including any such law, regulation, provision, or action
9 which purports to regulate unfair trade practices or estab-
10 lish consumer protections, including countersignature
11 laws.

12 **SEC. 334. COORDINATION WITH OTHER REGULATORS.**

13 (a) COORDINATION WITH STATE INSURANCE REGU-
14 LATORS.—The Association shall have the authority to—

15 (1) issue uniform insurance producer applica-
16 tions and renewal applications that may be used to
17 apply for the issuance or removal of State licenses,
18 while preserving the ability of each State to impose
19 such conditions on the issuance or renewal of a li-
20 cense as are consistent with section 333;

21 (2) establish a central clearinghouse through
22 which members of the Association may apply for the
23 issuance or renewal of licenses in multiple States;
24 and

1 (3) establish or utilize a national database for
2 the collection of regulatory information concerning
3 the activities of insurance producers.

4 (b) COORDINATION WITH THE NATIONAL ASSOCIA-
5 TION OF SECURITIES DEALERS.—The Association shall
6 coordinate with the National Association of Securities
7 Dealers in order to ease any administrative burdens that
8 fall on persons that are members of both associations, con-
9 sistent with the purposes of this subtitle and the Federal
10 securities laws.

11 **SEC. 335. JUDICIAL REVIEW.**

12 (a) JURISDICTION.—The appropriate United States
13 district court shall have exclusive jurisdiction over litiga-
14 tion involving the Association, including disputes between
15 the Association and its members that arise under this sub-
16 title. Suits brought in State court involving the Associa-
17 tion shall be deemed to have arisen under Federal law and
18 therefore be subject to jurisdiction in the appropriate
19 United States district court.

20 (b) EXHAUSTION OF REMEDIES.—An aggrieved per-
21 son shall be required to exhaust all available administra-
22 tive remedies before the Association and the NAIC before
23 it may seek judicial review of an Association decision.

24 (c) STANDARDS OF REVIEW.—The standards set
25 forth in section 553 of title 5, United States Code, shall

1 be applied whenever a rule or bylaw of the Association is
2 under judicial review, and the standards set forth in sec-
3 tion 554 of title 5, United States Code, shall be applied
4 whenever a disciplinary action of the Association is judi-
5 cially reviewed.

6 **SEC. 336. DEFINITIONS.**

7 For purposes of this subtitle, the following definitions
8 shall apply:

9 (1) HOME STATE.—The term “home State”
10 means the State in which the insurance producer
11 maintains its principal place of residence and is li-
12 censed to act as an insurance producer.

13 (2) INSURANCE.—The term “insurance” means
14 any product, other than title insurance, defined or
15 regulated as insurance by the appropriate State in-
16 surance regulatory authority.

17 (3) INSURANCE PRODUCER.—The term “insur-
18 ance producer” means any insurance agent or
19 broker, surplus lines broker, insurance consultant,
20 limited insurance representative, and any other per-
21 son that solicits, negotiates, effects, procures, deliv-
22 ers, renews, continues or binds policies of insurance
23 or offers advice, counsel, opinions or services related
24 to insurance.

1 (4) STATE.—The term “State” includes any
 2 State, the District of Columbia, American Samoa,
 3 Guam, Puerto Rico, and the United States Virgin
 4 Islands.

5 (5) STATE LAW.—The term “State law” in-
 6 cludes all laws, decisions, rules, regulations, or other
 7 State action having the effect of law, of any State.
 8 A law of the United States applicable only to the
 9 District of Columbia shall be treated as a State law
 10 rather than a law of the United States.

11 **TITLE IV—UNITARY SAVINGS**
 12 **AND LOAN HOLDING COMPA-**
 13 **NIES**

14 **SEC. 401. PREVENTION OF CREATION OF NEW S&L HOLD-**
 15 **ING COMPANIES WITH COMMERCIAL AFFILI-**
 16 **ATES.**

17 (a) IN GENERAL.—Section 10(c) of the Home Own-
 18 ers’ Loan Act (12 U.S.C. 1467a(c)) is amended by adding
 19 at the end the following new paragraph:

20 “(9) PREVENTION OF NEW AFFILIATIONS BE-
 21 TWEEN S&L HOLDING COMPANIES AND COMMERCIAL
 22 FIRMS.—

23 “(A) IN GENERAL.—Notwithstanding para-
 24 graph (3), no company may directly or indi-
 25 rectly, including through any merger, consolida-

tion, or other type of business combination, acquire control of a savings association after October 7, 1998, unless the company is engaged, directly or indirectly (including through a subsidiary other than a savings association), only in activities that are permitted—

“(i) under paragraph (1)(C) or (2); or

“(ii) for financial holding companies under section 6(c) of the Bank Holding Company Act of 1956.

“(B) PREVENTION OF NEW COMMERCIAL AFFILIATIONS.—Notwithstanding paragraph (3), no savings and loan holding company may engage directly or indirectly (including through a subsidiary other than a savings association) in any activity other than as described in clauses (i) and (ii) of subparagraph (A).

“(C) PRESERVATION OF AUTHORITY OF EXISTING UNITARY S&L HOLDING COMPANIES.—Subparagraphs (A) and (B) do not apply with respect to any company that was a savings and loan holding company on October 7, 1998, or that becomes a savings and loan holding company pursuant to an application

1 pending before the Office of Thrift Supervision
2 on or before that date, and that—

3 “(i) meets and continues to meet the
4 requirements of paragraph (3); and

5 “(ii) continues to control not fewer
6 than 1 savings association that it con-
7 trolled on October 7, 1998, or that it ac-
8 quired pursuant to an application pending
9 before the Office of Thrift Supervision on
10 or before that date, or the successor to
11 such savings association.

12 “(D) CORPORATE REORGANIZATIONS PER-
13 MITTED.—This paragraph does not prevent a
14 transaction that—

15 “(i) involves solely a company under
16 common control with a savings and loan
17 holding company from acquiring, directly
18 or indirectly, control of the savings and
19 loan holding company or any savings asso-
20 ciation that is already a subsidiary of the
21 savings and loan holding company; or

22 “(ii) involves solely a merger, consoli-
23 dation, or other type of business combina-
24 tion as a result of which a company under
25 common control with the savings and loan

1 holding company acquires, directly or indi-
2 rectly, control of the savings and loan hold-
3 ing company or any savings association
4 that is already a subsidiary of the savings
5 and loan holding company.

6 “(E) AUTHORITY TO PREVENT EVA-
7 SIONS.—The Director may issue interpreta-
8 tions, regulations, or orders that the Director
9 determines necessary to administer and carry
10 out the purpose and prevent evasions of this
11 paragraph, including a determination that, not-
12 withstanding the form of a transaction, the
13 transaction would in substance result in a com-
14 pany acquiring control of a savings association.

15 “(F) PRESERVATION OF AUTHORITY FOR
16 FAMILY TRUSTS.—Subparagraphs (A) and (B)
17 do not apply with respect to any trust that be-
18 comes a savings and loan holding company with
19 respect to a savings association, if—

20 “(i) not less than 85 percent of the
21 beneficial ownership interests in the trust
22 are continuously owned, directly or indi-
23 rectly, by or for the benefit of members of
24 the same family, or their spouses, who are
25 lineal descendants of common ancestors

1 who controlled, directly or indirectly, such
2 savings association on October 7, 1998, or
3 a subsequent date pursuant to an applica-
4 tion pending before the Office of Thrift
5 Supervision on or before October 7, 1998;
6 and

7 “(ii) at the time at which such trust
8 becomes a savings and loan holding com-
9 pany, such ancestors or lineal descendants,
10 or spouses of such descendants, have di-
11 rectly or indirectly controlled the savings
12 association continuously since October 7,
13 1998, or a subsequent date pursuant to an
14 application pending before the Office of
15 Thrift Supervision on or before October 7,
16 1998.”.

17 (b) CONFORMING AMENDMENT.—Section
18 10(o)(5)(E) of the Home Owners’ Loan Act (15 U.S.C.
19 1467a(o)(5)(E)) is amended by striking “, except subpara-
20 graph (B)”.

21 **SEC. 402. OPTIONAL CONVERSION OF FEDERAL SAVINGS**
22 **ASSOCIATIONS TO NATIONAL BANKS.**

23 Section 5(i) of the Home Owners’ Loan Act (12
24 U.S.C. 1464(i)) is amended by adding at the end the fol-
25 lowing new paragraph:

1 “(5) CONVERSION TO A NATIONAL BANK.—Not-
 2 withstanding any other provision of law, any Federal
 3 savings association chartered and in operation before
 4 the date of enactment of the Financial Services Act
 5 of 1998, with branches in 1 or more States, may
 6 convert, with the approval of the Comptroller of the
 7 Currency, into 1 or more national banks, each of
 8 which may encompass one or more of the branches
 9 of the Federal savings association in 1 or more
 10 States, but only if the resulting national bank or
 11 banks will meet any and all financial, management,
 12 and capital requirements applicable to a national
 13 bank.”.

14 **SEC. 403. RETENTION OF “FEDERAL” IN NAME OF CON-**
 15 **VERTED FEDERAL SAVINGS ASSOCIATION.**

16 Section 2 of the Act entitled “An Act to enable na-
 17 tional banking associations to increase their capital stock
 18 and to change their names or locations”, approved May
 19 1, 1886 (12 U.S.C. 30), is amended by adding at the end
 20 the following new subsection:

21 “(d) RETENTION OF ‘FEDERAL’ IN NAME OF CON-
 22 VERTED FEDERAL SAVINGS ASSOCIATION.—

23 “(1) IN GENERAL.—Notwithstanding subsection
 24 (a) or any other provision of law, any depository in-
 25 stitution the charter of which is converted from that

1 of a Federal savings association to a national bank
 2 or a State bank after the date of the enactment of
 3 the Financial Services Act of 1998 may retain the
 4 term ‘Federal’ in the name of such institution if
 5 such depository institution remains an insured de-
 6 pository institution.

7 “(2) DEFINITIONS.—For purposes of this sub-
 8 section, the terms ‘depository institution’, ‘insured
 9 depository institution’, ‘national bank’, and ‘State
 10 bank’ have the same meanings as in section 3 of the
 11 Federal Deposit Insurance Act.”.

12 **TITLE V—FINANCIAL** 13 **INFORMATION PRIVACY**

14 **SEC. 501. FINANCIAL INFORMATION PRIVACY.**

15 The Consumer Credit Protection Act (15 U.S.C.
 16 1601 et seq.) is amended by adding at the end the follow-
 17 ing:

18 **“TITLE X—FINANCIAL INFORMA-** 19 **TION PRIVACY PROTECTION**

20 **“SEC. 1001. SHORT TITLE; TABLE OF CONTENTS.**

21 “(a) SHORT TITLE.—This title may be cited as the
 22 ‘Financial Information Privacy Act of 1998’.

23 “(b) TABLE OF CONTENTS.—The table of contents
 24 for this title is as follows:

“TITLE X—FINANCIAL INFORMATION PRIVACY PROTECTION

“Sec. 1001. Short title; table of contents.

“Sec. 1002. Definitions.

“Sec. 1003. Privacy protection for customer information of financial institutions.

“Sec. 1004. Administrative enforcement.

“Sec. 1005. Civil liability.

“Sec. 1006. Criminal penalty.

“Sec. 1007. Relation to State laws.

“Sec. 1008. Agency guidance.

1 **“SEC. 1002. DEFINITIONS.**

2 “For purposes of this title, the following definitions
3 shall apply:

4 “(1) CUSTOMER.—The term ‘customer’ means,
5 with respect to a financial institution, any person (or
6 authorized representative of a person) to whom the
7 financial institution provides a product or service,
8 including that of acting as a fiduciary.

9 “(2) CUSTOMER INFORMATION OF A FINANCIAL
10 INSTITUTION.—The term ‘customer information of a
11 financial institution’ means any information main-
12 tained by a financial institution which is derived
13 from the relationship between the financial institu-
14 tion and a customer of the financial institution and
15 is identified with the customer.

16 “(3) DOCUMENT.—The term ‘document’ means
17 any information in any form.

18 “(4) FINANCIAL INSTITUTION.—

19 “(A) IN GENERAL.—The term ‘financial
20 institution’ means any institution engaged in
21 the business of providing financial services to

1 customers who maintain a credit, deposit, trust,
2 or other financial account or relationship with
3 the institution.

4 “(B) CERTAIN FINANCIAL INSTITUTIONS
5 SPECIFICALLY INCLUDED.—The term ‘financial
6 institution’ includes any depository institution
7 (as defined in section 19(b)(1)(A) of the Fed-
8 eral Reserve Act), any loan or finance company,
9 any credit card issuer or operator of a credit
10 card system, and any consumer reporting agen-
11 cy that compiles and maintains files on consum-
12 ers on a nationwide basis (as defined in section
13 603(p)).

14 “(C) FURTHER DEFINITION BY REGULA-
15 TION.—The Board of Governors of the Federal
16 Reserve System may prescribe regulations fur-
17 ther defining the term ‘financial institution’, in
18 accordance with subparagraph (A), for purposes
19 of this title.

20 **“SEC. 1003. PRIVACY PROTECTION FOR CUSTOMER INFOR-**
21 **MATION OF FINANCIAL INSTITUTIONS.**

22 “(a) PROHIBITION ON OBTAINING CUSTOMER INFOR-
23 MATION BY FALSE PRETENSES.—It shall be a violation
24 of this title for any person to obtain or attempt to obtain,
25 or cause to be disclosed or attempt to cause to be disclosed

1 to any person, customer information of a financial institu-
2 tion relating to another person—

3 “(1) by knowingly making a false, fictitious, or
4 fraudulent statement or representation to an officer,
5 employee, or agent of a financial institution with the
6 intent to deceive the officer, employee, or agent into
7 relying on that statement or representation for pur-
8 poses of releasing the customer information;

9 “(2) by knowingly making a false, fictitious, or
10 fraudulent statement or representation to a cus-
11 tomer of a financial institution with the intent to de-
12 ceive the customer into relying on that statement or
13 representation for purposes of releasing the cus-
14 tomer information or authorizing the release of such
15 information; or

16 “(3) by knowingly providing any document to
17 an officer, employee, or agent of a financial institu-
18 tion, knowing that the document is forged, counter-
19 feit, lost, or stolen, was fraudulently obtained, or
20 contains a false, fictitious, or fraudulent statement
21 or representation, if the document is provided with
22 the intent to deceive the officer, employee, or agent
23 into relying on that document for purposes of releas-
24 ing the customer information.

1 “(b) PROHIBITION ON SOLICITATION OF A PERSON
2 TO OBTAIN CUSTOMER INFORMATION FROM A FINANCIAL
3 INSTITUTION UNDER FALSE PRETENSES.—It shall be a
4 violation of this title to request a person to obtain cus-
5 tomer information of a financial institution, knowing or
6 consciously avoiding knowing that the person will obtain,
7 or attempt to obtain, the information from the institution
8 in any manner described in subsection (a).

9 “(c) NONAPPLICABILITY TO LAW ENFORCEMENT
10 AGENCIES.—No provision of this section shall be con-
11 strued so as to prevent any action by a law enforcement
12 agency, or any officer, employee, or agent of such agency,
13 to obtain customer information of a financial institution
14 in connection with the performance of the official duties
15 of the agency.

16 “(d) NONAPPLICABILITY TO FINANCIAL INSTITU-
17 TIONS IN CERTAIN CASES.—No provision of this section
18 shall be construed to prevent any financial institution, or
19 any officer, employee, or agent of a financial institution,
20 from obtaining customer information of such financial in-
21 stitution in the course of—

22 “(1) testing the security procedures or systems
23 of such institution for maintaining the confidential-
24 ity of customer information;

1 “(2) investigating allegations of misconduct or
2 negligence on the part of any officer, employee, or
3 agent of the financial institution; or

4 “(3) recovering customer information of the fi-
5 nancial institution which was obtained or received by
6 another person in any manner described in sub-
7 section (a) or (b).

8 “(e) NONAPPLICABILITY TO CERTAIN TYPES OF
9 CUSTOMER INFORMATION OF FINANCIAL INSTITU-
10 TIONS.—No provision of this section shall be construed to
11 prevent any person from obtaining customer information
12 of a financial institution that otherwise is available as a
13 public record filed pursuant to the securities laws (as de-
14 fined in section 3(a)(47) of the Securities Exchange Act
15 of 1934).

16 **“SEC. 1004. ADMINISTRATIVE ENFORCEMENT.**

17 “(a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
18 SION.—Except as provided in subsection (b), compliance
19 with this title shall be enforced by the Federal Trade Com-
20 mission in the same manner and with the same power and
21 authority as the Commission has under the Fair Debt Col-
22 lection Practices Act to enforce compliance with that title.

23 “(b) ENFORCEMENT BY OTHER AGENCIES IN CER-
24 TAIN CASES.—

1 “(1) IN GENERAL.—Compliance with this title
2 shall be enforced under—

3 “(A) section 8 of the Federal Deposit In-
4 surance Act, in the case of—

5 “(i) national banks, and Federal
6 branches and Federal agencies of foreign
7 banks, by the Office of the Comptroller of
8 the Currency;

9 “(ii) member banks of the Federal
10 Reserve System (other than national
11 banks), branches and agencies of foreign
12 banks (other than Federal branches, Fed-
13 eral agencies, and insured State branches
14 of foreign banks), commercial lending com-
15 panies owned or controlled by foreign
16 banks, and organizations operating under
17 section 25 or 25A of the Federal Reserve
18 Act, by the Board;

19 “(iii) banks insured by the Federal
20 Deposit Insurance Corporation (other than
21 members of the Federal Reserve System
22 and national nonmember banks) and in-
23 sured State branches of foreign banks, by
24 the Board of Directors of the Federal De-
25 posit Insurance Corporation; and

1 “(iv) savings associations the deposits
2 of which are insured by the Federal De-
3 posit Insurance Corporation, by the Direc-
4 tor of the Office of Thrift Supervision; and
5 “(B) the Federal Credit Union Act, by the
6 Administrator of the National Credit Union Ad-
7 ministration with respect to any Federal credit
8 union.

9 “(2) VIOLATIONS OF THIS TITLE TREATED AS
10 VIOLATIONS OF OTHER LAWS.—For the purpose of
11 the exercise by any agency referred to in paragraph
12 (1) of its powers under any Act referred to in that
13 paragraph, a violation of this title shall be deemed
14 to be a violation of a requirement imposed under
15 that Act. In addition to its powers under any provi-
16 sion of law specifically referred to in paragraph (1),
17 each of the agencies referred to in that paragraph
18 may exercise, for the purpose of enforcing compli-
19 ance with this title, any other authority conferred on
20 such agency by law.

21 “(c) STATE ACTION FOR VIOLATIONS.—

22 “(1) AUTHORITY OF STATES.—In addition to
23 such other remedies as are provided under State
24 law, if the chief law enforcement officer of a State,
25 or an official or agency designated by a State, has

1 reason to believe that any person has violated or is
2 violating this title, the State—

3 “(A) may bring an action to enjoin such
4 violation in any appropriate United States dis-
5 trict court or in any other court of competent
6 jurisdiction;

7 “(B) may bring an action on behalf of the
8 residents of the State to recover damages of not
9 more than \$1,000 for each violation; and

10 “(C) in the case of any successful action
11 under subparagraph (A) or (B), shall be award-
12 ed the costs of the action and reasonable attor-
13 ney fees as determined by the court.

14 “(2) RIGHTS OF FEDERAL REGULATORS.—

15 “(A) PRIOR NOTICE.—The State shall
16 serve prior written notice of any action under
17 paragraph (1) upon the Federal Trade Commis-
18 sion and, in the case of an action which involves
19 a financial institution described in section
20 1004(b)(1), the agency referred to in such sec-
21 tion with respect to such institution and provide
22 the Federal Trade Commission and any such
23 agency with a copy of its complaint, except in
24 any case in which such prior notice is not fea-

1 sible, in which case the State shall serve such
2 notice immediately upon instituting such action.

3 “(B) RIGHT TO INTERVENE.—The Federal
4 Trade Commission or an agency described in
5 subsection (b) shall have the right—

6 “(i) to intervene in an action under
7 paragraph (1);

8 “(ii) upon so intervening, to be heard
9 on all matters arising therein;

10 “(iii) to remove the action to the ap-
11 propriate United States district court; and

12 “(iv) to file petitions for appeal.

13 “(3) INVESTIGATORY POWERS.—For purposes
14 of bringing any action under this subsection, no pro-
15 vision of this subsection shall be construed as pre-
16 venting the chief law enforcement officer, or an offi-
17 cial or agency designated by a State, from exercising
18 the powers conferred on the chief law enforcement
19 officer or such official by the laws of such State to
20 conduct investigations or to administer oaths or af-
21 firmations or to compel the attendance of witnesses
22 or the production of documentary and other evi-
23 dence.

24 “(4) LIMITATION ON STATE ACTION WHILE
25 FEDERAL ACTION PENDING.—If the Federal Trade

1 Commission or any agency described in subsection
2 (b) has instituted a civil action for a violation of this
3 title, no State may, during the pendency of such ac-
4 tion, bring an action under this section against any
5 defendant named in the complaint of the Federal
6 Trade Commission or such agency for any violation
7 of this title that is alleged in that complaint.

8 **“SEC. 1005. CIVIL LIABILITY.**

9 “Any person, other than a financial institution, who
10 fails to comply with any provision of this title with respect
11 to any financial institution or any customer information
12 of a financial institution shall be liable to such financial
13 institution or the customer to whom such information re-
14 lates in an amount equal to the sum of the amounts deter-
15 mined under each of the following paragraphs:

16 “(1) ACTUAL DAMAGES.—The greater of—

17 “(A) the amount of any actual damage
18 sustained by the financial institution or cus-
19 tomer as a result of such failure; or

20 “(B) any amount received by the person
21 who failed to comply with this title, including
22 an amount equal to the value of any nonmone-
23 tary consideration, as a result of the action
24 which constitutes such failure.

1 “(2) ADDITIONAL DAMAGES.—Such additional
2 amount as the court may allow.

3 “(3) ATTORNEYS’ FEES.—In the case of any
4 successful action to enforce any liability under para-
5 graph (1) or (2), the costs of the action, together
6 with reasonable attorneys’ fees.

7 **“SEC. 1006. CRIMINAL PENALTY.**

8 “(a) IN GENERAL.—Whoever violates, or attempts to
9 violate, section 1003 shall be fined in accordance with title
10 18, United States Code, or imprisoned for not more than
11 5 years, or both.

12 “(b) ENHANCED PENALTY FOR AGGRAVATED
13 CASES.—Whoever violates, or attempts to violate, section
14 1003 while violating another law of the United States or
15 as part of a pattern of any illegal activity involving more
16 than \$100,000 in a 12-month period shall be fined twice
17 the amount provided in subsection (b)(3) or (c)(3) (as the
18 case may be) of section 3571 of title 18, United States
19 Code, imprisoned for not more than 10 years, or both.

20 **“SEC. 1007. RELATION TO STATE LAWS.**

21 “(a) IN GENERAL.—This title shall not be construed
22 as superseding, altering, or affecting the statutes, regula-
23 tions, orders, or interpretations in effect in any State, ex-
24 cept to the extent that such statutes, regulations, orders,

1 or interpretations are inconsistent with the provisions of
2 this title, and then only to the extent of the inconsistency.

3 “(b) GREATER PROTECTION UNDER STATE LAW.—

4 For purposes of this section, a State statute, regulation,
5 order, or interpretation is not inconsistent with the provi-
6 sions of this title if the protection such statute, regulation,
7 order, or interpretation affords any person is greater than
8 the protection provided under this title.

9 **“SEC. 1008. AGENCY GUIDANCE.**

10 “In furtherance of the objectives of this title, each
11 Federal banking agency (as defined in section 3(z) of the
12 Federal Deposit Insurance Act) shall issue advisories to
13 depository institutions under the jurisdiction of the agen-
14 cy, in order to assist such depository institutions in deter-
15 ring and detecting activities proscribed under section
16 1003.”.

17 **SEC. 502. REPORT TO CONGRESS ON FINANCIAL PRIVACY.**

18 Not later than 18 months after the date of enactment
19 of this Act, the Comptroller General of the United States,
20 in consultation with the Federal Trade Commission, the
21 Federal banking agencies, and other appropriate Federal
22 law enforcement agencies, shall submit to the Congress a
23 report on—

24 (1) the efficacy and adequacy of the remedies
25 provided in the amendments made by section 501 in

1 addressing attempts to obtain financial information
2 by fraudulent means or by false pretenses; and

3 (2) any recommendations for additional legisla-
4 tive or regulatory action to address threats to the
5 privacy of financial information created by attempts
6 to obtain information by fraudulent means or false
7 pretenses.

8 **TITLE VI—MISCELLANEOUS**

9 **SEC. 601. GRAND JURY PROCEEDINGS.**

10 Section 3322(b) of title 18, United States Code, is
11 amended—

12 (1) in paragraph (1), by inserting “Federal or
13 State” before “financial institution”; and

14 (2) in paragraph (2), by inserting “at any time
15 during or after the completion of the investigation of
16 the grand jury,” before “upon”.

17 **SEC. 602. SENSE OF THE COMMITTEE ON BANKING, HOUS-** 18 **ING, AND URBAN AFFAIRS OF THE SENATE.**

19 (a) FINDINGS.—The Committee on Banking, Hous-
20 ing, and Urban Affairs of the Senate finds that—

21 (1) financial modernization legislation should
22 benefit small institutions as well as large institu-
23 tions;

24 (2) the Congress made the subchapter S elec-
25 tion of the Internal Revenue Code of 1986, available

1 to banks in 1996, reflecting a desire by the Congress
2 to reduce the tax burden on community banks;

3 (3) large numbers of community banks have
4 elected or expressed interest in the subchapter S
5 election; and

6 (4) the Committee on Banking, Housing, and
7 Urban Affairs of the Senate recognizes that some
8 obstacles remain for community banks wishing to
9 make the subchapter S election.

10 (b) SENSE OF THE COMMITTEE.—It is the sense of
11 the Committee on Banking, Housing, and Urban Affairs
12 of the Senate that—

13 (1) the small business tax provisions of the In-
14 ternal Revenue Code of 1986, should be more widely
15 available to community banks;

16 (2) legislation should be passed to amend the
17 Internal Revenue Code of 1986, to—

18 (A) increase the allowed number of S cor-
19 poration shareholders;

20 (B) permit S corporation stock to be held
21 in individual retirement accounts;

22 (C) clarify that interest on investments
23 held for safety, soundness, and liquidity pur-
24 poses should not be considered to be passive in-
25 come;

1 (D) provide that bank director stock is not
2 treated as a disqualifying second class of stock
3 for S corporations; and

4 (E) improve the tax treatment of bad debt
5 and interest deductions; and

6 (3) the legislation described in paragraph (2)
7 should be adopted by the Congress in conjunction
8 with any financial modernization legislation.

9 **SEC. 603. INVESTMENTS IN GOVERNMENT SPONSORED EN-**
10 **TERPRISES.**

11 Section 18(s) of the Federal Deposit Insurance Act
12 (12 U.S.C. 1828(s)) is amended—

13 (1) by redesignating paragraph (4) as para-
14 graph (5); and

15 (2) by inserting after paragraph (3) the follow-
16 ing:

17 “(4) CERTAIN INVESTMENTS.—Paragraph (1)
18 shall not apply with respect to investments lawfully
19 made before April 11, 1996, by a depository institu-
20 tion in any Government sponsored enterprise.”.

21 **SEC. 604. REPEAL OF SAVINGS BANK PROVISIONS IN THE**
22 **BANK HOLDING COMPANY ACT OF 1956.**

23 Section 3(f) of the Bank Holding Company Act of
24 1956 (12 U.S.C. 1842(f)) is amended to read as follows:

25 “(f) [Repealed].”.

1 **SEC. 605. SERVICE OF MEMBERS OF THE BOARD OF GOV-**
 2 **ERNORS OF THE FEDERAL RESERVE SYSTEM.**

3 Notwithstanding the first undesignated paragraph of
 4 section 10 of the Federal Reserve Act, the vice chairman
 5 of the Board of Governors of the Federal Reserve System
 6 may serve as a member of the District of Columbia Finan-
 7 cial Responsibility and Management Assistance Authority
 8 established by section 101 of the District of Columbia Fi-
 9 nancial Responsibility and Management Assistance Act of
 10 1995.

11 **SEC. 606. PROVISION OF TECHNICAL ASSISTANCE TO**
 12 **MICROENTERPRISES.**

13 (a) IN GENERAL.—Title I of the Riegle Community
 14 Development and Regulatory Improvement Act of 1994
 15 (12 U.S.C. 4701 et seq.) is amended by adding at the end
 16 the following new subtitle:

17 **“Subtitle C—Microenterprise Tech-**
 18 **nical Assistance and Capacity**
 19 **Building Program**

20 **“SEC. 171. SHORT TITLE.**

21 “This subtitle may be cited as the ‘Program for In-
 22 vestment in Microentrepreneurs Act of 1998’, also re-
 23 ferred to as the ‘PRIME Act’.

24 **“SEC. 172. DEFINITIONS.**

25 “For purposes of this subtitle—

1 “(1) the term ‘Administrator’ has the same
2 meaning as in section 103;

3 “(2) the term ‘capacity building services’ means
4 services provided to an organization that is, or is in
5 the process of becoming a microenterprise develop-
6 ment organization or program, for the purpose of
7 enhancing its ability to provide training and services
8 to disadvantaged entrepreneurs;

9 “(3) the term ‘collaborative’ means 2 or more
10 nonprofit entities that agree to act jointly as a quali-
11 fied organization under this subtitle;

12 “(4) the term ‘disadvantaged entrepreneur’
13 means a microentrepreneur that is—

14 “(A) a low-income person;

15 “(B) a very low-income person; or

16 “(C) an entrepreneur that lacks adequate
17 access to capital or other resources essential for
18 business success, or is economically disadvan-
19 taged, as determined by the Administrator;

20 “(5) the term ‘Fund’ has the same meaning as
21 in section 103;

22 “(6) the term ‘Indian tribe’ has the same mean-
23 ing as in section 103;

24 “(7) the term ‘intermediary’ means a private,
25 nonprofit entity that seeks to serve microenterprise

1 development organizations and programs as author-
2 ized under section 175;

3 “(8) the term ‘low-income person’ has the same
4 meaning as in section 103;

5 “(9) the term ‘microentrepreneur’ means the
6 owner or developer of a microenterprise;

7 “(10) the term ‘microenterprise’ means a sole
8 proprietorship, partnership, or corporation that—

9 “(A) has fewer than 5 employees; and

10 “(B) generally lacks access to conventional
11 loans, equity, or other banking services;

12 “(11) the term ‘microenterprise development or-
13 ganization or program’ means a nonprofit entity, or
14 a program administered by such an entity, including
15 community development corporations or other non-
16 profit development organizations and social service
17 organizations, that provides services to disadvan-
18 tagged entrepreneurs or prospective entrepreneurs;

19 “(12) the term ‘training and technical assist-
20 ance’ means services and support provided to dis-
21 advantaged entrepreneurs or prospective entre-
22 preneurs, such as assistance for the purpose of en-
23 hancing business planning, marketing, management,
24 financial management skills, and assistance for the
25 purpose of accessing financial services; and

1 “(13) the term ‘very low-income person’ means
2 having an income, adjusted for family size, of not
3 more than 150 percent of the poverty line (as de-
4 fined in section 673(2) of the Community Services
5 Block Grant Act (42 U.S.C. 9902(2), including any
6 revision required by that section).

7 **“SEC. 173. ESTABLISHMENT OF PROGRAM.**

8 “The Administrator shall establish a microenterprise
9 technical assistance and capacity building grant program
10 to provide assistance from the Fund in the form of grants
11 to qualified organizations in accordance with this subtitle.

12 **“SEC. 174. USES OF ASSISTANCE.**

13 “A qualified organization shall use grants made
14 under this subtitle—

15 “(1) to provide training and technical assist-
16 ance to disadvantaged entrepreneurs;

17 “(2) to provide training and capacity building
18 services to microenterprise development organiza-
19 tions and programs and groups of such organiza-
20 tions to assist such organizations and programs in
21 developing microenterprise training and services;

22 “(3) to aid in researching and developing the
23 best practices in the field of microenterprise and
24 technical assistance programs for disadvantaged en-
25 trepreneurs; and

1 “(4) for such other activities as the Adminis-
2 trator determines are consistent with the purposes of
3 this subtitle.

4 **“SEC. 175. QUALIFIED ORGANIZATIONS.**

5 “For purposes of eligibility for assistance under this
6 subtitle, a qualified organization shall be—

7 “(1) a nonprofit microenterprise development
8 organization or program (or a group or collaborative
9 thereof) that has a demonstrated record of delivering
10 microenterprise services to disadvantaged entre-
11 preneurs;

12 “(2) an intermediary;

13 “(3) a microenterprise development organiza-
14 tion or program that is accountable to a local com-
15 munity, working in conjunction with a State or local
16 government or Indian tribe; or

17 “(4) an Indian tribe acting on its own, if the
18 Indian tribe can certify that no private organization
19 or program referred to in this paragraph exists with-
20 in its jurisdiction.

21 **“SEC. 176. ALLOCATION OF ASSISTANCE; SUBGRANTS.**

22 “(a) ALLOCATION OF ASSISTANCE.—

23 “(1) IN GENERAL.—The Administrator shall al-
24 locate assistance from the Fund under this subtitle
25 to ensure that—

1 “(A) activities described in section 174(1)
2 are funded using not less than 75 percent of
3 amounts made available for such assistance;
4 and

5 “(B) activities described in section 174(2)
6 are funded using not less than 15 percent of
7 amounts made available for such assistance.

8 “(2) LIMIT ON INDIVIDUAL ASSISTANCE.—No
9 single organization or entity may receive more than
10 10 percent of the total funds appropriated under
11 this subtitle in a single fiscal year.

12 “(b) TARGETED ASSISTANCE.—The Administrator
13 shall ensure that not less than 50 percent of the grants
14 made under this subtitle are used to benefit very low-in-
15 come persons, including those residing on Indian reserva-
16 tions.

17 “(c) SUBGRANTS AUTHORIZED.—

18 “(1) IN GENERAL.—A qualified organization re-
19 ceiving assistance under this subtitle may provide
20 grants using that assistance to qualified small and
21 emerging microenterprise organizations and pro-
22 grams, subject to such rules and regulations as the
23 Administrator determines to be appropriate.

24 “(2) LIMIT ON ADMINISTRATIVE EXPENSES.—
25 Not more than 7.5 percent of assistance received by

1 a qualified organization under this subtitle may be
2 used for administrative expenses in connection with
3 the making of subgrants under paragraph (1).

4 “(d) DIVERSITY.—In making grants under this sub-
5 title, the Administrator shall ensure that grant recipients
6 include both large and small microenterprise organiza-
7 tions, serving urban, rural, and Indian tribal communities
8 and racially and ethnically diverse populations.

9 **“SEC. 177. MATCHING REQUIREMENTS.**

10 “(a) IN GENERAL.—Financial assistance under this
11 subtitle shall be matched with funds from sources other
12 than the Federal Government on the basis of not less than
13 50 percent of each dollar provided by the Fund.

14 “(b) SOURCES OF MATCHING FUNDS.—Fees, grants,
15 gifts, funds from loan sources, and in-kind resources of
16 a grant recipient from public or private sources may be
17 used to comply with the matching requirement in sub-
18 section (a).

19 “(c) EXCEPTION.—

20 “(1) IN GENERAL.—In the case of an applicant
21 for assistance under this subtitle with severe con-
22 straints on available sources of matching funds, the
23 Administrator may reduce or eliminate the matching
24 requirements of subsection (a).

1 “(2) LIMITATION.—Not more than 10 percent
2 of the total funds made available from the Fund in
3 any fiscal year to carry out this subtitle may be ex-
4 cepted from the matching requirements of subsection
5 (a), as authorized by paragraph (1) of this sub-
6 section.

7 **“SEC. 178. APPLICATIONS FOR ASSISTANCE.**

8 “An application for assistance under this subtitle
9 shall be submitted in such form and in accordance with
10 such procedures as the Fund shall establish.

11 **“SEC. 179. RECORDKEEPING.**

12 “The requirements of section 115 shall apply to a
13 qualified organization receiving assistance from the Fund
14 under this subtitle as if it were a community development
15 financial institution receiving assistance from the Fund
16 under subtitle A.

17 **“SEC. 180. AUTHORIZATION.**

18 “In addition to funds otherwise authorized to be ap-
19 propriated to the Fund to carry out this title, there are
20 authorized to be appropriated to the Fund to carry out
21 this subtitle—

22 “(1) \$15,000,000 for fiscal year 2000;

23 “(2) \$25,000,000 for fiscal year 2001;

24 “(3) \$30,000,000 for fiscal year 2002; and

25 “(4) \$35,000,000 for fiscal year 2003.

1 **“SEC. 181. IMPLEMENTATION.**

2 “The Administrator shall, by regulation, establish
3 such requirements as may be necessary to carry out this
4 subtitle.”.

5 (b) ADMINISTRATIVE EXPENSES.—Section
6 121(a)(2)(A) of the Riegle Community Development and
7 Regulatory Improvement Act of 1994 (12 U.S.C.
8 4718(a)(2)(A)) is amended—

9 (1) by striking “\$5,550,000” and inserting
10 “\$6,100,000”; and

11 (2) in the first sentence, by inserting before the
12 period “, including costs and expenses associated
13 with carrying out subtitle C”.

14 (c) CONFORMING AMENDMENTS.—Section 104(d) of
15 the Riegle Community Development and Regulatory Im-
16 provement Act of 1994 (12 U.S.C. 4703(d)) is amended—

17 (1) in paragraph (2)—

18 (A) by striking “15” and inserting “17”;

19 and

20 (B) in subparagraph (G)—

21 (i) by striking “9” and inserting
22 “11”;

23 (ii) by redesignating clauses (iv) and
24 (v) as clauses (v) and (vi), respectively;
25 and

1 (iii) by inserting after clause (iii) the
2 following:

3 “(iv) 2 individuals who have expertise
4 in microenterprises and microenterprise de-
5 velopment;”; and

6 (2) in paragraph (4), in the first sentence, by
7 inserting before the period “and subtitle C”.

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