

Calendar No. 204

106TH CONGRESS  
1ST Session

**H. R. 10**

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**AN ACT**

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.

JULY 12, 1999

Received; read twice and placed on the calendar



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IN THE SENATE OF THE UNITED STATES

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## AN ACT

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,*

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

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

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

7 (1) To enhance competition in the financial  
8 services industry, in order to foster innovation and  
9 efficiency.

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

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

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

23 (5) To reduce and, to the maximum extent  
24 practicable, to eliminate the legal barriers preventing  
25 affiliation among depository institutions, securities  
26 firms, insurance companies, and other financial serv-

1 ice providers and to provide a prudential framework  
 2 for achieving that result.

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

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

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

14 (c) TABLE OF CONTENTS.—The table of contents for  
 15 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. 105A. Public meetings for large bank acquisitions and mergers.

Sec. 106. Prohibition on deposit production offices.

Sec. 107. Clarification of branch closure requirements.

Sec. 108. Amendments relating to limited purpose banks.

Sec. 109. GAO study of economic impact on community banks, other small fi-  
nancial institutions, insurance agents, and consumers.

Sec. 110. Responsiveness to community needs for financial services.

Sec. 110A. Study of financial modernization's affect on the accessibility of  
small business and farm loans.

Subtitle B—Streamlining Supervision of Financial Holding Companies

- Sec. 111. Streamlining financial holding company supervision.
- Sec. 112. Elimination of application requirement for financial holding companies.
- Sec. 113. Authority of State insurance regulator and Securities and Exchange Commission.
- Sec. 114. Prudential safeguards.
- Sec. 115. Examination of investment companies.
- Sec. 116. Limitation on rulemaking, prudential, supervisory, and enforcement authority of the Board.
- Sec. 117. Equivalent regulation and supervision.
- Sec. 118. Prohibition on FDIC assistance to affiliates and subsidiaries.
- Sec. 119. Repeal of savings bank provisions in the Bank Holding Company Act of 1956.
- Sec. 120. Technical amendment.

Subtitle C—Subsidiaries of National Banks

- Sec. 121. Permissible activities for subsidiaries of national banks.
- Sec. 122. Safety and soundness firewalls between banks and their financial subsidiaries.
- Sec. 123. Misrepresentations regarding depository institution liability for obligations of affiliates.
- Sec. 124. 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—National Treatment

- Sec. 151. Foreign banks that are financial holding companies.
- Sec. 152. Foreign banks and foreign financial institutions that are wholesale financial institutions.
- Sec. 153. Representative offices.
- Sec. 154. Reciprocity.

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.
- Sec. 168. Capital structure of Federal home loan banks.

#### Subtitle H—ATM Fee Reform

- Sec. 171. Short title.
- Sec. 172. Electronic fund transfer fee disclosures at any host ATM.
- Sec. 173. Disclosure of possible fees to consumers when ATM card is issued.
- Sec. 174. Feasibility study.
- Sec. 175. No liability if posted notices are damaged.

#### Subtitle I—Direct Activities of Banks

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

#### Subtitle J—Deposit Insurance Funds

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

#### Subtitle K—Miscellaneous Provisions

- Sec. 191. Termination of “know your customer” regulations.
- Sec. 192. Study and report on Federal electronic fund transfers.
- Sec. 193. General Accounting Office study of conflicts of interest.
- Sec. 194. Study of cost of all Federal banking regulations.
- Sec. 195. Study and report on adapting existing legislative requirements to on-line banking and lending.
- Sec. 196. Regulation of uninsured State member banks.
- Sec. 197. Clarification of source of strength doctrine.
- Sec. 198. Interest rates and other charges at interstate branches.
- Sec. 198A. Interstate branches and agencies of foreign banks.
- Sec. 198B. Fair treatment of women by financial advisers.

#### Subtitle L—Effective Date of Title

- Sec. 199. 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. Information sharing.
- Sec. 205. Treatment of new hybrid products.
- Sec. 206. Definition of excepted banking product.
- Sec. 207. Additional definitions.
- 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. Statutory disqualification for bank wrongdoing.
- Sec. 224. Conforming change in definition.
- Sec. 225. Conforming amendment.
- Sec. 226. Church plan exclusion.
- Sec. 227. 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—Disclosure of Customer Costs of Acquiring Financial Products

- Sec. 241. Improved and consistent disclosure.

### Subtitle E—Banks and Bank Holding Companies

- Sec. 251. Consultation.

## 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. Interagency consultation.
- Sec. 310. Definition of State.

### 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.

#### Subtitle D—Rental Car Agency Insurance Activities

- Sec. 341. Standard of regulation for motor vehicle rentals.

#### Subtitle E—Confidentiality

- Sec. 351. Confidentiality of health and medical information.

### TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES

- Sec. 401. Prohibition on new unitary savings and loan holding companies.
- Sec. 402. Retention of “Federal” in name of converted Federal savings association.

### TITLE V—PRIVACY

#### Subtitle A—Disclosure of Nonpublic Personal Information

- Sec. 501. Protection of nonpublic personal information.
- Sec. 502. Obligations with respect to disclosures of personal information.
- Sec. 503. Disclosure of institution privacy policy.
- Sec. 504. Rulemaking.
- Sec. 505. Enforcement.
- Sec. 506. Fair Credit Reporting Act amendment.
- Sec. 507. Relation to other provisions.
- Sec. 508. Study of information sharing among financial affiliates.
- Sec. 509. Definitions.
- Sec. 510. Effective date.

#### Subtitle B—Fraudulent Access to Financial Information

- Sec. 521. Privacy protection for customer information of financial institutions.
- Sec. 522. Administrative enforcement.
- Sec. 523. Criminal penalty.
- Sec. 524. Relation to State laws.

Sec. 525. Agency guidance.  
 Sec. 526. Reports.  
 Sec. 527. Definitions.

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 or order under this paragraph as of the day be-  
 22 fore the date of the enactment of the Financial Serv-  
 23 ices Act of 1999, to be so closely related to banking  
 24 as to be a proper incident thereto (subject to such

1 terms and conditions contained in such regulation or  
 2 order, unless modified by the Board);”.

3 (b) CONFORMING CHANGES TO OTHER STATUTES.—

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

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

16 **SEC. 103. FINANCIAL HOLDING COMPANIES.**

17 (a) IN GENERAL.—The Bank Holding Company Act  
 18 of 1956 is amended by inserting after section 5 (12 U.S.C.  
 19 1844) the following new section:

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

21 **“(a) FINANCIAL HOLDING COMPANY DEFINED.—**  
 22 For purposes of this section, the term ‘financial holding  
 23 company’ means a bank holding company which meets the  
 24 requirements of subsection (b).  
**”**

1       “(b) ELIGIBILITY REQUIREMENTS FOR FINANCIAL  
2 HOLDING COMPANIES.—

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

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

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

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

20              “(D) The company has filed with the  
21       Board a declaration that the company elects to  
22       be a financial holding company and certifying  
23       that the company meets the requirements of  
24       subparagraphs (A), (B), and (C).

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

10          “(3) LIMITED EXCLUSIONS FROM COMMUNITY  
11       NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DE-  
12       POSITORY INSTITUTIONS.—Any depository institu-  
13       tion acquired by a bank holding company during the  
14       12-month period preceding the submission of a no-  
15       tice under paragraph (1)(D) and any depository in-  
16       stitution acquired after the submission of such no-  
17       tice may be excluded for purposes of paragraph  
18       (1)(C) during the 12-month period beginning on the  
19       date of such acquisition if—

20               “(A) the bank holding company has sub-  
21       mitted an affirmative plan to the appropriate  
22       Federal banking agency to take such action as  
23       may be necessary in order for such institution  
24       to achieve a rating of ‘satisfactory record of

1 meeting community credit needs’, or better, at  
 2 the next examination of the institution; and

3 “(B) the plan has been accepted by such  
 4 agency.

5 “(c) ENGAGING IN ACTIVITIES THAT ARE FINANCIAL  
 6 IN NATURE.—

7 “(1) FINANCIAL ACTIVITIES.—

8 “(A) IN GENERAL.—Notwithstanding sec-  
 9 tion 4(a), a financial holding company may en-  
 10 gage in any activity, and acquire and retain the  
 11 shares of any company engaged in any activity,  
 12 that the Board has determined (by regulation  
 13 or order and in accordance with subparagraph  
 14 (B)) to be—

15 “(i) financial in nature or incidental  
 16 to such financial activities; or

17 “(ii) complementary to activities au-  
 18 thorized under this subsection to the ex-  
 19 tent that the amount of such complemen-  
 20 tary activities remains small.

21 “(B) COORDINATION BETWEEN THE  
 22 BOARD AND THE SECRETARY OF THE TREAS-  
 23 URY.—

24 “(i) PROPOSALS RAISED BEFORE THE  
 25 BOARD.—

1                   “(I)       CONSULTATION.—The  
2                   Board shall notify the Secretary of  
3                   the Treasury of, and consult with the  
4                   Secretary of the Treasury concerning,  
5                   any request, proposal, or application  
6                   under this subsection, including a reg-  
7                   ulation or order proposed under para-  
8                   graph (4), for a determination of  
9                   whether an activity is financial in na-  
10                  ture or incidental to such a financial  
11                  activity.

12                 “(II)   TREASURY   VIEW.—The  
13                 Board shall not determine that any  
14                 activity is financial in nature or inci-  
15                 dental to a financial activity under  
16                 this subsection if the Secretary of the  
17                 Treasury notifies the Board in writ-  
18                 ing, not later than 30 days after the  
19                 date of receipt of the notice described  
20                 in subclause (I) (or such longer period  
21                 as the Board determines to be appro-  
22                 priate in light of the circumstances)  
23                 that the Secretary of the Treasury be-  
24                 lieves that the activity is not financial

1 in nature or incidental to a financial  
2 activity.

3 “(ii) PROPOSALS RAISED BY THE  
4 TREASURY.—

5 “(I) TREASURY RECOMMENDA-  
6 TION.—The Secretary of the Treasury  
7 may, at any time, recommend in writ-  
8 ing that the Board find an activity to  
9 be financial in nature or incidental to  
10 a financial activity.

11 “(II) TIME PERIOD FOR BOARD  
12 ACTION.—Not later than 30 days  
13 after the date of receipt of a written  
14 recommendation from the Secretary of  
15 the Treasury under subclause (I) (or  
16 such longer period as the Secretary of  
17 the Treasury and the Board deter-  
18 mine to be appropriate in light of the  
19 circumstances), the Board shall deter-  
20 mine whether to initiate a public rule-  
21 making proposing that the subject  
22 recommended activity be found to be  
23 financial in nature or incidental to a  
24 financial activity under this sub-  
25 section, and shall notify the Secretary



1 of the Treasury in writing of the de-  
2 termination of the Board and, in the  
3 event that the Board determines not  
4 to seek public comment on the pro-  
5 posal, the reasons for that determina-  
6 tion.

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

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

13 “(B) changes or reasonably expected  
14 changes in the marketplace in which bank hold-  
15 ing companies compete;

16 “(C) changes or reasonably expected  
17 changes in the technology for delivering finan-  
18 cial services; and

19 “(D) whether such activity is necessary or  
20 appropriate to allow a bank holding company  
21 and the affiliates of a bank holding company  
22 to—

23 “(i) compete effectively with any com-  
24 pany seeking to provide financial services  
25 in the United States;

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

7                   “(iii) offer customers any available or  
8                   emerging technological means for using fi-  
9                   nancial services.

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

13                       “(A) Lending, exchanging, transferring, in-  
14                       vesting for others, or safeguarding money or se-  
15                       curities.

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

21                       “(C) Providing financial, investment, or  
22                       economic advisory services, including advising  
23                       an investment company (as defined in section 3  
24                       of the Investment Company Act of 1940).

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

4           “(E) Underwriting, dealing in, or making  
5           a market in securities.

6           “(F) Engaging in any activity that the  
7           Board has determined, by order or regulation  
8           that is in effect on the date of the enactment  
9           of the Financial Services Act of 1999, to be so  
10          closely related to banking or managing or con-  
11          trolling banks as to be a proper incident thereto  
12          (subject to the same terms and conditions con-  
13          tained in such order or regulation, unless modi-  
14          fied by the Board).

15          “(G) Engaging, in the United States, in  
16          any activity that—

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

19                 “(ii) the Board has determined, under  
20                 regulations issued pursuant to section  
21                 4(c)(13) of this Act (as in effect on the  
22                 day before the date of the enactment of the  
23                 Financial Services Act of 1999) to be  
24                 usual in connection with the transaction of

1 banking or other financial operations  
2 abroad.

3 “(H) Directly or indirectly acquiring or  
4 controlling, whether as principal, on behalf of  
5 one or more entities (including entities, other  
6 than a depository institution, that the bank  
7 holding company controls) or otherwise, shares,  
8 assets, or ownership interests (including with-  
9 out limitation debt or equity securities, partner-  
10 ship interests, trust certificates or other instru-  
11 ments representing ownership) of a company or  
12 other entity, whether or not constituting control  
13 of such company or entity, engaged in any ac-  
14 tivity not authorized pursuant to this section  
15 if—

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

19 “(ii) such shares, assets, or ownership  
20 interests are acquired and held by an affil-  
21 iate of the bank holding company that is a  
22 registered broker or dealer that is engaged  
23 in securities underwriting activities, or an  
24 affiliate of such broker or dealer, as part  
25 of a bona fide underwriting or investment

1 banking activity, including investment ac-  
2 tivities engaged in for the purpose of ap-  
3 preciation and ultimate resale or disposi-  
4 tion of the investment;

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

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

18 “(I) Directly or indirectly acquiring or con-  
19 trolling, whether as principal, on behalf of one  
20 or more entities (including entities, other than  
21 a depository institution or subsidiary of a de-  
22 pository institution, that the bank holding com-  
23 pany controls) or otherwise, shares, assets, or  
24 ownership interests (including without limita-  
25 tion debt or equity securities, partnership inter-

1           ests, trust certificates or other instruments rep-  
2           resenting ownership) of a company or other en-  
3           tity, whether or not constituting control of such  
4           company or entity, engaged in any activity not  
5           authorized pursuant to this section if—

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

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

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

23                   “(iv) during the period such shares,  
24                   assets, or ownership interests are held, the  
25                   bank holding company does not directly or

1 indirectly participate in the day-to-day  
2 management or operation of the company  
3 or entity except insofar as necessary to  
4 achieve the objectives of clauses (ii) and  
5 (iii).

6 “(4) AUTHORIZATION OF NEW FINANCIAL AC-  
7 TIVITIES.—The Board shall, by regulation or order  
8 and in accordance with paragraph (1)(B), define,  
9 consistent with the purposes of this Act, the fol-  
10 lowing activities as, and the extent to which such ac-  
11 tivities are, financial in nature or incidental to ac-  
12 tivities which are financial in nature:

13 “(A) Lending, exchanging, transferring, in-  
14 vesting for others, or safeguarding financial as-  
15 sets other than money or securities.

16 “(B) Providing any device or other instru-  
17 mentality for transferring money or other finan-  
18 cial assets.

19 “(C) Arranging, effecting, or facilitating fi-  
20 nancial transactions for the account of third  
21 parties.

22 “(5) POST-CONSUMMATION NOTIFICATION.—

23 “(A) IN GENERAL.—A financial holding  
24 company that acquires any company, or com-  
25 mences any activity, pursuant to this subsection

1 shall provide written notice to the Board de-  
2 scribing the activity commenced or conducted  
3 by the company acquired no later than 30 cal-  
4 endar days after commencing the activity or  
5 consummating the acquisition.

6 “(B) APPROVAL NOT REQUIRED FOR CER-  
7 TAIN FINANCIAL ACTIVITIES.—Except as pro-  
8 vided in section 4(j) with regard to the acquisi-  
9 tion of a savings association or in paragraph  
10 (6) of this subsection, a financial holding com-  
11 pany may commence any activity, or acquire  
12 any company, pursuant to paragraph (3) or any  
13 regulation prescribed or order issued under  
14 paragraph (4), without prior approval of the  
15 Board.

16 “(6) NOTICE REQUIRED FOR LARGE COMBINA-  
17 TIONS.—

18 “(A) IN GENERAL.—No financial holding  
19 company shall directly or indirectly acquire, and  
20 no company that becomes a financial holding  
21 company shall directly or indirectly acquire con-  
22 trol of, any company in the United States, in-  
23 cluding through merger, consolidation, or other  
24 type of business combination, that—



1 “(i) is engaged in activities permitted  
2 under this subsection or subsection (g);  
3 and

4 “(ii) has consolidated total assets in  
5 excess of \$40,000,000,000,  
6 unless such holding company has provided no-  
7 tice to the Board, not later than 60 days prior  
8 to such proposed acquisition or prior to becom-  
9 ing a financial holding company, and during  
10 that time period, or such longer time period not  
11 exceeding an additional 60 days, as established  
12 by the Board, the Board has not issued a notice  
13 disapproving the proposed acquisition or reten-  
14 tion.

15 “(B) FACTORS FOR CONSIDERATION.—In  
16 reviewing any prior notice filed under this para-  
17 graph, the Board shall take into consider-  
18 ation—

19 “(i) whether the company is in com-  
20 pliance with all applicable criteria set forth  
21 in subsection (b) and the provisions of sub-  
22 section (d);

23 “(ii) whether the proposed combina-  
24 tion represents an undue aggregation of  
25 resources;

1                   “(iii) whether the proposed combina-  
2                   tion poses a risk to the deposit insurance  
3                   system;

4                   “(iv) whether the proposed combina-  
5                   tion poses a risk to State insurance guar-  
6                   anty funds;

7                   “(v) whether the proposed combina-  
8                   tion can reasonably be expected to be in  
9                   the best interests of depositors or policy-  
10                  holders of the respective entities;

11                  “(vi) whether the proposed trans-  
12                  action can reasonably be expected to fur-  
13                  ther the purposes of this Act and produce  
14                  benefits to the public; and

15                  “(vii) whether, and the extent to  
16                  which, the proposed combination poses an  
17                  undue risk to the stability of the financial  
18                  system in the United States.

19                  “(C)     REQUIRED     INFORMATION.—The  
20                  Board may disapprove any prior notice filed  
21                  under this paragraph if the company submitting  
22                  such notice neglects, fails, or refuses to furnish  
23                  to the Board all relevant information required  
24                  by the Board.

1                   “(D) SOLICITATION OF VIEWS OF OTHER  
2                   SUPERVISORY AGENCIES.—

3                   “(i) IN GENERAL.—Upon receiving a  
4                   prior notice under this paragraph, in order  
5                   to provide for the submission of their views  
6                   and recommendations, the Board shall give  
7                   notice of the proposal to—

8                   “(I) the appropriate Federal  
9                   banking agency of any bank involved;

10                  “(II) the appropriate functional  
11                  regulator of any functionally regulated  
12                  nondepository institution (as defined  
13                  in section 5(c)(1)(C)) involved; and

14                  “(III) the Secretary of the Treas-  
15                  ury, the Attorney General, and the  
16                  Federal Trade Commission.

17                  “(ii) TIMING.—The views and rec-  
18                  ommendations of any agency provided no-  
19                  tice under this paragraph shall be sub-  
20                  mitted to the Board not later than 30 cal-  
21                  endar days after the date on which notice  
22                  to the agency was given, unless the Board  
23                  determines that another shorter time pe-  
24                  riod is appropriate.

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

3               “(1) IN GENERAL.—If the Board finds, after  
4       notice from or consultation with the appropriate  
5       Federal banking agency, that a financial holding  
6       company is not in compliance with the requirements  
7       of subparagraph (A), (B), or (C) of subsection  
8       (b)(1), the Board shall give notice of such finding to  
9       the company.

10              “(2) AGREEMENT TO CORRECT CONDITIONS RE-  
11       QUIRED.—Within 45 days of receipt by a financial  
12       holding company of a notice given under paragraph  
13       (1) (or such additional period as the Board may per-  
14       mit), the company shall execute an agreement ac-  
15       ceptable to the Board to comply with the require-  
16       ments applicable to a financial holding company.

17              “(3) AUTHORITY TO IMPOSE LIMITATIONS.—  
18       Until the conditions described in a notice to a finan-  
19       cial holding company under paragraph (1) are cor-  
20       rected—

21                      “(A) the Board may impose such limita-  
22       tions on the conduct or activities of the com-  
23       pany or any affiliate of the company as the  
24       Board determines to be appropriate under the  
25       circumstances; and

1           “(B) the appropriate Federal banking  
2           agency may impose such limitations on the con-  
3           duct or activities of an affiliated depository in-  
4           stitution or subsidiary of a depository institu-  
5           tion as the appropriate Federal banking agency  
6           determines to be appropriate under the cir-  
7           cumstances.

8           “(4) FAILURE TO CORRECT.—If, after receiving  
9           a notice under paragraph (1), a financial holding  
10          company does not—

11           “(A) execute and implement an agreement  
12           in accordance with paragraph (2);

13           “(B) comply with any limitations imposed  
14           under paragraph (3);

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

22           “(D) in the case of a notice of failure to  
23           comply with subparagraph (B) or (C) of sub-  
24           section (b)(1), restore compliance with any such  
25           subparagraph by the date the next examination

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

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

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

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

1           “(2) the holding company has reasonable poli-  
2           cies and procedures to preserve the separate cor-  
3           porate identity and limited liability of such company  
4           and the subsidiaries of such company, for the pro-  
5           tection of the company’s subsidiary insured deposi-  
6           tory institutions and wholesale financial institutions;  
7           and

8           “(3) the holding company complies with this  
9           section.

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

12           “(1) IN GENERAL.—Notwithstanding section  
13           4(a), a company that is not a bank holding company  
14           or a foreign bank (as defined in section 1(b)(7) of  
15           the International Banking Act of 1978) and becomes  
16           a financial holding company after the date of the en-  
17           actment of the Financial Services Act of 1999 may  
18           continue to engage in any activity and retain direct  
19           or indirect ownership or control of shares of a com-  
20           pany engaged in any activity if—

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

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

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

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

20          “(3) NO EXPANSION OF GRANDFATHERED COM-  
21          MERCIAL ACTIVITIES THROUGH MERGER OR CON-  
22          SOLIDATION.—A financial holding company that en-  
23          gages in activities or holds shares pursuant to this  
24          subsection, or a subsidiary of such financial holding  
25          company, may not acquire, in any merger, consolida-



1       tion, or other type of business combination, assets of  
2       any other company which is engaged in any activity  
3       which the Board has not determined to be financial  
4       in nature or incidental to activities that are financial  
5       in nature under subsection (c), except this para-  
6       graph shall not apply with respect to a company that  
7       owns a broadcasting station licensed under title III  
8       of the Communications Act of 1934 and the shares  
9       of which have been controlled by an insurance com-  
10      pany since January 1, 1998.

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

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

1           “(A) offer or market, directly or through  
2           any arrangement, any product or service of a  
3           company whose activities are conducted or  
4           whose shares are owned or controlled by the fi-  
5           nancial holding company pursuant to this sub-  
6           section or subparagraph (H) or (I) of sub-  
7           section (c)(3); or

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

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

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

1       10-year period beginning on the date of the enact-  
2       ment of the Financial Services Act of 1999. The  
3       Board may, upon application by a financial holding  
4       company, extend such 10-year period by a period not  
5       to exceed an additional 5 years if such extension  
6       would not be detrimental to the public interest.

7       “(g) DEVELOPING ACTIVITIES.—A financial holding  
8       company may engage directly or indirectly, or acquire  
9       shares of any company engaged, in any activity that the  
10      Board has not determined to be financial in nature or inci-  
11      dental to financial 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) neither the Board nor the Secretary of the  
4       Treasury has determined that the activity is not fi-  
5       nancial in nature or incidental to financial activities  
6       under subsection (c);

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

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

15       (b) FACTORS FOR CONSIDERATION IN REVIEWING  
16       APPLICATION BY FINANCIAL HOLDING COMPANY TO AC-  
17       QUIRE BANK.—Section 3(c) of the Bank Holding Com-  
18       pany Act of 1956 (12 U.S.C. 1842(c)) is amended by add-  
19       ing at the end the following new paragraph:

20              “(6) ‘TOO BIG TO FAIL’ FACTOR.—In consid-  
21       ering an acquisition, merger, or consolidation under  
22       this section involving a financial holding company or  
23       a company that would be any such holding company  
24       upon the consummation of the transaction, the  
25       Board shall consider whether, and the extent to

1       which, the proposed acquisition, merger, or consoli-  
2       dation poses an undue risk to the stability of the fi-  
3       nancial system of the United States.”.

4       (c) TECHNICAL AND CONFORMING AMENDMENTS.—

5               (1) Section 2 of the Bank Holding Company  
6       Act of 1956 (12 U.S.C. 1841) is amended by adding  
7       at the end the following new subsection:

8       “(p) INSURANCE COMPANY.—For purposes of sec-  
9       tions 5, 6, and 10, the term ‘insurance company’ includes  
10      any person engaged in the business of insurance to the  
11      extent of such activities.”.

12              (2) Section 4(j) of the Bank Holding Company  
13      Act of 1956 (12 U.S.C. 1843(j)) is amended—

14              (A) in paragraph (1)(A), by inserting “or  
15              in any complementary activity under section  
16              6(c)(1)(B)” after “subsection (c)(8) or (a)(2)”;  
17              and

18              (B) in paragraph (3)—

19                      (i) by inserting “, other than any  
20                      complementary activity under section  
21                      6(c)(1)(B),” after “to engage in any activ-  
22                      ity”; and

23                      (ii) by inserting “or a company en-  
24                      gaged in any complementary activity under

1 section 6(c)(1)(B)” after “insured deposi-  
2 tory institution”.

3 (d) REPORT.—

4 (1) IN GENERAL.—By the end of the 4-year pe-  
5 riod beginning on the date of the enactment of this  
6 Act and every 4 years thereafter, the Board of Gov-  
7 ernors of the Federal Reserve System and the Sec-  
8 retary of the Treasury shall submit a joint report to  
9 the Congress containing a summary of new activities  
10 which are financial in nature, including grand-  
11 fathered commercial activities, in which any financial  
12 holding company is engaged pursuant to subsection  
13 (c)(1) or (f) of section 6 of the Bank Holding Com-  
14 pany Act of 1956 (as added by subsection (a)).

15 (2) OTHER CONTENTS.—Each report submitted  
16 to the Congress pursuant to paragraph (1) shall also  
17 contain the following:

18 (A) A discussion of actions by the Board  
19 of Governors of the Federal Reserve System  
20 and the Secretary of the Treasury, whether by  
21 regulation, order, interpretation, or guideline or  
22 by approval or disapproval of an application,  
23 with regard to activities of financial holding  
24 companies which are incidental to activities fi-

1           nancial in nature or complementary to such fi-  
2           nancial activities.

3           (B) An analysis and discussion of the risks  
4           posed by commercial activities of financial hold-  
5           ing companies to the safety and soundness of  
6           affiliate depository institutions.

7           (C) An analysis and discussion of the ef-  
8           fect of mergers and acquisitions under section  
9           6 of the Bank Holding Company Act of 1956  
10          on market concentration in the financial serv-  
11          ices industry.

12          (D) An analysis and discussion, by the  
13          Board and the Secretary in consultation with  
14          the other Federal banking agencies (as defined  
15          in section 3(z) of the Federal Deposit Insurance  
16          Act), of the impact of the implementation of  
17          this Act, and the amendments made by this  
18          Act, on the extent of meeting community credit  
19          needs and capital availability under the Com-  
20          munity Reinvestment Act of 1977.

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

22       (a) AFFILIATIONS.—

23           (1) IN GENERAL.—Except as provided in para-  
24           graph (2), no State may, by statute, regulation,  
25           order, interpretation, or other action, prevent or re-

1 strict an insured depository institution or wholesale  
2 financial institution, or a subsidiary or affiliate  
3 thereof, from being affiliated directly or indirectly or  
4 associated with any person or entity, as authorized  
5 or permitted by this Act or any other provision of  
6 Federal law.

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

12 (A) any State from requiring any person  
13 or entity that proposes to acquire control of an  
14 entity that is engaged in the business of insur-  
15 ance and domiciled in that State (hereafter in  
16 this subparagraph referred to as the “insurer”)  
17 to furnish to the insurance regulatory authority  
18 of that State, not later than 60 days before the  
19 effective date of the proposed acquisition—

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



1 (ii) if the acquiring party is an indi-  
2 vidual, his or her principal occupation and  
3 all offices and positions held during the 5  
4 years preceding the date of notification,  
5 and any conviction of crimes other than  
6 minor traffic violations during the 10 years  
7 preceding the date of notification;

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

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

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

20 (III) a list of all individuals who  
21 are, or who have been selected to be-  
22 come, directors or executive officers of  
23 the acquiring party or who perform,  
24 or will perform, functions appropriate  
25 to such positions, including, for each

1           such individual, the information re-  
2           quired by clause (ii);

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

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

1 insurer actively engaged in the business of  
2 insurance, the financial statements of such  
3 insurer need not be audited, but such audit  
4 may be required if the need therefor is de-  
5 termined by the insurance regulatory au-  
6 thority of the State;

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

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

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

1 (ix) a full description of any contracts,  
2 arrangements, or understandings with re-  
3 spect to any security of the insurer in  
4 which any acquiring party is involved, in-  
5 cluding transfer of any of the securities,  
6 joint ventures, loan or option arrange-  
7 ments, puts or calls, guarantees of loans,  
8 guarantees against loss or guarantees of  
9 profits, division of losses or profits, or the  
10 giving or withholding of proxies, and iden-  
11 tification of the persons with whom such  
12 contracts, arrangements, or under-  
13 standings have been entered into;

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

21 (xi) a description of any recommenda-  
22 tions to purchase any security of the in-  
23 surer made during the 12-month period  
24 preceding the date of notification by any  
25 acquiring party or by any person based

1           upon interviews or at the suggestion of  
2           such acquiring party;

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

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

16          (B) in the case of a person engaged in the  
17          business of insurance which is the subject of an  
18          acquisition or change or continuation in control,  
19          the State of domicile of such person from re-  
20          viewing or taking action (including approval or  
21          disapproval) with regard to the acquisition or  
22          change or continuation in control, as long as  
23          the State reviews and actions—

24                 (i) are completed by the end of the  
25                 60-day period beginning on the later of the

1 date the State received notice of the pro-  
2 posed action or the date the State received  
3 the information required under State law  
4 regarding such acquisition or change or  
5 continuation in control;

6 (ii) do not have the effect of discrimi-  
7 nating, intentionally or unintentionally,  
8 against an insured depository institution or  
9 affiliate thereof or against any other per-  
10 son based upon affiliation with an insured  
11 depository institution; and

12 (iii) are based on standards or re-  
13 quirements relating to solvency or manage-  
14 rial fitness;

15 (C) any State from requiring an entity  
16 that is acquiring control of an entity that is en-  
17 gaged in the business of insurance and domi-  
18 ciled in that State to maintain or restore the  
19 capital requirements of that insurance entity to  
20 the level required under the capital regulations  
21 of general applicability in that State to avoid  
22 the requirement of preparing and filing with the  
23 insurance regulatory authority of that State a  
24 plan to increase the capital of the entity, except  
25 that any determination by the State insurance

1 regulatory authority with respect to such re-  
2 quirement shall be made not later than 60 days  
3 after the date of notification under subpara-  
4 graph (A);

5 (D) any State from taking actions with re-  
6 spect to the receivership or conservatorship of  
7 any insurance company;

8 (E) any State from restricting a change in  
9 the ownership of stock in an insurance com-  
10 pany, or a company formed for the purpose of  
11 controlling such insurance company, for a pe-  
12 riod of not more than 3 years beginning on the  
13 date of the conversion of such company from  
14 mutual to stock form; or

15 (F) any State from requiring an organiza-  
16 tion which has been eligible at any time since  
17 January 1, 1987, to claim the special deduction  
18 provided by section 833 of the Internal Revenue  
19 Code of 1986 to meet certain conditions in  
20 order to undergo, as determined by the State,  
21 a reorganization, recapitalization, conversion,  
22 merger, consolidation, sale or other disposition  
23 of substantial operating assets, demutualization,  
24 dissolution, or to undertake other similar ac-  
25 tions and which is governed under a State stat-

1           ute enacted on May 22, 1998, relating to hos-  
2           pital, medical, and dental service corporation  
3           conversions.

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

6                   (A) IN GENERAL.—Subject to subsection  
7           (c) and the nondiscrimination provisions con-  
8           tained in such subsection, no provision in para-  
9           graph (1) shall be construed as affecting State  
10          laws, regulations, orders, interpretations, or  
11          other actions of general applicability relating to  
12          the governance of corporations, partnerships,  
13          limited liability companies or other business as-  
14          sociations incorporated or formed under the  
15          laws of that State or domiciled in that State, or  
16          the applicability of the antitrust laws of any  
17          State or any State law that is similar to the  
18          antitrust laws.

19                  (B) DEFINITION.—The term “antitrust  
20          laws” has the same meaning as in subsection  
21          (a) of the first section of the Clayton Act, and  
22          includes section 5 of the Federal Trade Com-  
23          mission Act to the extent that such section 5  
24          relates to unfair methods of competition.

25          (b) ACTIVITIES.—



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

13           (2) INSURANCE SALES.—

14           (A) IN GENERAL.—In accordance with the  
15           legal standards for preemption set forth in the  
16           decision of the Supreme Court of the United  
17           States in *Barnett Bank of Marion County N.A.*  
18           *v. Nelson*, 517 U.S. 25 (1996), no State may,  
19           by statute, regulation, order, interpretation, or  
20           other action, prevent or significantly interfere  
21           with the ability of an insured depository institu-  
22           tion or wholesale financial institution, or a sub-  
23           sidiary or affiliate thereof, to engage, directly or  
24           indirectly, either by itself or in conjunction with  
25           a subsidiary, affiliate, or any other party, in

1 any insurance sales, solicitation, or cross-mar-  
2 keting activity.

3 (B) CERTAIN STATE LAWS PRESERVED.—

4 Notwithstanding subparagraph (A), a State  
5 may impose any of the following restrictions, or  
6 restrictions which are substantially the same as  
7 but no more burdensome or restrictive than  
8 those in each of the following clauses:

9 (i) Restrictions prohibiting the rejection  
10 of an insurance policy by an insured  
11 depository institution, wholesale financial  
12 institution, or any subsidiary or affiliate  
13 thereof, solely because the policy has been  
14 issued or underwritten by any person who  
15 is not associated with such insured depository  
16 institution or wholesale financial institution,  
17 or any subsidiary or affiliate thereof,  
18 when such insurance is required in connection  
19 with a loan or extension of credit.

20 (ii) Restrictions prohibiting a requirement  
21 for any debtor, insurer, or insurance  
22 agent or broker to pay a separate charge  
23 in connection with the handling of insurance  
24 that is required in connection with a  
25 loan or other extension of credit or the

1 provision of another traditional banking  
2 product by an insured depository institu-  
3 tion, wholesale financial institution, or any  
4 subsidiary or affiliate thereof, unless such  
5 charge would be required when the insured  
6 depository institution or wholesale financial  
7 institution, or any subsidiary or affiliate  
8 thereof, is the licensed insurance agent or  
9 broker providing 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 an 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 described in this clause that would not  
7 violate section 106 of the Bank Hold-  
8 ing Company Act Amendments of  
9 1970, as interpreted by the Board of  
10 Governors of the Federal Reserve Sys-  
11 tem; or

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

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

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

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

23 (I) is not a deposit;

24 (II) is not insured by the Federal

25 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 its subsidiaries or affiliates, or any person  
17 soliciting the purchase of or selling insur-  
18 ance on the premises thereof, the credit  
19 and insurance transactions be completed  
20 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 Sep-  
24 tember 3, 1998, and that is not described  
25 in 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—

18 (1) to investigate and bring enforcement ac-  
19 tions, consistent with section 18(c) of the Securities  
20 Act of 1933, with respect to fraud or deceit or un-  
21 lawful conduct by any person, in connection with se-  
22 curities or securities transactions; or

23 (2) to require the registration of securities or  
24 the licensure or registration of brokers, dealers, or  
25 investment advisers (consistent with section 203A of



1 the Investment Advisers Act of 1940), or the associ-  
2 ated persons of a broker, dealer, or investment ad-  
3 viser (consistent with such section 203A).

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

6 (1) INSURED DEPOSITORY INSTITUTION.—The  
7 term “insured depository institution” includes any  
8 foreign bank that maintains a branch, agency, or  
9 commercial lending company in the United States.

10 (2) STATE.—The term “State” means any  
11 State of the United States, the District of Columbia,  
12 any territory of the United States, Puerto Rico,  
13 Guam, American Samoa, the Trust Territory of the  
14 Pacific Islands, the Virgin Islands, and the Northern  
15 Mariana Islands.

16 **SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHOR-**  
17 **IZED.**

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

21 “(2) REGULATIONS.—A bank holding company  
22 organized as a mutual holding company shall be reg-  
23 ulated on terms, and shall be subject to limitations,  
24 comparable to those applicable to any other bank  
25 holding company.”.

1   **SEC. 105A. PUBLIC MEETINGS FOR LARGE BANK ACQUISI-**  
2                   **TIONS AND MERGERS.**

3           (a) BANK HOLDING COMPANY ACT OF 1956.—Sec-  
4   tion 3(c)(2) of the Bank Holding Company Act of 1956  
5   (12 U.S.C. 1842(c)(2)) is amended—

6           (1) by striking “FACTORS.—In every case” and  
7           inserting “FACTORS.—

8                   “(A) IN GENERAL.—In every case”; and

9           (2) by adding at the end the following new sub-  
10   paragraph:

11                   “(B) PUBLIC MEETINGS.—In each case in-  
12   volving one or more insured depository institu-  
13   tions each of which has total assets of  
14   \$1,000,000,000 or more, the Board shall, as  
15   necessary and on a timely basis, conduct public  
16   meetings in one or more areas where the Board  
17   believes, in the sole discretion of the Board,  
18   there will be a substantial public impact.”.

19           (b) FEDERAL DEPOSIT INSURANCE ACT.—Section  
20   18(c) of the Federal Deposit Insurance Act (12 U.S.C.  
21   1828(c)) is amended by adding at the end the following  
22   new paragraph:

23                   “(12) PUBLIC MEETINGS.—In each merger trans-  
24   action involving one or more insured depository institu-  
25   tions each of which has total assets of \$1,000,000,000 or  
26   more, the responsible agency shall, as necessary and on

1 a timely basis, conduct public meetings in one or more  
2 areas where the agency believes, in the sole discretion of  
3 the agency, there will be a substantial public impact.”.

4 (c) NATIONAL BANK CONSOLIDATION AND MERGER  
5 ACT.—The National Bank Consolidation and Merger Act  
6 (12 U.S.C. 215 et seq.) is amended by adding at the end  
7 the following new section:

8 **“SEC. 6. PUBLIC MEETINGS FOR LARGE BANK CONSOLIDA-**  
9 **TIONS AND MERGERS.**

10 “In each case of a consolidation or merger under this  
11 Act involving one or more banks each of which has total  
12 assets of \$1,000,000,000 or more, the Comptroller shall,  
13 as necessary and on a timely basis, conduct public meet-  
14 ings in one or more areas where the Comptroller believes,  
15 in the sole discretion of the Comptroller, there will be a  
16 substantial public impact.”.

17 (d) HOME OWNERS’ LOAN ACT.—Section 10(e) of  
18 the Home Owners’ Loan Act (12 U.S.C. 1463) is amended  
19 by adding at the end the following new paragraph:

20 “(7) PUBLIC MEETINGS FOR LARGE DEPOSI-  
21 TORY INSTITUTION ACQUISITIONS AND MERGERS.—

22 In each case involving one or more insured deposi-  
23 tory institutions each of which has total assets of  
24 \$1,000,000,000 or more, the Director shall, as nec-  
25 essary and on a timely basis, conduct public meet-

1        ings in one or more areas where the Director be-  
 2        lieves, in the sole discretion of the Director, there  
 3        will be a substantial public impact.”.

4    **SEC. 106. PROHIBITION ON DEPOSIT PRODUCTION OF-**  
 5                                    **FICES.**

6        (a) IN GENERAL.—Section 109(d) of the Riegle-Neal  
 7    Interstate Banking and Branching Efficiency Act of 1994  
 8    (12 U.S.C. 1835a(d)) is amended—

9                    (1) by inserting “, the Financial Services Act of  
 10       1999,” after “pursuant to this title”; and

11                   (2) by inserting “or such Act” after “made by  
 12       this title”.

13        (b) TECHNICAL AND CONFORMING AMENDMENT.—  
 14    Section 109(e)(4) of the Riegle-Neal Interstate Banking  
 15    and Branching Efficiency Act of 1994 (12 U.S.C.  
 16    1835a(e)(4)) is amended by inserting “and any branch of  
 17    a bank controlled by an out-of-State bank holding com-  
 18    pany (as defined in section 2(o)(7) of the Bank Holding  
 19    Company Act of 1956)” before the period.

20    **SEC. 107. CLARIFICATION OF BRANCH CLOSURE REQUIRE-**  
 21                                    **MENTS.**

22        Section 42(d)(4)(A) of the Federal Deposit Insurance  
 23    Act (12 U.S.C. 1831r–1(d)(4)(A)) is amended by inserting  
 24    “and any bank controlled by an out-of-State bank holding

1 company (as defined in section 2(o)(7) of the Bank Hold-  
 2 ing Company Act of 1956)” before the period.

3 **SEC. 108. AMENDMENTS RELATING TO LIMITED PURPOSE**  
 4 **BANKS.**

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

7 (1) in paragraph (2)(A)(ii)—

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

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

12 (C) by inserting after subclause (X) the  
 13 following new subclause:

14 “(XI) assets that are derived  
 15 from, or are incidental to, consumer  
 16 lending activities in which institutions  
 17 described in subparagraph (F) or (H)  
 18 of section 2(c)(2) are permitted to en-  
 19 gage,”;

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

22 “(B) any bank subsidiary of such company  
 23 engages in any activity in which the bank was  
 24 not lawfully engaged as of March 5, 1987, un-

1 less the bank is well managed and well capital-  
2 ized;

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

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

9 “(ii) engages in the business of mak-  
10 ing commercial loans (and, for purposes of  
11 this clause, loans made in the ordinary  
12 course of a credit card operation shall not  
13 be treated as commercial loans); or

14 “(D) after the date of the enactment of the  
15 Competitive Equality Amendments of 1987, any  
16 bank subsidiary of such company permits any  
17 overdraft (including any intraday overdraft), or  
18 incurs any such overdraft in such bank’s ac-  
19 count at a Federal Reserve bank, on behalf of  
20 an affiliate, other than an overdraft described  
21 in paragraph (3).”; and

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

1           “(3) PERMISSIBLE OVERDRAFTS DESCRIBED.—

2           For purposes of paragraph (2)(D), an overdraft is  
3           described in this paragraph if—

4                   “(A) such overdraft results from an inad-  
5                   vertent computer or accounting error that is be-  
6                   yond the control of both the bank and the affil-  
7                   iate;

8                   “(B) such overdraft—

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

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

22                   “(C) such overdraft—

23                           “(i) is incurred on behalf of an affil-  
24                           iate solely in connection with an activity  
25                           that is so closely related to banking, or

1 managing or controlling banks, as to be a  
2 proper incident thereto, to the extent the  
3 bank incurring the overdraft and the affil-  
4 iate on whose behalf the overdraft is in-  
5 curred each document that the overdraft is  
6 incurred for such purpose; and

7 “(ii) does not cause the bank to vio-  
8 late any provision of section 23A or 23B of  
9 the Federal Reserve Act, either directly, in  
10 the case of a member bank, or by virtue of  
11 section 18(j) of the Federal Deposit Insur-  
12 ance Act, in the case of a nonmember  
13 bank.

14 “(4) DIVESTITURE IN CASE OF LOSS OF EX-  
15 EMPTION.—If any company described in paragraph  
16 (1) fails to qualify for the exemption provided under  
17 such paragraph by operation of paragraph (2), such  
18 exemption shall cease to apply to such company and  
19 such company shall divest control of each bank it  
20 controls before the end of the 180-day period begin-  
21 ning on the date that the company receives notice  
22 from the Board that the company has failed to con-  
23 tinue to qualify for such exemption, unless before  
24 the end of such 180-day period, the company has—



“(B) implemented procedures that are reasonably adapted to avoid the reoccurrence of such condition or activity.

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

18 SEC. 109. GAO STUDY OF ECONOMIC IMPACT ON COMMU-  
19 NITY BANKS, OTHER SMALL FINANCIAL IN-  
20 STITUTIONS, INSURANCE AGENTS, AND CON-  
21 SUMERS.

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1 including community banks, registered brokers and deal-  
2 ers and insurance companies, which have total assets of  
3 \$100,000,000 or less, insurance agents, and consumers.

4 (b) REPORTS TO THE CONGRESS.—

5 (1) IN GENERAL.—The Comptroller General of  
6 the United States shall submit reports to the Con-  
7 gress, at the times required under paragraph (2),  
8 containing the findings and conclusions of the  
9 Comptroller General with regard to the study re-  
10 quired under subsection (a) and such recommenda-  
11 tions for legislative or administrative action as the  
12 Comptroller General may determine to be appro-  
13 priate.

14 (2) TIMING OF REPORTS.—The Comptroller  
15 General shall submit—

16 (A) an interim report before the end of the  
17 6-month period beginning after the date of the  
18 enactment of this Act;

19 (B) another interim report before the end  
20 of the next 6-month period; and

21 (C) a final report before the end of the 1-  
22 year period after such second 6-month period.”.

1 **SEC. 110. RESPONSIVENESS TO COMMUNITY NEEDS FOR FI-**  
2 **NANCIAL SERVICES.**

3 (a) STUDY.—The Secretary of the Treasury, in con-  
4 sultation with the Federal banking agencies (as defined  
5 in section 3(z) of the Federal Deposit Insurance Act),  
6 shall conduct a study of the extent to which adequate serv-  
7 ices are being provided as intended by the Community Re-  
8 investment Act of 1977, including services in low- and  
9 moderate-income neighborhoods and for persons of modest  
10 means, as a result of the enactment of this Act.

11 (b) REPORT.—Before the end of the 2-year period be-  
12 ginning on the date of the enactment of this Act, the Sec-  
13 retary of the Treasury, in consultation with the Federal  
14 banking agencies, shall submit a report to the Congress  
15 on the study conducted pursuant to subsection (a) and  
16 shall include such recommendations as the Secretary de-  
17 termines to be appropriate for administrative and legisla-  
18 tive action with respect to institutions covered under the  
19 Community Reinvestment Act of 1977.

20 **SEC. 110A. STUDY OF FINANCIAL MODERNIZATION'S AF-**  
21 **FECT ON THE ACCESSIBILITY OF SMALL**  
22 **BUSINESS AND FARM LOANS.**

23 (a) STUDY.—The Secretary of the Treasury, in con-  
24 sultation with the Federal banking agencies (as defined  
25 in Section 3(z) of the Federal Deposit Insurance Act),  
26 shall conduct a study of the extent to which credit is being

1 provided to and for small business and farms, as a result  
2 of this Act.

3 (b) REPORT.—Before the end of the 5-year period be-  
4 ginning on the date of the enactment of this Act, the Sec-  
5 retary, in consultation with the Federal banking agencies,  
6 shall submit a report to the Congress on the study con-  
7 ducted pursuant to subsection (a) and shall include such  
8 recommendations as the Secretary determines to be appro-  
9 priate for administrative and legislative action.

10 **Subtitle B—Streamlining Super-**  
11 **vision of Financial Holding**  
12 **Companies**

13 **SEC. 111. STREAMLINING FINANCIAL HOLDING COMPANY**  
14 **SUPERVISION.**

15 Section 5(c) of the Bank Holding Company Act of  
16 1956 (12 U.S.C. 1844(c)) is amended to read as follows:

17 “(c) REPORTS AND EXAMINATIONS.—

18 “(1) REPORTS.—

19 “(A) IN GENERAL.—The Board from time  
20 to time may require any bank holding company  
21 and any subsidiary of such company to submit  
22 reports under oath to keep the Board informed  
23 as to—

24 “(i) its financial condition, systems  
25 for monitoring and controlling financial

1 and operating risks, and transactions with  
2 depository institution subsidiaries of the  
3 holding company; and

4 “(ii) compliance by the company or  
5 subsidiary with applicable provisions of  
6 this Act.

7 “(B) USE OF EXISTING REPORTS.—

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

17 “(ii) AVAILABILITY.—A bank holding  
18 company or a subsidiary of such company  
19 shall provide to the Board, at the request  
20 of the Board, a report referred to in clause  
21 (i).

22 “(iii) REQUIRED USE OF PUBLICLY  
23 REPORTED INFORMATION.—The Board  
24 shall, to the fullest extent possible, accept  
25 in fulfillment of any reporting or record-

1 keeping requirements under this Act infor-  
2 mation that is otherwise required to be re-  
3 ported publicly and externally audited fi-  
4 nancial statements.

5 “(iv) REPORTS FILED WITH OTHER  
6 AGENCIES.—In the event the Board re-  
7 quires a report from a functionally regu-  
8 lated nondepository institution subsidiary  
9 of a bank holding company of a kind that  
10 is not required by another Federal or State  
11 regulator or appropriate self-regulatory or-  
12 ganization, the Board shall request that  
13 the appropriate regulator or self-regulatory  
14 organization obtain such report. If the re-  
15 port is not made available to the Board,  
16 and the report is necessary to assess a ma-  
17 terial risk to the bank holding company or  
18 any of its subsidiary depository institutions  
19 or compliance with this Act, the Board  
20 may require such subsidiary to provide  
21 such a report to the Board.

22 “(C) DEFINITION.—For purposes of this  
23 subsection, the term ‘functionally regulated  
24 nondepository institution’ means—

1 “(i) a broker or dealer registered  
 2 under the Securities Exchange Act of  
 3 1934;

4 “(ii) an investment adviser registered  
 5 under the Investment Advisers Act of  
 6 1940, or with any State, with respect to  
 7 the investment advisory activities of such  
 8 investment adviser and activities incidental  
 9 to such investment advisory activities;

10 “(iii) an insurance company subject to  
 11 supervision by a State insurance commis-  
 12 sion, agency, or similar authority; and

13 “(iv) an entity subject to regulation  
 14 by the Commodity Futures Trading Com-  
 15 mission, with respect to the commodities  
 16 activities of such entity and activities inci-  
 17 dental to such commodities activities.

18 “(2) EXAMINATIONS.—

19 “(A) EXAMINATION AUTHORITY.—

20 “(i) IN GENERAL.—The Board may  
 21 make examinations of each bank holding  
 22 company and each subsidiary of a bank  
 23 holding company.

24 “(ii) FUNCTIONALLY REGULATED  
 25 NONDEPOSITORY INSTITUTION SUBSIDI-

1           ARIES.—Notwithstanding clause (i), the  
2           Board may make examinations of a func-  
3           tionally regulated nondepository institution  
4           subsidiary of a bank holding company only  
5           if—

6                   “(I) the Board has reasonable  
7                   cause to believe that such subsidiary  
8                   is engaged in activities that pose a  
9                   material risk to an affiliated depository  
10                  institution; or

11                  “(II) based on reports and other  
12                  available information, the Board has  
13                  reasonable cause to believe that a sub-  
14                  sidiary is not in compliance with this  
15                  Act or with provisions relating to  
16                  transactions with an affiliated depository  
17                  institution and the Board cannot  
18                  make such determination through ex-  
19                  amination of the affiliated depository  
20                  institution or bank holding company.

21                  “(B) LIMITATIONS ON EXAMINATION AU-  
22                  THORITY FOR BANK HOLDING COMPANIES AND  
23                  SUBSIDIARIES.—Subject to subparagraph  
24                  (A)(ii), the Board may make examinations  
25                  under subparagraph (A)(i) of each bank holding



1 company and each subsidiary of such holding  
2 company in order to—

3 “(i) inform the Board of the nature of  
4 the operations and financial condition of  
5 the holding company and such subsidiaries;

6 “(ii) inform the Board of—

7 “(I) the financial and operational  
8 risks within the holding company sys-  
9 tem that may pose a threat to the  
10 safety and soundness of any sub-  
11 sidiary depository institution of such  
12 holding company; and

13 “(II) the systems for monitoring  
14 and controlling such risks; and

15 “(iii) monitor compliance with the  
16 provisions of this Act and those governing  
17 transactions and relationships between any  
18 subsidiary depository institution and its af-  
19 filiates.

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

24 “(i) the bank holding company; and

1                   “(ii) any subsidiary of the holding  
2                   company that, because of—

3                   “(I) the size, condition, or activi-  
4                   ties of the subsidiary; or

5                   “(II) the nature or size of trans-  
6                   actions between such subsidiary and  
7                   any depository institution which is  
8                   also a subsidiary of such holding com-  
9                   pany,

10                  could have a materially adverse effect on  
11                  the safety and soundness of any depository  
12                  institution affiliate of the holding company.

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

20                  “(E) DEFERENCE TO OTHER EXAMINA-  
21                  TIONS.—The Board shall, to the fullest extent  
22                  possible, address the circumstances which might  
23                  otherwise permit or require an examination by  
24                  the Board by forgoing an examination and in-

1           stead reviewing the reports of examination  
2           made of—

3                   “(i) any registered broker or dealer by  
4                   or on behalf of the Securities and Ex-  
5                   change Commission;

6                   “(ii) any investment adviser registered  
7                   by or on behalf of either the Securities and  
8                   Exchange Commission or any State, which-  
9                   ever is required by law;

10                  “(iii) any licensed insurance company  
11                  by or on behalf of any State regulatory au-  
12                  thority responsible for the supervision of  
13                  insurance companies; and

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

17           “(3) CAPITAL.—

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

24                          “(i) is in compliance with applicable  
25                          capital requirements of another Federal

1 regulatory authority (including the Securi-  
2 ties and Exchange Commission) or State  
3 insurance authority;

4 “(ii) is registered as an investment  
5 adviser under the Investment Advisers Act  
6 of 1940, or with any State, whichever is  
7 required by law; or

8 “(iii) is licensed as an insurance agent  
9 with the appropriate State insurance au-  
10 thority.

11 “(B) RULE OF CONSTRUCTION.—Subpara-  
12 graph (A) shall not be construed as preventing  
13 the Board from imposing capital or capital ade-  
14 quacy rules, guidelines, standards, or require-  
15 ments with respect to—

16 “(i) activities of a registered invest-  
17 ment adviser other than investment advi-  
18 sory activities or activities incidental to in-  
19 vestment advisory activities; or

20 “(ii) activities of a licensed insurance  
21 agent other than insurance agency activi-  
22 ties or activities incidental to insurance  
23 agency activities.

24 “(C) LIMITATIONS ON INDIRECT AC-  
25 TION.—In developing, establishing, or assessing

1 holding company capital or capital adequacy  
2 rules, guidelines, standards, or requirements for  
3 purposes of this paragraph, the Board shall not  
4 take into account the activities, operations, or  
5 investments of an affiliated investment company  
6 registered under the Investment Company Act  
7 of 1940, unless the investment company is—

8 “(i) a bank holding company; or

9 “(ii) controlled by a bank holding  
10 company by reason of ownership by the  
11 bank holding company (including through  
12 all of its affiliates) of 25 percent or more  
13 of the shares of the investment company,  
14 and the shares owned by the bank holding  
15 company have a market value equal to  
16 more than \$1,000,000.

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

19 “(A) IN GENERAL.—In the case of any  
20 bank holding company which is not significantly  
21 engaged in nonbanking activities, the Board, in  
22 consultation with the appropriate Federal bank-  
23 ing agency, may designate the appropriate Fed-  
24 eral banking agency of the lead insured deposi-  
25 tory institution subsidiary of such holding com-

pany as the appropriate Federal banking agency for the bank holding company.

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

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

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

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

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

“(C) AGENCY ORDERS.—Section 9 of this Act and section 105 of the Bank Holding Company Act Amendments of 1970 shall apply to

1 orders issued by an agency designated under  
2 subparagraph (A) in the same manner such sec-  
3 tions apply to orders issued by the Board.

4 “(5) FUNCTIONAL REGULATION OF SECURITIES  
5 AND INSURANCE ACTIVITIES.—The Board shall defer  
6 to—

7 “(A) the Securities and Exchange Commis-  
8 sion with regard to all interpretations of, and  
9 the enforcement of, applicable Federal securi-  
10 ties laws (and rules, regulations, orders, and  
11 other directives issued thereunder) relating to  
12 the activities, conduct, and operations of reg-  
13 istered brokers, dealers, investment advisers,  
14 and investment companies;

15 “(B) the relevant State securities authori-  
16 ties with regard to all interpretations of, and  
17 the enforcement of, applicable State securities  
18 laws (and rules, regulations, orders, and other  
19 directives issued thereunder) relating to the ac-  
20 tivities, conduct, and operations of brokers,  
21 dealers, and investment advisers required to be  
22 registered under State law; and

23 “(C) the relevant State insurance authori-  
24 ties with regard to all interpretations of, and  
25 the enforcement of, applicable State insurance

1 laws (and rules, regulations, orders, and other  
 2 directives issued thereunder) relating to the ac-  
 3 tivities, conduct, and operations of insurance  
 4 companies and insurance agents.”.

5 **SEC. 112. ELIMINATION OF APPLICATION REQUIREMENT**  
 6 **FOR FINANCIAL HOLDING COMPANIES.**

7 (a) PREVENTION OF DUPLICATIVE FILINGS.—Sec-  
 8 tion 5(a) of the Bank Holding Company Act of 1956 (12  
 9 U.S.C. 1844(a)) is amended by adding the following new  
 10 sentence at the end: “A declaration filed in accordance  
 11 with section 6(b)(1)(D) shall satisfy the requirements of  
 12 this subsection with regard to the registration of a bank  
 13 holding company but not any requirement to file an appli-  
 14 cation to acquire a bank pursuant to section 3.”.

15 (b) DIVESTITURE PROCEDURES.—Section 5(e)(1) of  
 16 the Bank Holding Company Act of 1956 (12 U.S.C.  
 17 1844(e)(1)) is amended—

18 (1) by striking “Financial Institutions Super-  
 19 visory Act of 1966, order” and inserting “Financial  
 20 Institutions Supervisory Act of 1966, at the election  
 21 of the bank holding company—

22 “(A) order”; and

23 (2) by striking “shareholders of the bank hold-  
 24 ing company. Such distribution” and inserting  
 25 “shareholders of the bank holding company; or



1           “(B) order the bank holding company, after due  
 2       notice and opportunity for hearing, and after con-  
 3       sultation with the primary supervisor for the bank,  
 4       which shall be the Comptroller of the Currency in  
 5       the case of a national bank, and the Federal Deposit  
 6       Insurance Corporation and the appropriate State su-  
 7       pervisor in the case of an insured nonmember bank,  
 8       to terminate (within 120 days or such longer period  
 9       as the Board may direct) the ownership or control  
 10      of any such bank by such company.

11   The distribution referred to in subparagraph (A)”.

12   **SEC. 113. AUTHORITY OF STATE INSURANCE REGULATOR**  
 13                   **AND SECURITIES AND EXCHANGE COMMIS-**  
 14                   **SION.**

15       (a) BANK HOLDING COMPANIES.—Section 5 of the  
 16   Bank Holding Company Act of 1956 (12 U.S.C. 1844)  
 17   is amended by adding at the end the following new sub-  
 18   section:

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

21       “(1) **IN GENERAL.**—Notwithstanding any other  
 22   provision of law, any regulation, order, or other ac-  
 23   tion of the Board which requires a bank holding  
 24   company to provide funds or other assets to a sub-  
 25   sidiary insured depository institution shall not be ef-

1       fective nor enforceable with respect to an entity de-  
2       scribed in subparagraph (A) if—

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

5               “(i) a bank holding company that is  
6       an insurance company, a broker or dealer  
7       registered under the Securities Exchange  
8       Act of 1934, an investment company reg-  
9       istered under the Investment Company Act  
10      of 1940, or an investment adviser reg-  
11      istered by or on behalf of either the Securi-  
12      ties and Exchange Commission or any  
13      State; or

14              “(ii) an affiliate of the depository in-  
15      stitution which is an insurance company or  
16      a broker or dealer registered under the Se-  
17      curities Exchange Act of 1934, an invest-  
18      ment company registered under the Invest-  
19      ment Company Act of 1940, or an invest-  
20      ment adviser registered by or on behalf of  
21      either the Securities and Exchange Com-  
22      mission or any State; and

23              “(B) the State insurance authority for the  
24      insurance company or the Securities and Ex-  
25      change Commission for the registered broker,

1 dealer, investment adviser (solely with respect  
2 to investment advisory activities or activities in-  
3 cidental thereto), or investment company, as  
4 the case may be, determines in writing sent to  
5 the holding company and the Board that the  
6 holding company shall not provide such funds  
7 or assets because such action would have a ma-  
8 terial adverse effect on the financial condition  
9 of the insurance company or the broker, dealer,  
10 investment company, or investment adviser, as  
11 the case may be.

12 “(2) NOTICE TO STATE INSURANCE AUTHORITY  
13 OR SEC REQUIRED.—If the Board requires a bank  
14 holding company, or an affiliate of a bank holding  
15 company, which is an insurance company or a  
16 broker, dealer, investment company, or investment  
17 adviser described in paragraph (1)(A) to provide  
18 funds or assets to an insured depository institution  
19 subsidiary of the holding company pursuant to any  
20 regulation, order, or other action of the Board re-  
21 ferred to in paragraph (1), the Board shall promptly  
22 notify the State insurance authority for the insur-  
23 ance company, the Securities and Exchange Com-  
24 mission, or State securities regulator, as the case  
25 may be, of such requirement.

1           “(3) DIVESTITURE IN LIEU OF OTHER AC-  
2           TION.—If the Board receives a notice described in  
3           paragraph (1)(B) from a State insurance authority  
4           or the Securities and Exchange Commission with re-  
5           gard to a bank holding company or affiliate referred  
6           to in that paragraph, the Board may order the bank  
7           holding company to divest the insured depository in-  
8           stitution not later than 180 days after receiving the  
9           notice, or such longer period as the Board deter-  
10          mines consistent with the safe and sound operation  
11          of the insured depository institution.

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

23          (b) SUBSIDIARIES OF DEPOSITORY INSTITUTIONS.—  
24          The Federal Deposit Insurance Act (12 U.S.C. 1811 et

1 seq.) is amended by adding at the end the following new  
2 section:

3 **“SEC. 45. AUTHORITY OF STATE INSURANCE REGULATOR**  
4 **AND SECURITIES AND EXCHANGE COMMIS-**  
5 **SION.**

6 “(a) IN GENERAL.—Notwithstanding any other pro-  
7 vision of law, any regulation, order, or other action of the  
8 appropriate Federal banking agency which requires a sub-  
9 sidiary to provide funds or other assets to an insured de-  
10 pository institution shall not be effective nor enforceable  
11 with respect to an entity described in paragraph (1) if—

12 “(1) such funds or assets are to be provided by  
13 a subsidiary which is an insurance company, a  
14 broker or dealer registered under the Securities Ex-  
15 change Act of 1934, an investment company reg-  
16 istered under the Investment Company Act of 1940,  
17 or an investment adviser registered by or on behalf  
18 of either the Securities and Exchange Commission  
19 or any State; and

20 “(2) the State insurance authority for the in-  
21 surance company or the Securities and Exchange  
22 Commission for the registered broker or dealer, the  
23 investment company, or the investment adviser, as  
24 the case may be, determines in writing sent to the  
25 insured depository institution and the appropriate

1 Federal banking agency that the subsidiary shall not  
2 provide such funds or assets because such action  
3 would have a material adverse effect on the financial  
4 condition of the insurance company or the broker,  
5 dealer, investment company, or investment adviser,  
6 as the case may be.

7 “(b) NOTICE TO STATE INSURANCE AUTHORITY OR  
8 SEC REQUIRED.—If the appropriate Federal banking  
9 agency requires a subsidiary, which is an insurance com-  
10 pany, a broker or dealer, an investment company, or an  
11 investment adviser (solely with respect to investment advi-  
12 sory activities or activities incidental thereto) described in  
13 subsection (a)(1) to provide funds or assets to an insured  
14 depository institution pursuant to any regulation, order,  
15 or other action of the appropriate Federal banking agency  
16 referred to in subsection (a), the appropriate Federal  
17 banking agency shall promptly notify the State insurance  
18 authority for the insurance company, the Securities and  
19 Exchange Commission, or State securities regulator, as  
20 the case may be, of such requirement.

21 “(c) DIVESTITURE IN LIEU OF OTHER ACTION.—If  
22 the appropriate Federal banking agency receives a notice  
23 described in subsection (a)(2) from a State insurance au-  
24 thority or the Securities and Exchange Commission with  
25 regard to a subsidiary referred to in that subsection, the

1 appropriate Federal banking agency may order the in-  
2 sured depository institution to divest the subsidiary not  
3 later than 180 days after receiving the notice, or such  
4 longer period as the appropriate Federal banking agency  
5 determines consistent with the safe and sound operation  
6 of the insured depository institution.

7 “(d) CONDITIONS BEFORE DIVESTITURE.—During  
8 the period beginning on the date an order to divest is  
9 issued by the appropriate Federal banking agency under  
10 subsection (c) to an insured depository institution and  
11 ending on the date the divestiture is complete, the appro-  
12 priate Federal banking agency may impose any conditions  
13 or restrictions on the insured depository institution’s own-  
14 ership of the subsidiary including restricting or prohibiting  
15 transactions between the insured depository institution  
16 and the subsidiary, as are appropriate under the cir-  
17 cumstances.”.

18 **SEC. 114. PRUDENTIAL SAFEGUARDS.**

19 (a) COMPTROLLER OF THE CURRENCY.—

20 (1) IN GENERAL.—The Comptroller of the Cur-  
21 rency may, by regulation or order, impose restric-  
22 tions or requirements on relationships or trans-  
23 actions between a national bank and a subsidiary of  
24 the national bank which the Comptroller finds are  
25 consistent with the public interest, the purposes of

1       this Act, title LXII of the Revised Statutes of the  
2       United States, and other Federal law applicable to  
3       national banks, and the standards in paragraph (2).

4               (2) STANDARDS.—The Comptroller of the Cur-  
5       rency may exercise authority under paragraph (1) if  
6       the Comptroller finds that such action will have any  
7       of the following effects:

8               (A) Avoid any significant risk to the safety  
9       and soundness of depository institutions or any  
10      Federal deposit insurance fund.

11              (B) Enhance the financial stability of  
12      banks.

13              (C) Avoid conflicts of interest or other  
14      abuses.

15              (D) Enhance the privacy of customers of  
16      the national bank or any subsidiary of the  
17      bank.

18              (E) Promote the application of national  
19      treatment and equality of competitive oppor-  
20      tunity between subsidiaries owned or controlled  
21      by domestic banks and subsidiaries owned or  
22      controlled by foreign banks operating in the  
23      United States.

24              (3) REVIEW.—The Comptroller of the Currency  
25      shall regularly—



1 (A) review all restrictions or requirements  
2 established pursuant to paragraph (1) to deter-  
3 mine whether there is a continuing need for any  
4 such restriction or requirement to carry out the  
5 purposes of the Act, including any purpose de-  
6 scribed in paragraph (2); and

7 (B) modify or eliminate any restriction or  
8 requirement the Comptroller finds is no longer  
9 required for such purposes.

10 (b) BOARD OF GOVERNORS OF THE FEDERAL RE-  
11 SERVE SYSTEM.—

12 (1) IN GENERAL.—The Board of Governors of  
13 the Federal Reserve System may, by regulation or  
14 order, impose restrictions or requirements on rela-  
15 tionships or transactions—

16 (A) between a depository institution sub-  
17 sidiary of a bank holding company and any af-  
18 filiate of such depository institution (other than  
19 a subsidiary of such institution); or

20 (B) between a State member bank and a  
21 subsidiary of such bank,

22 which the Board finds are consistent with the public  
23 interest, the purposes of this Act, the Bank Holding  
24 Company Act of 1956, the Federal Reserve Act, and  
25 other Federal law applicable to depository institution

1 subsidiaries of bank holding companies or State  
2 banks (as the case may be), and the standards in  
3 paragraph (2).

4 (2) STANDARDS.—The Board of Governors of  
5 the Federal Reserve System may exercise authority  
6 under paragraph (1) if the Board finds that such ac-  
7 tion will have any of the following effects:

8 (A) Avoid any significant risk to the safety  
9 and soundness of depository institutions or any  
10 Federal deposit insurance fund.

11 (B) Enhance the financial stability of bank  
12 holding companies.

13 (C) Avoid conflicts of interest or other  
14 abuses.

15 (D) Enhance the privacy of customers of  
16 the State member bank or any subsidiary of the  
17 bank.

18 (E) Promote the application of national  
19 treatment and equality of competitive oppor-  
20 tunity between nonbank affiliates owned or con-  
21 trolled by domestic bank holding companies and  
22 nonbank affiliates owned or controlled by for-  
23 eign banks operating in the United States.

24 (3) REVIEW.—The Board of Governors of the  
25 Federal Reserve System shall regularly—

1 (A) review all restrictions or requirements  
2 established pursuant to paragraph (1) to deter-  
3 mine whether there is a continuing need for any  
4 such restriction or requirement to carry out the  
5 purposes of the Act, including any purpose de-  
6 scribed in paragraph (2); and

7 (B) modify or eliminate any restriction or  
8 requirement the Board finds is no longer re-  
9 quired for such purposes.

10 (4) FOREIGN BANKS.—

11 (A) IN GENERAL.—The Board may, by  
12 regulation or order, impose restrictions or re-  
13 quirements on relationships or transactions be-  
14 tween a branch, agency, or commercial lending  
15 company of a foreign bank in the United States  
16 and any affiliate in the United States of such  
17 foreign bank that the Board finds are con-  
18 sistent with the public interest, the purposes of  
19 this Act, the Bank Holding Company Act of  
20 1956, the Federal Reserve Act, and other Fed-  
21 eral law applicable to foreign banks and their  
22 affiliates in the United States, and the stand-  
23 ards in paragraphs (2) and (3).

24 (B) EVASION.—In the event that the  
25 Board determines that there may be cir-

1           cumstances that would result in an evasion of  
2           this paragraph, the Board may also impose re-  
3           strictions or requirements on relationships or  
4           transactions between a foreign bank outside the  
5           United States and any affiliate in the United  
6           States of such foreign bank that are consistent  
7           with national treatment and equality of com-  
8           petitive opportunity.

9           (c) FEDERAL DEPOSIT INSURANCE CORPORATION.—

10           (1) IN GENERAL.—The Federal Deposit Insur-  
11           ance Corporation may, by regulation or order, im-  
12           pose restrictions or requirements on relationships or  
13           transactions between a State nonmember bank (as  
14           defined in section 3 of the Federal Deposit Insur-  
15           ance Act) and a subsidiary of the State nonmember  
16           bank which the Corporation finds are consistent with  
17           the public interest, the purposes of this Act, the  
18           Federal Deposit Insurance Act, or other Federal law  
19           applicable to State nonmember banks and the stand-  
20           ards in paragraph (2).

21           (2) STANDARDS.—The Federal Deposit Insur-  
22           ance Corporation may exercise authority under para-  
23           graph (1) if the Corporation finds that such action  
24           will have any of the following effects:

1           (A) Avoid any significant risk to the safety  
2           and soundness of depository institutions or any  
3           Federal deposit insurance fund.

4           (B) Enhance the financial stability of  
5           banks.

6           (C) Avoid conflicts of interest or other  
7           abuses.

8           (D) Enhance the privacy of customers of  
9           the State nonmember bank or any subsidiary of  
10          the bank.

11          (E) Promote the application of national  
12          treatment and equality of competitive oppor-  
13          tunity between subsidiaries owned or controlled  
14          by domestic banks and subsidiaries owned or  
15          controlled by foreign banks operating in the  
16          United States.

17          (3) REVIEW.—The Federal Deposit Insurance  
18          Corporation shall regularly—

19                (A) review all restrictions or requirements  
20                established pursuant to paragraph (1) to deter-  
21                mine whether there is a continuing need for any  
22                such restriction or requirement to carry out the  
23                purposes of the Act, including any purpose de-  
24                scribed in paragraph (2); and

1 (B) modify or eliminate any restriction or  
2 requirement the Corporation finds is no longer  
3 required for such purposes.

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

5 (a) EXCLUSIVE COMMISSION AUTHORITY.—

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

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

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

1       between the depository institution and the affiliate,  
2       and the effect of such relationship on the depository  
3       institution.

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

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

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

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

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

22           (4) REGISTERED INVESTMENT COMPANY.—The  
23      term “registered investment company” means an in-  
24      vestment company which is registered with the Com-  
25      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) an investment adviser registered by or on  
14 behalf of either the Securities and Exchange Com-  
15 mission or any State, whichever is required by law,  
16 with respect to the investment advisory activities of  
17 such investment adviser and activities incidental to  
18 such investment 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, with respect to the insurance activities and  
23 activities incidental to such insurance activities, sub-  
24 ject to supervision by a State insurance commission,  
25 agency, or similar authority; or

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

5   **SEC. 117. EQUIVALENT REGULATION AND SUPERVISION.**

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

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

16          (2) section 10A of the Bank Holding Company  
17      Act of 1956 (as added by this Act) that limit what-  
18      ever authority the Board might otherwise have to  
19      take direct or indirect action with respect to bank  
20      holding companies and their nonbank subsidiaries,  
21      shall also limit whatever authority that a Federal banking  
22      agency (as defined in section 3(z) of the Federal Deposit  
23      Insurance Act) might otherwise have under any statute  
24      to require reports, make examinations, impose capital re-  
25      quirements or take any other direct or indirect action with

1 respect to bank holding companies and their nonbank sub-  
2 sidiaries (including nonbank subsidiaries of depository in-  
3 stitutions), subject to the same standards and require-  
4 ments as are applicable to the Board under such provi-  
5 sions.

6 (b) CERTAIN EXAMINATIONS AUTHORIZED.—No pro-  
7 vision of this section shall be construed as preventing the  
8 Federal Deposit Insurance Corporation, if the Corporation  
9 finds it necessary to determine the condition of an insured  
10 depository institution for insurance purposes, from exam-  
11 ining an affiliate of any insured depository institution,  
12 pursuant to its authority under section 10(b)(4) of the  
13 Federal Deposit Insurance Act, as may be necessary to  
14 disclose fully the relationship between the depository insti-  
15 tution and the affiliate, and the effect of such relationship  
16 on the depository institution.

17 **SEC. 118. PROHIBITION ON FDIC ASSISTANCE TO AFFILI-**  
18 **ATES AND SUBSIDIARIES.**

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

1 **SEC. 119. REPEAL OF SAVINGS BANK PROVISIONS IN THE**  
 2 **BANK HOLDING COMPANY ACT OF 1956.**

3 Section 3(f) of the Bank Holding Company Act of  
 4 1956 (12 U.S.C. 1842(f)) is amended to read as follows:

5 “(f) [Repealed].”.

6 **SEC. 120. TECHNICAL AMENDMENT.**

7 Section 2(o)(1)(A) of the Bank Holding Company  
 8 Act of 1956 (12 U.S.C. 1841(o)(1)(A)) is amended by  
 9 striking “section 38(b)” and inserting “section 38”.

10 **Subtitle C—Subsidiaries of**  
 11 **National Banks**

12 **SEC. 121. PERMISSIBLE ACTIVITIES FOR SUBSIDIARIES OF**  
 13 **NATIONAL BANKS.**

14 (a) FINANCIAL SUBSIDIARIES OF NATIONAL  
 15 BANKS.—Chapter 1 of title LXII of the Revised Statutes  
 16 of United States (12 U.S.C. 21 et seq.) is amended—

17 (1) by redesignating section 5136A as section  
 18 5136C; and

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

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

22 **“(a) SUBSIDIARIES OF NATIONAL BANKS AUTHOR-**  
 23 **IZED TO ENGAGE IN FINANCIAL ACTIVITIES.—**

24 **“(1) EXCLUSIVE AUTHORITY.—**No provision of  
 25 section 5136 or any other provision of this title  
 26 LXII of the Revised Statutes of the United States

1 shall be construed as authorizing a subsidiary of a  
2 national bank to engage in, or own any share of or  
3 any other interest in any company engaged in, any  
4 activity that—

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

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

10 unless a national bank is specifically authorized by  
11 the express terms of a Federal statute and not by  
12 implication or interpretation to acquire shares of or  
13 an interest in, or to control, such subsidiary, such as  
14 by paragraph (2) of this subsection and section 25A  
15 of the Federal Reserve Act.

16 “(2) SPECIFIC AUTHORIZATION TO CONDUCT  
17 ACTIVITIES WHICH ARE FINANCIAL IN NATURE.—

18 Subject to paragraphs (3) and (4), a national bank  
19 may control a financial subsidiary, or hold an inter-  
20 est in a financial subsidiary, that is controlled by in-  
21 sured depository institutions or subsidiaries thereof.

22 “(3) ELIGIBILITY REQUIREMENTS.—A national  
23 bank may control or hold an interest in a company  
24 pursuant to paragraph (2) only if—

1           “(A) the national bank and all depository  
2 institution affiliates of the national bank are  
3 well capitalized;

4           “(B) the national bank and all depository  
5 institution affiliates of the national bank are  
6 well managed;

7           “(C) the national bank and all depository  
8 institution affiliates of such national bank have  
9 achieved a rating of ‘satisfactory record of  
10 meeting community credit needs’, or better, at  
11 the most recent examination of each such bank  
12 or institution; and

13           “(D) the bank has received the approval of  
14 the Comptroller of the Currency.

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

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

24           “(B) engage in real estate investment or  
25 development activities; or

1           “(C) engage in any activity permissible for  
2           a financial holding company under paragraph  
3           (3)(I) of section 6(c) of the Bank Holding Com-  
4           pany Act of 1956 (relating to insurance com-  
5           pany investments).

6           “(5) SIZE FACTOR WITH REGARD TO FREE-  
7           STANDING NATIONAL BANKS.—Notwithstanding  
8           paragraph (2), a national bank which has total as-  
9           sets of \$10,000,000,000 or more may not control a  
10          subsidiary engaged in financial activities pursuant to  
11          such paragraph unless such national bank is a sub-  
12          sidiary of a bank holding company.

13          “(6) LIMITED EXCLUSIONS FROM COMMUNITY  
14          NEEDS REQUIREMENTS FOR NEWLY AFFILIATED DE-  
15          POSITORY INSTITUTIONS.—Any depository institu-  
16          tion which becomes an affiliate of a national bank  
17          during the 12-month period preceding the date of an  
18          approval by the Comptroller of the Currency under  
19          paragraph (3)(D) for such bank, and any depository  
20          institution which becomes an affiliate of the national  
21          bank after such date, may be excluded for purposes  
22          of paragraph (3)(C) during the 12-month period be-  
23          ginning on the date of such affiliation if—

24                 “(A) the national bank or such depository  
25                 institution has submitted an affirmative plan to



1 the appropriate Federal banking agency to take  
2 such action as may be necessary in order for  
3 such institution to achieve a rating of ‘satisfac-  
4 tory record of meeting community credit needs’,  
5 or better, at the next examination of the insti-  
6 tution; and

7 “(B) the plan has been accepted by such  
8 agency.

9 “(7) 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) FINANCIAL SUBSIDIARY.—The term  
17 ‘financial subsidiary’ means a company which is  
18 a subsidiary of an insured bank and is engaged  
19 in financial activities that have been determined  
20 to be financial in nature or incidental to such  
21 financial activities in accordance with sub-  
22 section (b) or permitted in accordance with sub-  
23 section (b)(4), other than activities that are  
24 permissible for a national bank to engage in di-  
25 rectly or that are authorized under the Bank

1 Service Company Act, section 25 or 25A of the  
2 Federal Reserve Act, or any other Federal statute (other than this section) that specifically  
3 authorizes the conduct of such activities by its  
4 express terms and not by implication or interpretation.  
5  
6

7 “(C) WELL CAPITALIZED.—The term ‘well  
8 capitalized’ has the same meaning as in section  
9 38 of the Federal Deposit Insurance Act and,  
10 for purposes of this section, the Comptroller  
11 shall have exclusive jurisdiction to determine  
12 whether a national bank is well capitalized.

13 “(D) WELL MANAGED.—The term ‘well  
14 managed’ means—

15 “(i) in the case of a depository institution that has been examined, unless otherwise  
16 determined in writing by the appropriate Federal banking agency—  
17  
18

19 “(I) the achievement of a composite rating of 1 or 2 under the Uniform  
20 Financial Institutions Rating System (or an equivalent rating under  
21 an equivalent rating system) in connection with the most recent examina-  
22  
23  
24

1                   tion or subsequent review of the de-  
2                   pository institution; and

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

6                   “(ii) in the case of any depository in-  
7                   stitution that has not been examined, the  
8                   existence and use of managerial resources  
9                   that the appropriate Federal banking agen-  
10                  cy determines are satisfactory.

11                  “(E) INCORPORATED DEFINITIONS.—The  
12                  terms ‘appropriate Federal banking agency’ and  
13                  ‘depository institution’ have the same meanings  
14                  as in section 3 of the Federal Deposit Insur-  
15                  ance Act.

16                  “(b) ACTIVITIES THAT ARE FINANCIAL IN NA-  
17                  TURE.—

18                  “(1) FINANCIAL ACTIVITIES.—

19                  “(A) IN GENERAL.—For purposes of sub-  
20                  section (a)(7)(B), an activity shall be consid-  
21                  ered to have been determined to be financial in  
22                  nature or incidental to such financial activities  
23                  only if—

24                  “(i) such activity is permitted for a fi-  
25                  nancial holding company pursuant to sec-

tion 6(c)(3) of the Bank Holding Company Act of 1956 (to the extent such activity is not otherwise prohibited under this section or any other provision of law for a subsidiary of a national bank engaged in activities pursuant to subsection (a)(2)); or

“(ii) the Secretary of the Treasury determines the activity to be financial in nature or incidental to such financial activities in accordance with subparagraph (B) or paragraph (3).

“(B) COORDINATION BETWEEN THE BOARD AND THE SECRETARY OF THE TREASURY.—

“(i) PROPOSALS RAISED BEFORE THE SECRETARY OF THE TREASURY.—

“(I) CONSULTATION.—The Secretary of the Treasury shall notify the Board of, and consult with the Board concerning, any request, proposal, or application under this subsection, including any regulation or order proposed under paragraph (3), for a determination of whether an activity is

1 financial in nature or incidental to  
2 such a financial activity.

3 “(II) BOARD VIEW.—The Sec-  
4 retary of the Treasury shall not deter-  
5 mine that any activity is financial in  
6 nature or incidental to a financial ac-  
7 tivity under this subsection if the  
8 Board notifies the Secretary in writ-  
9 ing, not later than 30 days after the  
10 date of receipt of the notice described  
11 in subclause (I) (or such longer period  
12 as the Secretary determines to be ap-  
13 propriate in light of the cir-  
14 cumstances) that the Board believes  
15 that the activity is not financial in na-  
16 ture or incidental to a financial activ-  
17 ity.

18 “(ii) PROPOSALS RAISED BY THE  
19 BOARD.—

20 “(I) BOARD RECOMMENDA-  
21 TION.—The Board may, at any time,  
22 recommend in writing that the Sec-  
23 retary of the Treasury find an activity  
24 to be financial in nature or incidental  
25 to a financial activity (other than an

1 activity which the Board has sole au-  
2 thority to regulate under subpara-  
3 graph (C)).

4 “(II) TIME PERIOD FOR SECRE-  
5 TARIAL ACTION.—Not later than 30  
6 days after the date of receipt of a  
7 written recommendation from the  
8 Board under subclause (I) (or such  
9 longer period as the Secretary of the  
10 Treasury and the Board determine to  
11 be appropriate in light of the cir-  
12 cumstances), the Secretary shall de-  
13 termine whether to initiate a public  
14 rulemaking proposing that the subject  
15 recommended activity be found to be  
16 financial in nature or incidental to a  
17 financial activity under this sub-  
18 section, and shall notify the Board in  
19 writing of the determination of the  
20 Secretary and, in the event that the  
21 Secretary determines not to seek pub-  
22 lic comment on the proposal, the rea-  
23 sons for that determination.

24 “(C) AUTHORITY OVER MERCHANT BANK-  
25 ING.—The Board shall have sole authority to

1       prescribe regulations and issue interpretations  
2       to implement this paragraph with respect to ac-  
3       tivities described in section 6(c)(3)(H) of the  
4       Bank Holding Company Act of 1956.

5       “(2) FACTORS TO BE CONSIDERED.—In deter-  
6       mining whether an activity is financial in nature or  
7       incidental to financial activities, the Secretary shall  
8       take into account—

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

11              “(B) changes or reasonably expected  
12       changes in the marketplace in which banks  
13       compete;

14              “(C) changes or reasonably expected  
15       changes in the technology for delivering finan-  
16       cial services; and

17              “(D) whether such activity is necessary or  
18       appropriate to allow a bank and the subsidiaries  
19       of a bank to—

20                   “(i) compete effectively with any com-  
21       pany seeking to provide financial services  
22       in the United States;

23                   “(ii) use any available or emerging  
24       technological means, including any applica-  
25       tion necessary to protect the security or ef-

1 efficacy of systems for the transmission of  
2 data or financial transactions, in providing  
3 financial services; and

4 “(iii) offer customers any available or  
5 emerging technological means for using fi-  
6 nancial services.

7 “(3) AUTHORIZATION OF NEW FINANCIAL AC-  
8 TIVITIES.—The Secretary of the Treasury shall, by  
9 regulation or order and in accordance with para-  
10 graph (1)(B), define, consistent with the purposes of  
11 this Act, the following activities as, and the extent  
12 to which such activities are, financial in nature or  
13 incidental to activities which are financial in nature:

14 “(A) Lending, exchanging, transferring, in-  
15 vesting for others, or safeguarding financial as-  
16 sets other than money or securities.

17 “(B) Providing any device or other instru-  
18 mentality for transferring money or other finan-  
19 cial assets.

20 “(C) Arranging, effecting, or facilitating fi-  
21 nancial transactions for the account of third  
22 parties.

23 “(4) DEVELOPING ACTIVITIES.—Subject to sub-  
24 section (a)(2), a financial subsidiary of a national  
25 bank may engage directly or indirectly, or acquire



1 shares of any company engaged, in any activity that  
2 the Secretary has not determined to be financial in  
3 nature or incidental to financial activities under this  
4 subsection if—

5 “(A) the subsidiary reasonably concludes  
6 that the activity is financial in nature or inci-  
7 dental to financial activities;

8 “(B) the gross revenues from all activities  
9 conducted under this paragraph represent less  
10 than 5 percent of the consolidated gross reve-  
11 nues of the national bank;

12 “(C) the aggregate total assets of all com-  
13 panies the shares of which are held under this  
14 paragraph do not exceed 5 percent of the na-  
15 tional bank’s consolidated total assets;

16 “(D) the total capital invested in activities  
17 conducted under this paragraph represents less  
18 than 5 percent of the consolidated total capital  
19 of the national bank;

20 “(E) neither the Secretary of the Treasury  
21 nor the Board has determined that the activity  
22 is not financial in nature or incidental to finan-  
23 cial activities under this subsection; and

24 “(F) the national bank provides written  
25 notice to the Secretary of the Treasury describ-

1           ing the activity commenced by the subsidiary or  
2           conducted by the company acquired no later  
3           than 10 business days after commencing the ac-  
4           tivity or consummating the acquisition.

5           “(c) PROVISIONS APPLICABLE TO NATIONAL BANKS  
6 THAT FAIL TO MEET REQUIREMENTS.—

7           “(1) IN GENERAL.—If a national bank or de-  
8           pository institution affiliate is not in compliance  
9           with the requirements of subparagraph (A), (B), or  
10          (C) of subsection (a)(3), the appropriate Federal  
11          banking agency shall notify the Comptroller of the  
12          Currency, who shall give notice of such finding to  
13          the national bank.

14          “(2) AGREEMENT TO CORRECT CONDITIONS RE-  
15          QUIRED.—Not later than 45 days after receipt by a  
16          national bank of a notice given under paragraph (1)  
17          (or such additional period as the Comptroller of the  
18          Currency may permit), the national bank and any  
19          relevant affiliated depository institution shall execute  
20          an agreement acceptable to the Comptroller of the  
21          Currency and the other appropriate Federal banking  
22          agencies, if any, to comply with the requirements ap-  
23          plicable under subsection (a)(3).

24          “(3) COMPTROLLER OF THE CURRENCY MAY  
25          IMPOSE LIMITATIONS.—Until the conditions de-

1       scribed in a notice to a national bank under para-  
2       graph (1) are corrected—

3               “(A) the Comptroller of the Currency may  
4       impose such limitations on the conduct or ac-  
5       tivities of the national bank or any subsidiary  
6       of the bank as the Comptroller of the Currency  
7       determines to be appropriate under the cir-  
8       cumstances; and

9               “(B) the appropriate Federal banking  
10      agency may impose such limitations on the con-  
11      duct or activities of an affiliated depository in-  
12      stitution or any subsidiary of the depository in-  
13      stitution as such agency determines to be ap-  
14      propriate under the circumstances.

15              “(4) FAILURE TO CORRECT.—If, after receiving  
16      a notice under paragraph (1), a national bank and  
17      other affiliated depository institutions do not—

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

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

22              “(C) in the case of a notice of failure to  
23      comply with subsection (a)(3)(A), restore the  
24      national bank or any depository institution af-  
25      filiate of the bank to well capitalized status be-

1 fore the end of the 180-day period beginning on  
2 the date such notice is received by the national  
3 bank (or such other period permitted by the  
4 Comptroller of the Currency); or

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

13 the Comptroller of the Currency may require such  
14 national bank, under such terms and conditions as  
15 may be imposed by the Comptroller of the Currency  
16 and subject to such extension of time as may be  
17 granted in the Comptroller of the Currency’s discre-  
18 tion, to divest control of any subsidiary engaged in  
19 activities pursuant to subsection (a)(2) or, at the  
20 election of the national bank, instead to cease to en-  
21 gage in any activity conducted by a subsidiary of the  
22 national bank pursuant to subsection (a)(2).

23 “(5) CONSULTATION.—In taking any action  
24 under this subsection, the Comptroller of the Cur-

1 rency shall consult with all relevant Federal and  
 2 State regulatory agencies.”.

3 (b) CLERICAL AMENDMENT.—The table of sections  
 4 for chapter 1 of title LXII of the Revised Statutes of the  
 5 United States is amended—

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

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

“5136A. Subsidiaries of national banks.”.

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

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

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

15 (2) to apply to any transaction between the  
 16 bank and the financial subsidiary (including a loan,  
 17 extension of credit, guarantee, or purchase of as-  
 18 sets), other than an equity investment, the same re-  
 19 strictions and requirements as would apply if the fi-  
 20 nancial subsidiary were a subsidiary of a bank hold-  
 21 ing company having control of the bank; and

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

1 (A) the bank paid a dividend in the same  
 2 dollar amount to a bank holding company hav-  
 3 ing control of the bank; and

4 (B) the bank holding company used the  
 5 proceeds of the dividend to make an equity in-  
 6 vestment in a subsidiary that was engaged in  
 7 the same activities as the financial subsidiary of  
 8 the bank.

9 (b) SAFETY AND SOUNDNESS FIREWALLS APPLICA-  
 10 BLE TO SUBSIDIARIES OF BANKS.—The Federal Deposit  
 11 Insurance Act (12 U.S.C. 1811 et seq.) is amended by  
 12 inserting after section 45 (as added by section 113(b) of  
 13 this title) the following new section:

14 **“SEC. 46. SAFETY AND SOUNDNESS FIREWALLS APPLICA-**  
 15 **BLE TO SUBSIDIARIES OF BANKS.**

16 **“(a) LIMITING THE EQUITY INVESTMENT OF A BANK**  
 17 **IN A SUBSIDIARY.—**

18 **“(1) CAPITAL DEDUCTION.—**In determining  
 19 whether an insured bank complies with applicable  
 20 regulatory capital standards—

21 **“(A) the appropriate Federal banking**  
 22 **agency shall deduct from the assets and tan-**  
 23 **gible equity of the bank the aggregate amount**  
 24 **of the outstanding equity investments of the**  
 25 **bank in financial subsidiaries of the bank; and**

1           “(B) the assets and liabilities of such fi-  
2           nancial subsidiaries shall not be consolidated  
3           with those of the bank.

4           “(2) INVESTMENT LIMITATION.—An insured  
5           bank shall not, without the prior approval of the ap-  
6           propriate Federal banking agency, make any equity  
7           investment in a financial subsidiary of the bank if  
8           that investment would, when made, exceed the  
9           amount that the bank could pay as a dividend with-  
10          out obtaining prior regulatory approval.

11          “(3) TREATMENT OF RETAINED EARNINGS.—  
12          The amount of any net earnings retained by a finan-  
13          cial subsidiary of an insured depository institution  
14          shall be treated as an outstanding equity investment  
15          of the bank in the subsidiary for purposes of para-  
16          graph (1).

17          “(b) OPERATIONAL AND FINANCIAL SAFEGUARDS  
18          FOR THE BANK.—An insured bank that has a financial  
19          subsidiary shall maintain procedures for identifying and  
20          managing any financial and operational risks posed by the  
21          financial subsidiary.

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

24                 “(1) IN GENERAL.—Each insured bank shall  
25                 ensure that the bank maintains and complies with

1 reasonable policies and procedures to preserve the  
2 separate corporate identity and legal status of the  
3 bank and any financial subsidiary or affiliate of the  
4 bank.

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

10 “(d) FINANCIAL SUBSIDIARY DEFINED.—For pur-  
11 poses of this section, the term ‘financial subsidiary’ has  
12 the meaning given to such term in section 5136A(a)(7)(B)  
13 of the Revised Statutes of the United States.

14 “(e) REGULATIONS.—The appropriate Federal bank-  
15 ing agencies shall jointly prescribe regulations imple-  
16 menting this section.”.

17 (c) TRANSACTIONS BETWEEN FINANCIAL SUBSIDI-  
18 ARIES AND OTHER AFFILIATES.—Section 23A of the Fed-  
19 eral Reserve Act (12 U.S.C. 371c) is amended—

20 (1) by redesignating subsection (e) as sub-  
21 section (f); and

22 (2) by inserting after subsection (d), the fol-  
23 lowing new subsection:

24 “(e) RULES RELATING TO BANKS WITH FINANCIAL  
25 SUBSIDIARIES.—



1           “(1) FINANCIAL SUBSIDIARY DEFINED.—For  
2           purposes of this section and section 23B, the term  
3           ‘financial subsidiary’ means a company which is a  
4           subsidiary of a bank and is engaged in activities that  
5           are financial in nature or incidental to such financial  
6           activities pursuant to subsection (a)(2) or (b)(4) of  
7           section 5136A of the Revised Statutes of the United  
8           States.

9           “(2) APPLICATION TO TRANSACTIONS BETWEEN  
10          A FINANCIAL SUBSIDIARY OF A BANK AND THE  
11          BANK.—For purposes of applying this section and  
12          section 23B to a transaction between a financial  
13          subsidiary of a bank and the bank (or between such  
14          financial subsidiary and any other subsidiary of the  
15          bank which is not a financial subsidiary) and not-  
16          withstanding subsection (b)(2) and section  
17          23B(d)(1), the financial subsidiary of the bank—

18                 “(A) shall be an affiliate of the bank and  
19                 any other subsidiary of the bank which is not  
20                 a financial subsidiary; and

21                 “(B) shall not be treated as a subsidiary of  
22                 the bank.

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

1           “(A) IN GENERAL.—A transaction between  
2           a financial subsidiary and an affiliate of the fi-  
3           nancial subsidiary shall not be deemed to be a  
4           transaction between a subsidiary of a national  
5           bank and an affiliate of the bank for purposes  
6           of section 23A or section 23B of the Federal  
7           Reserve Act.

8           “(B) CERTAIN AFFILIATES EXCLUDED.—  
9           For purposes of subparagraph (A) and notwith-  
10          standing paragraph (4), the term ‘affiliate’  
11          shall not include a bank, or a subsidiary of a  
12          bank, which is engaged exclusively in activities  
13          permissible for a national bank to engage in di-  
14          rectly or which are authorized by any Federal  
15          law other than section 5136A of the Revised  
16          Statutes of the United States.

17          “(4) EQUITY INVESTMENTS EXCLUDED SUB-  
18          JECT TO THE APPROVAL OF THE BANKING AGEN-  
19          CY.—Subsection (a)(1) shall not apply so as to limit  
20          the equity investment of a bank in a financial sub-  
21          sidiary of such bank, except that any investment  
22          that exceeds the amount of a dividend that the bank  
23          could pay at the time of the investment without ob-  
24          taining prior approval of the appropriate Federal  
25          banking agency and is in excess of the limitation

1       which would apply under subsection (a)(1), but for  
 2       this paragraph, may be made only with the approval  
 3       of the appropriate Federal banking agency (as de-  
 4       fined in section 3(q) of the Federal Deposit Insur-  
 5       ance Act) with respect to such bank.”.

6       (d) ANTITYING.—Section 106(a) of the Bank Hold-  
 7       ing Company Act Amendments of 1970 is amended by  
 8       adding at the end the following new sentence: “For pur-  
 9       poses of this section, a subsidiary of a national bank which  
 10      engages in activities pursuant to subsection (a)(2) or  
 11      (b)(4) of section 5136A of the Revised Statutes of the  
 12      United States shall be deemed to be a subsidiary of a bank  
 13      holding company, and not a subsidiary of a bank.”.

14   **SEC. 123. MISREPRESENTATIONS REGARDING DEPOSITORY**  
 15                   **INSTITUTION LIABILITY FOR OBLIGATIONS**  
 16                   **OF AFFILIATES.**

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

20   **“§ 1008. Misrepresentations regarding financial insti-**  
 21                   **tution liability for obligations of affiliates**

22      “(a) IN GENERAL.—No institution-affiliated party of  
 23      an insured depository institution or institution-affiliated  
 24      party of a subsidiary or affiliate of an insured depository  
 25      institution shall fraudulently represent that the institution

1 is or will be liable for any obligation of a subsidiary or  
2 other affiliate of the institution.

3 “(b) CRIMINAL PENALTY.—Whoever violates sub-  
4 section (a) shall be fined under this title, imprisoned for  
5 not more than 5 years, or both.

6 “(c) INSTITUTION-AFFILIATED PARTY DEFINED.—  
7 For purposes of this section, the term ‘institution-affili-  
8 ated party’ has the same meaning as in section 3 of the  
9 Federal Deposit Insurance Act and any reference in that  
10 section shall also be deemed to refer to a subsidiary or  
11 affiliate of an insured depository institution.

12 “(d) OTHER DEFINITIONS.—For purposes of this  
13 section, the terms ‘affiliate’, ‘insured depository institu-  
14 tion’, and ‘subsidiary’ have same meanings as in section  
15 3 of the Federal Deposit Insurance Act.”.

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

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

20 **SEC. 124. REPEAL OF STOCK LOAN LIMIT IN FEDERAL RE-**  
21 **SERVE ACT.**

22 Section 11 of the Federal Reserve Act (12 U.S.C.  
23 248) is amended by striking the paragraph designated as  
24 “(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 Section 10 of the Bank Holding Company Act of  
9 1956 (12 U.S.C. 1841 et seq.) is amended to read as fol-  
10 lows:

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 one or more wholesale finan-  
22 cial 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 sub-  
19                   sidiary, the nature or size of transactions  
20                   between 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) LIMITATION.—The Board shall  
5 not, by regulation, guideline, order or oth-  
6 erwise, prescribe or impose any capital or  
7 capital adequacy rules, standards, guide-  
8 lines, or requirements upon any subsidiary  
9 that is not a depository institution and  
10 that is registered as an investment adviser  
11 under the Investment Advisers Act of  
12 1940, except that this clause shall not be  
13 construed as preventing the Board from  
14 imposing capital or capital adequacy rules,  
15 guidelines, standards, or requirements with  
16 respect to activities of a registered invest-  
17 ment adviser other than investment advi-  
18 sory activities or activities incidental to in-  
19 vestment 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, unless the investment com-  
5 pany is—

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, and 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 1999, 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 1999, 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 sub-  
14 sidiary 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 per-  
11 mit—

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 considers appropriate, giv-  
8 ing 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, directly or in-  
14 directly, and which engages in any activity pur-  
15 suant to subsection (c) or (g) of section 6, com-  
16 ply with the provisions of sections 23A and 23B  
17 of the Federal Reserve Act in the same manner  
18 and to the same extent as such transactions  
19 would be required to comply with such sections  
20 if the bank were a member bank.

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

1 for purposes of subsections (c)(1)(C) and (c)(3) of  
2 section 9B of the Federal Reserve Act, and any such  
3 foreign bank or company shall be subject to para-  
4 graphs (3), (4), and (5) of section 9B(d) of the Fed-  
5 eral Reserve Act, except that the Board may adopt  
6 such modifications, conditions, or exemptions as the  
7 Board deems appropriate, giving due regard to the  
8 principle of national treatment and equality of com-  
9 petitive opportunity.

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

23 “(5) NO EFFECT ON OTHER PROVISIONS.—This  
24 section shall not be construed as limiting the author-  
25 ity of the Board under the International Banking

1 Act of 1978 with respect to the regulation, super-  
2 vision, or examination of foreign banks and their of-  
3 fices and affiliates in the United States.

4 “(6) APPLICABILITY OF COMMUNITY REINVEST-  
5 MENT ACT OF 1977.—The branches in the United  
6 States of a foreign bank that is, or is affiliated with  
7 a company that is, treated as a wholesale financial  
8 holding company shall be subject to section  
9 9B(b)(11) of the Federal Reserve Act as if the for-  
10 eign bank were a wholesale financial institution  
11 under such section. The Board and the Comptroller  
12 of the Currency shall apply the provisions of sections  
13 803(2), 804, and 807(1) of the Community Rein-  
14 vestment Act of 1977 to branches of foreign banks  
15 which receive only such deposits as are permissible  
16 for receipt by a corporation organized under section  
17 25A of the Federal Reserve Act, in the same manner  
18 and to the same extent such sections apply to such  
19 a corporation.”.

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) of the (12 U.S.C.  
12 3401(7))—

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

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

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

20 (2) in section 1112(e), by striking “and the Se-  
21 curities and Exchange Commission” and inserting “,  
22 the Securities and Exchange Commission, and the  
23 Commodity Futures Trading 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. 1841) is  
 3           amended by inserting after subsection (p) (as added  
 4           by section 103(b)(1)) the following new subsections:

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

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

13                 “(1) has the meaning given to such term in sec-  
 14                 tion 3 of 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 subject to section 9B of the Fed-  
 13                   eral 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 1 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.

19                   (2) CLERICAL AMENDMENT.—The table of sec-  
 20   tions for chapter 1 of title LXII of the Revised Stat-  
 21   utes of the United States is amended by inserting  
 22   after the item relating to section 5136A (as added  
 23   by section 121(d) of this title) the following new  
 24   item:

“5136B. National wholesale financial institutions.”.

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

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

5 “(a) APPLICATION FOR MEMBERSHIP AS WHOLE-  
6 SALE FINANCIAL INSTITUTION.—

7 “(1) APPLICATION REQUIRED.—

8 “(A) IN GENERAL.—Any bank may apply  
9 to the Board of Governors of the Federal Re-  
10 serve System to become a State wholesale fi-  
11 nancial institution, or to the Comptroller of the  
12 Currency to become a national wholesale finan-  
13 cial institution, and, as a wholesale financial in-  
14 stitution, to subscribe to the stock of the Fed-  
15 eral Reserve bank organized within the district  
16 where the applying bank is located.

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

21 “(2) INSURANCE TERMINATION.—No bank the  
22 deposits of which are insured under the Federal De-  
23 posit Insurance Act may become a wholesale finan-  
24 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 or national  
11 banks, except that a wholesale financial institution  
12 may terminate membership under this Act only with  
13 the prior written approval of the Board and on  
14 terms and conditions that the Board determines are  
15 appropriate to carry 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;

1           “(B) subject to subparagraph (A), all ref-  
2           erences to the appropriate Federal banking  
3           agency or to the Corporation in that section  
4           shall be deemed to be references to the Comp-  
5           troller of the Currency, in the case of a national  
6           wholesale financial institution, and to the  
7           Board, in the case of all other wholesale finan-  
8           cial institutions; and

9           “(C) in the case of wholesale financial in-  
10          stitutions, the purpose of prompt corrective ac-  
11          tion shall be to protect taxpayers and the finan-  
12          cial system from the risks associated with the  
13          operation and activities of wholesale financial  
14          institutions.

15          “(3) ENFORCEMENT AUTHORITY.—Section  
16          3(u), subsections (j) and (k) of section 7, sub-  
17          sections (b) through (n), (s), (u), and (v) of section  
18          8, and section 19 of the Federal Deposit Insurance  
19          Act shall apply to a wholesale financial institution in  
20          the same manner and to the same extent as such  
21          provisions apply to State member insured banks or  
22          national banks, as the case may be, and any ref-  
23          erence in such sections to an insured depository in-  
24          stitution shall be deemed to include a reference to a  
25          wholesale financial institution.

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

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

14          “(6) BRANCHING.—Notwithstanding any other  
15      provision of law, a wholesale financial institution  
16      may establish and operate a branch at any location  
17      on such terms and conditions as established by, and  
18      with the approval of—

19               “(A) the Board, in the case of a State-  
20      chartered wholesale financial institution; and

21               “(B) the Comptroller of the Currency, in  
22      the case of a national bank wholesale financial  
23      institution.

24          “(7) ACTIVITIES OF OUT-OF-STATE BRANCHES  
25      OF WHOLESALE FINANCIAL INSTITUTIONS.—A



1 State-chartered wholesale financial institution shall  
2 be deemed to be a State bank and an insured State  
3 bank for purposes of paragraphs (1), (2), and (3) of  
4 section 24(j) of the Federal Deposit Insurance Act.

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

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

23 “(10) PARITY FOR WHOLESALE FINANCIAL IN-  
24 STITUTIONS.—A State bank that is a wholesale fi-  
25 nancial institution under this section shall have all

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

6 “(11) COMMUNITY REINVESTMENT ACT OF  
7 1977.—A State wholesale financial institution shall  
8 be subject to the Community Reinvestment Act of  
9 1977.

10 “(c) SPECIFIC REQUIREMENTS APPLICABLE TO  
11 WHOLESALE FINANCIAL INSTITUTIONS.—

12 “(1) LIMITATIONS ON DEPOSITS.—

13 “(A) MINIMUM AMOUNT.—

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

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

24 “(B) NO DEPOSIT INSURANCE.—Except as  
25 otherwise provided in section 8A(f) of the Fed-

1           eral Deposit Insurance Act, no deposits held by  
2           a wholesale financial institution shall be insured  
3           deposits under the Federal Deposit Insurance  
4           Act.

5           “(C) ADVERTISING AND DISCLOSURE.—

6           The Board and the Comptroller of the Currency  
7           shall prescribe jointly regulations pertaining to  
8           advertising and disclosure by wholesale financial  
9           institutions to ensure that each depositor is no-  
10          tified that deposits at the wholesale financial in-  
11          stitution are not federally insured or otherwise  
12          guaranteed by the United States Government.

13          “(2) MINIMUM CAPITAL LEVELS APPLICABLE

14          TO WHOLESALE FINANCIAL INSTITUTIONS.—The  
15          Board shall, by regulation, adopt capital require-  
16          ments for wholesale financial institutions—

17               “(A) to account for the status of wholesale  
18               financial institutions as institutions that accept  
19               deposits that are not insured under the Federal  
20               Deposit Insurance Act; and

21               “(B) to provide for the safe and sound op-  
22               eration of the wholesale financial institution  
23               without undue risk to creditors or other per-  
24               sons, including Federal Reserve banks, engaged  
25               in transactions with the bank.

1           “(3) ADDITIONAL REQUIREMENTS APPLICABLE  
2           TO WHOLESALE FINANCIAL INSTITUTIONS.—In addi-  
3           tion to any requirement otherwise applicable to State  
4           member insured banks or applicable, under this sec-  
5           tion, to wholesale financial institutions, the Board  
6           may impose, by regulation or order, upon wholesale  
7           financial institutions—

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

10                          “(i) the transfer of risk to the deposit  
11                          insurance funds; or

12                          “(ii) an affiliate from gaining access  
13                          to, or the benefits of, credit from a Federal  
14                          Reserve bank, including overdrafts at a  
15                          Federal Reserve bank;

16                          “(B) special clearing balance requirements;  
17                          and

18                          “(C) any additional requirements that the  
19                          Board determines to be appropriate or nec-  
20                          essary to—

21                          “(i) promote the safety and soundness  
22                          of the wholesale financial institution or any  
23                          insured depository institution affiliate of  
24                          the wholesale financial institution;

1                   “(ii) prevent the transfer of risk to  
2                   the deposit insurance funds; or

3                   “(iii) protect creditors and other per-  
4                   sons, including Federal Reserve banks, en-  
5                   gaged in transactions with the wholesale fi-  
6                   nancial institution.

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

14                  “(A) the promotion of the safety and  
15                  soundness of the wholesale financial institution  
16                  or any insured depository institution affiliate of  
17                  the wholesale financial institution;

18                  “(B) the protection of the deposit insur-  
19                  ance funds; and

20                  “(C) the protection of creditors and other  
21                  persons, including Federal Reserve banks, en-  
22                  gaged in transactions with the wholesale finan-  
23                  cial institution.

24                  “(5) LIMITATION ON TRANSACTIONS BETWEEN  
25                  A WHOLESALE FINANCIAL INSTITUTION AND AN IN-

1       SURED BANK.—For purposes of section 23A(d)(1) of  
2       the Federal Reserve Act, a wholesale financial insti-  
3       tution that is affiliated with an insured bank shall  
4       not be a bank.

5           “(6) NO EFFECT ON OTHER PROVISIONS.—This  
6       section shall not be construed as limiting the  
7       Board’s authority over member banks or the author-  
8       ity of the Comptroller of the Currency over national  
9       banks under any other provision of law, or to create  
10      any obligation for any Federal Reserve bank to  
11      make, increase, renew, or extend any advance or dis-  
12      count under this Act to any member bank or other  
13      depository institution.

14      “(d) CAPITAL AND MANAGERIAL REQUIREMENTS.—

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

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

22           “(3) AGREEMENT TO RESTORE INSTITUTION.—  
23      Not later than 45 days after the date of receipt of  
24      a notice under paragraph (2) (or such additional pe-  
25      riod not to exceed 90 days as the Board may per-

1       mit), the company shall execute an agreement ac-  
2       ceptable to the Board to restore the wholesale finan-  
3       cial institution to compliance with all of the require-  
4       ments of paragraph (1).

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

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

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

5           “(e) RESOLUTION OF WHOLESALE FINANCIAL INSTI-  
6           TUTIONS.—

7           “(1) CONSERVATORSHIP OR RECEIVERSHIP.—

8                   “(A) APPOINTMENT.—The Board may ap-  
9                   point a conservator or receiver to take posses-  
10                  sion and control of a wholesale financial institu-  
11                  tion to the same extent and in the same manner  
12                  as the Comptroller of the Currency may appoint  
13                  a conservator or receiver for a national bank.

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

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



1 for a national bank and the national bank for which  
2 the conservator or receiver has been appointed.

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

12 “(f) BOARD BACKUP AUTHORITY.—

13 “(1) NOTICE TO THE COMPTROLLER.—Before  
14 taking any action under section 8 of the Federal De-  
15 posit Insurance Act involving a wholesale financial  
16 institution that is chartered as a national bank, the  
17 Board shall notify the Comptroller and recommend  
18 that the Comptroller take appropriate action. If the  
19 Comptroller fails to take the recommended action or  
20 to provide an acceptable plan for addressing the con-  
21 cerns of the Board before the close of the 30-day pe-  
22 riod beginning on the date of receipt of the formal  
23 recommendation from the Board, the Board may  
24 take such action.

1           “(2) EXIGENT CIRCUMSTANCES.—Notwith-  
 2           standing paragraph (1), the Board may exercise its  
 3           authority without regard to the time period set forth  
 4           in paragraph (1) where the Board finds that exigent  
 5           circumstances exist and the Board notifies the  
 6           Comptroller of the Board’s action and of the exigent  
 7           circumstances.

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

11          (c) VOLUNTARY TERMINATION OF INSURED STATUS  
 12          BY CERTAIN INSTITUTIONS.—

13               (1) SECTION 8 DESIGNATIONS.—Section 8(a) of  
 14          the Federal Deposit Insurance Act (12 U.S.C.  
 15          1818(a)) is amended—

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

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

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

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

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

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

10 “(A) to the Corporation and the Board of  
11 Governors of the Federal Reserve System, in  
12 the case of an insured State bank, or to the  
13 Corporation and the Comptroller of the Cur-  
14 rency, in the case of an insured national bank  
15 authorized to operate as a wholesale financial  
16 institution, not less than 6 months before the  
17 effective date of such termination; and

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

21 “(2) either—

22 “(A) the deposit insurance fund of which  
23 such bank is a member equals or exceeds the  
24 fund’s designated reserve ratio as of the date  
25 the bank provides a written notice under para-  
26 graph (1) and the Corporation determines that

1 the fund will equal or exceed the applicable des-  
2 ignated reserve ratio for the 2 semiannual as-  
3 sessment periods immediately following such  
4 date; or

5 “(B) the Corporation and the Board of  
6 Governors of the Federal Reserve System, in  
7 the case of an insured State bank, or the Cor-  
8 poration and the Comptroller of the Currency,  
9 in the case of an insured national bank author-  
10 ized to operate as a wholesale financial institu-  
11 tion, has approved the termination of the  
12 bank’s insured status and the bank pays an exit  
13 fee in accordance with subsection (e).

14 “(b) EXCEPTION.—Subsection (a) shall not apply  
15 with respect to—

16 “(1) an insured savings association; or

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

20 “(c) ELIGIBILITY FOR INSURANCE TERMINATED.—  
21 Any bank that voluntarily elects to terminate the bank’s  
22 insured status under subsection (a) shall not be eligible  
23 for insurance on any deposits or any assistance authorized  
24 under this Act after the period specified in subsection  
25 (f)(1).

1       “(d) INSTITUTION MUST BECOME WHOLESALE FI-  
2       NANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING  
3       ACTIVITIES.—Any depository institution which voluntarily  
4       terminates such institution’s status as an insured deposi-  
5       tory institution under this section may not, upon termi-  
6       nation of insurance, accept any deposits unless the institu-  
7       tion is a wholesale financial institution subject to section  
8       9B of the Federal Reserve Act.

9       “(e) EXIT FEES.—

10           “(1) IN GENERAL.—Any bank that voluntarily  
11       terminates such bank’s status as an insured deposi-  
12       tory institution under this section shall pay an exit  
13       fee in an amount that the Corporation determines is  
14       sufficient to account for the institution’s pro rata  
15       share of the amount (if any) which would be re-  
16       quired to restore the relevant deposit insurance fund  
17       to the fund’s designated reserve ratio as of the date  
18       the bank provides a written notice under subsection  
19       (a)(1).

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

23       “(f) TEMPORARY INSURANCE OF DEPOSITS INSURED  
24       AS OF TERMINATION.—

1           “(1) TRANSITION PERIOD.—The insured depos-  
2       its of each depositor in a State bank or a national  
3       bank on the effective date of the voluntary termi-  
4       nation of the bank’s insured status, less all subse-  
5       quent withdrawals from any deposits of such deposi-  
6       tor, shall continue to be insured for a period of not  
7       less than 6 months and not more than 2 years, as  
8       determined by the Corporation. During such period,  
9       no additions to any such deposits, and no new de-  
10      posits in the depository institution made after the ef-  
11      fective date of such termination shall be insured by  
12      the Corporation.

13           “(2) TEMPORARY ASSESSMENTS; OBLIGATIONS  
14      AND DUTIES.—During the period specified in para-  
15      graph (1) with respect to any bank, the bank shall  
16      continue to pay assessments under section 7 as if  
17      the bank were an insured depository institution. The  
18      bank shall, in all other respects, be subject to the  
19      authority of the Corporation and the duties and obli-  
20      gations of an insured depository institution under  
21      this Act during such period, and in the event that  
22      the bank is closed due to an inability to meet the de-  
23      mands of the bank’s depositors during such period,  
24      the Corporation shall have the same powers and

1 rights with respect to such bank as in the case of  
2 an insured depository institution.

3 “(g) ADVERTISEMENTS.—

4 “(1) IN GENERAL.—A bank that voluntarily  
5 terminates the bank’s insured status under this sec-  
6 tion shall not advertise or hold itself out as having  
7 insured deposits, except that the bank may advertise  
8 the temporary insurance of deposits under sub-  
9 section (f) if, in connection with any such advertise-  
10 ment, the advertisement also states with equal prom-  
11 inence that additions to deposits and new deposits  
12 made after the effective date of the termination are  
13 not insured.

14 “(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS,  
15 AND SECURITIES.—Any certificate of deposit or  
16 other obligation or security issued by a State bank  
17 or a national bank after the effective date of the vol-  
18 untary termination of the bank’s insured status  
19 under this section shall be accompanied by a con-  
20 spicuous, prominently displayed notice that such cer-  
21 tificate of deposit or other obligation or security is  
22 not insured under this Act.

23 “(h) NOTICE REQUIREMENTS.—

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

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

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

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

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

16          (d) TECHNICAL AND CONFORMING AMENDMENTS TO  
 17          THE BANKRUPTCY CODE.—

18               (1) BANKRUPTCY CODE DEBTORS.—Section  
 19               109(b)(2) of title 11, United States Code, is amend-  
 20               ed by striking “; or” and inserting the following: “,  
 21               except that—

22                   “(A) a wholesale financial institution es-  
 23                   tablished under section 5136B of the Revised  
 24                   Statutes of the United States or section 9B of  
 25                   the Federal Reserve Act may be a debtor if a



petition is filed at the direction of the Comptroller of the Currency (in the case of a wholesale financial institution established under section 5136B of the Revised Statutes of the United States) or the Board of Governors of the Federal Reserve System (in the case of any wholesale financial institution); and

“(B) a corporation organized under section 25A of the Federal Reserve Act may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; or”.

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

“(d) Only a railroad and a person that may be a debtor or under chapter 7 of this title, except that a stockbroker, a wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act, a corporation organized under section 25A of the Federal Reserve Act, or a commodity broker, may be a debtor under chapter 11 of this title.”.

1 (3) DEFINITION OF FINANCIAL INSTITUTION.—

2 Section 101(22) of title 11, United States Code, is  
3 amended to read as follows:

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

15 (4) SUBCHAPTER V OF CHAPTER 7.—

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

18 (i) by redesignating subsections (e)  
19 through (i) as subsections (f) through (j),  
20 respectively; and

21 (ii) by inserting after subsection (d)  
22 the following:

23 “(e) Subchapter V of chapter 7 of this title applies  
24 only in a case under such chapter concerning the liquida-  
25 tion of a wholesale financial institution established under

1 section 5136B of the Revised Statutes of the United  
2 States or section 9B of the Federal Reserve Act, or a cor-  
3 poration organized under section 25A of the Federal Re-  
4 serve Act.”.

5 (B) WHOLESALE BANK LIQUIDATION.—

6 Chapter 7 of title 11, United States Code, is  
7 amended by adding at the end the following:

8 “SUBCHAPTER V—WHOLESALE BANK  
9 LIQUIDATION

10 “§ 781. Definitions for subchapter

11 “In this subchapter—

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

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

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

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

1   **“§ 782. Selection of trustee**

2           “(a) Notwithstanding any other provision of this title,  
3 the conservator or receiver who files the petition shall be  
4 the trustee under this chapter, unless the Comptroller of  
5 the Currency (in the case of a national wholesale financial  
6 institution for which it appointed the conservator or re-  
7 ceiver) or the Board (in the case of any wholesale bank  
8 for which it appointed the conservator or receiver) des-  
9 ignates an alternative trustee. The Comptroller of the Cur-  
10 rency or the Board (as applicable) may designate a suc-  
11 cessor trustee, if required.

12           “(b) Whenever the Comptroller of the Currency or  
13 the Board appoints or designates a trustee, chapter 3 and  
14 sections 704 and 705 of this title shall apply to the Comp-  
15 troller or the Board, as applicable, in the same way and  
16 to the same extent that they apply to a United States  
17 trustee.

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

19           “(a) The trustee under this subchapter has power to  
20 distribute property not of the estate, including distribu-  
21 tions to customers that are mandated by subchapters III  
22 and Iv of this chapter.

23           “(b) The trustee under this subchapter may, after no-  
24 tice and a hearing—

25                   “(1) sell the wholesale bank to a depository in-  
26 stitution or consortium of depository institutions

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

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

5 “(3) 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) transfer assets or liabilities to a depository  
10 institution;

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

17 “(A) the bridge bank shall be treated as a  
18 wholesale bank for the purpose of this sub-  
19 section; and

20 “(B) any references in any such provision  
21 of law to the Federal Deposit Insurance Cor-  
22 poration shall be construed to be references to  
23 the appointing agency and that references to  
24 deposit insurance shall be omitted.

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

4 **“§ 784. Right to be heard**

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

11 (C) CONFORMING AMENDMENT.—The  
 12 table of sections for chapter 7 of title 11,  
 13 United States Code, is amended by adding at  
 14 the end the following:

“SUBCHAPTER V—WHOLESALE BANK LIQUIDATION

“781. Definitions for subchapter.

“782. Selection of trustee.

“783. Additional powers of trustee.

“784. Right to be heard.”.

15 (e) RESOLUTION OF EDGE CORPORATIONS.—The  
 16 sixteenth undesignated paragraph of section 25A of the  
 17 Federal Reserve Act (12 U.S.C. 624) is amended to read  
 18 as follows:

19 “(16) APPOINTMENT OF RECEIVER OR CONSER-  
 20 VATOR.—

21 “(A) IN GENERAL.—The Board may ap-  
 22 point a conservator or receiver for a corporation

1 organized under the provisions of this section to  
2 the same extent and in the same manner as the  
3 Comptroller of the Currency may appoint a con-  
4 servator or receiver for a national bank, and the  
5 conservator or receiver for such corporation  
6 shall exercise the same powers, functions, and  
7 duties, subject to the same limitations, as a  
8 conservator or receiver for a national bank.

9 “(B) EQUIVALENT AUTHORITY.—The  
10 Board shall have the same authority with re-  
11 spect to any conservator or receiver appointed  
12 for a corporation organized under the provisions  
13 of this section under this paragraph and any  
14 such corporation as the Comptroller of the Cur-  
15 rency has with respect to a conservator or re-  
16 ceiver of a national bank and the national bank  
17 for which a conservator or receiver has been ap-  
18 pointed.

19 “(C) TITLE 11 PETITIONS.—The Board  
20 may direct the conservator or receiver of a cor-  
21 poration organized under the provisions of this  
22 section to file a petition pursuant to title 11,  
23 United States Code, in which case, title 11,  
24 United States Code, shall apply to the corpora-

1           tion in lieu of otherwise applicable Federal or  
2           State insolvency law.”.

3           **Subtitle E—Preservation of FTC**  
4           **Authority**

5   **SEC. 141. AMENDMENT TO THE BANK HOLDING COMPANY**  
6           **ACT OF 1956 TO MODIFY NOTIFICATION AND**  
7           **POST-APPROVAL WAITING PERIOD FOR SEC-**  
8           **TION 3 TRANSACTIONS.**

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

15   **SEC. 142. INTERAGENCY DATA SHARING.**

16           To the extent not prohibited by other law, the Comp-  
17   troller of the Currency, the Director of the Office of Thrift  
18   Supervision, the Federal Deposit Insurance Corporation,  
19   and the Board of Governors of the Federal Reserve Sys-  
20   tem shall make available to the Attorney General and the  
21   Federal Trade Commission any data in the possession of  
22   any such banking agency that the antitrust agency deems  
23   necessary for antitrust review of any transaction requiring  
24   notice to any such antitrust agency or the approval of such  
25   agency under section 3, 4, or 6 of the Bank Holding Com-



pany Act of 1956, section 18(c) of the Federal Deposit Insurance Act, the National Bank Consolidation and Merger Act, section 10 of the Home Owners' Loan Act, or the antitrust laws.

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

(a) CLARIFICATION OF FEDERAL TRADE COMMISSION JURISDICTION.—Any person which directly or indirectly controls, is controlled directly or indirectly by, or is directly or indirectly under common control with, any bank or savings association (as such terms are defined in section 3 of the Federal Deposit Insurance Act) and is not itself a bank or savings association shall not be deemed to be a bank or savings association for purposes of the Federal Trade Commission Act or any other law enforced by the Federal Trade Commission.

(b) SAVINGS PROVISION.—No provision of this section shall be construed as restricting the authority of any Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) under any Federal banking law, including section 8 of the Federal Deposit Insurance Act.

(c) HART–SCOTT–RODINO AMENDMENTS.—

(1) BANKS.—Section 7A(c)(7) of the Clayton Act (15 U.S.C. 18a(c)(7)) is amended by inserting

1 before the semicolon at the end the following: “, ex-  
2 cept that a portion of a transaction is not exempt  
3 under this paragraph if such portion of the trans-  
4 action (A) is subject to section 6 of the Bank Hold-  
5 ing Company Act of 1956; and (B) does not require  
6 agency approval under section 3 of the Bank Hold-  
7 ing Company Act of 1956”.

8 (2) BANK HOLDING COMPANIES.—Section  
9 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)) is  
10 amended by inserting before the semicolon at the  
11 end the following: “, except that a portion of a  
12 transaction is not exempt under this paragraph if  
13 such portion of the transaction (A) is subject to sec-  
14 tion 6 of the Bank Holding Company Act of 1956;  
15 and (B) does not require agency approval under sec-  
16 tion 4 of the Bank Holding Company Act of 1956”.

17 **SEC. 144. ANNUAL GAO REPORT.**

18 (a) IN GENERAL.—By the end of the 1-year period  
19 beginning on the date of the enactment of this Act and  
20 annually thereafter, the Comptroller General of the United  
21 States shall submit a report to the Congress on market  
22 concentration in the financial services industry and its im-  
23 pact on consumers.

24 (b) ANALYSIS.—Each report submitted under sub-  
25 section (a) shall contain an analysis of—

1           (1) the positive and negative effects of affili-  
2       ations between various types of financial companies,  
3       and of acquisitions pursuant to this Act and the  
4       amendments made by this Act to other provisions of  
5       law, including any positive or negative effects on  
6       consumers, area markets, and submarkets thereof or  
7       on registered securities brokers and dealers which  
8       have been purchased by depository institutions or  
9       depository institution holding companies;

10          (2) the changes in business practices and the  
11       effects of any such changes on the availability of  
12       venture capital, consumer credit, and other financial  
13       services or products and the availability of capital  
14       and credit for small businesses; and

15          (3) the acquisition patterns among depository  
16       institutions, depository institution holding compa-  
17       nies, securities firms, and insurance companies in-  
18       cluding acquisitions among the largest 20 percent of  
19       firms and acquisitions within regions or other lim-  
20       ited geographical areas.

21       (c) SUNSET.—This section shall not apply after the  
22       end of the 5-year period beginning on the date of the en-  
23       actment of this Act.

1       **Subtitle F—National Treatment**

2       **SEC. 151. FOREIGN BANKS THAT ARE FINANCIAL HOLDING**  
3               **COMPANIES.**

4           Section 8(c) of the International Banking Act of  
5   1978 (12 U.S.C. 3106(c)) is amended by adding at the  
6   end the following new paragraph:

7               “(3)   TERMINATION    OF   GRANDFATHERED  
8       RIGHTS.—

9               “(A) IN GENERAL.—If any foreign bank or  
10           foreign company files a declaration under sec-  
11           tion 6(b)(1)(D) or receives a determination  
12           under section 10(d)(1) of the Bank Holding  
13           Company Act of 1956, any authority conferred  
14           by this subsection on any foreign bank or com-  
15           pany to engage in any activity which the Board  
16           has determined to be permissible for financial  
17           holding companies under section 6 of such Act  
18           shall terminate immediately.

19               “(B) RESTRICTIONS AND REQUIREMENTS  
20           AUTHORIZED.—If a foreign bank or company  
21           that engages, directly or through an affiliate  
22           pursuant to paragraph (1), in an activity which  
23           the Board has determined to be permissible for  
24           financial holding companies under section 6 of  
25           the Bank Holding Company Act of 1956 has

1 not filed a declaration with the Board of its sta-  
 2 tus as a financial holding company under such  
 3 section or received a determination under sec-  
 4 tion 10(d)(1) by the end of the 2-year period  
 5 beginning on the date of the enactment of the  
 6 Financial Services Act of 1999, the Board, giv-  
 7 ing due regard to the principle of national  
 8 treatment and equality of competitive oppor-  
 9 tunity, may impose such restrictions and re-  
 10 quirements on the conduct of such activities by  
 11 such foreign bank or company as are com-  
 12 parable to those imposed on a financial holding  
 13 company organized under the laws of the  
 14 United States, including a requirement to con-  
 15 duct such activities in compliance with any pru-  
 16 dential safeguards established under section  
 17 114 of the Financial Services Act.”.

18 **SEC. 152. FOREIGN BANKS AND FOREIGN FINANCIAL INSTI-**  
 19 **TUTIONS THAT ARE WHOLESALE FINANCIAL**  
 20 **INSTITUTIONS.**

21 Section 8A of the Federal Deposit Insurance Act (as  
 22 added by section 136(c)(2) of this Act) is amended by add-  
 23 ing at the end the following new subsection:

24 “(i) VOLUNTARY TERMINATION OF DEPOSIT INSUR-  
 25 ANCE.—The provisions on voluntary termination of insur-

1   ance in this section shall apply to an insured branch of  
 2   a foreign bank (including a Federal branch) in the same  
 3   manner and to the same extent as they apply to an insured  
 4   State bank or a national bank.”.

5   **SEC. 153. REPRESENTATIVE OFFICES.**

6       (a) DEFINITION OF “REPRESENTATIVE OFFICE”.—  
 7   Section 1(b)(15) of the International Banking Act of 1978  
 8   (12 U.S.C. 3101(15)) is amended by striking “State agen-  
 9   cy, or subsidiary of a foreign bank” and inserting “or  
 10   State agency”.

11       (b) EXAMINATIONS.—Section 10(c) of the Inter-  
 12   national Banking Act of 1978 (12 U.S.C. 3107(c)) is  
 13   amended by adding at the end the following: “The Board  
 14   may also make examinations of any affiliate of a foreign  
 15   bank conducting business in any State if the Board deems  
 16   it necessary to determine and enforce compliance with this  
 17   Act, the Bank Holding Company Act of 1956 (12 U.S.C.  
 18   1841 et seq.), or other applicable Federal banking law.”.

19   **SEC. 154. RECIPROCITY.**

20       (a) NATIONAL TREATMENT REPORTS.—

21           (1) REPORT REQUIRED IN THE EVENT OF CER-  
 22   TAIN ACQUISITIONS.—

23           (A) IN GENERAL.—Whenever a person  
 24           from a foreign country announces its intention  
 25           to acquire or acquires a bank, a securities un-

1           derwriter, broker, or dealer, an investment ad-  
2           viser, or insurance company that ranks within  
3           the top 50 firms in that line of business in the  
4           United States, the Secretary of Commerce, in  
5           the case of an insurance company, or the Sec-  
6           retary of the Treasury, in the case of a bank,  
7           a securities underwriter, broker, or dealer, or  
8           an investment adviser, shall, within the earlier  
9           of 6 months of such announcement or such ac-  
10          quisition and in consultation with other appro-  
11          priate Federal and State agencies, prepare and  
12          submit to the Congress a report on whether a  
13          United States person would be able, de facto or  
14          de jure, to acquire an equivalent sized firm in  
15          the country in which such person from a foreign  
16          country is located.

17                   (B) ANALYSIS AND RECOMMENDATIONS.—

18          If a report submitted under subparagraph (A)  
19          states that the equivalent treatment referred to  
20          in such subparagraph, de facto and de jure, is  
21          not provided in the country which is the subject  
22          of the report, the Secretary of Commerce or the  
23          Secretary of the Treasury, as the case may be  
24          and in consultation with other appropriate Fed-  
25          eral and State agencies, shall include in the re-

1 port analysis and recommendations as to how  
2 that country's laws and regulations would need  
3 to be changed so that reciprocal treatment  
4 would exist.

5 (2) REPORT REQUIRED BEFORE FINANCIAL  
6 SERVICES NEGOTIATIONS COMMENCE.—The Sec-  
7 retary of Commerce, with respect to insurance com-  
8 panies, and the Secretary of the Treasury, with re-  
9 spect to banks, securities underwriters, brokers,  
10 dealers, and investment advisers, shall, not less than  
11 6 months before the commencement of the financial  
12 services negotiations of the World Trade Organiza-  
13 tion and in consultation with other appropriate Fed-  
14 eral and State agencies, prepare and submit to the  
15 Congress a report containing—

16 (A) an assessment of the 30 largest finan-  
17 cial services markets with regard to whether re-  
18 ciprocal access is available in such markets to  
19 United States financial services providers; and

20 (B) with respect to any such financial serv-  
21 ices markets in which reciprocal access is not  
22 available to United States financial services  
23 providers, an analysis and recommendations as  
24 to what legislative, regulatory, or enforcement



1 changes would be required to ensure full reci-  
2 procity for such providers.

3 (3) PERSON OF A FOREIGN COUNTRY DE-  
4 FINED.—For purposes of this subsection, the term  
5 “person of a foreign country” means a person, or a  
6 person which directly or indirectly owns or controls  
7 that person, that is a resident of that country, is or-  
8 ganized under the laws of that country, or has its  
9 principal place of business in that country.

10 (b) PROVISIONS APPLICABLE TO SUBMISSIONS.—

11 (1) NOTICE.—Before preparing any report re-  
12 quired under subsection (a), the Secretary of Com-  
13 merce or the Secretary of the Treasury, as the case  
14 may be, shall publish notice that a report is in prep-  
15 aration and seek comment from United States per-  
16 sons.

17 (2) PRIVILEGED SUBMISSIONS.—Upon the re-  
18 quest of the submitting person, any comments or re-  
19 lated communications received by the Secretary of  
20 Commerce or the Secretary of the Treasury, as the  
21 case may be, with regard to the report shall, for the  
22 purposes of section 552 of title 5, of the United  
23 States Code, be treated as commercial information  
24 obtained from a person that is privileged or con-  
25 fidential, regardless of the medium in which the in-

1       formation is obtained. This confidential information  
 2       shall be the property of the Secretary and shall be  
 3       privileged from disclosure to any other person. How-  
 4       ever, this privilege shall not be construed as pre-  
 5       venting access to that confidential information by  
 6       the Congress.

7               (3) PROHIBITION OF UNAUTHORIZED DISCLO-  
 8       SURES.—No person in possession of confidential in-  
 9       formation, provided under this section may disclose  
 10      that information, in whole or in part, except for dis-  
 11      closure made in published statistical material that  
 12      does not disclose, either directly or when used in  
 13      conjunction with publicly available information, the  
 14      confidential information of any person.

## 15       **Subtitle G—Federal Home Loan** 16       **Bank System Modernization**

### 17   **SEC. 161. SHORT TITLE.**

18       This subtitle may be cited as the “Federal Home  
 19   Loan Bank System Modernization Act of 1999”.

### 20   **SEC. 162. DEFINITIONS.**

21       Section 2 of the Federal Home Loan Bank Act (12  
 22   U.S.C. 1422) is amended—

23               (1) in paragraph (1), by striking “term ‘Board’  
 24      means” and inserting “terms ‘Finance Board’ and  
 25      ‘Board’ mean”;

1           (2) by striking paragraph (3) and inserting the  
2 following:

3           “(3) STATE.—The term ‘State’, in addition to  
4 the States of the United States, includes the District  
5 of Columbia, Guam, Puerto Rico, the United States  
6 Virgin Islands, American Samoa, and the Common-  
7 wealth of the Northern Mariana Islands.”; and

8           (3) by adding at the end the following new  
9 paragraph:

10           “(13) COMMUNITY FINANCIAL INSTITUTION.—

11           “(A) IN GENERAL.—The term ‘community  
12 financial institution’ means a member—

13           “(i) the deposits of which are insured  
14 under the Federal Deposit Insurance Act;  
15 and

16           “(ii) that has, as of the date of the  
17 transaction at issue, less than  
18 \$500,000,000 in average total assets,  
19 based on an average of total assets over  
20 the 3 years preceding that date.

21           “(B) ADJUSTMENTS.—The \$500,000,000  
22 limit referred to in subparagraph (A)(ii) shall  
23 be adjusted annually by the Finance Board,  
24 based on the annual percentage increase, if any,  
25 in the Consumer Price Index for all urban con-

1           sumers, as published by the Department of  
2           Labor.”.

3 **SEC. 163. SAVINGS ASSOCIATION MEMBERSHIP.**

4           Section 5(f) of the Home Owners’ Loan Act (12  
5 U.S.C. 1464(f)) is amended to read as follows:

6           “(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—  
7 On and after January 1, 1999, a Federal savings associa-  
8 tion may become a member of the Federal Home Loan  
9 Bank System, and shall qualify for such membership in  
10 the manner provided by the Federal Home Loan Bank  
11 Act.”.

12 **SEC. 164. ADVANCES TO MEMBERS; COLLATERAL.**

13           (a) IN GENERAL.—Section 10(a) of the Federal  
14 Home Loan Bank Act (12 U.S.C. 1430(a)) is amended—

15                 (1) by redesignating paragraphs (1) through  
16                 (4) as subparagraphs (A) through (D), respectively,  
17                 and indenting appropriately;

18                 (2) by striking “(a) Each” and inserting the  
19                 following:

20                 “(a) IN GENERAL.—

21                         “(1) ALL ADVANCES.—Each”;

22                 (3) by striking the second sentence and insert-  
23                 ing the following:

24                         “(2) PURPOSES OF ADVANCES.—A long-term  
25                 advance may only be made for the purposes of—

1           “(A) providing funds to any member for  
2           residential housing finance; and

3           “(B) providing funds to any community fi-  
4           nancial institution for small business, agricul-  
5           tural, rural development, or low-income commu-  
6           nity development lending.”;

7           (4) by striking “A Bank” and inserting the fol-  
8           lowing:

9           “(3) COLLATERAL.—A Bank”;

10          (5) in paragraph (3) (as so designated by para-  
11          graph (4) of this subsection)—

12                (A) in subparagraph (C) (as so redesign-  
13                ated by paragraph (1) of this subsection) by  
14                striking “Deposits” and inserting “Cash or de-  
15                posits”;

16                (B) in subparagraph (D) (as so redesign-  
17                ated by paragraph (1) of this subsection), by  
18                striking the second sentence; and

19                (C) by inserting after subparagraph (D)  
20                (as so redesignated by paragraph (1) of this  
21                subsection) the following new subparagraph:

22                “(E) Secured loans for small business, ag-  
23                riculture, rural development, or low-income  
24                community development, or securities rep-  
25                resenting a whole interest in such secured

1 loans, in the case of any community financial  
2 institution.”;

3 (6) in paragraph (5)—

4 (A) in the second sentence, by striking  
5 “and the Board”;

6 (B) in the third sentence, by striking  
7 “Board” and inserting “Federal home loan  
8 bank”; and

9 (C) by striking “(5) Paragraphs (1)  
10 through (4)” and inserting the following:

11 “(4) ADDITIONAL BANK AUTHORITY.—Subpara-  
12 graphs (A) through (E) of paragraph (3)”;

13 (7) by adding at the end the following:

14 “(5) REVIEW OF CERTAIN COLLATERAL STAND-  
15 ARDS.—The Board may review the collateral stand-  
16 ards applicable to each Federal home loan bank for  
17 the classes of collateral described in subparagraphs  
18 (D) and (E) of paragraph (3), and may, if necessary  
19 for safety and soundness purposes, require an in-  
20 crease in the collateral standards for any or all of  
21 those classes of collateral.

22 “(6) DEFINITIONS.—For purposes of this sub-  
23 section, the terms ‘small business’, ‘agriculture’,  
24 ‘rural development’, and ‘low-income community de-

1       velopment’ shall have the meanings given those  
2       terms by rule or regulation of the Finance Board.”.

3       (b) CLERICAL AMENDMENT.—The section heading  
4 for section 10 of the Federal Home Loan Bank Act (12  
5 U.S.C. 1430) is amended to read as follows:

6       **“SEC. 10. ADVANCES TO MEMBERS.”.**

7       (c) CONFORMING AMENDMENTS RELATING TO MEM-  
8 BERS WHICH ARE NOT QUALIFIED THRIFT LENDERS—  
9 The first of the 2 subsections designated as subsection (e)  
10 of section 10 of the Federal Home Loan Bank Act (12  
11 U.S.C. 1430(e)(1)) is amended—

12               (1) in the last sentence of paragraph (1), by in-  
13 serting “or, in the case of any community financial  
14 institution, for the purposes described in subsection  
15 (a)(2)” before the period; and

16               (2) in paragraph (5)(C), by inserting “except  
17 that, in determining the actual thrift investment per-  
18 centage of any community financial institution for  
19 purposes of this subsection, the total investment of  
20 such member in loans for small business, agri-  
21 culture, rural development, or low-income commu-  
22 nity development, or securities representing a whole  
23 interest in such loans, shall be treated as a qualified  
24 thrift investment (as defined in such section 10(m))”  
25 before the period.

1 **SEC. 165. ELIGIBILITY CRITERIA.**

2 Section 4(a) of the Federal Home Loan Bank Act  
3 (12 U.S.C. 1424(a)) is amended—

4 (1) in paragraph (2)(A), by inserting, “(other  
5 than a community financial institution)” after “in-  
6 stitution”; and

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

9 “(3) LIMITED EXEMPTION FOR COMMUNITY FI-  
10 NANCIAL INSTITUTIONS.—A community financial in-  
11 stitution that otherwise meets the requirements of  
12 paragraph (2) may become a member without regard  
13 to the percentage of its total assets that is rep-  
14 resented by residential mortgage loans, as described  
15 in subparagraph (A) of paragraph (2).”.

16 **SEC. 166. MANAGEMENT OF BANKS.**

17 (a) BOARD OF DIRECTORS.—Section 7(d) of the Fed-  
18 eral Home Loan Bank Act (12 U.S.C. 1427(d)) is amend-  
19 ed—

20 (1) by striking “(d) The term” and inserting  
21 the following:

22 “(d) TERMS OF OFFICE.—The term”; and

23 (2) by striking “shall be two years”.

24 (b) COMPENSATION.—Section 7(i) of the Federal  
25 Home Loan Bank Act (12 U.S.C. 1427(i)) is amended by  
26 striking “, subject to the approval of the board”.



1       (c) REPEAL OF SECTIONS 22A AND 27.—The Fed-  
2 eral Home Loan Bank Act (12 U.S.C. 1421 et seq.) is  
3 amended by striking sections 22A (12 U.S.C. 1442a) and  
4 27 (12 U.S.C. 1447).

5       (d) SECTION 12.—Section 12 of the Federal Home  
6 Loan Bank Act (12 U.S.C. 1432) is amended—

7           (1) in subsection (a)—

8               (A) by striking “, but, except” and all that  
9 follows through “ten years”;

10              (B) by striking “subject to the approval of  
11 the Board” the first place that term appears;

12              (C) by striking “and, by its Board of direc-  
13 tors,” and all that follows through “agent of  
14 such bank,” and inserting “and, by the board  
15 of directors of the bank, to prescribe, amend,  
16 and repeal by-laws governing the manner in  
17 which its affairs may be administered, con-  
18 sistent with applicable laws and regulations, as  
19 administered by the Finance Board. No officer,  
20 employee, attorney, or agent of a Federal home  
21 loan bank”; and

22              (D) by striking “Board of directors” where  
23 such term appears in the penultimate sentence  
24 and inserting “board of directors”; and

1           (2) in subsection (b), by striking “loans banks”  
2           and inserting “loan banks”.

3           (e) POWERS AND DUTIES OF FEDERAL HOUSING FI-  
4       NANCE BOARD.—

5           (1) ISSUANCE OF NOTICES OF VIOLATIONS.—

6       Section 2B(a) of the Federal Home Loan Bank Act  
7       (12 U.S.C. 1422b(a)) is amended by adding at the  
8       end the following new paragraphs:

9           “(5) To issue and serve a notice of charges  
10       upon a Federal home loan bank or upon any execu-  
11       tive officer or director of a Federal home loan bank  
12       if, in the determination of the Finance Board, the  
13       bank, executive officer, or director is engaging or  
14       has engaged in, or the Finance Board has reason-  
15       able cause to believe that the bank, executive officer,  
16       or director is about to engage in, any conduct that  
17       violates any provision of this Act or any law, order,  
18       rule, or regulation or any condition imposed in writ-  
19       ing by the Finance Board in connection with the  
20       granting of any application or other request by the  
21       bank, or any written agreement entered into by the  
22       bank with the agency, in accordance with the proce-  
23       dures provided in section 1371(c) of the Federal  
24       Housing Enterprises Financial Safety and Sound-  
25       ness Act of 1992. Such authority includes the same

1 authority to take affirmative action to correct condi-  
2 tions resulting from violations or practices or to  
3 limit activities of a bank or any executive officer or  
4 director of a bank as appropriate Federal banking  
5 agencies have to take with respect to insured deposi-  
6 tory institutions under paragraphs (6) and (7) of  
7 section 8(b) of the Federal Deposit Insurance Act,  
8 and to have all other powers, rights, and duties to  
9 enforce this Act with respect to the Federal home  
10 loan banks and their executive officers and directors  
11 as the Office of Federal Housing Enterprise Over-  
12 sight has to enforce the Federal Housing Enter-  
13 prises Financial Safety and Soundness Act of 1992,  
14 the Federal National Mortgage Association Charter  
15 Act, or the Federal Home Loan Mortgage Corpora-  
16 tion Act with respect to the Federal housing enter-  
17 prises under the Federal Housing Enterprises Fi-  
18 nancial Safety and Soundness Act of 1992.

19 “(6) To address any insufficiencies in capital  
20 levels resulting from the application of section 5(f)  
21 of the Home Owners’ Loan Act.

22 “(7) To sue and be sued, by and through its  
23 own attorneys.”.

24 (2) TECHNICAL AMENDMENT.—Section 111 of  
25 Public Law 93–495 (12 U.S.C. 250) is amended by

1 striking “Federal Home Loan Bank Board,” and in-  
2 serting “Director of the Office of Thrift Supervision,  
3 “the Federal Housing Finance Board,”.

4 (f) ELIGIBILITY TO SECURE ADVANCES.—

5 (1) SECTION 9.—Section 9 of the Federal  
6 Home Loan Bank Act (12 U.S.C. 1429) is amend-  
7 ed—

8 (A) in the second sentence, by striking  
9 “with the approval of the Board”; and

10 (B) in the third sentence, by striking “,  
11 subject to the approval of the Board,”.

12 (2) SECTION 10.—Section 10 of the Federal  
13 Home Loan Bank Act (12 U.S.C. 1430) is amend-  
14 ed—

15 (A) in subsection (c)—

16 (i) in the first sentence, by striking  
17 “Board” and inserting “Federal home loan  
18 bank”; and

19 (ii) by striking the second sentence;

20 (B) in subsection (d)—

21 (i) in the first sentence, by striking  
22 “and the approval of the Board”; and

23 (ii) by striking “Subject to the ap-  
24 proval of the Board, any” and inserting  
25 “Any”; and

1 (C) in subsection (j)(1)—

2 (i) by striking “to subsidize the inter-  
3 est rate on advances” and inserting “to  
4 provide subsidies, including subsidized in-  
5 terest rates on advances”;

6 (ii) by striking “Pursuant” and in-  
7 serting the following:

8 “(A) ESTABLISHMENT.—Pursuant”; and

9 (iii) by adding at the end the fol-  
10 lowing new subparagraph:

11 “(B) NONDELEGATION OF APPROVAL AU-  
12 THORITY.—Subject to such regulations as the  
13 Finance Board may prescribe, the board of di-  
14 rectors of each Federal home loan bank may  
15 approve or disapprove requests from members  
16 for Affordable Housing Program subsidies, and  
17 may not delegate such authority.”.

18 (g) SECTION 16.—Section 16(a) of the Federal Home  
19 Loan Bank Act (12 U.S.C. 1436(a)) is amended—

20 (1) in the third sentence—

21 (A) by striking “net earnings” and insert-  
22 ing “previously retained earnings or current net  
23 earnings”; and

1 (B) by striking “, and then only with the  
2 approval of the Federal Housing Finance  
3 Board”; and  
4 (2) by striking the fourth sentence.

5 (h) SECTION 18.—Section 18(b) of the Federal Home  
6 Loan Bank Act (12 U.S.C. 1438(b)) is amended by strik-  
7 ing paragraph (4).

8 **SEC. 167. RESOLUTION FUNDING CORPORATION.**

9 (a) IN GENERAL.—Section 21B(f)(2)(C) of the Fed-  
10 eral Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(C)) is  
11 amended to read as follows:

12 “(C) PAYMENTS BY FEDERAL HOME LOAN  
13 BANKS.—

14 “(i) IN GENERAL.—To the extent that  
15 the amounts available pursuant to sub-  
16 paragraphs (A) and (B) are insufficient to  
17 cover the amount of interest payments,  
18 each Federal home loan bank shall pay to  
19 the Funding Corporation in each calendar  
20 year, 20.75 percent of the net earnings of  
21 that bank (after deducting expenses relat-  
22 ing to section 10(j) and operating ex-  
23 penses).

24 “(ii) ANNUAL DETERMINATION.—The  
25 Board annually shall determine the extent

1 to which the value of the aggregate  
2 amounts paid by the Federal home loan  
3 banks exceeds or falls short of the value of  
4 an annuity of \$300,000,000 per year that  
5 commences on the issuance date and ends  
6 on the final scheduled maturity date of the  
7 obligations, and shall select appropriate  
8 present value factors for making such de-  
9 terminations.

10 “(iii) PAYMENT TERM ALTER-  
11 ATIONS.—The Board shall extend or short-  
12 en the term of the payment obligations of  
13 a Federal home loan bank under this sub-  
14 paragraph as necessary to ensure that the  
15 value of all payments made by the banks  
16 is equivalent to the value of an annuity re-  
17 ferred to in clause (ii).

18 “(iv) TERM BEYOND MATURITY.—If  
19 the Board extends the term of payments  
20 beyond the final scheduled maturity date  
21 for the obligations, each Federal home loan  
22 bank shall continue to pay 20.75 percent  
23 of its net earnings (after deducting ex-  
24 penses relating to section 10(j) and oper-  
25 ating expenses) to the Treasury of the

1 United States until the value of all such  
2 payments by the Federal home loan banks  
3 is equivalent to the value of an annuity re-  
4 ferred to in clause (ii). In the final year in  
5 which the Federal home loan banks are re-  
6 quired to make any payment to the Treas-  
7 ury under this subparagraph, if the dollar  
8 amount represented by 20.75 percent of  
9 the net earnings of the Federal home loan  
10 banks exceeds the remaining obligation of  
11 the banks to the Treasury, the Finance  
12 Board shall reduce the percentage pro rata  
13 to a level sufficient to pay the remaining  
14 obligation.”.

15 (b) EFFECTIVE DATE.—The amendment made by  
16 subsection (a) shall become effective on January 1, 1999.  
17 Payments made by a Federal home loan bank before that  
18 effective date shall be counted toward the total obligation  
19 of that bank under section 21B(f)(2)(C) of the Federal  
20 Home Loan Bank Act, as amended by this section.

21 **SEC. 168. CAPITAL STRUCTURE OF FEDERAL HOME LOAN**  
22 **BANKS.**

23 Section 6 of the Federal Home Loan Bank Act (12  
24 U.S.C. 1426) is amended to read as follows:



1 **“SEC. 6. CAPITAL STRUCTURE OF FEDERAL HOME LOAN**  
2 **BANKS.**

3 “(a) REGULATIONS.—

4 “(1) CAPITAL STANDARDS.—Not later than 1  
5 year after the date of the enactment of the Financial  
6 Services Act of 1999, the Finance Board shall issue  
7 regulations prescribing uniform capital standards  
8 applicable to each Federal home loan bank, which  
9 shall require each such bank to meet—

10 “(A) the leverage requirement specified in  
11 paragraph (2); and

12 “(B) the risk-based capital requirements,  
13 in accordance with paragraph (3).

14 “(2) LEVERAGE REQUIREMENT.—

15 “(A) IN GENERAL.—The leverage require-  
16 ment shall require each Federal home loan  
17 bank to maintain a minimum amount of total  
18 capital based on the aggregate on-balance sheet  
19 assets of the bank and shall be 5 percent.

20 “(B) TREATMENT OF STOCK AND RE-  
21 TAINED EARNINGS.—In determining compliance  
22 with the minimum leverage ratio established  
23 under subparagraph (A), the paid-in value of  
24 the outstanding Class B stock shall be multi-  
25 plied by 1.5, the paid-in value of the out-  
26 standing Class C stock and the amount of re-

1           tained earnings shall be multiplied by 2.0, and  
2           such higher amounts shall be deemed to be cap-  
3           ital for purposes of meeting the 5 percent min-  
4           imum leverage ratio.

5           “(3) RISK-BASED CAPITAL STANDARDS.—

6                   “(A) IN GENERAL.—Each Federal home  
7           loan bank shall maintain permanent capital in  
8           an amount that is sufficient, as determined in  
9           accordance with the regulations of the Finance  
10          Board, to meet—

11                          “(i) the credit risk to which the Fed-  
12                          eral home loan bank is subject; and

13                          “(ii) the market risk, including inter-  
14                          est rate risk, to which the Federal home  
15                          loan bank is subject, based on a stress test  
16                          established by the Finance Board that rig-  
17                          orously tests for changes in market vari-  
18                          ables, including changes in interest rates,  
19                          rate volatility, and changes in the shape of  
20                          the yield curve.

21                          “(B) CONSIDERATION OF OTHER RISK-  
22           BASED STANDARDS.—In establishing the risk-  
23           based standard under subparagraph (A)(ii), the  
24           Finance Board shall take due consideration of  
25           any risk-based capital test established pursuant

1 to section 1361 of the Federal Housing Enter-  
2 prises Financial Safety and Soundness Act of  
3 1992 (12 U.S.C. 4611) for the enterprises (as  
4 defined in that Act), with such modifications as  
5 the Finance Board determines to be appro-  
6 priate to reflect differences in operations be-  
7 tween the Federal home loan banks and those  
8 enterprises.

9 “(4) OTHER REGULATORY REQUIREMENTS.—

10 The regulations issued by the Finance Board under  
11 paragraph (1) shall—

12 “(A) permit each Federal home loan bank  
13 to issue, with such rights, terms, and pref-  
14 erences, not inconsistent with this Act and the  
15 regulations issued hereunder, as the board of  
16 directors of that bank may approve, any one or  
17 more of—

18 “(i) Class A stock, which shall be re-  
19 deemable in cash and at par 6 months fol-  
20 lowing submission by a member of a writ-  
21 ten notice of its intent to redeem such  
22 shares;

23 “(ii) Class B stock, which shall be re-  
24 deemable in cash and at par 5 years fol-  
25 lowing submission by a member of a writ-

1           ten notice of its intent to redeem such  
2           shares; and

3           “(iii) Class C stock, which shall be  
4           nonredeemable;

5           “(B) provide that the stock of a Federal  
6           home loan bank may be issued to and held by  
7           only members of the bank, and that a bank  
8           may not issue any stock other than as provided  
9           in this section;

10          “(C) prescribe the manner in which stock  
11          of a Federal home loan bank may be sold,  
12          transferred, redeemed, or repurchased; and

13          “(D) provide the manner of disposition of  
14          outstanding stock held by, and the liquidation  
15          of any claims of the Federal home loan bank  
16          against, an institution that ceases to be a mem-  
17          ber of the bank, through merger or otherwise,  
18          or that provides notice of intention to withdraw  
19          from membership in the bank.

20          “(5) DEFINITIONS OF CAPITAL.—For purposes  
21          of determining compliance with the capital standards  
22          established under this subsection—

23                 “(A) permanent capital of a Federal home  
24                 loan bank shall include (as determined in ac-

1 cordance with generally accepted accounting  
2 principles)—

3 “(i) the amounts paid for the Class C  
4 stock and any other nonredeemable stock  
5 approved by the Finance Board;

6 “(ii) the amounts paid for the Class B  
7 stock, in an amount not to exceed 1 per-  
8 cent of the total assets of the bank; and

9 “(iii) the retained earnings of the  
10 bank; and

11 “(B) total capital of a Federal home loan  
12 bank shall include—

13 “(i) permanent capital;

14 “(ii) the amounts paid for the Class A  
15 stock, Class B stock (excluding any  
16 amount treated as permanent capital  
17 under subparagraph (5)(A)(ii)), or any  
18 other class of redeemable stock approved  
19 by the Finance Board;

20 “(iii) consistent with generally accept-  
21 ed accounting principles, and subject to the  
22 regulation of the Finance Board, a general  
23 allowance for losses, which may not include  
24 any reserves or allowances made or held  
25 against specific assets; and

1                   “(iv) any other amounts from sources  
2                   available to absorb losses incurred by the  
3                   bank that the Finance Board determines  
4                   by regulation to be appropriate to include  
5                   in determining total capital.

6                   “(6) TRANSITION PERIOD.—Notwithstanding  
7                   any other provisions of this Act, the requirements  
8                   relating to purchase and retention of capital stock of  
9                   a Federal home loan bank by any member thereof in  
10                  effect on the day before the date of the enactment  
11                  of the Federal Home Loan Bank System Moderniza-  
12                  tion Act of 1999, shall continue in effect with re-  
13                  spect to each Federal home loan bank until the reg-  
14                  ulations required by this subsection have taken ef-  
15                  fect and the capital structure plan required by sub-  
16                  section (b) has been approved by the Finance Board  
17                  and implemented by such bank.

18                  “(b) CAPITAL STRUCTURE PLAN.—

19                  “(1) APPROVAL OF PLANS.—Not later than 270  
20                  days after the date of publication by the Finance  
21                  Board of final regulations in accordance with sub-  
22                  section (a), the board of directors of each Federal  
23                  home loan bank shall submit for Finance Board ap-  
24                  proval a plan establishing and implementing a cap-  
25                  ital structure for such bank that—

1           “(A) the board of directors determines is  
2           best suited for the condition and operation of  
3           the bank and the interests of the members of  
4           the bank;

5           “(B) meets the requirements of subsection  
6           (c); and

7           “(C) meets the minimum capital standards  
8           and requirements established under subsection  
9           (a) and other regulations prescribed by the Fi-  
10          nance Board.

11          “(2) APPROVAL OF MODIFICATIONS.—The  
12          board of directors of a Federal home loan bank shall  
13          submit to the Finance Board for approval any modi-  
14          fications that the bank proposes to make to an ap-  
15          proved capital structure plan.

16          “(c) CONTENTS OF PLAN.—The capital structure  
17          plan of each Federal home loan bank shall contain provi-  
18          sions addressing each of the following:

19               “(1) MINIMUM INVESTMENT.—

20               “(A) IN GENERAL.—Each capital structure  
21               plan of a Federal home loan bank shall require  
22               each member of the bank to maintain a min-  
23               imum investment in the stock of the bank, the  
24               amount of which shall be determined in a man-  
25               ner to be prescribed by the board of directors

1 of each bank and to be included as part of the  
2 plan.

3 “(B) INVESTMENT ALTERNATIVES.—

4 “(i) IN GENERAL.—In establishing the  
5 minimum investment required for each  
6 member under subparagraph (A), a Fed-  
7 eral home loan bank may, in its discretion,  
8 include any one or more of the require-  
9 ments referred to in clause (ii), or any  
10 other provisions approved by the Finance  
11 Board.

12 “(ii) AUTHORIZED REQUIREMENTS.—

13 A requirement is referred to in this clause  
14 if it is a requirement for—

15 “(I) a stock purchase based on a  
16 percentage of the total assets of a  
17 member; or

18 “(II) a stock purchase based on a  
19 percentage of the outstanding ad-  
20 vances from the bank to the member.

21 “(C) MINIMUM AMOUNT.—Each capital  
22 structure plan of a Federal home loan bank  
23 shall require that the minimum stock invest-  
24 ment established for members shall be set at a  
25 level that is sufficient for the bank to meet the



1 minimum capital requirements established by  
2 the Finance Board under subsection (a).

3 “(D) ADJUSTMENTS TO MINIMUM RE-  
4 QUIRED INVESTMENT.—The capital structure  
5 plan of each Federal home loan bank shall im-  
6 pose a continuing obligation on the board of di-  
7 rectors of the bank to review and adjust the  
8 minimum investment required of each member  
9 of that bank, as necessary to ensure that the  
10 bank remains in compliance with applicable  
11 minimum capital levels established by the Fi-  
12 nance Board, and shall require each member to  
13 comply promptly with any adjustments to the  
14 required minimum investment.

15 “(2) TRANSITION RULE.—

16 “(A) IN GENERAL.—The capital structure  
17 plan of each Federal home loan bank shall  
18 specify the date on which it shall take effect,  
19 and may provide for a transition period of not  
20 longer than 3 years to allow the bank to come  
21 into compliance with the capital requirements  
22 prescribed under subsection (a), and to allow  
23 any institution that was a member of the bank  
24 on the date of the enactment of the Financial  
25 Services Act of 1999, to come into compliance

1 with the minimum investment required pursu-  
2 ant to the plan.

3 “(B) INTERIM PURCHASE REQUIRE-  
4 MENTS.—The capital structure plan of a Fed-  
5 eral home loan bank may allow any member re-  
6 ferred to in subparagraph (A) that would be re-  
7 quired by the terms of the capital structure  
8 plan to increase its investment in the stock of  
9 the bank to do so in periodic installments dur-  
10 ing the transition period.

11 “(3) DISPOSITION OF SHARES.—The capital  
12 structure plan of a Federal home loan bank shall  
13 provide for the manner of disposition of any stock  
14 held by a member of that bank that terminates its  
15 membership or that provides notice of its intention  
16 to withdraw from membership in that bank.

17 “(4) CLASSES OF STOCK.—

18 “(A) IN GENERAL.—The capital structure  
19 plan of a Federal home loan bank shall afford  
20 each member of that bank the option of main-  
21 taining its required investment in the bank  
22 through the purchase of any combination of  
23 classes of stock authorized by the board of di-  
24 rectors of the bank and approved by the Fi-  
25 nance Board in accordance with its regulations.

1           “(B) RIGHTS REQUIREMENT.—A Federal  
2           home loan bank shall include in its capital  
3           structure plan provisions establishing terms,  
4           rights, and preferences, including minimum in-  
5           vestment, dividends, voting, and liquidation  
6           preferences of each class of stock issued by the  
7           bank, consistent with Finance Board regula-  
8           tions and market requirements.

9           “(C) REDUCED MINIMUM INVESTMENT.—  
10          The capital structure plan of a Federal home  
11          loan bank may provide for a reduced minimum  
12          stock investment for any member of that bank  
13          that elects to purchase Class B, Class C, or any  
14          other class of nonredeemable stock, in a manner  
15          that is consistent with meeting the minimum  
16          capital requirements of the bank, as established  
17          by the Finance Board.

18          “(D) LIQUIDATION OF CLAIMS.—The cap-  
19          ital structure plan of a Federal home loan bank  
20          shall provide for the liquidation in an orderly  
21          manner, as determined by the bank, of any  
22          claim of that bank against a member, including  
23          claims for any applicable prepayment fees or  
24          penalties resulting from prepayment of ad-  
25          vances prior to stated maturity.

1           “(5) LIMITED TRANSFERABILITY OF STOCK.—

2           The capital structure plan of a Federal home loan  
3           bank shall—

4                   “(A) provide that—

5                           “(i) any stock issued by that bank  
6                           shall be available only to, held only by, and  
7                           tradable only among members of that bank  
8                           and between that bank and its members;  
9                           and

10                           “(ii) a bank has no obligation to re-  
11                           purchase its outstanding Class C stock but  
12                           may do so, provided it is consistent with  
13                           Finance Board regulations and is at a  
14                           price that is mutually agreeable to the  
15                           bank and the member; and

16                           “(B) establish standards, criteria, and re-  
17                           quirements for the issuance, purchase, transfer,  
18                           retirement, and redemption of stock issued by  
19                           that bank.

20           “(6) BANK REVIEW OF PLAN.—Before filing a  
21           capital structure plan with the Finance Board, each  
22           Federal home loan bank shall conduct a review of  
23           the plan by—

24                           “(A) an independent certified public ac-  
25                           countant, to ensure, to the extent possible, that

1 implementation of the plan would not result in  
2 any write-down of the redeemable bank stock  
3 investment of its members; and

4 “(B) at least one major credit rating agen-  
5 cy, to determine, to the extent possible, whether  
6 implementation of the plan would have any ma-  
7 terial effect on the credit ratings of the bank.

8 “(d) TERMINATION OF MEMBERSHIP.—

9 “(1) VOLUNTARY WITHDRAWAL.—Any member  
10 may withdraw from a Federal home loan bank by  
11 providing written notice to the bank of its intent to  
12 do so. The applicable stock redemption notice peri-  
13 ods shall commence upon receipt of the notice by the  
14 bank. Upon the expiration of the applicable notice  
15 period for each class of redeemable stock, the mem-  
16 ber may surrender such stock to the bank, and shall  
17 be entitled to receive in cash the par value of the  
18 stock. During the applicable notice periods, the  
19 member shall be entitled to dividends and other  
20 membership rights commensurate with continuing  
21 stock ownership.

22 “(2) INVOLUNTARY WITHDRAWAL.—

23 “(A) IN GENERAL.—The board of directors  
24 of a Federal home loan bank may terminate the

1 membership of any institution if, subject to Fi-  
2 nance Board regulations, it determines that—

3 “(i) the member has failed to comply  
4 with a provision of this Act or any regula-  
5 tion prescribed under this Act; or

6 “(ii) the member has been determined  
7 to be insolvent, or otherwise subject to the  
8 appointment of a conservator, receiver, or  
9 other legal custodian, by a State or Fed-  
10 eral authority with regulatory and super-  
11 visory responsibility for the member.

12 “(B) STOCK DISPOSITION.—An institution,  
13 the membership of which is terminated in ac-  
14 cordance with subparagraph (A)—

15 “(i) shall surrender redeemable stock  
16 to the Federal home loan bank, and shall  
17 receive in cash the par value of the stock,  
18 upon the expiration of the applicable notice  
19 period under subsection (a)(4)(A);

20 “(ii) shall receive any dividends de-  
21 clared on its redeemable stock, during the  
22 applicable notice period under subsection  
23 (a)(4)(A); and

1 “(iii) shall not be entitled to any other  
2 rights or privileges accorded to members  
3 after the date of the termination.

4 “(C) COMMENCEMENT OF NOTICE PE-  
5 RIOD.—With respect to an institution, the  
6 membership of which is terminated in accord-  
7 ance with subparagraph (A), the applicable no-  
8 tice period under subsection (a)(4) for each  
9 class of redeemable stock shall commence on  
10 the earlier of—

11 “(i) the date of such termination; or

12 “(ii) the date on which the member  
13 has provided notice of its intent to redeem  
14 such stock.

15 “(3) LIQUIDATION OF INDEBTEDNESS.—Upon  
16 the termination of the membership of an institution  
17 for any reason, the outstanding indebtedness of the  
18 member to the bank shall be liquidated in an orderly  
19 manner, as determined by the bank and, upon the  
20 extinguishment of all such indebtedness, the bank  
21 shall return to the member all collateral pledged to  
22 secure the indebtedness.

23 “(e) REDEMPTION OF EXCESS STOCK.—

24 “(1) IN GENERAL.—A Federal home loan bank,  
25 in its sole discretion, may redeem or repurchase, as

1       appropriate, any shares of Class A or Class B stock  
2       issued by the bank and held by a member that are  
3       in excess of the minimum stock investment required  
4       of that member.

5           “(2) EXCESS STOCK.—Shares of stock held by  
6       a member shall not be deemed to be ‘excess stock’  
7       for purposes of this subsection by virtue of a mem-  
8       ber’s submission of a notice of intent to withdraw  
9       from membership or termination of its membership  
10      in any other manner.

11          “(3) PRIORITY.—A Federal home loan bank  
12      may not redeem any excess Class B stock prior to  
13      the end of the 5-year notice period, unless the mem-  
14      ber has no Class A stock outstanding that could be  
15      redeemed as excess.

16          “(f) IMPAIRMENT OF CAPITAL.—If the Finance  
17      Board or the board of directors of a Federal home loan  
18      bank determines that the bank has incurred or is likely  
19      to incur losses that result in or are expected to result in  
20      charges against the capital of the bank, the bank shall  
21      not redeem or repurchase any stock of the bank without  
22      the prior approval of the Finance Board while such  
23      charges are continuing or are expected to continue. In no  
24      case may a bank redeem or repurchase any applicable cap-



1 ital stock if, following the redemption, the bank would fail  
2 to satisfy any minimum capital requirement.

3 “(g) REJOINING AFTER DIVESTITURE OF ALL  
4 SHARES.—

5 “(1) IN GENERAL.—Except as provided in para-  
6 graph (2), and notwithstanding any other provision  
7 of this Act, an institution that divests all shares of  
8 stock in a Federal home loan bank may not, after  
9 such divestiture, acquire shares of any Federal home  
10 loan bank before the end of the 5-year period begin-  
11 ning on the date of the completion of such divesti-  
12 ture, unless the divestiture is a consequence of a  
13 transfer of membership on an uninterrupted basis  
14 between banks.

15 “(2) EXCEPTION FOR WITHDRAWALS FROM  
16 MEMBERSHIP BEFORE 1998.—Any institution that  
17 withdrew from membership in any Federal home  
18 loan bank before December 31, 1997, may acquire  
19 shares of a Federal home loan bank at any time  
20 after that date, subject to the approval of the Fi-  
21 nance Board and the requirements of this Act.

22 “(h) TREATMENT OF RETAINED EARNINGS.—

23 “(1) IN GENERAL.—The holders of the Class C  
24 stock of a Federal home loan bank, and any other  
25 classes of nonredeemable stock approved by the Fi-

1 nance Board (to the extent provided in the terms  
2 thereof), shall own the retained earnings, surplus,  
3 undivided profits, and equity reserves, if any, of the  
4 bank.

5 “(2) NO NONREDEEMABLE CLASSES OF  
6 STOCK.—If a Federal home loan bank has no out-  
7 standing Class C or other such nonredeemable stock,  
8 then the holders of any other classes of stock of the  
9 bank then outstanding shall have ownership in, and  
10 a private property right in, the retained earnings,  
11 surplus, undivided profits, and equity reserves, if  
12 any, of the bank.

13 “(3) EXCEPTION.—Except as specifically pro-  
14 vided in this section or through the declaration of a  
15 dividend or a capital distribution by a Federal home  
16 loan bank, or in the event of liquidation of the bank,  
17 a member shall have no right to withdraw or other-  
18 wise receive distribution of any portion of the re-  
19 tained earnings of the bank.

20 “(4) LIMITATION.—A Federal home loan bank  
21 may not make any distribution of its retained earn-  
22 ings unless, following such distribution, the bank  
23 would continue to meet all applicable capital require-  
24 ments.”.

1       **Subtitle H—ATM Fee Reform**

2   **SEC. 171. SHORT TITLE.**

3       This subtitle may be cited as the “ATM Fee Reform  
4 Act of 1999”.

5   **SEC. 172. ELECTRONIC FUND TRANSFER FEE DISCLOSURES**

6               **AT ANY HOST ATM.**

7       Section 904(d) of the Electronic Fund Transfer Act  
8 (15 U.S.C. 1693b(d)) is amended by adding at the end  
9 the following new paragraph:

10               “(3) FEE DISCLOSURES AT AUTOMATED TELL-  
11 ER MACHINES.—

12               “(A) IN GENERAL.—The regulations pre-  
13 scribed under paragraph (1) shall require any  
14 automated teller machine operator who imposes  
15 a fee on any consumer for providing host trans-  
16 fer services to such consumer to provide notice  
17 in accordance with subparagraph (B) to the  
18 consumer (at the time the service is provided)  
19 of—

20               “(i) the fact that a fee is imposed by  
21 such operator for providing the service;  
22 and

23               “(ii) the amount of any such fee.

24               “(B) NOTICE REQUIREMENTS.—

1           “(i) ON THE MACHINE.—The notice  
2           required under clause (i) of subparagraph  
3           (A) with respect to any fee described in  
4           such subparagraph shall be posted in a  
5           prominent and conspicuous location on or  
6           at the automated teller machine at which  
7           the electronic fund transfer is initiated by  
8           the consumer; and

9           “(ii) ON THE SCREEN.—The notice  
10          required under clauses (i) and (ii) of sub-  
11          paragraph (A) with respect to any fee de-  
12          scribed in such subparagraph shall appear  
13          on the screen of the automated teller ma-  
14          chine, or on a paper notice issued from  
15          such machine, after the transaction is initi-  
16          ated and before the consumer is irrev-  
17          ocably committed to completing the trans-  
18          action.

19          “(C) PROHIBITION ON FEES NOT PROP-  
20          ERLY DISCLOSED AND EXPLICITLY ASSUMED BY  
21          CONSUMER.—No fee may be imposed by any  
22          automated teller machine operator in connec-  
23          tion with any electronic fund transfer initiated  
24          by a consumer for which a notice is required  
25          under subparagraph (A), unless—

1 “(i) the consumer receives such notice  
2 in accordance with subparagraph (B); and

3 “(ii) the consumer elects to continue  
4 in the manner necessary to effect the  
5 transaction after receiving such notice.

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

8 “(i) ELECTRONIC FUND TRANSFER.—  
9 The term ‘electronic fund transfer’ in-  
10 cludes a transaction which involves a bal-  
11 ance inquiry initiated by a consumer in the  
12 same manner as an electronic fund trans-  
13 fer, whether or not the consumer initiates  
14 a transfer of funds in the course of the  
15 transaction.

16 “(ii) AUTOMATED TELLER MACHINE  
17 OPERATOR.—The term ‘automated teller  
18 machine operator’ means any person  
19 who—

20 “(I) operates an automated teller  
21 machine at which consumers initiate  
22 electronic fund transfers; and

23 “(II) is not the financial institu-  
24 tion which holds the account of such

1 consumer from which the transfer is  
2 made.

3 “(iii) **HOST TRANSFER SERVICES.**—

4 The term ‘host transfer services’ means  
5 any electronic fund transfer made by an  
6 automated teller machine operator in con-  
7 nection with a transaction initiated by a  
8 consumer at an automated teller machine  
9 operated by such operator.”.

10 **SEC. 173. DISCLOSURE OF POSSIBLE FEES TO CONSUMERS**

11 **WHEN ATM CARD IS ISSUED.**

12 Section 905(a) of the Electronic Fund Transfer Act  
13 (15 U.S.C. 1693c(a)) is amended—

14 (1) by striking “and” at the end of paragraph  
15 (8);

16 (2) by striking the period at the end of para-  
17 graph (9) and inserting “; and”; and

18 (3) by inserting after paragraph (9) the fol-  
19 lowing new paragraph:

20 “(10) a notice to the consumer that a fee may  
21 be imposed by—

22 “(A) an automated teller machine operator  
23 (as defined in section 904(d)(3)(D)(ii)) if the  
24 consumer initiates a transfer from an auto-  
25 mated teller machine which is not operated by

1 the person issuing the card or other means of  
2 access; and

3 “(B) any national, regional, or local net-  
4 work utilized to effect the transaction.”.

5 **SEC. 174. FEASIBILITY STUDY.**

6 (a) IN GENERAL.—The Comptroller General of the  
7 United States shall conduct a study of the feasibility of  
8 requiring, in connection with any electronic fund transfer  
9 initiated by a consumer through the use of an automated  
10 teller machine—

11 (1) a notice to be provided to the consumer be-  
12 fore the consumer is irrevocably committed to com-  
13 pleting the transaction, which clearly states the  
14 amount of any fee which will be imposed upon the  
15 consummation of the transaction by—

16 (A) any automated teller machine operator  
17 (as defined in section 904(d)(3)(D)(ii) of the  
18 Electronic Fund Transfer Act) involved in the  
19 transaction;

20 (B) the financial institution holding the ac-  
21 count of the consumer;

22 (C) any national, regional, or local network  
23 utilized to effect the transaction; and

24 (D) any other party involved in the trans-  
25 fer; and

1           (2) the consumer to elect to consummate the  
2           transaction after receiving the notice described in  
3           paragraph (1).

4           (b) FACTORS TO BE CONSIDERED.—In conducting  
5           the study required under subsection (a) with regard to the  
6           notice requirement described in such subsection, the  
7           Comptroller General shall consider the following factors:

8                   (1) The availability of appropriate technology.

9                   (2) Implementation and operating costs.

10                  (3) The competitive impact any such notice re-  
11                  quirement would have on various sizes and types of  
12                  institutions, if implemented.

13                  (4) The period of time which would be reason-  
14                  able for implementing any such notice requirement.

15                  (5) The extent to which consumers would ben-  
16                  efit from any such notice requirement.

17                  (6) Any other factor the Comptroller General  
18                  determines to be appropriate in analyzing the feasi-  
19                  bility of imposing any such notice requirement.

20           (c) REPORT TO THE CONGRESS.—Before the end of  
21           the 6-month period beginning on the date of the enact-  
22           ment of this Act, the Comptroller General shall submit  
23           a report to the Congress containing—



1           (1) the findings and conclusions of the Comp-  
2           troller General in connection with the study required  
3           under subsection (a); and

4           (2) the recommendation of the Comptroller  
5           General with regard to the question of whether a no-  
6           tice requirement described in subsection (a) should  
7           be implemented and, if so, how such requirement  
8           should be implemented.

9   **SEC. 175. NO LIABILITY IF POSTED NOTICES ARE DAM-**  
10           **AGED.**

11       Section 910 of the Electronic Fund Transfer Act (15  
12   U.S.C 1693h) is amended by adding at the end the fol-  
13   lowing new subsection:

14       “(d) EXCEPTION FOR DAMAGED NOTICES.—If the  
15   notice required to be posted pursuant to section  
16   904(d)(3)(B)(i) by an automated teller machine operator  
17   has been posted by such operator in compliance with such  
18   section and the notice is subsequently removed, damaged,  
19   or altered by any person other than the operator of the  
20   automated teller machine, the operator shall have no li-  
21   ability under this section for failure to comply with section  
22   904(d)(3)(B)(i).”.

1       **Subtitle I—Direct Activities of**  
2                                   **Banks**

3   **SEC. 181. AUTHORITY OF NATIONAL BANKS TO UNDER-**  
4                                   **WRITE CERTAIN MUNICIPAL BONDS.**

5       The paragraph designated the Seventh of section  
6 5136 of the Revised Statutes of the United States (12  
7 U.S.C. 24(7)) is amended by adding at the end the fol-  
8 lowing new sentence: “In addition to the provisions in this  
9 paragraph for dealing in, underwriting or purchasing secu-  
10 rities, the limitations and restrictions contained in this  
11 paragraph as to dealing in, underwriting, and purchasing  
12 investment securities for the national bank’s own account  
13 shall not apply to obligations (including limited obligation  
14 bonds, revenue bonds, and obligations that satisfy the re-  
15 quirements of section 142(b)(1) of the Internal Revenue  
16 Code of 1986) issued by or on behalf of any State or polit-  
17 ical subdivision of a State, including any municipal cor-  
18 porate instrumentality of one or more States, or any pub-  
19 lic agency or authority of any State or political subdivision  
20 of a State, if the national bank is well capitalized (as de-  
21 fined in section 38 of the Federal Deposit Insurance  
22 Act).”.

**Subtitle J—Deposit Insurance  
Funds**

**SEC. 186. STUDY OF SAFETY AND SOUNDNESS OF FUNDS.**

(a) STUDY REQUIRED.—The Board of Directors of the Federal Deposit Insurance Corporation shall conduct a study of the following issues with regard to the Bank Insurance Fund and the Savings Association Insurance Fund:

(1) SAFETY AND SOUNDNESS.—The safety and soundness of the funds and the adequacy of the reserve requirements applicable to the funds in light of—

(A) the size of the insured depository institutions which are resulting from mergers and consolidations since the effective date of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994; and

(B) the affiliation of insured depository institutions with other financial institutions pursuant to this Act and the amendments made by this Act.

(2) CONCENTRATION LEVELS.—The concentration levels of the funds, taking into account the number of members of each fund and the geographic distribution of such members, and the extent to

1       which either fund is exposed to higher risks due to  
2       a regional concentration of members or an insuffi-  
3       cient membership base relative to the size of member  
4       institutions.

5           (3) MERGER ISSUES.—Issues relating to the  
6       planned merger of the funds, including the cost of  
7       merging the funds and the manner in which such  
8       costs will be distributed among the members of the  
9       respective funds.

10       (b) REPORT REQUIRED.—

11           (1) IN GENERAL.—Before the end of the 9-  
12       month period beginning on the date of the enact-  
13       ment of this Act, the Board of Directors of the Fed-  
14       eral Deposit Insurance Corporation shall submit a  
15       report to the Congress on the study conducted pur-  
16       suant to subsection (a).

17           (2) CONTENTS OF REPORT.—The report shall  
18       include—

19                (A) detailed findings of the Board of Di-  
20       rectors with regard to the issues described in  
21       subsection (a);

22                (B) a description of the plans developed by  
23       the Board of Directors for merging the Bank  
24       Insurance Fund and the Savings Association  
25       Insurance Fund, including an estimate of the

1 amount of the cost of such merger which would  
2 be borne by Savings Association Insurance  
3 Fund members; and

4 (C) such recommendations for legislative  
5 and administrative action as the Board of Di-  
6 rectors determines to be necessary or appro-  
7 priate to preserve the safety and soundness of  
8 the deposit insurance funds, reduce the risks to  
9 such funds, provide for an efficient merger of  
10 such funds, and for other purposes.

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

13 (1) INSURED DEPOSITORY INSTITUTION.—The  
14 term “insured depository institution” has the same  
15 meaning as in section 3(c) of the Federal Deposit  
16 Insurance Act.

17 (2) BIF AND SAIF MEMBERS.—The terms  
18 “Bank Insurance Fund member” and “Savings As-  
19 sociation Insurance Fund member” have the same  
20 meanings as in section 7(l) of the Federal Deposit  
21 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 K—Miscellaneous**  
 20 **Provisions**

21 **SEC. 191. TERMINATION OF “KNOW YOUR CUSTOMER” REG-**  
 22 **ULATIONS.**

23 (a) IN GENERAL.—None of the proposed regulations  
 24 described in subsection (b) may be published in final form  
 25 and, to the extent any such regulation has become effec-

1 tive before the date of the enactment of this Act, such  
2 regulation shall cease to be effective as of such date.

3 (b) PROPOSED REGULATIONS DESCRIBED.—The  
4 proposed regulations referred to in subsection (a) are as  
5 follows:

6 (1) The regulation proposed by the Comptroller  
7 of the Currency to amend part 21 of title 12 of the  
8 Code of Federal Regulations, as published in the  
9 Federal Register on December 7, 1998.

10 (2) The regulation proposed by the Director of  
11 the Office of Thrift Supervision to amend part 563  
12 of title 12 of the Code of Federal Regulations, as  
13 published in the Federal Register on December 7,  
14 1998.

15 (3) The regulation proposed by the Board of  
16 Governors of the Federal Reserve System to amend  
17 parts 208, 211, and 225 of title 12 of the Code of  
18 Federal Regulations, as published in the Federal  
19 Register on December 7, 1998.

20 (4) The regulation proposed by the Federal De-  
21 posit Insurance Corporation to amend part 326 of  
22 title 12 of the Code of Federal Regulations, as pub-  
23 lished in the Federal Register on December 7, 1998.

1 **SEC. 192. STUDY AND REPORT ON FEDERAL ELECTRONIC**  
2 **FUND TRANSFERS.**

3 (a) STUDY.—The Secretary of the Treasury shall  
4 conduct a feasibility study to determine—

5 (1) whether all electronic payments issued by  
6 Federal agencies could be routed through the Re-  
7 gional Finance Centers of the Department of the  
8 Treasury for verification and reconciliation;

9 (2) whether all electronic payments made by the  
10 Federal Government could be subjected to the same  
11 level of reconciliation as United States Treasury  
12 checks, including matching each payment issued  
13 with each corresponding deposit at financial institu-  
14 tions;

15 (3) whether the appropriate computer security  
16 controls are in place in order to ensure the integrity  
17 of electronic payments;

18 (4) the estimated costs of implementing, if so  
19 recommended, the processes and controls described  
20 in paragraphs (1), (2), and (3); and

21 (5) a possible timetable for implementing those  
22 processes if so recommended.

23 (b) REPORT TO CONGRESS.—Not later than October  
24 1, 2000, the Secretary of the Treasury shall submit a re-  
25 port to Congress containing the results of the study re-  
26 quired by subsection (a).



1 (c) DEFINITION.—For purposes of this section, the  
2 term “electronic payment” means any transfer of funds,  
3 other than a transaction originated by check, draft, or  
4 similar paper instrument, which is initiated through an  
5 electronic terminal, telephonic instrument, or computer or  
6 magnetic tapes so as to order, instruct, or authorize a  
7 debit or credit to a financial account.

8 **SEC. 193. GENERAL ACCOUNTING OFFICE STUDY OF CON-**  
9 **FLICTS OF INTEREST**

10 (a) STUDY REQUIRED.—The Comptroller General of  
11 the United States shall conduct a study analyzing the con-  
12 flict of interest faced by the Board of Governors of the  
13 Federal Reserve System between its role as a primary reg-  
14 ulator of the banking industry and its role as a vendor  
15 of services to the banking and financial services industry.

16 (b) SPECIFIC CONFLICT REQUIRED TO BE AD-  
17 DRESSED.—In the course of the study required under sub-  
18 section (a), the Comptroller General shall address the con-  
19 flict of interest faced by the Board of Governors of the  
20 Federal Reserve System between the role of the Board as  
21 a regulator of the payment system, generally, and its par-  
22 ticipation in the payment system as a competitor with pri-  
23 vate entities who are providing payment services.

24 (c) REPORT TO CONGRESS.—Before the end of the  
25 1-year period beginning on the date of the enactment of

1 this Act, the Comptroller General shall submit a report  
2 to the Congress containing the findings and conclusions  
3 of the Comptroller General in connection with the study  
4 required under this section, together with such rec-  
5 ommendations for such legislative or administrative ac-  
6 tions as the Comptroller General may determine to be ap-  
7 propriate, including recommendations for resolving any  
8 such conflict of interest.

9 **SEC. 194. STUDY OF COST OF ALL FEDERAL BANKING REG-**  
10 **ULATIONS.**

11 (a) IN GENERAL.—In accordance with the finding in  
12 the Board of Governors of the Federal Reserve System  
13 Staff Study Numbered 171 (April, 1998) that “Further  
14 research covering more and different types of regulations  
15 and regulatory requirements is clearly needed to make in-  
16 formed decisions about regulations”, the Board of Gov-  
17 ernors of the Federal Reserve System, in consultation with  
18 the other Federal banking agencies (as defined in section  
19 3 of the Federal Deposit Insurance Act) shall conduct a  
20 comprehensive study of the total annual costs and benefits  
21 of all Federal financial regulations and regulatory require-  
22 ments applicable to banks.

23 (b) REPORT REQUIRED.—Before the end of the 2-  
24 year period beginning on the date of the enactment of this  
25 Act, the Board of Governors of the Federal Reserve Sys-

1 tem shall submit a comprehensive report to the Congress  
2 containing the findings and conclusions of the Board in  
3 connection with the study required under subsection (a)  
4 and such recommendations for legislative and administra-  
5 tive action as the Board may determine to be appropriate.

6 **SEC. 195. STUDY AND REPORT ON ADAPTING EXISTING**  
7 **LEGISLATIVE REQUIREMENTS TO ONLINE**  
8 **BANKING AND LENDING.**

9 (a) STUDY REQUIRED.—The Federal banking agen-  
10 cies shall conduct a study of banking regulations regard-  
11 ing the delivery of financial services, including those regu-  
12 lations that may assume that there will be person-to-per-  
13 son contact during the course of a financial services trans-  
14 action, and report their recommendations on adapting  
15 those existing requirements to online banking and lending.

16 (b) REPORT REQUIRED.—Within 1 year of the date  
17 of the enactment of this Act, the Federal banking agencies  
18 shall submit a report to the Congress on the findings and  
19 conclusions of the agencies with respect to the study re-  
20 quired under subsection (a), together with such rec-  
21 ommendations for legislative or regulatory action as the  
22 agencies may determine to be appropriate.

23 (c) DEFINITION.—For purposes of this section, the  
24 term “Federal banking agencies” means each Federal

1 banking agency (as defined in section 3(z) of the Federal  
2 Deposit Insurance Act).

3 **SEC. 196. REGULATION OF UNINSURED STATE MEMBER**  
4 **BANKS.**

5 Section 9 of the Federal Reserve Act (12 U.S.C. 321  
6 et seq.) is amended by adding at the end the following  
7 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. 197. CLARIFICATION OF SOURCE OF STRENGTH DOC-**  
21 **TRINE.**

22 Section 18 of the Federal Deposit Insurance Act (21  
23 U.S.C. 1828) is amended by adding at the end the fol-  
24 lowing new subsection:

25 “(t) LIMITATION ON CLAIMS.—

1           “(1) IN GENERAL.—Notwithstanding any other  
2           provision of law other than paragraph (2), no person  
3           shall have any claim for monetary damages or re-  
4           turn of assets or other property against any Federal  
5           banking agency (including in its capacity as conser-  
6           vator or receiver) relating to the transfer of money,  
7           assets, or other property to increase the capital of  
8           an insured depository institution by any depository  
9           institution holding company or controlling share-  
10          holder for such depository institution, or any affil-  
11          iate or subsidiary of such depository institution, if at  
12          the time of the transfer—

13                 “(A) the insured depository institution is  
14                 subject to any direction issued in writing by a  
15                 Federal banking agency to increase its capital;

16                 “(B) the depository institution is under-  
17                 capitalized, significantly undercapitalized, or  
18                 critically undercapitalized (as defined in section  
19                 38 of this Act); and

20                 “(C) for that portion of the transfer that  
21                 is made by an entity covered by section 5(g) of  
22                 the Bank Holding Company Act of 1956 or sec-  
23                 tion 45 of this Act, the Federal banking agency  
24                 has followed the procedure set forth in such  
25                 section.

1           “(2) EXCEPTION.—No provision of this sub-  
2       section shall be construed as limiting—

3           “(A) the right of an insured depository in-  
4       stitution, a depository institution holding com-  
5       pany, or any other agency or person to seek di-  
6       rect review of an order or directive issued by a  
7       Federal banking agency under this Act, the  
8       Bank Holding Company Act of 1956, the Na-  
9       tional Bank Receivership Act, the Bank Con-  
10      servation Act, or the Home Owners’ Loan Act;

11          “(B) the rights of any party to a contract  
12      pursuant to section 11(e) of this Act; or

13          “(C) the rights of any party to a contract  
14      with a depository institution holding company  
15      or a subsidiary of a depository institution hold-  
16      ing company (other than an insured depository  
17      institution).”.

18   **SEC. 198. INTEREST RATES AND OTHER CHARGES AT**  
19                   **INTERSTATE BRANCHES.**

20       Section 44 of the Federal Deposit Insurance Act (12  
21   U.S.C. 1831u) is amended—

22           (1) by redesignating subsection (f) as sub-  
23      section (g); and

24           (2) by inserting after subsection (e) the fol-  
25      lowing:

1       “(f) APPLICABLE RATE AND OTHER CHARGE LIM-  
2 TATIONS.—

3           “(1) IN GENERAL.—Except as provided for in  
4 paragraph (3), upon the establishment of a branch  
5 of any insured depository institution in a host State  
6 under this section, the maximum interest rate or  
7 amount of interest, discount points, finance charges,  
8 or other similar charges that may be charged, taken,  
9 received, or reserved from time to time in any loan  
10 or discount made or upon any note, bill of exchange,  
11 financing transaction, or other evidence of debt by  
12 any insured depository institution in such State shall  
13 be equal to not more than the greater of—

14           “(A) the maximum interest rate or amount  
15 of interest, discount points, finance charges, or  
16 other similar charges that may be charged,  
17 taken, received, or reserved in a similar trans-  
18 action under the constitution, statutory, or  
19 other laws of the home State of the insured de-  
20 pository institution establishing any such  
21 branch, without reference to this section, as  
22 such maximum interest rate or amount of inter-  
23 est may change from time to time; or

24           “(B) the maximum rate or amount of in-  
25 terest, discount points, finance charges, or

1 other similar charges that may be charged,  
2 taken, received, or reserved in a similar trans-  
3 action by an insured depository institution  
4 under the constitution, statutory, or other laws  
5 of the host State, without reference to this sec-  
6 tion.

7 “(2) PREEMPTION.—The limitations established  
8 under paragraph (1) shall apply only in any State  
9 that has a constitutional provision that sets a max-  
10 imum lawful rate of interest on any contract at not  
11 more than 5 percent per annum above the Federal  
12 Reserve Discount Rate or 90-day commercial paper  
13 in effect in the Federal Reserve Bank in the Federal  
14 Reserve District in which the State is located.

15 “(3) RULE OF CONSTRUCTION.—No provision  
16 of this subsection shall be construed as superseding  
17 section 501 of the Depository Institutions Deregula-  
18 tion and Monetary Control Act of 1980.

19 **SEC. 198A. INTERSTATE BRANCHES AND AGENCIES OF FOR-**  
20 **EIGN BANKS.**

21 Section 5(a)(7) of the International Banking Act of  
22 1978 (12 U.S.C. 3103(a)(7)), is amended to read as fol-  
23 lows:

24 “(7) ADDITIONAL AUTHORITY FOR INTERSTATE  
25 BRANCHES AND AGENCIES OF FOREIGN BANKS, UP-



1 GRADES OF CERTAIN FOREIGN BANK AGENCIES AND  
2 BRANCHES.—Notwithstanding paragraphs (1) and  
3 (2), a foreign bank may—

4 “(A) with the approval of the Board and  
5 the Comptroller of the Currency, establish and  
6 operate a Federal branch or Federal agency or,  
7 with the approval of the Board and the appro-  
8 priate State bank supervisor, a State branch or  
9 State agency in any State outside the foreign  
10 bank’s home State if—

11 “(i) the establishment and operation  
12 of such branch or agency is permitted by  
13 the State in which the branch or agency is  
14 to be established; and

15 “(ii) in the case of a Federal or State  
16 branch, the branch receives only such de-  
17 posits as would be permitted for a corpora-  
18 tion organized under section 25A of the  
19 Federal Reserve Act (12 U.S.C. 611 et  
20 seq.); or

21 “(B) with the approval of the Board and  
22 the relevant licensing authority (the Comp-  
23 troller in the case of a Federal branch or the  
24 appropriate State supervisor in the case of a  
25 State branch), upgrade an agency, or a branch

1 of the type referred to in subparagraph (A)(ii),  
2 located in a State outside the foreign bank's  
3 home State, into a Federal or State branch if—

4 “(i) the establishment and operation  
5 of such branch is permitted by such State;  
6 and

7 “(ii) such agency or branch—

8 “(I) was in operation in such  
9 State on the day before September 29,  
10 1994; or

11 “(II) has been in operation in  
12 such State for a period of time that  
13 meets the State's minimum age re-  
14 quirement permitted under section  
15 44(a)(5) of the Federal Deposit Insur-  
16 ance Act.”.

17 **SEC. 198B. FAIR TREATMENT OF WOMEN BY FINANCIAL AD-**  
18 **VISERS.**

19 (a) FINDINGS.—The Congress finds as follows:

20 (1) Women's stature in society has risen consid-  
21 erably, as they are now able to vote, own property,  
22 and pursue independent careers, and are granted  
23 equal protection under the law.

24 (2) Women are at least as fiscally responsible  
25 as men, and more than half of all women have sole

1 responsibility for balancing the family checkbook and  
2 paying the bills.

3 (3) Estate planners, trust officers, investment  
4 advisers, and other financial planners and advisers  
5 still encourage the unjust and outdated practice of  
6 leaving assets in trust for the category of wives and  
7 daughters, along with senile parents, minors, and  
8 mentally incompetent children.

9 (4) Estate planners, trust officers, investment  
10 advisers, and other financial planners and advisers  
11 still use sales themes and tactics detrimental to  
12 women by stereotyping women as uncomfortable  
13 handling money and needing protection from their  
14 own possible errors of judgment and “fortune hunt-  
15 ers”.

16 (b) SENSE OF THE CONGRESS.—It is the sense of  
17 the Congress that estate planners, trust officers, invest-  
18 ment advisers, and other financial planners and advisers  
19 should—

20 (1) eliminate examples in their training mate-  
21 rials which portray women as incapable and foolish;  
22 and

23 (2) develop fairer and more balanced presen-  
24 tations that eliminate outmoded and stereotypical

1 examples which lead clients to take actions that are  
2 financially detrimental to their wives and daughters.

### 3 **Subtitle L—Effective Date of Title**

#### 4 **SEC. 199. EFFECTIVE DATE.**

5 Except with regard to any subtitle or other provision  
6 of this title for which a specific effective date is provided,  
7 this title and the amendments made by this title shall take  
8 effect at the end of the 180-day period beginning on the  
9 date of the enactment of this Act.

## 10 **TITLE II—FUNCTIONAL** 11 **REGULATION**

### 12 **Subtitle A—Brokers and Dealers**

#### 13 **SEC. 201. DEFINITION OF BROKER.**

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

16 “(4) BROKER.—

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

21 “(B) EXCEPTION FOR CERTAIN BANK AC-  
22 TIVITIES.—A bank shall not be considered to be  
23 a broker because the bank engages in any one  
24 or more of the following activities under the  
25 conditions described:

1           “(i) THIRD PARTY BROKERAGE AR-  
2           RANGEMENTS.—The bank enters into a  
3           contractual or other written arrangement  
4           with a broker or dealer registered under  
5           this title under which the broker or dealer  
6           offers brokerage services on or off the  
7           premises of the bank if—

8                   “(I) such broker or dealer is  
9                   clearly identified as the person per-  
10                  forming the brokerage services;

11                  “(II) the broker or dealer per-  
12                  forms brokerage services in an area  
13                  that is clearly marked and, to the ex-  
14                  tent practicable, physically separate  
15                  from the routine deposit-taking activi-  
16                  ties of the bank;

17                  “(III) any materials used by the  
18                  bank to advertise or promote generally  
19                  the availability of brokerage services  
20                  under the arrangement clearly indi-  
21                  cate that the brokerage services are  
22                  being provided by the broker or dealer  
23                  and not by the bank;

24                  “(IV) any materials used by the  
25                  bank to advertise or promote generally

1 the availability of brokerage services  
2 under the arrangement are in compli-  
3 ance with the Federal securities laws  
4 before distribution;

5 “(V) bank employees (other than  
6 associated persons of a broker or deal-  
7 er who are qualified pursuant to the  
8 rules of a self-regulatory organization)  
9 perform only clerical or ministerial  
10 functions in connection with broker-  
11 age transactions including scheduling  
12 appointments with the associated per-  
13 sons of a broker or dealer, except that  
14 bank employees may forward cus-  
15 tomer funds or securities and may de-  
16 scribe in general terms the types of  
17 investment vehicles available from the  
18 bank and the broker or dealer under  
19 the arrangement;

20 “(VI) bank employees do not re-  
21 ceive incentive compensation for any  
22 brokerage transaction unless such em-  
23 ployees are associated persons of a  
24 broker or dealer and are qualified  
25 pursuant to the rules of a self-regu-

latory organization, except that the bank employees may receive compensation for the referral of any customer if the compensation is a nominal one-time cash fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction;

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

“(VIII) the bank does not carry a securities account of the customer except as permitted under clause (ii) or (viii) of this subparagraph; and

“(IX) the bank, broker, or dealer informs each customer that the brokerage services are provided by the broker or dealer and not by the bank and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and

1 are not insured by the Federal De-  
2 posit Insurance Corporation.

3 “(ii) TRUST ACTIVITIES.—The bank  
4 effects transactions in a trustee or fidu-  
5 ciary capacity in its trust department, or  
6 another department where the trust or fi-  
7 duciary activity is regularly examined by  
8 bank examiners under the same standards  
9 and in the same way as such activities are  
10 examined in the trust department, and—

11 “(I) is chiefly compensated for  
12 such transactions, consistent with fi-  
13 duciary principles and standards, on  
14 the basis of an administration or an-  
15 nual fee (payable on a monthly, quar-  
16 terly, or other basis), a percentage of  
17 assets under management, or a flat or  
18 capped per order processing fee equal  
19 to not more than the cost incurred by  
20 the bank in connection with executing  
21 securities transactions for trustee and  
22 fiduciary customers, or any combina-  
23 tion of such fees; and

24 “(II) does not solicit brokerage  
25 business, other than by advertising



1                   that it effects transactions in securi-  
2                   ties in conjunction with advertising its  
3                   other trust activities.

4                   “(iii)     PERMISSIBLE     SECURITIES  
5                   TRANSACTIONS.—The bank effects trans-  
6                   actions in—

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

9                   “(II) exempted securities;

10                  “(III) qualified Canadian govern-  
11                  ment obligations as defined in section  
12                  5136 of the Revised Statutes, in con-  
13                  formity with section 15C of this title  
14                  and the rules and regulations there-  
15                  under, or obligations of the North  
16                  American Development Bank; or

17                  “(IV) any standardized, credit  
18                  enhanced debt security issued by a  
19                  foreign government pursuant to the  
20                  March 1989 plan of then Secretary of  
21                  the Treasury Brady, used by such for-  
22                  eign government to retire outstanding  
23                  commercial bank loans.

24                  “(iv)     CERTAIN     STOCK     PURCHASE  
25                  PLANS.—

1                   “(I)       EMPLOYEE       BENEFIT  
2                   PLANS.—The bank effects trans-  
3                   actions, as a registered transfer agent  
4                   (including as a registrar of stocks), in  
5                   the securities of an issuer as part of  
6                   any pension, retirement, profit-shar-  
7                   ing, bonus, thrift, savings, incentive,  
8                   or other similar benefit plan for the  
9                   employees of that issuer or its affili-  
10                  ates (as defined in section 2 of the  
11                  Bank Holding Company Act of 1956),  
12                  if—

13                       “(aa) the bank does not so-  
14                       licit transactions or provide in-  
15                       vestment advice with respect to  
16                       the purchase or sale of securities  
17                       in connection with the plan; and

18                       “(bb) the bank’s compensa-  
19                       tion for such plan or program  
20                       consists chiefly of administration  
21                       fees, or flat or capped per order  
22                       processing fees, or both.

23                   “(II)       DIVIDEND       REINVESTMENT  
24                   PLANS.—The bank effects trans-  
25                   actions, as a registered transfer agent

1 (including as a registrar of stocks), in  
2 the securities of an issuer as part of  
3 that issuer's dividend reinvestment  
4 plan, if—

5 “(aa) the bank does not so-  
6 licit transactions or provide in-  
7 vestment advice with respect to  
8 the purchase or sale of securities  
9 in connection with the plan;

10 “(bb) the bank does not net  
11 shareholders' buy and sell orders,  
12 other than for programs for odd-  
13 lot holders or plans registered  
14 with the Commission; and

15 “(cc) the bank's compensa-  
16 tion for such plan or program  
17 consists chiefly of administration  
18 fees, or flat or capped per order  
19 processing fees, or both.

20 “(III) ISSUER PLANS.—The bank  
21 effects transactions, as a registered  
22 transfer agent (including as a reg-  
23 istrar of stocks), in the securities of  
24 an issuer as part of that issuer's plan

1 for the purchase or sale of that  
2 issuer's shares, if—

3 “(aa) the bank does not so-  
4 licit transactions or provide in-  
5 vestment advice with respect to  
6 the purchase or sale of securities  
7 in connection with the plan or  
8 program;

9 “(bb) the bank does not net  
10 shareholders' buy and sell orders,  
11 other than for programs for odd-  
12 lot holders or plans registered  
13 with the Commission; and

14 “(cc) the bank's compensa-  
15 tion for such plan or program  
16 consists chiefly of administration  
17 fees, or flat or capped per order  
18 processing fees, or both.

19 “(IV) PERMISSIBLE DELIVERY  
20 OF MATERIALS.—The exception to  
21 being considered a broker for a bank  
22 engaged in activities described in sub-  
23 clauses (I), (II), and (III) will not be  
24 affected by a bank's delivery of writ-  
25 ten or electronic plan materials to em-

1            ployees of the issuer, shareholders of  
2            the issuer, or members of affinity  
3            groups of the issuer, so long as such  
4            materials are—

5            “(aa) comparable in scope or  
6            nature to that permitted by the  
7            Commission as of the date of the  
8            enactment of the Financial Serv-  
9            ices Act of 1999; or

10           “(bb) otherwise permitted by  
11           the Commission.

12           “(v) SWEEP ACCOUNTS.—The bank  
13           effects transactions as part of a program  
14           for the investment or reinvestment of de-  
15           posit funds into any no-load, open-end  
16           management investment company reg-  
17           istered under the Investment Company Act  
18           of 1940 that holds itself out as a money  
19           market fund.

20           “(vi) AFFILIATE TRANSACTIONS.—  
21           The bank effects transactions for the ac-  
22           count of any affiliate (as defined in section  
23           2 of the Bank Holding Company Act of  
24           1956) of the bank other than—

1 “(I) a registered broker or deal-  
2 er; or

3 “(II) an affiliate that is engaged  
4 in merchant banking, as described in  
5 section 6(c)(3)(H) of the Bank Hold-  
6 ing Company Act of 1956.

7 “(vii) PRIVATE SECURITIES OFFER-  
8 INGS.—The bank—

9 “(I) effects sales as part of a pri-  
10 mary offering of securities not involv-  
11 ing a public offering, pursuant to sec-  
12 tion 3(b), 4(2), or 4(6) of the Securi-  
13 ties Act of 1933 or the rules and reg-  
14 ulations issued thereunder;

15 “(II) at any time after the date  
16 that is 1 year after the date of the en-  
17 actment of the Financial Services Act  
18 of 1999, is not affiliated with a broker  
19 or dealer that has been registered for  
20 more than 1 year in accordance with  
21 this Act, and engages in dealing, mar-  
22 ket making, or underwriting activities,  
23 other than with respect to exempted  
24 securities; and

1 “(III) effects transactions exclu-  
2 sively with qualified investors.

3 “(viii) SAFEKEEPING AND CUSTODY  
4 ACTIVITIES.—

5 “(I) IN GENERAL.—The bank, as  
6 part of customary banking activities—

7 “(aa) provides safekeeping  
8 or custody services with respect  
9 to securities, including the exer-  
10 cise of warrants and other rights  
11 on behalf of customers;

12 “(bb) facilitates the transfer  
13 of funds or securities, as a custo-  
14 dian or a clearing agency, in con-  
15 nection with the clearance and  
16 settlement of its customers’  
17 transactions in securities;

18 “(cc) effects securities lend-  
19 ing or borrowing transactions  
20 with or on behalf of customers as  
21 part of services provided to cus-  
22 tomers pursuant to division (aa)  
23 or (bb) or invests cash collateral  
24 pledged in connection with such  
25 transactions; or

1                   “(dd)     holds     securities  
2                   pledged by a customer to another  
3                   person or securities subject to  
4                   purchase or resale agreements in-  
5                   volving a customer, or facilitates  
6                   the pledging or transfer of such  
7                   securities by book entry or as  
8                   otherwise provided under applica-  
9                   ble law, if the bank maintains  
10                  records separately identifying the  
11                  securities and the customer.

12                  “(II) EXCEPTION FOR CARRYING  
13                  BROKER ACTIVITIES.—The exception  
14                  to being considered a broker for a  
15                  bank engaged in activities described in  
16                  subclause (I) shall not apply if the  
17                  bank, in connection with such activi-  
18                  ties, acts in the United States as a  
19                  carrying broker (as such term, and  
20                  different formulations thereof, are  
21                  used in section 15(c)(3) of this title  
22                  and the rules and regulations there-  
23                  under) for any broker or dealer, un-  
24                  less such carrying broker activities are  
25                  engaged in with respect to government



1 securities (as defined in paragraph  
2 (42) of this subsection).

3 “(ix) EXCEPTED BANKING PROD-  
4 UCTS.—The bank effects transactions in  
5 excepted banking products, as defined in  
6 section 206 of the Financial Services Act  
7 of 1999.

8 “(x) MUNICIPAL SECURITIES.—The  
9 bank effects transactions in municipal se-  
10 curities.

11 “(xi) DE MINIMIS EXCEPTION.—The  
12 bank effects, other than in transactions re-  
13 ferred to in clauses (i) through (x), not  
14 more than 500 transactions in securities in  
15 any calendar year, and such transactions  
16 are not effected by an employee of the  
17 bank who is also an employee of a broker  
18 or dealer.

19 “(C) BROKER DEALER EXECUTION.—The  
20 exception to being considered a broker for a  
21 bank engaged in activities described in clauses  
22 (ii), (iv), and (viii) of subparagraph (B) shall  
23 not apply if the activities described in such pro-  
24 visions result in the trade in the United States

1 of any security that is a publicly traded security  
2 in the United States, unless—

3 “(i) the bank directs such trade to a  
4 registered broker or dealer for execution;

5 “(ii) the trade is a cross trade or  
6 other substantially similar trade of a secu-  
7 rity that—

8 “(I) is made by the bank or be-  
9 tween the bank and an affiliated fidu-  
10 ciary; and

11 “(II) is not in contravention of  
12 fiduciary principles established under  
13 applicable Federal or State law; or

14 “(iii) the trade is conducted in some  
15 other manner permitted under rules, regu-  
16 lations, or orders as the Commission may  
17 prescribe or issue.

18 “(D) FIDUCIARY CAPACITY.—For purposes  
19 of subparagraph (B)(ii), the term ‘fiduciary ca-  
20 pacity’ means—

21 “(i) in the capacity as trustee, execu-  
22 tor, administrator, registrar of stocks and  
23 bonds, transfer agent, guardian, assignee,  
24 receiver, or custodian under a uniform gift  
25 to minor act, or as an investment adviser

1 if the bank receives a fee for its investment  
2 advice;

3 “(ii) in any capacity in which the  
4 bank possesses investment discretion on  
5 behalf of another; or

6 “(iii) in any other similar capacity.

7 “(F) EXCEPTION FOR ENTITIES SUBJECT  
8 TO SECTION 15(e).—The term ‘broker’ does not  
9 include a bank that—

10 “(i) was, immediately prior to the en-  
11 actment of the Financial Services Act of  
12 1999, subject to section 15(e) of this title;  
13 and

14 “(ii) is subject to such restrictions  
15 and requirements as the Commission con-  
16 siders appropriate.”.

17 **SEC. 202. DEFINITION OF DEALER.**

18 Section 3(a)(5) of the Securities Exchange Act of  
19 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

20 “(5) DEALER.—

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

1           “(B) EXCEPTION FOR PERSON NOT EN-  
2           GAGED IN THE BUSINESS OF DEALING.—The  
3           term ‘dealer’ does not include a person that  
4           buys or sells securities for such person’s own  
5           account, either individually or in a fiduciary ca-  
6           pacity, but not as a part of a regular business.

7           “(C) EXCEPTION FOR CERTAIN BANK AC-  
8           TIVITIES.—A bank shall not be considered to be  
9           a dealer because the bank engages in any of the  
10          following activities under the conditions de-  
11          scribed:

12                   “(i) PERMISSIBLE SECURITIES TRANS-  
13                   ACTIONS.—The bank buys or sells—

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

16                           “(II) exempted securities;

17                           “(III) qualified Canadian govern-  
18                           ment obligations as defined in section  
19                           5136 of the Revised Statutes of the  
20                           United States, in conformity with sec-  
21                           tion 15C of this title and the rules  
22                           and regulations thereunder, or obliga-  
23                           tions of the North American Develop-  
24                           ment Bank; or

1           “(IV) any standardized, credit  
2           enhanced debt security issued by a  
3           foreign government pursuant to the  
4           March 1989 plan of then Secretary of  
5           the Treasury Brady, used by such for-  
6           eign government to retire outstanding  
7           commercial bank loans.

8           “(ii) INVESTMENT, TRUSTEE, AND FI-  
9           DUCIARY TRANSACTIONS.—The bank buys  
10          or sells securities for investment pur-  
11          poses—

12                   “(I) for the bank; or

13                   “(II) for accounts for which the  
14          bank acts as a trustee or fiduciary.

15           “(iii) ASSET-BACKED TRANS-  
16          ACTIONS.—The bank engages in the  
17          issuance or sale to qualified investors,  
18          through a grantor trust or other separate  
19          entity, of securities backed by or rep-  
20          resenting an interest in notes, drafts, ac-  
21          ceptances, loans, leases, receivables, other  
22          obligations (other than securities of which  
23          the bank is not the issuer), or pools of any  
24          such obligations predominantly originated  
25          by—

1 “(I) the bank;

2 “(II) an affiliate of any such  
3 bank other than a broker or dealer; or

4 “(III) a syndicate of banks of  
5 which the bank is a member, if the  
6 obligations or pool of obligations con-  
7 sists of mortgage obligations or con-  
8 sumer-related receivables.

9 “(iv) EXCEPTED BANKING PROD-  
10 UCTS.—The bank buys or sells excepted  
11 banking products, as defined in section  
12 206 of the Financial Services Act of 1999.

13 “(v) DERIVATIVE INSTRUMENTS.—  
14 The bank issues, buys, or sells any deriva-  
15 tive instrument to which the bank is a  
16 party—

17 “(I) to or from a qualified inves-  
18 tor, except that if the instrument pro-  
19 vides for the delivery of one or more  
20 securities (other than a derivative in-  
21 strument or government security), the  
22 transaction shall be effected with or  
23 through a registered broker or dealer;  
24 or

1 “(II) to or from other persons,  
2 except that if the derivative instru-  
3 ment provides for the delivery of one  
4 or more securities (other than a deriv-  
5 ative instrument or government secu-  
6 rity), or is a security (other than a  
7 government security), the transaction  
8 shall be effected with or through a  
9 registered broker or dealer; or

10 “(III) to or from any person if  
11 the instrument is neither a security  
12 nor provides for the delivery of one or  
13 more securities (other than a deriva-  
14 tive instrument).”.

15 **SEC. 203. REGISTRATION FOR SALES OF PRIVATE SECURI-**  
16 **TIES OFFERINGS.**

17 Section 15A of the Securities Exchange Act of 1934  
18 (15 U.S.C. 78o–3) is amended by inserting after sub-  
19 section (i) the following new subsection:

20 “(j) REGISTRATION FOR SALES OF PRIVATE SECURI-  
21 TIES OFFERINGS.—A registered securities association  
22 shall create a limited qualification category for any associ-  
23 ated person of a member who effects sales as part of a  
24 primary offering of securities not involving a public offer-  
25 ing, pursuant to section 3(b), 4(2), or 4(6) of the Securi-

1 ties Act of 1933 and the rules and regulations thereunder,  
2 and shall deem qualified in such limited qualification cat-  
3 egory, without testing, any bank employee who, in the six  
4 month period preceding the date of the enactment of this  
5 Act, engaged in effecting such sales.”.

6 **SEC. 204. INFORMATION SHARING.**

7 Section 18 of the Federal Deposit Insurance Act is  
8 amended by adding at the end the following new sub-  
9 section:

10 “(t) RECORDKEEPING REQUIREMENTS.—

11 “(1) REQUIREMENTS.—Each appropriate Fed-  
12 eral banking agency, after consultation with and  
13 consideration of the views of the Commission, shall  
14 establish recordkeeping requirements for banks rely-  
15 ing on exceptions contained in paragraphs (4) and  
16 (5) of section 3(a) of the Securities Exchange Act of  
17 1934. Such recordkeeping requirements shall be suf-  
18 ficient to demonstrate compliance with the terms of  
19 such exceptions and be designed to facilitate compli-  
20 ance with such exceptions. Each appropriate Federal  
21 banking agency shall make any such information  
22 available to the Commission upon request.

23 “(2) DEFINITIONS.—As used in this subsection  
24 the term ‘Commission’ means the Securities and Ex-  
25 change Commission.”.



1 **SEC. 205. TREATMENT OF NEW HYBRID PRODUCTS.**

2 Section 15 of the Securities Exchange Act of 1934  
3 (15 U.S.C. 78o) is amended by adding at the end the fol-  
4 lowing new subsection:

5 “(i) RULEMAKING TO EXTEND REQUIREMENTS TO  
6 NEW HYBRID PRODUCTS.—

7 “(1) LIMITATION.—The Commission shall  
8 not—

9 “(A) require a bank to register as a broker  
10 or dealer under this section because the bank  
11 engages in any transaction in, or buys or sells,  
12 a new hybrid product; or

13 “(B) bring an action against a bank for a  
14 failure to comply with a requirement described  
15 in subparagraph (A),  
16 unless the Commission has imposed such require-  
17 ment by rule or regulation issued in accordance with  
18 this section.

19 “(2) CRITERIA FOR RULEMAKING.—The Com-  
20 mission shall not impose a requirement under para-  
21 graph (1) of this subsection with respect to any new  
22 hybrid product unless the Commission determines  
23 that—

24 “(A) the new hybrid product is a security;  
25 and

1           “(B) imposing such requirement is nec-  
2           essary or appropriate in the public interest and  
3           for the protection of investors, consistent with  
4           the requirements of section 3(f).

5           “(3) CONSIDERATIONS.—In making a deter-  
6           mination under paragraph (2), the Commission shall  
7           consider—

8                 “(A) the nature of the new hybrid product;  
9                 and

10                “(B) the history, purpose, extent, and ap-  
11                propriateness of the regulation of the new hy-  
12                brid product under the Federal securities laws  
13                and under the Federal banking laws.

14           “(4) CONSULTATION.—In promulgating rules  
15           under this subsection, the Commission shall consult  
16           with and consider the views of the Board of Gov-  
17           ernors of the Federal Reserve System regarding the  
18           nature of the new hybrid product, the history, pur-  
19           pose, extent, and appropriateness of the regulation  
20           of the new product under the Federal banking laws,  
21           and the impact of the proposed rule on the banking  
22           industry.

23           “(5) NEW HYBRID PRODUCT.—For purposes of  
24           this subsection, the term ‘new hybrid product’ means  
25           a product that—

1           “(A) was not subjected to regulation by  
2           the Commission as a security prior to the date  
3           of the enactment of this subsection; and

4           “(B) is not an excepted banking product,  
5           as such term is defined in section 206 of the  
6           Financial Services Act of 1999.”.

7   **SEC. 206. DEFINITION OF EXCEPTED BANKING PRODUCT.**

8           (a) DEFINITION OF EXCEPTED BANKING PROD-  
9   UCT.—For purposes of paragraphs (4) and (5) of section  
10  3(a) of the Securities Exchange Act of 1934 (15 U.S.C.  
11  78c(a) (4), (5)), the term “excepted banking product”  
12  means—

13           (1) a deposit account, savings account, certifi-  
14           cate of deposit, or other deposit instrument issued  
15           by a bank;

16           (2) a banker’s acceptance;

17           (3) a letter of credit issued or loan made by a  
18           bank;

19           (4) a debit account at a bank arising from a  
20           credit card or similar arrangement;

21           (5) a participation in a loan which the bank or  
22           an affiliate of the bank (other than a broker or deal-  
23           er) funds, participates in, or owns that is sold—

24                   (A) to qualified investors; or

25                   (B) to other persons that—

1 (i) have the opportunity to review and  
2 assess any material information, including  
3 information regarding the borrower's cred-  
4 itworthiness; and

5 (ii) based on such factors as financial  
6 sophistication, net worth, and knowledge  
7 and experience in financial matters, have  
8 the capability to evaluate the information  
9 available, as determined under generally  
10 applicable banking standards or guidelines;  
11 or

12 (6) a derivative instrument that involves or re-  
13 lates to—

14 (A) currencies, except options on cur-  
15 rencies that trade on a national securities ex-  
16 change;

17 (B) interest rates, except interest rate de-  
18 rivative instruments that—

19 (i) are based on a security or a group  
20 or index of securities (other than govern-  
21 ment securities or a group or index of gov-  
22 ernment securities);

23 (ii) provide for the delivery of one or  
24 more securities (other than government se-  
25 curities); or

1 (iii) trade on a national securities ex-  
2 change; or

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

6 (i) are securities or that are based on  
7 a group or index of securities (other than  
8 government securities or a group or index  
9 of government securities);

10 (ii) provide for the delivery of one or  
11 more securities (other than government se-  
12 curities); or

13 (iii) trade on a national securities ex-  
14 change.

15 (b) CLASSIFICATION LIMITED.—Classification of a  
16 particular product as an excepted banking product pursu-  
17 ant to this section shall not be construed as finding or  
18 implying that such product is or is not a security for any  
19 purpose under the securities laws, or is or is not an ac-  
20 count, agreement, contract, or transaction for any purpose  
21 under the Commodity Exchange Act.

22 (c) INCORPORATED DEFINITIONS.—For purposes of  
23 this section—

24 (1) the terms “bank”, “qualified investor”, and  
25 “securities laws” have the same meanings given in

1       section 3(a) of the Securities Exchange Act of 1934,  
2       as amended by this Act; and

3               (2) the term “government securities” has the  
4       meaning given in section 3(a)(42) of such Act (as  
5       amended by this Act), and, for purposes of this sec-  
6       tion, commercial paper, bankers acceptances, and  
7       commercial bills shall be treated in the same manner  
8       as government securities.

9   **SEC. 207. ADDITIONAL DEFINITIONS.**

10       Section 3(a) of the Securities Exchange Act of 1934  
11   is amended by adding at the end the following new para-  
12   graphs:

13               “(54) DERIVATIVE INSTRUMENT.—

14               “(A) DEFINITION.—The term ‘derivative  
15       instrument’ means any individually negotiated  
16       contract, agreement, warrant, note, or option  
17       that is based, in whole or in part, on the value  
18       of, any interest in, or any quantitative measure  
19       or the occurrence of any event relating to, one  
20       or more commodities, securities, currencies, in-  
21       terest or other rates, indices, or other assets,  
22       but does not include an excepted banking prod-  
23       uct, as defined in paragraphs (1) through (5) of  
24       section 206(a) of the Financial Services Act of  
25       1999.

1           “(B) CLASSIFICATION LIMITED.—Classi-  
2           fication of a particular contract as a derivative  
3           instrument pursuant to this paragraph shall not  
4           be construed as finding or implying that such  
5           instrument is or is not a security for any pur-  
6           pose under the securities laws, or is or is not  
7           an account, agreement, contract, or transaction  
8           for any purpose under the Commodity Ex-  
9           change Act.

10          “(55) QUALIFIED INVESTOR.—

11               “(A) DEFINITION.—For purposes of this  
12           title, the term ‘qualified investor’ means—

13                   “(i) any investment company reg-  
14                   istered with the Commission under section  
15                   8 of the Investment Company Act of 1940;

16                   “(ii) any issuer eligible for an exclu-  
17                   sion from the definition of investment com-  
18                   pany pursuant to section 3(c)(7) of the In-  
19                   vestment Company Act of 1940;

20                   “(iii) any bank (as defined in para-  
21                   graph (6) of this subsection), savings asso-  
22                   ciation (as defined in section 3(b) of the  
23                   Federal Deposit Insurance Act), broker,  
24                   dealer, insurance company (as defined in  
25                   section 2(a)(13) of the Securities Act of

1 1933), or business development company  
2 (as defined in section 2(a)(48) of the In-  
3 vestment Company Act of 1940);

4 “(iv) any small business investment  
5 company licensed by the United States  
6 Small Business Administration under sec-  
7 tion 301 (c) or (d) of the Small Business  
8 Investment Act of 1958;

9 “(v) any State sponsored employee  
10 benefit plan, or any other employee benefit  
11 plan, within the meaning of the Employee  
12 Retirement Income Security Act of 1974,  
13 other than an individual retirement ac-  
14 count, if the investment decisions are made  
15 by a plan fiduciary, as defined in section  
16 3(21) of that Act, which is either a bank,  
17 savings and loan association, insurance  
18 company, or registered investment adviser;

19 “(vi) any trust whose purchases of se-  
20 curities are directed by a person described  
21 in clauses (i) through (v) of this subpara-  
22 graph;

23 “(vii) any market intermediary ex-  
24 empt under section 3(c)(2) of the Invest-  
25 ment Company Act of 1940;



1 “(viii) any associated person of a  
2 broker or dealer other than a natural per-  
3 son;

4 “(ix) any foreign bank (as defined in  
5 section 1(b)(7) of the International Bank-  
6 ing Act of 1978);

7 “(x) the government of any foreign  
8 country;

9 “(xi) any corporation, company, or  
10 partnership that owns and invests on a dis-  
11 cretionary basis, not less than \$10,000,000  
12 in investments;

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

16 “(xiii) any government or political  
17 subdivision, agency, or instrumentality of a  
18 government who owns and invests on a dis-  
19 cretionary basis not less than \$50,000,000  
20 in investments; or

21 “(xiv) any multinational or supra-  
22 national entity or any agency or instru-  
23 mentality thereof.

24 “(B) ADDITIONAL AUTHORITY.—The Com-  
25 mission may, by rule or order, define a ‘quali-

1           fied investor’ as any other person, taking into  
2           consideration such factors as the financial so-  
3           phistication of the person, net worth, and  
4           knowledge and experience in financial mat-  
5           ters.”.

6 **SEC. 208. GOVERNMENT SECURITIES DEFINED.**

7           Section 3(a)(42) of the Securities Exchange Act of  
8   1934 (15 U.S.C. 78c(a)(42)) is amended—

9           (1) by striking “or” at the end of subparagraph  
10       (C);

11          (2) by striking the period at the end of sub-  
12       paragraph (D) and inserting “; or”; and

13          (3) by adding at the end the following new sub-  
14       paragraph:

15               “(E) for purposes of sections 15, 15C, and  
16       17A as applied to a bank, a qualified Canadian  
17       government obligation as defined in section  
18       5136 of the Revised Statutes of the United  
19       States.”.

20 **SEC. 209. EFFECTIVE DATE.**

21       This subtitle shall take effect at the end of the 270-  
22   day period beginning on the date of the enactment of this  
23   Act.

1 **SEC. 210. RULE OF CONSTRUCTION.**

2 Nothing in this Act shall supersede, affect, or other-  
 3 wise limit the scope and applicability of the Commodity  
 4 Exchange Act (7 U.S.C. 1 et seq.).

5 **Subtitle B—Bank Investment**  
 6 **Company Activities**

7 **SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY**  
 8 **AFFILIATED BANK.**

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

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

14 (2) by striking “(f) Every registered” and in-  
 15 serting the following:

16 “(f) CUSTODY OF SECURITIES.—

17 “(1) Every registered”;

18 (3) by redesignating the second, third, fourth,  
 19 and fifth sentences of such subsection as paragraphs  
 20 (2) through (5), respectively, and indenting the left  
 21 margin of such paragraphs appropriately; and

22 (4) by adding at the end the following new  
 23 paragraph:

24 “(6) The Commission may adopt rules and reg-  
 25 ulations, and issue orders, consistent with the pro-  
 26 tection of investors, prescribing the conditions under

1       which a bank, or an affiliated person of a bank, ei-  
2       ther of which is an affiliated person, promoter, orga-  
3       nizer, or sponsor of, or principal underwriter for, a  
4       registered management company may serve as custo-  
5       dian of that registered management company.”.

6       (b) UNIT INVESTMENT TRUSTS.—Section 26 of the  
7       Investment Company Act of 1940 (15 U.S.C. 80a–26) is  
8       amended—

9               (1) by redesignating subsections (b) through (e)  
10       as subsections (c) through (f), respectively; and

11              (2) by inserting after subsection (a) the fol-  
12       lowing new subsection:

13       “(b) The Commission may adopt rules and regula-  
14       tions, and issue orders, consistent with the protection of  
15       investors, prescribing the conditions under which a bank,  
16       or an affiliated person of a bank, either of which is an  
17       affiliated person of a principal underwriter for, or deposi-  
18       tor of, a registered unit investment trust, may serve as  
19       trustee or custodian under subsection (a)(1).”.

20       (c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a)  
21       of the Investment Company Act of 1940 (15 U.S.C. 80a–  
22       35(a)) is amended—

23              (1) in paragraph (1), by striking “or” at the  
24       end;

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

3           (3) by inserting after paragraph (2) the fol-  
4           lowing:

5           “(3) as custodian.”.

6   **SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COM-**  
7                           **PANY.**

8           Section 17(a) of the Investment Company Act of  
9   1940 (15 U.S.C. 80a–17(a)) is amended—

10           (1) by striking “or” at the end of paragraph  
11           (2);

12           (2) by striking the period at the end of para-  
13           graph (3) and inserting “; or”; and

14           (3) by adding at the end the following new  
15           paragraph:

16           “(4) to loan money or other property to such  
17           registered company, or to any company controlled by  
18           such registered company, in contravention of such  
19           rules, regulations, or orders as the Commission may  
20           prescribe or issue consistent with the protection of  
21           investors.”.

22   **SEC. 213. INDEPENDENT DIRECTORS.**

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

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

3                   “(v) any person or any affiliated per-  
4                   son of a person (other than a registered in-  
5                   vestment company) that, at any time dur-  
6                   ing the 6-month period preceding the date  
7                   of the determination of whether that per-  
8                   son or affiliated person is an interested  
9                   person, has executed any portfolio trans-  
10                  actions for, engaged in any principal trans-  
11                  actions with, or distributed shares for—

12                           “(I) the investment company;

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

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

23           (2) by redesignating clause (vi) as clause (vii);

24       and

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

3                   “(vi) any person or any affiliated per-  
4                   son of a person (other than a registered in-  
5                   vestment company) that, at any time dur-  
6                   ing the 6-month period preceding the date  
7                   of the determination of whether that per-  
8                   son or affiliated person is an interested  
9                   person, has loaned money or other prop-  
10                  erty to—

11                           “(I) the investment company;

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

18                           “(III) any account for which the  
19                           investment company’s investment ad-  
20                           viser has borrowing authority,”.

21       (b)           CONFORMING           AMENDMENT.—Section  
22       2(a)(19)(B) of the Investment Company Act of 1940 (15  
23       U.S.C. 80a–2(a)(19)(B)) is amended—

24                   (1) by striking clause (v) and inserting the fol-  
25       lowing new clause:

1           “(v) any person or any affiliated per-  
2           son of a person (other than a registered in-  
3           vestment company) that, at any time dur-  
4           ing the 6-month period preceding the date  
5           of the determination of whether that per-  
6           son or affiliated person is an interested  
7           person, has executed any portfolio trans-  
8           actions for, engaged in any principal trans-  
9           actions with, or distributed shares for—

10           “(I) any investment company for  
11           which the investment adviser or prin-  
12           cipal underwriter serves as such;

13           “(II) any investment company  
14           holding itself out to investors, for pur-  
15           poses of investment or investor serv-  
16           ices, as a company related to any in-  
17           vestment company for which the in-  
18           vestment adviser or principal under-  
19           writer serves as such; or

20           “(III) any account over which the  
21           investment adviser has brokerage  
22           placement discretion,”;

23           (2) by redesignating clause (vi) as clause (vii);

24           and



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

3                   “(vi) any person or any affiliated per-  
4                   son of a person (other than a registered in-  
5                   vestment company) that, at any time dur-  
6                   ing the 6-month period preceding the date  
7                   of the determination of whether that per-  
8                   son or affiliated person is an interested  
9                   person, has loaned money or other prop-  
10                  erty to—

11                       “(I) any investment company for  
12                       which the investment adviser or prin-  
13                       cipal underwriter serves as such;

14                       “(II) any investment company  
15                       holding itself out to investors, for pur-  
16                       poses of investment or investor serv-  
17                       ices, as a company related to any in-  
18                       vestment company for which the in-  
19                       vestment adviser or principal under-  
20                       writer serves as such; or

21                       “(III) any account for which the  
22                       investment adviser has borrowing au-  
23                       thority,”.

24       (c) AFFILIATION OF DIRECTORS.—Section 10(c) of  
25 the Investment Company Act of 1940 (15 U.S.C. 80a—

1 10(c)) is amended by striking “bank, except” and insert-  
2 ing “bank (together with its affiliates and subsidiaries) or  
3 any one bank holding company (together with its affiliates  
4 and subsidiaries) (as such terms are defined in section 2  
5 of the Bank Holding Company Act of 1956), except”.

6 (d) EFFECTIVE DATE.—The amendments made by  
7 this section shall take effect at the end of the 1-year period  
8 beginning on the date of the enactment of this subtitle.

9 **SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

10 Section 35(a) of the Investment Company Act of  
11 1940 (15 U.S.C. 80a–34(a)) is amended to read as fol-  
12 lows:

13 “(a) MISREPRESENTATION OF GUARANTEES.—

14 “(1) IN GENERAL.—It shall be unlawful for any  
15 person, issuing or selling any security of which a  
16 registered investment company is the issuer, to rep-  
17 resent or imply in any manner whatsoever that such  
18 security or company—

19 “(A) has been guaranteed, sponsored, rec-  
20 ommended, or approved by the United States,  
21 or any agency, instrumentality or officer of the  
22 United States;

23 “(B) has been insured by the Federal De-  
24 posit Insurance Corporation; or

1           “(C) is guaranteed by or is otherwise an  
2           obligation of any bank or insured depository in-  
3           stitution.

4           “(2) DISCLOSURES.—Any person issuing or  
5           selling the securities of a registered investment com-  
6           pany that is advised by, or sold through, a bank  
7           shall prominently disclose that an investment in the  
8           company is not insured by the Federal Deposit In-  
9           surance Corporation or any other government agen-  
10          cy. The Commission may adopt rules and regula-  
11          tions, and issue orders, consistent with the protec-  
12          tion of investors, prescribing the manner in which  
13          the disclosure under this paragraph shall be pro-  
14          vided.

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

19 **SEC. 215. DEFINITION OF BROKER UNDER THE INVEST-**  
20 **MENT COMPANY ACT OF 1940.**

21          Section 2(a)(6) of the Investment Company Act of  
22          1940 (15 U.S.C. 80a-2(a)(6)) is amended to read as fol-  
23          lows:

24                 “(6) The term ‘broker’ has the same meaning  
25          given in section 3 of the Securities Exchange Act of

1       1934, except that such term does not include any  
2       person solely by reason of the fact that such person  
3       is an underwriter for one or more investment compa-  
4       nies.”.

5   **SEC. 216. DEFINITION OF DEALER UNDER THE INVEST-**  
6                   **MENT COMPANY ACT OF 1940.**

7       Section 2(a)(11) of the Investment Company Act of  
8   1940 (15 U.S.C. 80a-2(a)(11)) is amended to read as fol-  
9   lows:

10           “(11) The term ‘dealer’ has the same meaning  
11       given in the Securities Exchange Act of 1934, but  
12       does not include an insurance company or invest-  
13       ment company.”.

14   **SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINI-**  
15                   **TION OF INVESTMENT ADVISER FOR BANKS**  
16                   **THAT ADVISE INVESTMENT COMPANIES.**

17       (a) INVESTMENT ADVISER.—Section 202(a)(11)(A)  
18   of the Investment Advisers Act of 1940 (15 U.S.C. 80b-  
19   2(a)(11)(A)) is amended by striking “investment com-  
20   pany” and inserting “investment company, except that the  
21   term ‘investment adviser’ includes any bank or bank hold-  
22   ing company to the extent that such bank or bank holding  
23   company serves or acts as an investment adviser to a reg-  
24   istered investment company, but if, in the case of a bank,  
25   such services or actions are performed through a sepa-

1 rately identifiable department or division, the department  
2 or division, and not the bank itself, shall be deemed to  
3 be the investment adviser”.

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

8 “(26) The term ‘separately identifiable depart-  
9 ment or division’ of a bank means a unit—

10 “(A) that is under the direct supervision of  
11 an officer or officers designated by the board of  
12 directors of the bank as responsible for the day-  
13 to-day conduct of the bank’s investment adviser  
14 activities for one or more investment companies,  
15 including the supervision of all bank employees  
16 engaged in the performance of such activities;  
17 and

18 “(B) for which all of the records relating  
19 to its investment adviser activities are sepa-  
20 rately maintained in or extractable from such  
21 unit’s own facilities or the facilities of the bank,  
22 and such records are so maintained or other-  
23 wise accessible as to permit independent exam-  
24 ination and enforcement by the Commission of  
25 this Act or the Investment Company Act of

1           1940 and rules and regulations promulgated  
2           under this Act or the Investment Company Act  
3           of 1940.”.

4 **SEC. 218. DEFINITION OF BROKER UNDER THE INVEST-**  
5 **MENT ADVISERS ACT OF 1940.**

6           Section 202(a)(3) of the Investment Advisers Act of  
7   1940 (15 U.S.C. 80b–2(a)(3)) is amended to read as fol-  
8   lows:

9           “(3) The term ‘broker’ has the same meaning  
10          given in section 3 of the Securities Exchange Act of  
11          1934.”.

12 **SEC. 219. DEFINITION OF DEALER UNDER THE INVEST-**  
13 **MENT ADVISERS ACT OF 1940.**

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

17          “(7) The term ‘dealer’ has the same meaning  
18          given in section 3 of the Securities Exchange Act of  
19          1934, but does not include an insurance company or  
20          investment company.”.

21 **SEC. 220. INTERAGENCY CONSULTATION.**

22          The Investment Advisers Act of 1940 (15 U.S.C.  
23   80b–1 et seq.) is amended by inserting after section 210  
24   the following new section:

1 **“SEC. 210A. CONSULTATION.**

2 “(a) EXAMINATION RESULTS AND OTHER INFORMA-  
3 TION.—

4 “(1) The appropriate Federal banking agency  
5 shall provide the Commission upon request the re-  
6 sults of any examination, reports, records, or other  
7 information to which such agency may have access  
8 with respect to the investment advisory activities—

9 “(A) of any—

10 “(i) bank holding company;

11 “(ii) bank; or

12 “(iii) separately identifiable depart-  
13 ment or division of a bank,

14 that is registered under section 203 of this title;  
15 and

16 “(B) in the case of a bank holding com-  
17 pany or bank that has a subsidiary or a sepa-  
18 rately identifiable department or division reg-  
19 istered under that section, of such bank or bank  
20 holding company.

21 “(2) The Commission shall provide to the ap-  
22 propriate Federal banking agency upon request the  
23 results of any examination, reports, records, or other  
24 information with respect to the investment advisory  
25 activities of any bank holding company, bank, or  
26 separately identifiable department or division of a

1 bank, which is registered under section 203 of this  
2 title.

3 “(b) EFFECT ON OTHER AUTHORITY.—Nothing in  
4 this section shall limit in any respect the authority of the  
5 appropriate Federal banking agency with respect to such  
6 bank holding company, bank, or department or division  
7 under any other provision of law.

8 “(c) DEFINITION.—For purposes of this section, the  
9 term ‘appropriate Federal banking agency’ shall have the  
10 same meaning given in section 3 of the Federal Deposit  
11 Insurance Act.”.

12 **SEC. 221. TREATMENT OF BANK COMMON TRUST FUNDS.**

13 (a) SECURITIES ACT OF 1933.—Section 3(a)(2) of  
14 the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is  
15 amended by striking “or any interest or participation in  
16 any common trust fund or similar fund maintained by a  
17 bank exclusively for the collective investment and reinvest-  
18 ment of assets contributed thereto by such bank in its ca-  
19 pacity as trustee, executor, administrator, or guardian”  
20 and inserting “or any interest or participation in any com-  
21 mon trust fund or similar fund that is excluded from the  
22 definition of the term ‘investment company’ under section  
23 3(c)(3) of the Investment Company Act of 1940”.

24 (b) SECURITIES EXCHANGE ACT OF 1934.—Section  
25 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934



1 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as fol-  
2 lows:

3 “(iii) any interest or participation in any  
4 common trust fund or similar fund that is ex-  
5 cluded from the definition of the term ‘invest-  
6 ment company’ under section 3(c)(3) of the In-  
7 vestment Company Act of 1940;”.

8 (c) INVESTMENT COMPANY ACT OF 1940.—Section  
9 3(c)(3) of the Investment Company Act of 1940 (15  
10 U.S.C. 80a–3(c)(3)) is amended by inserting before the  
11 period the following: “, if—

12 “(A) such fund is employed by the bank  
13 solely as an aid to the administration of trusts,  
14 estates, or other accounts created and main-  
15 tained for a fiduciary purpose;

16 “(B) except in connection with the ordi-  
17 nary advertising of the bank’s fiduciary serv-  
18 ices, interests in such fund are not—

19 “(i) advertised; or

20 “(ii) offered for sale to the general  
21 public; and

22 “(C) fees and expenses charged by such  
23 fund are not in contravention of fiduciary prin-  
24 ciples established under applicable Federal or  
25 State law”.

1 **SEC. 222. INVESTMENT ADVISERS PROHIBITED FROM HAV-**  
2 **ING CONTROLLING INTEREST IN REG-**  
3 **ISTERED INVESTMENT COMPANY.**

4 Section 15 of the Investment Company Act of 1940  
5 (15 U.S.C. 80a-15) is amended by adding at the end the  
6 following new subsection:

7 “(g) CONTROLLING INTEREST IN INVESTMENT COM-  
8 PANY PROHIBITED.—

9 “(1) IN GENERAL.—If an investment adviser to  
10 a registered investment company, or an affiliated  
11 person of that investment adviser, holds a control-  
12 ling interest in that registered investment company  
13 in a trustee or fiduciary capacity, such person  
14 shall—

15 “(A) if it holds the shares in a trustee or  
16 fiduciary capacity with respect to any employee  
17 benefit plan subject to the Employee Retirement  
18 Income Security Act of 1974, transfer the  
19 power to vote the shares of the investment com-  
20 pany through to another person acting in a fi-  
21 duciary capacity with respect to the plan who is  
22 not an affiliated person of that investment ad-  
23 viser or any affiliated person thereof; or

24 “(B) if it holds the shares in a trustee or  
25 fiduciary capacity with respect to any person or  
26 entity other than an employee benefit plan sub-

1           ject to the Employee Retirement Income Secu-  
2           rity Act of 1974—

3                   “(i) transfer the power to vote the  
4                   shares of the investment company through  
5                   to—

6                           “(I) the beneficial owners of the  
7                           shares;

8                           “(II) another person acting in a  
9                           fiduciary capacity who is not an affili-  
10                          ated person of that investment adviser  
11                          or any affiliated person thereof; or

12                          “(III) any person authorized to  
13                          receive statements and information  
14                          with respect to the trust who is not an  
15                          affiliated person of that investment  
16                          adviser or any affiliated person there-  
17                          of;

18                          “(ii) vote the shares of the investment  
19                          company held by it in the same proportion  
20                          as shares held by all other shareholders of  
21                          the investment company; or

22                          “(iii) vote the shares of the invest-  
23                          ment company as otherwise permitted  
24                          under such rules, regulations, or orders as

1           the Commission may prescribe or issue  
2           consistent with the protection of investors.

3           “(2) EXEMPTION.—Paragraph (1) shall not  
4           apply to any investment adviser to a registered in-  
5           vestment company, or any affiliated person of that  
6           investment adviser, that holds shares of the invest-  
7           ment company in a trustee or fiduciary capacity if  
8           that registered investment company consists solely of  
9           assets held in such capacities.

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

17 **SEC. 223. STATUTORY DISQUALIFICATION FOR BANK**  
18 **WRONGDOING.**

19          Section 9(a) of the Investment Company Act of 1940  
20 (15 U.S.C. 80a-9(a)) is amended in paragraphs (1) and  
21 (2) by striking “securities dealer, transfer agent,” and in-  
22 serting “securities dealer, bank, transfer agent,”.

23 **SEC. 224. CONFORMING CHANGE IN DEFINITION.**

24          Section 2(a)(5) of the Investment Company Act of  
25 1940 (15 U.S.C. 80a-2(a)(5)) is amended by striking

1 “(A) a banking institution organized under the laws of the  
2 United States” and inserting “(A) a depository institution  
3 (as defined in section 3 of the Federal Deposit Insurance  
4 Act) or a branch or agency of a foreign bank (as such  
5 terms are defined in section 1(b) of the International  
6 Banking Act of 1978)”.

7 **SEC. 225. CONFORMING AMENDMENT.**

8 Section 202 of the Investment Advisers Act of 1940  
9 (15 U.S.C. 80b–2) is amended by adding at the end the  
10 following new subsection:

11 “(c) CONSIDERATION OF PROMOTION OF EFFI-  
12 CIENCY, COMPETITION, AND CAPITAL FORMATION.—  
13 Whenever pursuant to this title the Commission is en-  
14 gaged in rulemaking and is required to consider or deter-  
15 mine whether an action is necessary or appropriate in the  
16 public interest, the Commission shall also consider, in ad-  
17 dition to the protection of investors, whether the action  
18 will promote efficiency, competition, and capital forma-  
19 tion.”.

20 **SEC. 226. CHURCH PLAN EXCLUSION.**

21 Section 3(c)(14) of the Investment Company Act of  
22 1940 (15 U.S.C. 80a-3(c)(14)) is amended—

23 (1) by redesignating clauses (i) and (ii) of sub-  
24 paragraph (B) as subclauses (I) and (II), respec-  
25 tively;

1           (2) by redesignating subparagraphs (A) and  
2           (B) as clauses (i) and (ii), respectively;

3           (3) by inserting “(A)” after “(14)”; and

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

6           “(B) If a registered investment company would  
7           be excluded from the definition of investment com-  
8           pany under this subsection but for the fact that  
9           some of the company’s assets do not satisfy the con-  
10          dition of subparagraph (A)(ii) of this paragraph,  
11          then any investment adviser to the company or affili-  
12          ated person of such investment adviser shall not be  
13          subject to the requirements of section 15(g)(1)(B)  
14          with respect to shares of the investment company.”.

15   **SEC. 227. EFFECTIVE DATE.**

16          This subtitle shall take effect 90 days after the date  
17          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 (k); and

12 (2) by inserting after subsection (h) the fol-  
 13 lowing new subsection:

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 1 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 re-  
17 garding—

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 MOD-

ELS.—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:

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  
19           bank holding company’ means any investment  
20           bank holding company that is supervised by the  
21           Commission pursuant to this subsection.

22           “(C) The terms ‘affiliate’, ‘bank’, ‘bank  
23           holding company’, ‘company’, ‘control’, ‘savings  
24           association’, and ‘wholesale financial institution’  
25           have the same meanings given in section 2 of

1 the Bank Holding Company Act of 1956 (12  
2 U.S.C. 1841).

3 “(D) The term ‘insured bank’ has the  
4 same meaning given in section 3 of the Federal  
5 Deposit Insurance Act.

6 “(E) The term ‘foreign bank’ has the same  
7 meaning given in section 1(b)(7) of the Inter-  
8 national Banking Act of 1978.

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) AUTHORITY TO LIMIT DISCLOSURE OF INFOR-  
17 MATION.—Notwithstanding any other provision of law, the  
18 Commission shall not be compelled to disclose any infor-  
19 mation required to be reported under subsection (h) or  
20 (i) or any information supplied to the Commission by any  
21 domestic or foreign regulatory agency that relates to the  
22 financial or operational condition of any associated person  
23 of a broker or dealer, investment bank holding company,  
24 or any affiliate of an investment bank holding company.  
25 Nothing in this subsection shall authorize the Commission

1 to withhold information from Congress, or prevent the  
2 Commission from complying with a request for informa-  
3 tion from any other Federal department or agency or any  
4 self-regulatory organization requesting the information for  
5 purposes within the scope of its jurisdiction, or complying  
6 with an order of a court of the United States in an action  
7 brought by the United States or the Commission. For pur-  
8 poses of section 552 of title 5, United States Code, this  
9 subsection shall be considered a statute described in sub-  
10 section (b)(3)(B) of such section 552. In prescribing regu-  
11 lations to carry out the requirements of this subsection,  
12 the Commission shall designate information described in  
13 or obtained pursuant to subparagraphs (A), (B), and (C)  
14 of subsection (i)(5) as confidential information for pur-  
15 poses of section 24(b)(2) of this title.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) Section 3(a)(34) of the Securities Exchange  
18 Act of 1934 (15 U.S.C. 78c(a)(34)) is amended by  
19 adding at the end the following new subparagraph:

20 “(H) When used with respect to an institu-  
21 tion described in subparagraph (D), (F), or (G)  
22 of section 2(c)(2), or held under section 4(f), of  
23 the Bank Holding Company Act of 1956—

24 “(i) the Comptroller of the Currency,  
25 in the case of a national bank or a bank

1 in the District of Columbia examined by  
2 the Comptroller of the Currency;

3 “(ii) the Board of Governors of the  
4 Federal Reserve System, in the case of a  
5 State member bank of the Federal Reserve  
6 System or any corporation chartered under  
7 section 25A of the Federal Reserve Act;

8 “(iii) the Federal Deposit Insurance  
9 Corporation, in the case of any other bank  
10 the deposits of which are insured in ac-  
11 cordance with the Federal Deposit Insur-  
12 ance Act; or

13 “(iv) the Commission in the case of all  
14 other such institutions.”.

15 (2) Section 1112(e) of the Right to Financial  
16 Privacy Act of 1978 (12 U.S.C. 3412(e)) is amend-  
17 ed—

18 (A) by striking “this title” and inserting  
19 “law”; and

20 (B) by inserting “, examination reports”  
21 after “financial records”.

1 **Subtitle D—Disclosure of Customer**  
2 **Costs of Acquiring Financial**  
3 **Products**

4 **SEC. 241. IMPROVED AND CONSISTENT DISCLOSURE.**

5 (a) REVISED REGULATIONS REQUIRED.—Within 1  
6 year after the date of the enactment of this Act, each Fed-  
7 eral financial regulatory authority shall prescribe rules, or  
8 revisions to its rules, to improve the accuracy, simplicity,  
9 and completeness, and to make more consistent, the dis-  
10 closure of information by persons subject to the jurisdic-  
11 tion of such regulatory authority concerning any commis-  
12 sions, fees, or other costs incurred by customers in the  
13 acquisition of financial products.

14 (b) CONSULTATION.—In prescribing rules and revi-  
15 sions under subsection (a), the Federal financial regu-  
16 latory authorities shall consult with each other and with  
17 appropriate State financial regulatory authorities.

18 (c) CONSIDERATION OF EXISTING DISCLOSURES.—  
19 In prescribing rules and revisions under subsection (a),  
20 the Federal financial regulatory authorities shall consider  
21 the sufficiency and appropriateness of then existing laws  
22 and rules applicable to persons subject to their jurisdic-  
23 tion, and may prescribe exemptions from the rules and re-  
24 visions required by subsection (a) to the extent appro-

1 piate in light of the objective of this section to increase  
2 the consistency of disclosure practices.

3 (d) ENFORCEMENT.—Any rule prescribed by a Fed-  
4 eral financial regulatory authority pursuant to this section  
5 shall, for purposes of enforcement, be treated as a rule  
6 prescribed by such regulatory authority pursuant to the  
7 statute establishing such regulatory authority’s jurisdic-  
8 tion over the persons to whom such rule applies.

9 (e) DEFINITION.—As used in this section, the term  
10 “Federal financial regulatory authority” means the Board  
11 of Governors of the Federal Reserve System, the Securi-  
12 ties and Exchange Commission, the Comptroller of the  
13 Currency, the Federal Deposit Insurance Corporation, the  
14 Commodity Futures Trading Commission, and any self-  
15 regulatory organization under the supervision of any of  
16 the foregoing.

17 **Subtitle E—Banks and Bank**  
18 **Holding Companies**

19 **SEC. 251. CONSULTATION.**

20 (a) IN GENERAL.—The Securities and Exchange  
21 Commission shall consult and coordinate comments with  
22 the appropriate Federal banking agency before taking any  
23 action or rendering any opinion with respect to the man-  
24 ner in which any insured depository institution or deposi-  
25 tory institution holding company reports loan loss reserves

1 in its financial statement, including the amount of any  
2 such loan loss reserve.

3 (b) DEFINITIONS.—For purposes of subsection (a),  
4 the terms “insured depository institution”, “depository in-  
5 stitution holding company”, and “appropriate Federal  
6 banking agency” have the same meaning as in section 3  
7 of the Federal Deposit Insurance Act.

8 **TITLE III—INSURANCE**  
9 **Subtitle A—State Regulation of**  
10 **Insurance**

11 **SEC. 301. STATE REGULATION OF THE BUSINESS OF INSUR-**  
12 **ANCE.**

13 The Act entitled “An Act to express the intent of the  
14 Congress with reference to the regulation of the business  
15 of insurance” and approved March 9, 1945 (15 U.S.C.  
16 1011 et seq.), commonly referred to as the “McCarran-  
17 Ferguson Act” remains the law of the United States.

18 **SEC. 302. MANDATORY INSURANCE LICENSING REQUIRE-**  
19 **MENTS.**

20 No person shall engage in the business of insurance  
21 in a State as principal or agent unless such person is li-  
22 censed as required by the appropriate insurance regulator  
23 of such State in accordance with the relevant State insur-  
24 ance law, subject to section 104.



1 **SEC. 303. FUNCTIONAL REGULATION OF INSURANCE.**

2       The insurance activities of any person (including a  
3 national bank exercising its power to act as agent under  
4 the eleventh undesignated paragraph of section 13 of the  
5 Federal Reserve Act) shall be functionally regulated by the  
6 States, subject to section 104.

7 **SEC. 304. INSURANCE UNDERWRITING IN NATIONAL**  
8 **BANKS.**

9       (a) IN GENERAL.—Except as provided in section 305,  
10 a national bank and the subsidiaries of a national bank  
11 may not provide insurance in a State as principal except  
12 that this prohibition shall not apply to authorized prod-  
13 ucts.

14       (b) AUTHORIZED PRODUCTS.—For the purposes of  
15 this section, a product is authorized if—

16           (1) as of January 1, 1999, the Comptroller of  
17 the Currency had determined in writing that na-  
18 tional banks may provide such product as principal,  
19 or national banks were in fact lawfully providing  
20 such product as principal;

21           (2) no court of relevant jurisdiction had, by  
22 final judgment, overturned a determination of the  
23 Comptroller of the Currency that national banks  
24 may provide such product as principal; and

25           (3) the product is not title insurance, or an an-  
26 nuity contract the income of which is subject to tax

1 treatment under section 72 of the Internal Revenue  
2 Code of 1986.

3 (c) DEFINITION.—For purposes of this section, the  
4 term “insurance” means—

5 (1) any product regulated as insurance as of  
6 January 1, 1999, in accordance with the relevant  
7 State insurance law, in the State in which the prod-  
8 uct is provided;

9 (2) any product first offered after January 1,  
10 1999, which—

11 (A) a State insurance regulator determines  
12 shall be regulated as insurance in the State in  
13 which the product is provided because the prod-  
14 uct insures, guarantees, or indemnifies against  
15 liability, loss of life, loss of health, or loss  
16 through damage to or destruction of property,  
17 including, but not limited to, surety bonds, life  
18 insurance, health insurance, title insurance, and  
19 property and casualty insurance (such as pri-  
20 vate passenger or commercial automobile,  
21 homeowners, mortgage, commercial multiperil,  
22 general liability, professional liability, workers’  
23 compensation, fire and allied lines, farm owners  
24 multiperil, aircraft, fidelity, surety, medical

malpractice, ocean marine, inland marine, and boiler and machinery insurance); and

(B) is not a product or service of a bank that is—

(i) a deposit product;

(ii) a loan, discount, letter of credit, or other extension of credit;

(iii) a trust or other fiduciary service;

(iv) a qualified financial contract (as defined in or determined pursuant to section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act); or

(v) a financial guaranty, except that this subparagraph (B) shall not apply to a product that includes an insurance component such that if the product is offered or proposed to be offered by the bank as principal—

(I) it would be treated as a life insurance contract under section 7702 of the Internal Revenue Code of 1986; or

(II) in the event that the product is not a letter of credit or other similar extension of credit, a qualified fi-

1                   nancial contract, or a financial guar-  
2                   anty, it would qualify for treatment  
3                   for losses incurred with respect to  
4                   such product under section 832(b)(5)  
5                   of the Internal Revenue Code of 1986,  
6                   if the bank were subject to tax as an  
7                   insurance company under section 831  
8                   of that Code; or

9                   (3) any annuity contract, the income on which  
10                  is subject to tax treatment under section 72 of the  
11                  Internal Revenue Code of 1986.

12 **SEC. 305. TITLE INSURANCE ACTIVITIES OF NATIONAL**  
13 **BANKS AND THEIR AFFILIATES.**

14                  (a) GENERAL PROHIBITION.—No national bank, and  
15                  no subsidiary of a national bank, may engage in any activ-  
16                  ity involving the underwriting or sale of title insurance.

17                  (b) NONDISCRIMINATION PARITY EXCEPTION.—

18                         (1) IN GENERAL.—Notwithstanding any other  
19                         provision of law (including section 104 of this Act),  
20                         in the case of any State in which banks organized  
21                         under the laws of such State are authorized to sell  
22                         title insurance as agency, a national bank and a sub-  
23                         sidiary of a national bank may sell title insurance as  
24                         agent in such State, but only in the same manner,  
25                         to the same extent, and under the same restrictions

1 as such State banks are authorized to sell title in-  
2 surance as agent in such State.

3 (2) COORDINATION WITH “WILDCARD” PROVI-  
4 SION.—A State law which authorizes State banks to  
5 engage in any activities in such State in which a na-  
6 tional bank may engage shall not be treated as a  
7 statute which authorizes State banks to sell title in-  
8 surance as agent, for purposes of paragraph (1).

9 (c) GRANDFATHERING WITH CONSISTENT REGULA-  
10 TION.—

11 (1) IN GENERAL.—Except as provided in para-  
12 graphs (2) and (3) and notwithstanding subsections  
13 (a) and (b), a national bank, and a subsidiary of a  
14 national bank, may conduct title insurance activities  
15 which such national bank or subsidiary was actively  
16 and lawfully conducting before the date of the enact-  
17 ment of this Act.

18 (2) INSURANCE AFFILIATE.—In the case of a  
19 national bank which has an affiliate which provides  
20 insurance as principal and is not a subsidiary of the  
21 bank, the national bank and any subsidiary of the  
22 national bank may not engage in the underwriting of  
23 title insurance pursuant to paragraph (1).

24 (3) INSURANCE SUBSIDIARY.—In the case of a  
25 national bank which has a subsidiary which provides

1 insurance as principal and has no affiliate other  
2 than a subsidiary which provides insurance as prin-  
3 cipal, the national bank may not directly engage in  
4 any activity involving the underwriting of title insur-  
5 ance.

6 (d) “AFFILIATE” AND “SUBSIDIARY” DEFINED.—  
7 For purposes of this section, the terms “affiliate” and  
8 “subsidiary” have the same meanings as in section 2 of  
9 the Bank Holding Company Act of 1956.

10 (e) RULE OF CONSTRUCTION.—No provision of this  
11 Act or any other Federal law shall be construed as super-  
12 seding or affecting a State law which was in effect before  
13 the date of the enactment of this Act and which prohibits  
14 title insurance from being offered, provided, or sold in  
15 such State, or from being underwritten with respect to  
16 real property in such State, by any person whatsoever.

17 **SEC. 306. EXPEDITED AND EQUALIZED DISPUTE RESOLU-**  
18 **TION FOR FEDERAL REGULATORS.**

19 (a) FILING IN COURT OF APPEALS.—In the case of  
20 a regulatory conflict between a State insurance regulator  
21 and a Federal regulator as to whether any product is or  
22 is not insurance, as defined in section 304(c) of this Act,  
23 or whether a State statute, regulation, order, or interpre-  
24 tation regarding any insurance sales or solicitation activity  
25 is properly treated as preempted under Federal law, either

1 regulator may seek expedited judicial review of such deter-  
2 mination by the United States Court of Appeals for the  
3 circuit in which the State is located or in the United  
4 States Court of Appeals for the District of Columbia Cir-  
5 cuit by filing a petition for review in such court.

6 (b) EXPEDITED REVIEW.—The United States Court  
7 of Appeals in which a petition for review is filed in accord-  
8 ance with subsection (a) shall complete all action on such  
9 petition, including rendering a judgment, before the end  
10 of the 60-day period beginning on the date on which such  
11 petition is filed, unless all parties to such proceeding agree  
12 to any extension of such period.

13 (c) SUPREME COURT REVIEW.—Any request for cer-  
14 tiorari to the Supreme Court of the United States of any  
15 judgment of a United States Court of Appeals with respect  
16 to a petition for review under this section shall be filed  
17 with the Supreme Court of the United States as soon as  
18 practicable after such judgment is issued.

19 (d) STATUTE OF LIMITATION.—No petition may be  
20 filed under this section challenging an order, ruling, deter-  
21 mination, or other action of a Federal regulator or State  
22 insurance regulator after the later of—

23 (1) the end of the 12-month period beginning  
24 on the date on which the first public notice is made

1 of such order, ruling, determination or other action  
2 in its final form; or

3 (2) the end of the 6-month period beginning on  
4 the date on which such order, ruling, determination,  
5 or other action takes effect.

6 (e) STANDARD OF REVIEW.—The court shall decide  
7 a petition filed under this section based on its review on  
8 the merits of all questions presented under State and Fed-  
9 eral law, including the nature of the product or activity  
10 and the history and purpose of its regulation under State  
11 and Federal law, without unequal deference.

12 **SEC. 307. CONSUMER PROTECTION REGULATIONS.**

13 The Federal Deposit Insurance Act (12 U.S.C. 1811  
14 et seq.) is amended by inserting after section 46 (as added  
15 by section 122(b) of this Act) the following new section:

16 **“SEC. 47. CONSUMER PROTECTION REGULATIONS.**

17 **“(a) REGULATIONS REQUIRED.—**

18 **“(1) IN GENERAL.—**The Federal banking agen-  
19 cies shall prescribe and publish in final form, before  
20 the end of the 1-year period beginning on the date  
21 of the enactment of the Financial Services Act of  
22 1999, consumer protection regulations (which the  
23 agencies jointly determine to be appropriate) that—

24 **“(A)** apply to retail sales practices, solici-  
25 tations, advertising, or offers of any insurance



1 product by any insured depository institution or  
2 wholesale financial institution or any person  
3 who is engaged in such activities at an office of  
4 the institution or on behalf of the institution;  
5 and

6 “(B) are consistent with the requirements  
7 of this Act and provide such additional protec-  
8 tions for consumers to whom such sales, solici-  
9 tations, advertising, or offers are directed as  
10 the agency determines to be appropriate.

11 “(2) APPLICABILITY TO SUBSIDIARIES.—The  
12 regulations prescribed pursuant to paragraph (1)  
13 shall extend such protections to any subsidiaries of  
14 an insured depository institution, as deemed appro-  
15 priate by the regulators referred to in paragraph (3),  
16 where such extension is determined to be necessary  
17 to ensure the consumer protections provided by this  
18 section.

19 “(3) CONSULTATION AND JOINT REGULA-  
20 TIONS.—The Federal banking agencies shall consult  
21 with each other and prescribe joint regulations pur-  
22 suant to paragraph (1), after consultation with the  
23 State insurance regulators, as appropriate.

24 “(b) SALES PRACTICES.—The regulations prescribed  
25 pursuant to subsection (a) shall include anticoercion rules

1 applicable to the sale of insurance products which prohibit  
2 an insured depository institution from engaging in any  
3 practice that would lead a consumer to believe an exten-  
4 sion of credit, in violation of section 106(b) of the Bank  
5 Holding Company Act Amendments of 1970, is condi-  
6 tional upon—

7 “(1) the purchase of an insurance product from  
8 the institution or any of its affiliates; or

9 “(2) an agreement by the consumer not to ob-  
10 tain, or a prohibition on the consumer from obtain-  
11 ing, an insurance product from an unaffiliated enti-  
12 ty.

13 “(c) DISCLOSURES AND ADVERTISING.—The regula-  
14 tions prescribed pursuant to subsection (a) shall include  
15 the following provisions relating to disclosures and adver-  
16 tising in connection with the initial purchase of an insur-  
17 ance product:

18 “(1) DISCLOSURES.—

19 “(A) IN GENERAL.—Requirements that the  
20 following disclosures be made orally and in writ-  
21 ing before the completion of the initial sale and,  
22 in the case of clause (iii), at the time of applica-  
23 tion for an extension of credit:

24 “(i) UNINSURED STATUS.—As appro-  
25 priate, the product is not insured by the

1 Federal Deposit Insurance Corporation,  
2 the United States Government, or the in-  
3 sured depository institution.

4 “(ii) INVESTMENT RISK.—In the case  
5 of a variable annuity or other insurance  
6 product which involves an investment risk,  
7 that there is an investment risk associated  
8 with the product, including possible loss of  
9 value.

10 “(iii) COERCION.—The approval of an  
11 extension of credit may not be conditioned  
12 on—

13 “(I) the purchase of an insurance  
14 product from the institution in which  
15 the application for credit is pending or  
16 any of its affiliates or subsidiaries; or

17 “(II) an agreement by the con-  
18 sumer not to obtain, or a prohibition  
19 on the consumer from obtaining, an  
20 insurance product from an unaffili-  
21 ated entity.

22 “(B) MAKING DISCLOSURE READILY UN-  
23 DERSTANDABLE.—Regulations prescribed under  
24 subparagraph (A) shall encourage the use of  
25 disclosure that is conspicuous, simple, direct,

1 and readily understandable, such as the fol-  
2 lowing:

3 “(i) ‘NOT FDIC—INSURED’.

4 “(ii) ‘NOT GUARANTEED BY THE  
5 BANK’.

6 “(iii) ‘MAY GO DOWN IN VALUE’.

7 “(iv) ‘NOT INSURED BY ANY  
8 GOVERNMENT AGENCY’.

9 “(C) ADJUSTMENTS FOR ALTERNATIVE  
10 METHODS OF PURCHASE.—In prescribing the  
11 requirements under subparagraphs (A) and  
12 (D), necessary adjustments shall be made for  
13 purchase in person, by telephone, or by elec-  
14 tronic media to provide for the most appro-  
15 priate and complete form of disclosure and ac-  
16 knowledgments.

17 “(D) CONSUMER ACKNOWLEDGMENT.—A  
18 requirement that an insured depository institu-  
19 tion shall require any person selling an insur-  
20 ance product at any office of, or on behalf of,  
21 the institution to obtain, at the time a con-  
22 sumer receives the disclosures required under  
23 this paragraph or at the time of the initial pur-  
24 chase by the consumer of such product, an ac-  
25 knowledgment by such consumer of the receipt

1 of the disclosure required under this subsection  
2 with respect to such product.

3 “(2) PROHIBITION ON MISREPRESENTA-  
4 TIONS.—A prohibition on any practice, or any adver-  
5 tising, at any office of, or on behalf of, the insured  
6 depository institution, or any subsidiary as appro-  
7 priate, which could mislead any person or otherwise  
8 cause a reasonable person to reach an erroneous be-  
9 lief with respect to—

10 “(A) the uninsured nature of any insur-  
11 ance product sold, or offered for sale, by the in-  
12 stitution or any subsidiary of the institution;

13 “(B) in the case of a variable annuity or  
14 other insurance product that involves an invest-  
15 ment risk, the investment risk associated with  
16 any such product; or

17 “(C) in the case of an institution or sub-  
18 sidiary at which insurance products are sold or  
19 offered for sale, the fact that—

20 “(i) the approval of an extension of  
21 credit to a customer by the institution or  
22 subsidiary may not be conditioned on the  
23 purchase of an insurance product by such  
24 customer from the institution or sub-  
25 sidiary; and

1                   “(ii) the customer is free to purchase  
2                   the insurance product from another  
3                   source.”.

4           “(d) SEPARATION OF BANKING AND NONBANKING  
5 ACTIVITIES.—

6                   “(1) REGULATIONS REQUIRED.—The regula-  
7                   tions prescribed pursuant to subsection (a) shall in-  
8                   clude such provisions as the Federal banking agen-  
9                   cies consider appropriate to ensure that the routine  
10                  acceptance of deposits is kept, to the extent prac-  
11                  ticable, physically segregated from insurance product  
12                  activity.

13                  “(2) REQUIREMENTS.—Regulations prescribed  
14                  pursuant to paragraph (1) shall include the fol-  
15                  lowing:

16                       “(A) SEPARATE SETTING.—A clear delin-  
17                       eation of the setting in which, and the cir-  
18                       cumstances under which, transactions involving  
19                       insurance products should be conducted in a lo-  
20                       cation physically segregated from an area where  
21                       retail deposits are routinely accepted.

22                       “(B) REFERRALS.—Standards which per-  
23                       mit any person accepting deposits from the  
24                       public in an area where such transactions are  
25                       routinely conducted in an insured depository in-

stitution to refer a customer who seeks to purchase any insurance product to a qualified person who sells such product, only if the person making the referral receives no more than a one-time nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

“(C) QUALIFICATION AND LICENSING REQUIREMENTS.—Standards prohibiting any insured depository institution from permitting any person to sell or offer for sale any insurance product in any part of any office of the institution, or on behalf of the institution, unless such person is appropriately qualified and licensed.

“(e) DOMESTIC VIOLENCE DISCRIMINATION PROHIBITION.—

“(1) IN GENERAL.—In the case of an applicant for, or an insured under, any insurance product described in paragraph (2), the status of the applicant or insured as a victim of domestic violence, or as a provider of services to victims of domestic violence, shall not be considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of insurance policies, or

1 payment of insurance claims, except as required or  
2 expressly permitted under State law.

3 “(2) SCOPE OF APPLICATION.—The prohibition  
4 contained in paragraph (1) shall apply to any insur-  
5 ance product which is sold or offered for sale, as  
6 principal, agent, or broker, by any insured deposi-  
7 tory institution or wholesale financial institution or  
8 any person who is engaged in such activities at an  
9 office of the institution or on behalf of the institu-  
10 tion.

11 “(3) SENSE OF THE CONGRESS.—It is the sense  
12 of the Congress that, by the end of the 30-month pe-  
13 riod beginning on the date of the enactment of this  
14 Act, the States should enact prohibitions against dis-  
15 crimination with respect to insurance products that  
16 are at least as strict as the prohibitions contained in  
17 paragraph (1).

18 “(4) DOMESTIC VIOLENCE DEFINED.—For pur-  
19 poses of this subsection, the term ‘domestic violence’  
20 means the occurrence of one or more of the following  
21 acts by a current or former family member, house-  
22 hold member, intimate partner, or caretaker:

23 “(A) Attempting to cause or causing or  
24 threatening another person physical harm, se-



1           vere emotional distress, psychological trauma,  
2           rape, or sexual assault.

3           “(B) Engaging in a course of conduct or  
4           repeatedly committing acts toward another per-  
5           son, including following the person without  
6           proper authority, under circumstances that  
7           place the person in reasonable fear of bodily in-  
8           jury or physical harm.

9           “(C) Subjecting another person to false  
10          imprisonment.

11          “(D) Attempting to cause or cause damage  
12          to property so as to intimidate or attempt to  
13          control the behavior of another person.

14          “(f) CONSUMER GRIEVANCE PROCESS.—The Federal  
15          banking agencies shall jointly establish a consumer com-  
16          plaint mechanism, for receiving and expeditiously address-  
17          ing consumer complaints alleging a violation of regulations  
18          issued under the section, which shall—

19               “(1) establish a group within each regulatory  
20               agency to receive such complaints;

21               “(2) develop procedures for investigating such  
22               complaints;

23               “(3) develop procedures for informing con-  
24               sumers of rights they may have in connection with  
25               such complaints; and

1           “(4) develop procedures for addressing concerns  
2       raised by such complaints, as appropriate, including  
3       procedures for the recovery of losses to the extent  
4       appropriate.

5       “(g) EFFECT ON OTHER AUTHORITY.—

6           “(1) IN GENERAL.—No provision of this section  
7       shall be construed as granting, limiting, or otherwise  
8       affecting—

9           “(A) any authority of the Securities and  
10       Exchange Commission, any self-regulatory or-  
11       ganization, the Municipal Securities Rule-  
12       making Board, or the Secretary of the Treasury  
13       under any Federal securities law; or

14          “(B) except as provided in paragraph (2),  
15       any authority of any State insurance commis-  
16       sioner or other State authority under any State  
17       law.

18       “(2) COORDINATION WITH STATE LAW.—

19          “(A) IN GENERAL.—Except as provided in  
20       subparagraph (B), regulations prescribed by a  
21       Federal banking agency under this section shall  
22       not apply to retail sales, solicitations, adver-  
23       tising, or offers of any insurance product by  
24       any insured depository institution or wholesale  
25       financial institution or to any person who is en-

1 gaged in such activities at an office of such in-  
2 stitution or on behalf of the institution, in a  
3 State where the State has in effect statutes,  
4 regulations, orders, or interpretations, that are  
5 inconsistent with or contrary to the regulations  
6 prescribed by the Federal banking agencies.

7 “(B) PREEMPTION.—If, with respect to  
8 any provision of the regulations prescribed  
9 under this section, the Board of Governors of  
10 the Federal Reserve System, the Comptroller of  
11 the Currency, and the Board of Directors of the  
12 Federal Deposit Insurance Corporation deter-  
13 mine jointly that the protection afforded by  
14 such provision for consumers is greater than  
15 the protection provided by a comparable provi-  
16 sion of the statutes, regulations, orders, or in-  
17 terpretations referred to in subparagraph (A) of  
18 any State, such provision of the regulations pre-  
19 scribed under this section shall supersede the  
20 comparable provision of such State statute, reg-  
21 ulation, order, or interpretation.

22 “(h) INSURANCE PRODUCT DEFINED.—For purposes  
23 of this section, the term ‘insurance product’ includes an  
24 annuity contract the income of which is subject to tax

1 treatment under section 72 of the Internal Revenue Code  
2 of 1986.”.

3 **SEC. 308. CERTAIN STATE AFFILIATION LAWS PREEMPTED**  
4 **FOR INSURANCE COMPANIES AND AFFILI-**  
5 **ATES.**

6 Except as provided in section 104(a)(2), no State  
7 may, by law, regulation, order, interpretation, or other-  
8 wise—

9 (1) prevent or significantly interfere with the  
10 ability of any insurer, or any affiliate of an insurer  
11 (whether such affiliate is organized as a stock com-  
12 pany, mutual holding company, or otherwise), to be-  
13 come a financial holding company or to acquire con-  
14 trol of an insured depository institution;

15 (2) limit the amount of an insurer’s assets that  
16 may be invested in the voting securities of an in-  
17 sured depository institution (or any company which  
18 controls such institution), except that the laws of an  
19 insurer’s State of domicile may limit the amount of  
20 such investment to an amount that is not less than  
21 5 percent of the insurer’s admitted assets; or

22 (3) prevent, significantly interfere with, or have  
23 the authority to review, approve, or disapprove a  
24 plan of reorganization by which an insurer proposes  
25 to reorganize from mutual form to become a stock

1 insurer (whether as a direct or indirect subsidiary of  
2 a mutual holding company or otherwise) unless such  
3 State is the State of domicile of the insurer.

4 **SEC. 309. INTERAGENCY CONSULTATION.**

5 (a) PURPOSE.—It is the intention of the Congress  
6 that the Board of Governors of the Federal Reserve Sys-  
7 tem, as the umbrella supervisor for financial holding com-  
8 panies, and the State insurance regulators, as the func-  
9 tional regulators of companies engaged in insurance activi-  
10 ties, coordinate efforts to supervise companies that control  
11 both a depository institution and a company engaged in  
12 insurance activities regulated under State law. In par-  
13 ticular, Congress believes that the Board and the State  
14 insurance regulators should share, on a confidential basis,  
15 information relevant to the supervision of companies that  
16 control both a depository institution and a company en-  
17 gaged in insurance activities, including information re-  
18 garding the financial health of the consolidated organiza-  
19 tion and information regarding transactions and relation-  
20 ships between insurance companies and affiliated deposi-  
21 tory institutions. The appropriate Federal banking agen-  
22 cies for depository institutions should also share, on a con-  
23 fidential basis, information with the relevant State insur-  
24 ance regulators regarding transactions and relationships  
25 between depository institutions and affiliated companies

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

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

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

24 (2) BANKING AGENCY INFORMATION.—Upon  
25 the request of the appropriate insurance regulator of

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

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

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

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

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

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

16       (e) CONFIDENTIALITY AND PRIVILEGE.—

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



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

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

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

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

22 (2) BOARD; FINANCIAL HOLDING COMPANY;  
23 AND WHOLESALE FINANCIAL INSTITUTION.—The  
24 terms “Board”, “financial holding company”, and  
25 “wholesale financial institution” have the same

1 meanings as in section 2 of the Bank Holding Com-  
2 pany Act of 1956.

3 **SEC. 310. DEFINITION OF STATE.**

4 For purposes of this subtitle, the term “State” means  
5 any State of the United States, the District of Columbia,  
6 any territory of the United States, Puerto Rico, Guam,  
7 American Samoa, the Trust Territory of the Pacific Is-  
8 lands, the Virgin Islands, and the Northern Mariana Is-  
9 lands.

10 **Subtitle B—Redomestication of**  
11 **Mutual Insurers**

12 **SEC. 311. GENERAL APPLICATION.**

13 This subtitle shall only apply to a mutual insurance  
14 company in a State which has not enacted a law which  
15 expressly establishes reasonable terms and conditions for  
16 a mutual insurance company domiciled in such State to  
17 reorganize into a mutual holding company.

18 **SEC. 312. REDOMESTICATION OF MUTUAL INSURERS.**

19 (a) REDOMESTICATION.—A mutual insurer organized  
20 under the laws of any State may transfer its domicile to  
21 a transferee domicile as a step in a reorganization in  
22 which, pursuant to the laws of the transferee domicile and  
23 consistent with the standards in subsection (f), the mutual  
24 insurer becomes a stock insurer that is a direct or indirect  
25 subsidiary of a mutual holding company.

1       (b) RESULTING DOMICILE.—Upon complying with  
2 the applicable law of the transferee domicile governing  
3 transfers of domicile and completion of a transfer pursu-  
4 ant to this section, the mutual insurer shall cease to be  
5 a domestic insurer in the transferor domicile and, as a  
6 continuation of its corporate existence, shall be a domestic  
7 insurer of the transferee domicile.

8       (c) LICENSES PRESERVED.—The certificate of au-  
9 thority, agents' appointments and licenses, rates, approv-  
10 als and other items that a licensed State allows and that  
11 are in existence immediately prior to the date that a re-  
12 domesticating insurer transfers its domicile pursuant to  
13 this subtitle shall continue in full force and effect upon  
14 transfer, if the insurer remains duly qualified to transact  
15 the business of insurance in such licensed State.

16       (d) EFFECTIVENESS OF OUTSTANDING POLICIES  
17 AND CONTRACTS.—

18           (1) IN GENERAL.—All outstanding insurance  
19 policies and annuities contracts of a redomesticating  
20 insurer shall remain in full force and effect and need  
21 not be endorsed as to the new domicile of the in-  
22 surer, unless so ordered by the State insurance regu-  
23 lator of a licensed State, and then only in the case  
24 of outstanding policies and contracts whose owners  
25 reside in such licensed State.

1           (2) FORMS.—

2           (A) Applicable State law may require a re-  
3 domesticating insurer to file new policy forms  
4 with the State insurance regulator of a licensed  
5 State on or before the effective date of the  
6 transfer.

7           (B) Notwithstanding subparagraph (A), a  
8 redomesticating insurer may use existing policy  
9 forms with appropriate endorsements to reflect  
10 the new domicile of the redomesticating insurer  
11 until the new policy forms are approved for use  
12 by the State insurance regulator of such li-  
13 censed State.

14       (e) NOTICE.—A redomesticating insurer shall give  
15 notice of the proposed transfer to the State insurance reg-  
16 ulator of each licensed State and shall file promptly any  
17 resulting amendments to corporate documents required to  
18 be filed by a foreign licensed mutual insurer with the in-  
19 surance regulator of each such licensed State.

20       (f) PROCEDURAL REQUIREMENTS.—No mutual in-  
21 surer may redomesticate to another State and reorganize  
22 into a mutual holding company pursuant to this section  
23 unless the State insurance regulator of the transferee  
24 domicile determines that the plan of reorganization of the  
25 insurer includes the following requirements:

1           (1) APPROVAL BY BOARD OF DIRECTORS AND  
2       POLICYHOLDERS.—The reorganization is approved  
3       by at least a majority of the board of directors of  
4       the mutual insurer and at least a majority of the  
5       policyholders who vote after notice, disclosure of the  
6       reorganization and the effects of the transaction on  
7       policyholder contractual rights, and reasonable op-  
8       portunity to vote, in accordance with such notice,  
9       disclosure, and voting procedures as are approved by  
10      the State insurance regulator of the transferee domi-  
11      cile.

12          (2) CONTINUED VOTING CONTROL BY POLICY-  
13      HOLDERS; REVIEW OF PUBLIC STOCK OFFERING.—  
14      After the consummation of a reorganization, the pol-  
15      icyholders of the reorganized insurer shall have the  
16      same voting rights with respect to the mutual hold-  
17      ing company as they had before the reorganization  
18      with respect to the mutual insurer. With respect to  
19      an initial public offering of stock, the offering shall  
20      be conducted in compliance with applicable securities  
21      laws and in a manner approved by the State insur-  
22      ance regulator of the transferee domicile.

23          (3) AWARD OF STOCK OR GRANT OF OPTIONS  
24      TO OFFICERS AND DIRECTORS.—For a period of 6  
25      months after completion of an initial public offering,

1       neither a stock holding company nor the converted  
2       insurer shall award any stock options or stock  
3       grants to persons who are elected officers or direc-  
4       tors of the mutual holding company, the stock hold-  
5       ing company, or the converted insurer, except with  
6       respect to any such awards or options to which a  
7       person is entitled as a policyholder and as approved  
8       by the State insurance regulator of the transferee  
9       domicile.

10           (4) CONTRACTUAL RIGHTS.—Upon reorganiza-  
11       tion into a mutual holding company, the contractual  
12       rights of the policyholders are preserved.

13           (5) FAIR AND EQUITABLE TREATMENT OF POL-  
14       ICYHOLDERS.—The reorganization is approved as  
15       fair and equitable to the policyholders by the insur-  
16       ance regulator of the transferee domicile.

17       **SEC. 313. EFFECT ON STATE LAWS RESTRICTING REDOMES-**  
18                               **TICATION.**

19       (a) IN GENERAL.—Unless otherwise permitted by  
20       this subtitle, State laws of any transferor domicile that  
21       conflict with the purposes and intent of this subtitle are  
22       preempted, including but not limited to—

23           (1) any law that has the purpose or effect of  
24       impeding the activities of, taking any action against,  
25       or applying any provision of law or regulation to,

1 any insurer or an affiliate of such insurer because  
2 that insurer or any affiliate plans to redomesticate,  
3 or has redomesticated, pursuant to this subtitle;

4 (2) any law that has the purpose or effect of  
5 impeding the activities of, taking action against, or  
6 applying any provision of law or regulation to, any  
7 insured or any insurance licensee or other inter-  
8 mediary because such person has procured insurance  
9 from or placed insurance with any insurer or affil-  
10 iate of such insurer that plans to redomesticate, or  
11 has redomesticated, pursuant to this subtitle, but  
12 only to the extent that such law would treat such in-  
13 sured licensee or other intermediary differently than  
14 if the person procured insurance from, or placed in-  
15 surance with, an insured licensee or other inter-  
16 mediary which had not redomesticated;

17 (3) any law that has the purpose or effect of  
18 terminating, because of the redomestication of a mu-  
19 tual insurer pursuant to this subtitle, any certificate  
20 of authority, agent appointment or license, rate ap-  
21 proval, or other approval, of any State insurance  
22 regulator or other State authority in existence imme-  
23 diately prior to the redomestication in any State  
24 other than the transferee domicile.

1       (b) DIFFERENTIAL TREATMENT PROHIBITED.—No  
2 State law, regulation, interpretation, or functional equiva-  
3 lent thereof, of a State other than a transferee domicile  
4 may treat a redomesticating or redomesticated insurer or  
5 any affiliate thereof any differently than an insurer oper-  
6 ating in that State that is not a redomesticating or re-  
7 domesticated insurer.

8       (c) LAWS PROHIBITING OPERATIONS.—If any li-  
9 censed State fails to issue, delays the issuance of, or seeks  
10 to revoke an original or renewal certificate of authority  
11 of a redomesticated insurer immediately following re-  
12 domestication, except on grounds and in a manner con-  
13 sistent with its past practices regarding the issuance of  
14 certificates of authority to foreign insurers that are not  
15 redomesticating, then the redomesticating insurer shall be  
16 exempt from any State law of the licensed State to the  
17 extent that such State law or the operation of such State  
18 law would make unlawful, or regulate, directly or indi-  
19 rectly, the operation of the redomesticated insurer, except  
20 that such licensed State may require the redomesticated  
21 insurer to—

22           (1) comply with the unfair claim settlement  
23 practices law of the licensed State;

24           (2) pay, on a nondiscriminatory basis, applica-  
25 ble premium and other taxes which are levied on li-



1       censed insurers or policyholders under the laws of  
2       the licensed State;

3           (3) register with and designate the State insur-  
4       ance regulator as its agent solely for the purpose of  
5       receiving service of legal documents or process;

6           (4) submit to an examination by the State in-  
7       surance regulator in any licensed state in which the  
8       redomesticated insurer is doing business to deter-  
9       mine the insurer's financial condition, if—

10           (A) the State insurance regulator of the  
11       transferee domicile has not begun an examina-  
12       tion of the redomesticated insurer and has not  
13       scheduled such an examination to begin before  
14       the end of the 1-year period beginning on the  
15       date of the redomestication; and

16           (B) any such examination is coordinated to  
17       avoid unjustified duplication and repetition;

18       (5) comply with a lawful order issued in—

19           (A) a delinquency proceeding commenced  
20       by the State insurance regulator of any licensed  
21       State if there has been a judicial finding of fi-  
22       nancial impairment under paragraph (7); or

23           (B) a voluntary dissolution proceeding;

24       (6) comply with any State law regarding decep-  
25       tive, false, or fraudulent acts or practices, except

1       that if the licensed State seeks an injunction regard-  
2       ing the conduct described in this paragraph, such in-  
3       junction must be obtained from a court of competent  
4       jurisdiction as provided in section 314(a);

5           (7) comply with an injunction issued by a court  
6       of competent jurisdiction, upon a petition by the  
7       State insurance regulator alleging that the redomes-  
8       ticating insurer is in hazardous financial condition  
9       or is financially impaired;

10          (8) participate in any insurance insolvency  
11       guaranty association on the same basis as any other  
12       insurer licensed in the licensed State; and

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

19   **SEC. 314. OTHER PROVISIONS.**

20       (a) JUDICIAL REVIEW.—The appropriate United  
21       States district court shall have exclusive jurisdiction over  
22       litigation arising under this section involving any redomes-  
23       ticating or redomesticated insurer.

24       (b) SEVERABILITY.—If any provision of this section,  
25       or the application thereof to any person or circumstances,

1 is held invalid, the remainder of the section, and the appli-  
2 cation of such provision to other persons or circumstances,  
3 shall not be affected thereby.

4 **SEC. 315. DEFINITIONS.**

5 For purposes of this subtitle, the following definitions  
6 shall apply:

7 (1) COURT OF COMPETENT JURISDICTION.—

8 The term “court of competent jurisdiction” means a  
9 court authorized pursuant to section 314(a) to adju-  
10 dicate litigation arising under this subtitle.

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

14 (3) INSURANCE LICENSEE.—The term “insur-  
15 ance licensee” means any person holding a license  
16 under State law to act as insurance agent, subagent,  
17 broker, or consultant.

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

22 (5) LICENSED STATE.—The term “licensed  
23 State” means any State, the District of Columbia,  
24 American Samoa, Guam, Puerto Rico, or the United  
25 States Virgin Islands in which the redomesticating

1 insurer has a certificate of authority in effect imme-  
2 diately prior to the redomestication.

3 (6) MUTUAL INSURER.—The term “mutual in-  
4 surer” means a mutual insurer organized under the  
5 laws of any State.

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

11 (8) POLICYHOLDER.—The term “policyholder”  
12 means the owner of a policy issued by a mutual in-  
13 surer, except that, with respect to voting rights, the  
14 term means a member of a mutual insurer or mu-  
15 tual holding company granted the right to vote, as  
16 determined under applicable State law.

17 (9) REDOMESTICATED INSURER.—The term  
18 “redomesticated insurer” means a mutual insurer  
19 that has redomesticated pursuant to this subtitle.

20 (10) REDOMESTICATING INSURER.—The term  
21 “redomesticating insurer” means a mutual insurer  
22 that is redomesticating pursuant to this subtitle.

23 (11) REDOMESTICATION OR TRANSFER.—The  
24 terms “redomestication” and “transfer” mean the

1 transfer of the domicile of a mutual insurer from  
2 one State to another State pursuant to this subtitle.

3 (12) STATE INSURANCE REGULATOR.—The  
4 term “State insurance regulator” means the prin-  
5 cipal insurance regulatory authority of a State, the  
6 District of Columbia, American Samoa, Guam,  
7 Puerto Rico, or the United States Virgin Islands.

8 (13) STATE LAW.—The term “State law”  
9 means the statutes of any State, the District of Co-  
10 lumbia, American Samoa, Guam, Puerto Rico, or the  
11 United States Virgin Islands and any regulation,  
12 order, or requirement prescribed pursuant to any  
13 such statute.

14 (14) TRANSFEREE DOMICILE.—The term  
15 “transferee domicile” means the State to which a  
16 mutual insurer is redomesticating pursuant to this  
17 subtitle.

18 (15) TRANSFEROR DOMICILE.—The term  
19 “transferor domicile” means the State from which a  
20 mutual insurer is redomesticating pursuant to this  
21 subtitle.

22 **SEC. 316. EFFECTIVE DATE.**

23 This subtitle shall take effect on the date of the en-  
24 actment of this Act.

1 **Subtitle C—National Association of**  
2 **Registered Agents and Brokers**

3 **SEC. 321. STATE FLEXIBILITY IN MULTISTATE LICENSING**  
4 **REFORMS.**

5 (a) IN GENERAL.—The provisions of this subtitle  
6 shall take effect unless, not later than 3 years after the  
7 date of the enactment of this Act, at least a majority of  
8 the States—

9 (1) have enacted uniform laws and regulations  
10 governing the licensure of individuals and entities  
11 authorized to sell and solicit the purchase of insur-  
12 ance within the State; or

13 (2) have enacted reciprocity laws and regula-  
14 tions governing the licensure of nonresident individ-  
15 uals and entities authorized to sell and solicit insur-  
16 ance within those States.

17 (b) UNIFORMITY REQUIRED.—States shall be deemed  
18 to have established the uniformity necessary to satisfy  
19 subsection (a)(1) if the States—

20 (1) establish uniform criteria regarding the in-  
21 tegrity, personal qualifications, education, training,  
22 and experience of licensed insurance producers, in-  
23 cluding the qualification and training of sales per-  
24 sonnel in ascertaining the appropriateness of a par-  
25 ticular insurance product for a prospective customer;

1           (2) establish uniform continuing education re-  
2           quirements for licensed insurance producers;

3           (3) establish uniform ethics course require-  
4           ments for licensed insurance producers in conjunc-  
5           tion with the continuing education requirements  
6           under paragraph (2);

7           (4) establish uniform criteria to ensure that an  
8           insurance product, including any annuity contract,  
9           sold to a consumer is suitable and appropriate for  
10          the consumer based on financial information dis-  
11          closed by the consumer; and

12          (5) do not impose any requirement upon any in-  
13          surance producer to be licensed or otherwise quali-  
14          fied to do business as a nonresident that has the ef-  
15          fect of limiting or conditioning that producer's ac-  
16          tivities because of its residence or place of oper-  
17          ations, except that counter-signature requirements  
18          imposed on nonresident producers shall not be  
19          deemed to have the effect of limiting or conditioning  
20          a producer's activities because of its residence or  
21          place of operations under this section.

22          (c) RECIPROCITY REQUIRED.—States shall be  
23          deemed to have established the reciprocity required to sat-  
24          isfy subsection (a)(2) if the following conditions are met:

1           (1)   ADMINISTRATIVE    LICENSING    PROCE-  
2           DURES.—At least a majority of the States permit a  
3           producer that has a resident license for selling or so-  
4           liciting the purchase of insurance in its home State  
5           to receive a license to sell or solicit the purchase of  
6           insurance in such majority of States as a non-  
7           resident to the same extent that such producer is  
8           permitted to sell or solicit the purchase of insurance  
9           in its State, if the producer’s home State also  
10          awards such licenses on such a reciprocal basis,  
11          without satisfying any additional requirements other  
12          than submitting—

13                   (A) a request for licensure;

14                   (B) the application for licensure that the  
15           producer submitted to its home State;

16                   (C) proof that the producer is licensed and  
17           in good standing in its home State; and

18                   (D) the payment of any requisite fee to the  
19           appropriate authority.

20          (2)   CONTINUING    EDUCATION    REQUIRE-  
21          MENTS.—A majority of the States accept an insur-  
22          ance producer’s satisfaction of its home State’s con-  
23          tinuing education requirements for licensed insur-  
24          ance producers to satisfy the States’ own continuing  
25          education requirements if the producer’s home State



1 also recognizes the satisfaction of continuing edu-  
2 cation requirements on such a reciprocal basis.

3 (3) NO LIMITING NONRESIDENT REQUIRE-  
4 MENTS.—A majority of the States do not impose  
5 any requirement upon any insurance producer to be  
6 licensed or otherwise qualified to do business as a  
7 nonresident that has the effect of limiting or condi-  
8 tioning that producer's activities because of its resi-  
9 dence or place of operations, except that countersig-  
10 nature requirements imposed on nonresident pro-  
11 ducers shall not be deemed to have the effect of lim-  
12 iting or conditioning a producer's activities because  
13 of its residence or place of operations under this sec-  
14 tion.

15 (4) RECIPROCAL RECIPROCITY.—Each of the  
16 States that satisfies paragraphs (1), (2), and (3)  
17 grants reciprocity to residents of all of the other  
18 States that satisfy such paragraphs.

19 (d) DETERMINATION.—

20 (1) NAIC DETERMINATION.—At the end of the  
21 3-year period beginning on the date of the enact-  
22 ment of this Act, the National Association of Insur-  
23 ance Commissioners shall determine, in consultation  
24 with the insurance commissioners or chief insurance  
25 regulatory officials of the States, whether the uni-

1       formity or reciprocity required by subsections (b)  
2       and (c) has been achieved.

3           (2) JUDICIAL REVIEW.—The appropriate  
4       United States district court shall have exclusive ju-  
5       risdiction over any challenge to the National Asso-  
6       ciation of Insurance Commissioners' determination  
7       under this section and such court shall apply the  
8       standards set forth in section 706 of title 5, United  
9       States Code, when reviewing any such challenge.

10       (e) CONTINUED APPLICATION.—If, at any time, the  
11      uniformity or reciprocity required by subsections (b) and  
12      (c) no longer exists, the provisions of this subtitle shall  
13      take effect 2 years after the date on which such uniformity  
14      or reciprocity ceases to exist, unless the uniformity or reci-  
15      procity required by those provisions is satisfied before the  
16      expiration of that 2-year period.

17       (f) SAVINGS PROVISION.—No provision of this sec-  
18      tion shall be construed as requiring that any law, regula-  
19      tion, provision, or action of any State which purports to  
20      regulate insurance producers, including any such law, reg-  
21      ulation, provision, or action which purports to regulate un-  
22      fair trade practices or establish consumer protections, in-  
23      cluding countersignature laws, be altered or amended in  
24      order to satisfy the uniformity or reciprocity required by  
25      subsections (b) and (c), unless any such law, regulation,

1 provision, or action is inconsistent with a specific require-  
2 ment of any such subsection and then only to the extent  
3 of such inconsistency.

4 (g) UNIFORM LICENSING.—Nothing in this section  
5 shall be construed to require any State to adopt new or  
6 additional licensing requirements to achieve the uniformity  
7 necessary to satisfy subsection (a)(1).

8 **SEC. 322. NATIONAL ASSOCIATION OF REGISTERED**  
9 **AGENTS AND BROKERS.**

10 (a) ESTABLISHMENT.—There is established the Na-  
11 tional Association of Registered Agents and Brokers  
12 (hereafter in this subtitle referred to as the “Associa-  
13 tion”).

14 (b) STATUS.—The Association shall—

15 (1) be a nonprofit corporation;

16 (2) have succession until dissolved by an Act of  
17 Congress;

18 (3) not be an agent or instrumentality of the  
19 United States Government; and

20 (4) except as otherwise provided in this Act, be  
21 subject to, and have all the powers conferred upon  
22 a nonprofit corporation by the District of Columbia  
23 Nonprofit Corporation Act (D.C. Code, sec. 29y-  
24 1001 et seq.).

1 **SEC. 323. PURPOSE.**

2       The purpose of the Association shall be to provide  
3 a mechanism through which uniform licensing, appoint-  
4 ment, continuing education, and other insurance producer  
5 sales qualification requirements and conditions can be  
6 adopted and applied on a multistate basis, while pre-  
7 serving the right of States to license, supervise, and dis-  
8 cipline insurance producers and to prescribe and enforce  
9 laws and regulations with regard to insurance-related con-  
10 sumer protection and unfair trade practices.

11 **SEC. 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT.**

12       The Association shall be subject to the supervision  
13 and oversight of the National Association of Insurance  
14 Commissioners (hereafter in this subtitle referred to as the  
15 “NAIC”).

16 **SEC. 325. MEMBERSHIP.**

17       (a) ELIGIBILITY.—

18           (1) IN GENERAL.—Any State-licensed insurance  
19 producer shall be eligible to become a member in the  
20 Association.

21           (2) INELIGIBILITY FOR SUSPENSION OR REV-  
22 OCATION OF LICENSE.—Notwithstanding paragraph  
23 (1), a State-licensed insurance producer shall not be  
24 eligible to become a member if a State insurance  
25 regulator has suspended or revoked such producer’s  
26 license in that State during the 3-year period pre-

1 ceding the date on which such producer applies for  
2 membership.

3 (3) RESUMPTION OF ELIGIBILITY.—Paragraph  
4 (2) shall cease to apply to any insurance producer  
5 if—

6 (A) the State insurance regulator renews  
7 the license of such producer in the State in  
8 which the license was suspended or revoked; or

9 (B) the suspension or revocation is subse-  
10 quently overturned.

11 (b) AUTHORITY TO ESTABLISH MEMBERSHIP CRI-  
12 TERIA.—The Association shall have the authority to estab-  
13 lish membership criteria that—

14 (1) bear a reasonable relationship to the pur-  
15 poses for which the Association was established; and

16 (2) do not unfairly limit the access of smaller  
17 agencies to the Association membership.

18 (c) ESTABLISHMENT OF CLASSES AND CAT-  
19 EGORIES.—

20 (1) CLASSES OF MEMBERSHIP.—The Associa-  
21 tion may establish separate classes of membership,  
22 with separate criteria, if the Association reasonably  
23 determines that performance of different duties re-  
24 quires different levels of education, training, or expe-  
25 rience.

1           (2) CATEGORIES.—The Association may estab-  
2       lish separate categories of membership for individ-  
3       uals and for other persons. The establishment of any  
4       such categories of membership shall be based either  
5       on the types of licensing categories that exist under  
6       State laws or on the aggregate amount of business  
7       handled by an insurance producer. No special cat-  
8       egories of membership, and no distinct membership  
9       criteria, shall be established for members which are  
10      insured depository institutions or wholesale financial  
11      institutions or for their employees, agents, or affili-  
12      ates.

13      (d) MEMBERSHIP CRITERIA.—

14           (1) IN GENERAL.—The Association may estab-  
15      lish criteria for membership which shall include  
16      standards for integrity, personal qualifications, edu-  
17      cation, training, and experience.

18           (2) MINIMUM STANDARD.—In establishing cri-  
19      teria under paragraph (1), the Association shall con-  
20      sider the highest levels of insurance producer quali-  
21      fications established under the licensing laws of the  
22      States.

23      (e) EFFECT OF MEMBERSHIP.—Membership in the  
24      Association shall entitle the member to licensure in each  
25      State for which the member pays the requisite fees, includ-

1 ing licensing fees and, where applicable, bonding require-  
2 ments, set by such State.

3 (f) ANNUAL RENEWAL.—Membership in the Associa-  
4 tion shall be renewed on an annual basis.

5 (g) CONTINUING EDUCATION.—The Association shall  
6 establish, as a condition of membership, continuing edu-  
7 cation requirements which shall be comparable to or great-  
8 er than the continuing education requirements under the  
9 licensing laws of a majority of the States.

10 (h) SUSPENSION AND REVOCATION.—The Associa-  
11 tion may—

12 (1) inspect and examine the records and offices  
13 of the members of the Association to determine com-  
14 pliance with the criteria for membership established  
15 by the Association; and

16 (2) suspend or revoke the membership of an in-  
17 surance producer if—

18 (A) the producer fails to meet the applica-  
19 ble membership criteria of the Association; or

20 (B) the producer has been subject to dis-  
21 ciplinary action pursuant to a final adjudicatory  
22 proceeding under the jurisdiction of a State in-  
23 surance regulator, and the Association con-  
24 cludes that retention of membership in the As-  
25 sociation would not be in the public interest.

1 (i) OFFICE OF CONSUMER COMPLAINTS.—

2 (1) IN GENERAL.—The Association shall estab-  
3 lish an office of consumer complaints that shall—

4 (A) receive and investigate complaints  
5 from both consumers and State insurance regu-  
6 lators related to members of the Association;  
7 and

8 (B) recommend to the Association any dis-  
9 ciplinary actions that the office considers appro-  
10 priate, to the extent that any such rec-  
11 ommendation is not inconsistent with State law.

12 (2) RECORDS AND REFERRALS.—The office of  
13 consumer complaints of the Association shall—

14 (A) maintain records of all complaints re-  
15 ceived in accordance with paragraph (1) and  
16 make such records available to the NAIC and  
17 to each State insurance regulator for the State  
18 of residence of the consumer who filed the com-  
19 plaint; and

20 (B) refer, when appropriate, any such com-  
21 plaint to any appropriate State insurance regu-  
22 lator.

23 (3) TELEPHONE AND OTHER ACCESS.—The of-  
24 fice of consumer complaints shall maintain a toll-free  
25 telephone number for the purpose of this subsection



1 and, as practicable, other alternative means of com-  
2 munication with consumers, such as an Internet  
3 home page.

4 **SEC. 326. BOARD OF DIRECTORS.**

5 (a) ESTABLISHMENT.—There is established the  
6 board of directors of the Association (hereafter in this sub-  
7 title referred to as the “Board”) for the purpose of gov-  
8 erning and supervising the activities of the Association  
9 and the members of the Association.

10 (b) POWERS.—The Board shall have such powers and  
11 authority as may be specified in the bylaws of the Associa-  
12 tion.

13 (c) COMPOSITION.—

14 (1) MEMBERS.—The Board shall be composed  
15 of seven members appointed by the NAIC.

16 (2) REQUIREMENT.—At least four of the mem-  
17 bers of the Board shall have significant experience  
18 with the regulation of commercial lines of insurance  
19 in at least 1 of the 20 States in which the greatest  
20 total dollar amount of commercial-lines insurance is  
21 placed in the United States.

22 (3) INITIAL BOARD MEMBERSHIP.—

23 (A) IN GENERAL.—If, by the end of the 2-  
24 year period beginning on the date of the enact-  
25 ment of this Act, the NAIC has not appointed

1           the initial seven members of the Board of the  
2           Association, the initial Board shall consist of  
3           the seven State insurance regulators of the  
4           seven States with the greatest total dollar  
5           amount of commercial-lines insurance in place  
6           as of the end of such period.

7                   (B) ALTERNATE COMPOSITION.—If any of  
8           the State insurance regulators described in sub-  
9           paragraph (A) declines to serve on the Board,  
10          the State insurance regulator with the next  
11          greatest total dollar amount of commercial-lines  
12          insurance in place, as determined by the NAIC  
13          as of the end of such period, shall serve as a  
14          member of the Board.

15                   (C) INOPERABILITY.—If fewer than seven  
16          State insurance regulators accept appointment  
17          to the Board, the Association shall be estab-  
18          lished without NAIC oversight pursuant to sec-  
19          tion 332.

20          (d) TERMS.—The term of each director shall, after  
21          the initial appointment of the members of the Board, be  
22          for 3 years, with one-third of the directors to be appointed  
23          each year.

24          (e) BOARD VACANCIES.—A vacancy on the Board  
25          shall be filled in the same manner as the original appoint-

1 ment of the initial Board for the remainder of the term  
2 of the vacating member.

3 (f) MEETINGS.—The Board shall meet at the call of  
4 the chairperson, or as otherwise provided by the bylaws  
5 of the Association.

6 **SEC. 327. OFFICERS.**

7 (a) IN GENERAL.—

8 (1) POSITIONS.—The officers of the Association  
9 shall consist of a chairperson and a vice chairperson  
10 of the Board, a president, secretary, and treasurer  
11 of the Association, and such other officers and as-  
12 sistant officers as may be deemed necessary.

13 (2) MANNER OF SELECTION.—Each officer of  
14 the Board and the Association shall be elected or ap-  
15 pointed at such time and in such manner and for  
16 such terms not exceeding 3 years as may be pre-  
17 scribed in the bylaws of the Association.

18 (b) CRITERIA FOR CHAIRPERSON.—Only individuals  
19 who are members of the NAIC shall be eligible to serve  
20 as the chairperson of the board of directors.

21 **SEC. 328. BYLAWS, RULES, AND DISCIPLINARY ACTION.**

22 (a) ADOPTION AND AMENDMENT OF BYLAWS.—

23 (1) COPY REQUIRED TO BE FILED WITH THE  
24 NAIC.—The board of directors of the Association  
25 shall file with the NAIC a copy of the proposed by-

1 laws or any proposed amendment to the bylaws, ac-  
2 companied by a concise general statement of the  
3 basis and purpose of such proposal.

4 (2) EFFECTIVE DATE.—Except as provided in  
5 paragraph (3), any proposed bylaw or proposed  
6 amendment shall take effect—

7 (A) thirty days after the date of the filing  
8 of a copy with the NAIC;

9 (B) upon such later date as the Associa-  
10 tion may designate; or

11 (C) upon such earlier date as the NAIC  
12 may determine.

13 (3) DISAPPROVAL BY THE NAIC.—Notwith-  
14 standing paragraph (2), a proposed bylaw or amend-  
15 ment shall not take effect if, after public notice and  
16 opportunity to participate in a public hearing—

17 (A) the NAIC disapproves such proposal as  
18 being contrary to the public interest or contrary  
19 to the purposes of this subtitle and provides no-  
20 tice to the Association setting forth the reasons  
21 for such disapproval; or

22 (B) the NAIC finds that such proposal in-  
23 volves a matter of such significant public inter-  
24 est that public comment should be obtained, in  
25 which case it may, after notifying the Associa-

tion in writing of such finding, require that the procedures set forth in subsection (b) be followed with respect to such proposal, in the same manner as if such proposed bylaw change were a proposed rule change within the meaning of such subsection.

(b) ADOPTION AND AMENDMENT OF RULES.—

(1) FILING PROPOSED REGULATIONS WITH THE NAIC.—

(A) IN GENERAL.—The board of directors of the Association shall file with the NAIC a copy of any proposed rule or any proposed amendment to a rule of the Association which shall be accompanied by a concise general statement of the basis and purpose of such proposal.

(B) OTHER RULES AND AMENDMENTS INEFFECTIVE.—No proposed rule or amendment shall take effect unless approved by the NAIC or otherwise permitted in accordance with this paragraph.

(2) INITIAL CONSIDERATION BY THE NAIC.—

Not later than 35 days after the date of publication of notice of filing of a proposal, or before the end of such longer period not to exceed 90 days as the NAIC may designate after such date, if the NAIC

1 finds such longer period to be appropriate and sets  
2 forth its reasons for so finding, or as to which the  
3 Association consents, the NAIC shall—

4 (A) by order approve such proposed rule or  
5 amendment; or

6 (B) institute proceedings to determine  
7 whether such proposed rule or amendment  
8 should be modified or disapproved.

9 (3) NAIC PROCEEDINGS.—

10 (A) IN GENERAL.—Proceedings instituted  
11 by the NAIC with respect to a proposed rule or  
12 amendment pursuant to paragraph (2) shall—

13 (i) include notice of the grounds for  
14 disapproval under consideration;

15 (ii) provide opportunity for hearing;  
16 and

17 (iii) be concluded not later than 180  
18 days after the date of the Association's fil-  
19 ing of such proposed rule or amendment.

20 (B) DISPOSITION OF PROPOSAL.—At the  
21 conclusion of any proceeding under subpara-  
22 graph (A), the NAIC shall, by order, approve or  
23 disapprove the proposed rule or amendment.

24 (C) EXTENSION OF TIME FOR CONSIDER-  
25 ATION.—The NAIC may extend the time for

1 concluding any proceeding under subparagraph

2 (A) for—

3 (i) not more than 60 days if the  
4 NAIC finds good cause for such extension  
5 and sets forth its reasons for so finding; or

6 (ii) for such longer period as to which  
7 the Association consents.

8 (4) STANDARDS FOR REVIEW.—

9 (A) GROUNDS FOR APPROVAL.—The NAIC  
10 shall approve a proposed rule or amendment if  
11 the NAIC finds that the rule or amendment is  
12 in the public interest and is consistent with the  
13 purposes of this Act.

14 (B) APPROVAL BEFORE END OF NOTICE  
15 PERIOD.—The NAIC shall not approve any pro-  
16 posed rule before the end of the 30-day period  
17 beginning on the date on which the Association  
18 files proposed rules or amendments in accord-  
19 ance with paragraph (1), unless the NAIC finds  
20 good cause for so doing and sets forth the rea-  
21 sons for so finding.

22 (5) ALTERNATE PROCEDURE.—

23 (A) IN GENERAL.—Notwithstanding any  
24 provision of this subsection other than subpara-  
25 graph (B), a proposed rule or amendment relat-

1           ing to the administration or organization of the  
2           Association shall take effect—

3                   (i) upon the date of filing with the  
4                   NAIC, if such proposed rule or amendment  
5                   is designated by the Association as relating  
6                   solely to matters which the NAIC, con-  
7                   sistent with the public interest and the  
8                   purposes of this subsection, determines by  
9                   rule do not require the procedures set forth  
10                  in this paragraph; or

11                  (ii) upon such date as the NAIC shall  
12                  for good cause determine.

13           (B) ABROGATION BY THE NAIC.—

14                   (i) IN GENERAL.—At any time within  
15                   60 days after the date of filing of any pro-  
16                   posed rule or amendment under subpara-  
17                   graph (A)(i) or clause (ii) of this subpara-  
18                   graph, the NAIC may repeal such rule or  
19                   amendment and require that the rule or  
20                   amendment be refiled and reviewed in ac-  
21                   cordance with this paragraph, if the NAIC  
22                   finds that such action is necessary or ap-  
23                   propriate in the public interest, for the  
24                   protection of insurance producers or policy-



1 holders, or otherwise in furtherance of the  
2 purposes of this subtitle.

3 (ii) EFFECT OF RECONSIDERATION BY  
4 THE NAIC.—Any action of the NAIC pur-  
5 suant to clause (i) shall—

6 (I) not affect the validity or force  
7 of a rule change during the period  
8 such rule or amendment was in effect;  
9 and

10 (II) not be considered to be a  
11 final action.

12 (c) ACTION REQUIRED BY THE NAIC.—The NAIC  
13 may, in accordance with such rules as the NAIC deter-  
14 mines to be necessary or appropriate to the public interest  
15 or to carry out the purposes of this subtitle, require the  
16 Association to adopt, amend, or repeal any bylaw, rule or  
17 amendment of the Association, whenever adopted.

18 (d) DISCIPLINARY ACTION BY THE ASSOCIATION.—

19 (1) SPECIFICATION OF CHARGES.—In any pro-  
20 ceeding to determine whether membership shall be  
21 denied, suspended, revoked, or not renewed (here-  
22 after in this section referred to as a “disciplinary ac-  
23 tion”), the Association shall bring specific charges,  
24 notify such member of such charges, give the mem-

1       ber an opportunity to defend against the charges,  
2       and keep a record.

3           (2) SUPPORTING STATEMENT.—A determina-  
4       tion to take disciplinary action shall be supported by  
5       a statement setting forth—

6           (A) any act or practice in which such  
7       member has been found to have been engaged;

8           (B) the specific provision of this subtitle,  
9       the rules or regulations under this subtitle, or  
10      the rules of the Association which any such act  
11      or practice is deemed to violate; and

12          (C) the sanction imposed and the reason  
13      for such sanction.

14      (e) NAIC REVIEW OF DISCIPLINARY ACTION.—

15          (1) NOTICE TO THE NAIC.—If the Association  
16      orders any disciplinary action, the Association shall  
17      promptly notify the NAIC of such action.

18          (2) REVIEW BY THE NAIC.—Any disciplinary  
19      action taken by the Association shall be subject to  
20      review by the NAIC—

21          (A) on the NAIC's own motion; or

22          (B) upon application by any person ag-  
23      grieved by such action if such application is  
24      filed with the NAIC not more than 30 days  
25      after the later of—

- 1 (i) the date the notice was filed with  
2 the NAIC pursuant to paragraph (1); or  
3 (ii) the date the notice of the discipli-  
4 nary action was received by such aggrieved  
5 person.

6 (f) EFFECT OF REVIEW.—The filing of an applica-  
7 tion to the NAIC for review of a disciplinary action, or  
8 the institution of review by the NAIC on the NAIC's own  
9 motion, shall not operate as a stay of disciplinary action  
10 unless the NAIC otherwise orders.

11 (g) SCOPE OF REVIEW.—

12 (1) IN GENERAL.—In any proceeding to review  
13 such action, after notice and the opportunity for  
14 hearing, the NAIC shall—

15 (A) determine whether the action should be  
16 taken;

17 (B) affirm, modify, or rescind the discipli-  
18 nary sanction; or

19 (C) remand to the Association for further  
20 proceedings.

21 (2) DISMISSAL OF REVIEW.—The NAIC may  
22 dismiss a proceeding to review disciplinary action if  
23 the NAIC finds that—

24 (A) the specific grounds on which the ac-  
25 tion is based exist in fact;

1 (B) the action is in accordance with appli-  
2 cable rules and regulations; and

3 (C) such rules and regulations are, and  
4 were, applied in a manner consistent with the  
5 purposes of this subtitle.

6 **SEC. 329. ASSESSMENTS.**

7 (a) INSURANCE PRODUCERS SUBJECT TO ASSESS-  
8 MENT.—The Association may establish such application  
9 and membership fees as the Association finds necessary  
10 to cover the costs of its operations, including fees made  
11 reimbursable to the NAIC under subsection (b), except  
12 that, in setting such fees, the Association may not dis-  
13 criminate against smaller insurance producers.

14 (b) NAIC ASSESSMENTS.—The NAIC may assess the  
15 Association for any costs that the NAIC incurs under this  
16 subtitle.

17 **SEC. 330. FUNCTIONS OF THE NAIC.**

18 (a) ADMINISTRATIVE PROCEDURE.—Determinations  
19 of the NAIC, for purposes of making rules pursuant to  
20 section 328, shall be made after appropriate notice and  
21 opportunity for a hearing and for submission of views of  
22 interested persons.

23 (b) EXAMINATIONS AND REPORTS.—

24 (1) EXAMINATIONS.—The NAIC may make  
25 such examinations and inspections of the Association

1 and require the Association to furnish to the NAIC  
2 such reports and records or copies thereof as the  
3 NAIC may consider necessary or appropriate in the  
4 public interest or to effectuate the purposes of this  
5 subtitle.

6 (2) REPORT BY ASSOCIATION.—As soon as  
7 practicable after the close of each fiscal year, the As-  
8 sociation shall submit to the NAIC a written report  
9 regarding the conduct of its business, and the exer-  
10 cise of the other rights and powers granted by this  
11 subtitle, during such fiscal year. Such report shall  
12 include financial statements setting forth the finan-  
13 cial position of the Association at the end of such  
14 fiscal year and the results of its operations (includ-  
15 ing the source and application of its funds) for such  
16 fiscal year. The NAIC shall transmit such report to  
17 the President and the Congress with such comment  
18 thereon as the NAIC determines to be appropriate.

19 **SEC. 331. LIABILITY OF THE ASSOCIATION AND THE DIREC-**  
20 **TORS, OFFICERS, AND EMPLOYEES OF THE**  
21 **ASSOCIATION.**

22 (a) IN GENERAL.—The Association shall not be  
23 deemed to be an insurer or insurance producer within the  
24 meaning of any State law, rule, regulation, or order regu-  
25 lating or taxing insurers, insurance producers, or other en-

1 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 rep-  
21 resenting at least 50 percent of the total United  
22 States commercial-lines insurance premiums have  
23 not satisfied the uniformity or reciprocity require-  
24 ments of subsections (a), (b), and (c) of section 321;  
25 and

1           (2) the NAIC has not approved the Associa-  
2           tion's bylaws as required by section 328 or is unable  
3           to operate or supervise the Association, or the Asso-  
4           ciation is not conducting its activities as required  
5           under this Act.

6           (b) BOARD APPOINTMENTS.—If the repeals required  
7           by subsection (a) are implemented, the following shall  
8           apply:

9           (1) GENERAL APPOINTMENT POWER.—The  
10          President, with the advice and consent of the Sen-  
11          ate, shall appoint the members of the Association's  
12          Board established under section 326 from lists of  
13          candidates recommended to the President by the  
14          National Association of Insurance Commissioners.

15          (2) PROCEDURES FOR OBTAINING NATIONAL  
16          ASSOCIATION OF INSURANCE COMMISSIONERS AP-  
17          POINTMENT RECOMMENDATIONS.—

18                (A) INITIAL DETERMINATION AND REC-  
19                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 six recommended can-  
9 didates for the Board to the President by Janu-  
10 ary 15 of each subsequent year. If the NAIC  
11 fails to provide a list by that date, or if any list  
12 that is provided does not include at least six  
13 recommended 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       **Subtitle D—Rental Car Agency**  
12               **Insurance Activities**

13   **SEC. 341. STANDARD OF REGULATION FOR MOTOR VEHI-**  
14               **CLE RENTALS.**

15       (a) PROTECTION AGAINST RETROACTIVE APPLICA-  
16   TION OF REGULATORY AND LEGAL ACTION.—Except as  
17   provided in subsection (b), during the 3-year period begin-  
18   ning on the date of the enactment of this Act, it shall  
19   be a presumption that no State law imposes any licensing,  
20   appointment, or education requirements on any person  
21   who solicits the purchase of or sells insurance connected  
22   with, and incidental to, the lease or rental of a motor vehi-  
23   cle.

1 (b) PREEMINENCE OF STATE INSURANCE LAW.—No  
2 provision of this section shall be construed as altering the  
3 validity, interpretation, construction, or effect of—

4 (1) any State statute;

5 (2) the prospective application of any court  
6 judgment interpreting or applying any State statute;  
7 or

8 (3) the prospective application of any final  
9 State regulation, order, bulletin, or other statutorily  
10 authorized interpretation or action,

11 which, by its specific terms, expressly regulates or exempts  
12 from regulation any person who solicits the purchase of  
13 or sells insurance connected with, and incidental to, the  
14 short-term lease or rental of a motor vehicle.

15 (c) SCOPE OF APPLICATION.—This section shall  
16 apply with respect to—

17 (1) the lease or rental of a motor vehicle for a  
18 total period of 90 consecutive days or less; and

19 (2) insurance which is provided in connection  
20 with, and incidentally to, such lease or rental for a  
21 period of consecutive days not exceeding the lease or  
22 rental period.

23 (d) MOTOR VEHICLE DEFINED.—For purposes of  
24 this section, the term “motor vehicle” has the meaning

1 given to such term in section 13102 of title 49, United  
2 States Code.

### 3           **Subtitle E—Confidentiality**

#### 4   **SEC. 351. CONFIDENTIALITY OF HEALTH AND MEDICAL IN-** 5           **FORMATION.**

6           (a) IN GENERAL.—A company which underwrites or  
7 sells annuities contracts or contracts insuring, guaran-  
8 teeing, or indemnifying against loss, harm, damage, ill-  
9 ness, disability, or death (other than credit-related insur-  
10 ance) and any subsidiary or affiliate thereof shall maintain  
11 a practice of protecting the confidentiality of individually  
12 identifiable customer health and medical and genetic infor-  
13 mation and may disclose such information only—

14               (1) with the consent, or at the direction, of the  
15 customer;

16               (2) for insurance underwriting and reinsuring  
17 policies, account administration, reporting, inves-  
18 tigating, or preventing fraud or material misrepresen-  
19 tation, processing premium payments, processing  
20 insurance claims, administering insurance benefits  
21 (including utilization review activities), providing in-  
22 formation to the customer's physician or other  
23 health care provider, participating in research  
24 projects, enabling the purchase, transfer, merger, or  
25 sale of any insurance-related business, or as other-



1 wise required or specifically permitted by Federal or  
2 State law; or

3 (3) in connection with—

4 (A) the authorization, settlement, billing,  
5 processing, clearing, transferring, reconciling,  
6 or collection of amounts charged, debited, or  
7 otherwise paid using a debit, credit, or other  
8 payment card or account number, or by other  
9 payment means;

10 (B) the transfer of receivables, accounts,  
11 or interest therein;

12 (C) the audit of the debit, credit, or other  
13 payment information;

14 (D) compliance with Federal, State, or  
15 local law;

16 (E) compliance with a properly authorized  
17 civil, criminal, or regulatory investigation by  
18 Federal, State, or local authorities as governed  
19 by the requirements of this section; or

20 (F) fraud protection, risk control, resolving  
21 customer disputes or inquiries, communicating  
22 with the person to whom the information re-  
23 lates, or reporting to consumer reporting agen-  
24 cies.

1       (b) STATE ACTIONS FOR VIOLATIONS.—In addition  
2 to such other remedies as are provided under State law,  
3 if the chief law enforcement officer of a State, State insur-  
4 ance regulator, or an official or agency designated by a  
5 State, has reason to believe that any person has violated  
6 or is violating this title, the State may bring an action  
7 to enjoin such violation in any appropriate United States  
8 district court or in any other court of competent jurisdic-  
9 tion.

10       (c) EFFECTIVE DATE; SUNSET.—

11           (1) EFFECTIVE DATE.—Except as provided in  
12 paragraph (2), subsection (a) shall take effect on  
13 February 1, 2000.

14           (2) SUNSET.—Subsection (a) shall not take ef-  
15 fect if, or shall cease to be effective on and after the  
16 date on which, legislation is enacted that satisfies  
17 the requirements in section 264(c)(1) of the Health  
18 Insurance Portability and Accountability Act of  
19 1996 (Public Law 104–191; 110 Stat. 2033).

20       (d) CONSULTATION.—While subsection (a) is in ef-  
21 fect, State insurance regulatory authorities, through the  
22 National Association of Insurance Commissioners, shall  
23 consult with the Secretary of Health and Human Services  
24 in connection with the administration of such subsection.

1 **TITLE IV—UNITARY SAVINGS**  
2 **AND LOAN HOLDING COMPA-**  
3 **NIES**

4 **SEC. 401. PROHIBITION ON NEW UNITARY SAVINGS AND**  
5 **LOAN HOLDING COMPANIES.**

6 (a) IN GENERAL.—Section 10(c) of the Home Own-  
7 ers’ Loan Act (12 U.S.C. 1467a(c)) is amended by adding  
8 at the end the following new paragraph:

9 “(9) TERMINATION OF EXPANDED POWERS FOR  
10 NEW UNITARY HOLDING COMPANY.—

11 “(A) IN GENERAL.—Subject to subpara-  
12 graph (B) and notwithstanding paragraph (3),  
13 no company may directly or indirectly, includ-  
14 ing through any merger, consolidation, or other  
15 type of business combination, acquire control of  
16 a savings association after March 4, 1999, un-  
17 less the company is engaged, directly or indi-  
18 rectly (including through a subsidiary other  
19 than a savings association), only in activities  
20 that are permitted—

21 “(i) under paragraph (1)(C) or (2); or

22 “(ii) for financial holding companies  
23 under section 6(c) of the Bank Holding  
24 Company Act of 1956.

1           “(B) EXISTING UNITARY HOLDING COMPA-  
2           NIES AND THE SUCCESSORS TO SUCH COMPA-  
3           NIES.—Subparagraph (A) shall not apply, and  
4           paragraph (3) shall continue to apply, to a com-  
5           pany (or any subsidiary of such company)  
6           that—

7                   “(i) either—

8                           “(I) acquired one or more sav-  
9                           ings associations described in para-  
10                          graph (3) pursuant to applications at  
11                          least one of which was filed on or be-  
12                          fore March 4, 1999; or

13                          “(II) subject to subparagraph  
14                          (C), became a savings and loan hold-  
15                          ing company by acquiring control of  
16                          the company described in subclause  
17                          (I); and

18                          “(ii) continues to control the savings  
19                          association referred to in clause (i)(II) or  
20                          the successor to any such savings associa-  
21                          tion.

22           “(C) NOTICE PROCESS FOR NONFINANCIAL  
23           ACTIVITIES BY A SUCCESSOR UNITARY HOLDING  
24           COMPANY.—

1           “(i) NOTICE REQUIRED.—Subpara-  
2 graph (B) shall not apply to any company  
3 described in subparagraph (B)(i)(II) which  
4 engages, directly or indirectly, in any activ-  
5 ity other than activities described in  
6 clauses (i) and (ii) of subparagraph (A),  
7 unless—

8           “(I) in addition to an application  
9 to the Director under this section to  
10 become a savings and loan holding  
11 company, the company submits a no-  
12 tice to the Board of Governors of the  
13 Federal Reserve System of such non-  
14 financial activities in the same man-  
15 ner as a notice of nonbanking activi-  
16 ties is filed with the Board under sec-  
17 tion 4(j) of the Bank Holding Com-  
18 pany Act of 1956; and

19           “(II) before the end of the appli-  
20 cable period under such section 4(j),  
21 the Board either approves or does not  
22 disapprove of the continuation of such  
23 activities by such company, directly or  
24 indirectly, after becoming a savings  
25 and loan holding company.

1                   “(ii) PROCEDURE.—Section 4(j) of  
2                   the Bank Holding Company Act of 1956,  
3                   including the standards for review, shall  
4                   apply to any notice filed with the Board  
5                   under this subparagraph in the same man-  
6                   ner as it applies to notices filed under such  
7                   section.”.

8           (b) TECHNICAL AND CONFORMING AMENDMENT.—  
9   Section 10(c)(3) of the Home Owners’ Loan Act (12  
10 U.S.C. 1467a(c)(3)) is amended by striking “Notwith-  
11 standing” and inserting “Except as provided in paragraph  
12 (9) and notwithstanding”.

13           (c) CONFORMING AMENDMENT.—Section 10(o)(5) of  
14 the Home Owners’ Loan Act (12 U.S.C. 1467a(o)(5)) is  
15 amended—

16           (1) in subparagraph (E), by striking “, except  
17       subparagraph (B)”;

18           (2) by adding at the end the following new sub-  
19       paragraph:

20                   “(F) In the case of a mutual holding com-  
21                   pany which is a savings and loan holding com-  
22                   pany described in subsection (c)(3), engaging in  
23                   the activities permitted for financial holding  
24                   companies under section 6(c) of the Bank Hold-  
25                   ing Company Act of 1956.”.

1 **SEC. 402. RETENTION OF “FEDERAL” IN NAME OF CON-**  
2 **VERTED FEDERAL SAVINGS ASSOCIATION.**

3 Section 2 of the Act entitled “An Act to enable na-  
4 tional banking associations to increase their capital stock  
5 and to change their names or locations”, approved May  
6 1, 1886 (12 U.S.C. 30), is amended by adding at the end  
7 the following new subsection:

8 “(d) RETENTION OF ‘FEDERAL’ IN NAME OF CON-  
9 VERTED FEDERAL SAVINGS ASSOCIATION.—

10 “(1) IN GENERAL.—Notwithstanding subsection  
11 (a) or any other provision of law, any depository in-  
12 stitution the charter of which is converted from that  
13 of a Federal savings association to a national bank  
14 or a State bank after the date of the enactment of  
15 the Financial Services Act of 1999 may retain the  
16 term ‘Federal’ in the name of such institution if  
17 such depository institution remains an insured de-  
18 pository institution.

19 “(2) DEFINITIONS.—For purposes of this sub-  
20 section, the terms ‘depository institution’, ‘insured  
21 depository institution’, ‘national bank’, and ‘State  
22 bank’ have the same meanings as in section 3 of the  
23 Federal Deposit Insurance Act.”.

1                   **TITLE V—PRIVACY**  
2                   **Subtitle A—Disclosure of**  
3                   **Nonpublic Personal Information**

4   **SEC. 501. PROTECTION OF NONPUBLIC PERSONAL INFOR-**  
5                   **MATION.**

6           (a) **PRIVACY OBLIGATION POLICY.**—It is the policy  
7 of the Congress that each financial institution has an af-  
8 firmative and continuing obligation to respect the privacy  
9 of its customers and to protect the security and confiden-  
10 tiality of those customers' nonpublic personal information.

11          (b) **FINANCIAL INSTITUTIONS SAFEGUARDS.**—In fur-  
12 therance of the policy in subsection (a), each agency or  
13 authority described in section 505(a) shall establish appro-  
14 priate standards for the financial institutions subject to  
15 their jurisdiction relating to administrative, technical, and  
16 physical safeguards—

17               (1) to insure the security and confidentiality of  
18               customer records and information;

19               (2) to protect against any anticipated threats or  
20               hazards to the security or integrity of such records;  
21               and

22               (3) to protect against unauthorized access to or  
23               use of such records or information which could re-  
24               sult in substantial harm or inconvenience to any cus-  
25               tomer.



1 **SEC. 502. OBLIGATIONS WITH RESPECT TO DISCLOSURES**  
2 **OF PERSONAL INFORMATION.**

3 (a) NOTICE REQUIREMENTS.—Except as otherwise  
4 provided in this subtitle, a financial institution may not,  
5 directly or through any affiliate, disclose to a nonaffiliated  
6 third party any nonpublic personal information, unless  
7 such financial institution provides or has provided to the  
8 consumer a notice that complies with section 503(b).

9 (b) OPT OUT.—

10 (1) IN GENERAL.—A financial institution may  
11 not disclose nonpublic personal information to non-  
12 affiliated third parties unless—

13 (A) such financial institution clearly and  
14 conspicuously discloses to the consumer, in  
15 writing or in electronic form (or other form per-  
16 mitted by the regulations prescribed under sec-  
17 tion 504), that such information may be dis-  
18 closed to such third parties;

19 (B) the consumer is given the opportunity,  
20 before the time that such information is initially  
21 disclosed, to direct that such information not be  
22 disclosed to such third parties; and

23 (C) the consumer is given an explanation  
24 of how the consumer can exercise that non-  
25 disclosure option.

1           (2) EXCEPTION.—This subsection shall not pre-  
2       vent a financial institution from providing nonpublic  
3       personal information to a nonaffiliated third party to  
4       perform services or functions on behalf of the finan-  
5       cial institution, including marketing of the financial  
6       institution’s own products or services or financial  
7       products or services offered pursuant to joint agree-  
8       ments between two or more financial institutions  
9       that comply with the requirements imposed by the  
10      regulations prescribed under section 504, if the fi-  
11      nancial institution fully discloses the providing of  
12      such information and enters into a contractual  
13      agreement with the third party that requires the  
14      third party to maintain the confidentiality of such  
15      information.

16      (c) LIMITS ON REUSE OF INFORMATION.—Except as  
17      otherwise provided in this subtitle, a nonaffiliated third  
18      party that receives from a financial institution nonpublic  
19      personal information under this section shall not, directly  
20      or through an affiliate of such receiving third party, dis-  
21      close such information to any other person that is a non-  
22      affiliated third party of both the financial institution and  
23      such receiving third party, unless such disclosure would  
24      be lawful if made directly to such other person by the fi-  
25      nancial institution.

1 (d) LIMITATIONS ON THE SHARING OF ACCOUNT  
2 NUMBER INFORMATION FOR MARKETING PURPOSES.—A  
3 financial institution shall not disclose an account number  
4 or similar form of access number or access code for a cred-  
5 it card account, deposit account, or transaction account  
6 of a consumer to any nonaffiliated third party for use in  
7 telemarketing, direct mail marketing, or other marketing  
8 through electronic mail to the consumer.

9 (e) GENERAL EXCEPTIONS.—Subsections (a) and (b)  
10 shall not prohibit the disclosure of nonpublic personal in-  
11 formation—

12 (1) as necessary to effect, administer, or en-  
13 force a transaction requested or authorized by the  
14 consumer, or in connection with—

15 (A) servicing or processing a financial  
16 product or service requested or authorized by  
17 the consumer;

18 (B) maintaining or servicing the con-  
19 sumer's account with the financial institution;  
20 or

21 (C) a proposed or actual securitization,  
22 secondary market sale (including sales of serv-  
23 icing rights), or similar transaction related to a  
24 transaction of the consumer;

1           (2) with the consent or at the direction of the  
2       consumer;

3           (3) to protect the confidentiality or security of  
4       its records pertaining to the consumer, the service or  
5       product, or the transaction therein, or to protect  
6       against or prevent actual or potential fraud, unau-  
7       thorized transactions, claims, or other liability, for  
8       required institutional risk control, or for resolving  
9       customer disputes or inquiries, or to persons holding  
10      a beneficial interest relating to the consumer, or to  
11      persons acting in a fiduciary capacity on behalf of  
12      the consumer;

13          (4) to provide information to insurance rate ad-  
14      visory organizations, guaranty funds or agencies, ap-  
15      plicable rating agencies of the financial institution,  
16      persons assessing the institution's compliance with  
17      industry standards, and the institution's attorneys,  
18      accountants, and auditors;

19          (5) to the extent specifically permitted or re-  
20      quired under other provisions of law and in accord-  
21      ance with the Right to Financial Privacy Act of  
22      1978, to law enforcement agencies (including a Fed-  
23      eral functional regulator, a State insurance author-  
24      ity, or the Federal Trade Commission), self-regu-

1       latory organizations, or for an investigation on a  
2       matter related to public safety;

3           (6) to a consumer reporting agency in accord-  
4       ance with the Fair Credit Reporting Act, or in ac-  
5       cordance with interpretations of such Act by the  
6       Board of Governors of the Federal Reserve System  
7       or the Federal Trade Commission, including inter-  
8       pretations published as commentary (16 CFR 601–  
9       622);

10          (7) in connection with a proposed or actual  
11       sale, merger, transfer, or exchange of all or a por-  
12       tion of a business or operating unit if the disclosure  
13       of nonpublic personal information concerns solely  
14       consumers of such business or unit; or

15          (8) to comply with Federal, State, or local laws,  
16       rules, and other applicable legal requirements; to  
17       comply with a properly authorized civil, criminal, or  
18       regulatory investigation or subpoena by Federal,  
19       State, or local authorities; or to respond to judicial  
20       process or government regulatory authorities having  
21       jurisdiction over the financial institution for exam-  
22       ination, compliance, or other purposes as authorized  
23       by law.

1 **SEC. 503. DISCLOSURE OF INSTITUTION PRIVACY POLICY.**

2 (a) DISCLOSURE REQUIRED.—A financial institution  
3 shall clearly and conspicuously disclose to each consumer,  
4 at the time of establishing the customer relationship with  
5 the consumer and not less than annually, in writing or  
6 in electronic form (or other form permitted by the regula-  
7 tions prescribed under section 504), its policies and prac-  
8 tices with respect to protecting the nonpublic personal in-  
9 formation of consumers in accordance with the rules pre-  
10 scribed under section 504.

11 (b) INFORMATION TO BE INCLUDED.—The disclosure  
12 required by subsection (a) shall include—

13 (1) the policy and practices of the institution  
14 with respect to disclosing nonpublic personal infor-  
15 mation to nonaffiliated third parties, other than  
16 agents of the institution, consistent with section 502  
17 of this subtitle, and including—

18 (A) the categories of persons to whom the  
19 information is or may be disclosed, other than  
20 the persons to whom the information may be  
21 provided pursuant to section 502(e); and

22 (B) the practices and policies of the insti-  
23 tution with respect to disclosing of nonpublic  
24 personal information of persons who have  
25 ceased to be customers of the financial institu-  
26 tion;

1           (2) the categories of nonpublic personal infor-  
2           mation that are collected by the financial institution;

3           (3) the policies that the institution maintains to  
4           protect the confidentiality and security of nonpublic  
5           personal information in accordance with section 501;  
6           and

7           (4) the disclosures required, if any, under sec-  
8           tion 603(d)(2)(A)(iii) of the Fair Credit Reporting  
9           Act.

10 **SEC. 504. RULEMAKING.**

11           (a) REGULATORY AUTHORITY.—The Federal bank-  
12           ing agencies, the National Credit Union Association, the  
13           Secretary of the Treasury, and the Securities and Ex-  
14           change Commission, shall jointly prescribe, after consulta-  
15           tion with the Federal Trade Commission, and representa-  
16           tives of State insurance authorities designated by the Na-  
17           tional Association of Insurance Commissioners, such regu-  
18           lations as may be necessary to carry out the purposes of  
19           this subtitle. Such regulations shall be prescribed in ac-  
20           cordance with applicable requirements of the title 5,  
21           United States Code, and shall be issued in final form with-  
22           in 6 months after the date of enactment of this Act.

23           (b) AUTHORITY TO GRANT EXCEPTIONS.—The regu-  
24           lations prescribed under subsection (a) may include such  
25           additional exceptions to subsections (a) and (b) of section

1 502 as are deemed consistent with the purposes of this  
2 subtitle.

3 **SEC. 505. ENFORCEMENT.**

4 (a) IN GENERAL.—This subtitle and the rules pre-  
5 scribed thereunder shall be enforced by the Federal func-  
6 tional regulators, the State insurance authorities, and the  
7 Federal Trade Commission with respect to financial insti-  
8 tutions subject to their jurisdiction under applicable law,  
9 as follows:

10 (1) Under section 8 of the Federal Deposit In-  
11 surance Act, in the case of—

12 (A) national banks, Federal branches and  
13 Federal agencies of foreign banks, and any sub-  
14 sidiaries of such entities, by the Office of the  
15 Comptroller of the Currency;

16 (B) member banks of the Federal Reserve  
17 System (other than national banks), branches  
18 and agencies of foreign banks (other than Fed-  
19 eral branches, Federal agencies, and insured  
20 State branches of foreign banks), commercial  
21 lending companies owned or controlled by for-  
22 eign banks, organizations operating under sec-  
23 tion 25 or 25A of the Federal Reserve Act,  
24 bank holding companies and their nonbank sub-  
25 sidiaries or affiliates (except broker-dealers, af-



1           filiates providing insurance, investment compa-  
2           nies, and investment advisers), by the Board of  
3           Governors of the Federal Reserve System;

4           (C) banks insured by the Federal Deposit  
5           Insurance Corporation (other than members of  
6           the Federal Reserve System), insured State  
7           branches of foreign banks, and any subsidiaries  
8           of such entities, by the Board of Directors of  
9           the Federal Deposit Insurance Corporation; and

10          (D) savings association the deposits of  
11          which are insured by the Federal Deposit In-  
12          surance Corporation, and any subsidiaries of  
13          such a savings association, by the Director of  
14          the Office of Thrift Supervision.

15          (2) Under the Federal Credit Union Act, by the  
16          Administrator of the National Credit Union Admin-  
17          istration with respect to any Federal or state char-  
18          tered credit union, and any subsidiaries of such an  
19          entity.

20          (3) Under the Farm Credit Act of 1971, by the  
21          Farm Credit Administration with respect to the  
22          Federal Agricultural Mortgage Corporation, any  
23          Federal land bank, Federal land bank association,  
24          Federal intermediate credit bank, or production  
25          credit association.

1           (4) Under the Securities Exchange Act of 1934,  
2           by the Securities and Exchange Commission with re-  
3           spect to any broker-dealer.

4           (5) Under the Investment Company Act of  
5           1940, by the Securities and Exchange Commission  
6           with respect to investment companies.

7           (6) Under the Investment Advisers Act of 1940,  
8           by the Securities and Exchange Commission with re-  
9           spect to investment advisers registered with the  
10          Commission under such Act.

11          (7) Under Federal Housing Enterprises Finan-  
12          cial Safety and Soundness Act of 1992 (12 U. S. C.  
13          4501 et seq.), by the Office of Federal Housing En-  
14          terprise Oversight with respect to the Federal Na-  
15          tional Mortgage Association and the Federal Home  
16          Loan Mortgage Corporation.

17          (8) Under the Federal Home Loan Bank Act,  
18          by the Federal Housing Finance Board with respect  
19          to Federal home loan banks.

20          (9) Under State insurance law, in the case of  
21          any person engaged in providing insurance, by the  
22          State insurance authority of the State in which the  
23          person is domiciled, subject to section 104 of this  
24          Act.

1           (10) Under the Federal Trade Commission Act,  
2           by the Federal Trade Commission for any other fi-  
3           nancial institution that is not subject to the jurisdic-  
4           tion of any agency or authority under paragraphs  
5           (1) through (9) of this subsection.

6           (b) ENFORCEMENT OF SECTION 501.—

7           (1) IN GENERAL.—Except as provided in para-  
8           graph (2), the agencies and authorities described in  
9           subsection (a) shall implement the standards pre-  
10          scribed under section 501(b) in the same manner, to  
11          the extent practicable, as standards prescribed pur-  
12          suant to subsection (a) of section 39 of the Federal  
13          Deposit Insurance Act are implemented pursuant to  
14          such section.

15          (2) EXCEPTION.—The agencies and authorities  
16          described in paragraphs (4), (5), (6), (9), and (10)  
17          of subsection (a) shall implement the standards pre-  
18          scribed under section 501(b) by rule with respect to  
19          the financial institutions subject to their respective  
20          jurisdictions under subsection (a).

21          (c) DEFINITIONS.—The terms used in subsection  
22          (a)(1) that are not defined in this subtitle or otherwise  
23          defined in section 3(s) of the Federal Deposit Insurance  
24          Act shall have the meaning given to them in section 1(b)  
25          of the International Banking Act of 1978.

1 **SEC. 506. FAIR CREDIT REPORTING ACT AMENDMENT.**

2 (a) AMENDMENT.—Section 621 of the Fair Credit  
3 Reporting Act (15 U.S.C. 1681s) is amended—

4 (1) in subsection (d), by striking everything fol-  
5 lowing the end of the second sentence; and

6 (2) by striking subsection “(e)” and inserting in  
7 lieu thereof the following:

8 “(e) REGULATORY AUTHORITY.—

9 “(1) The Federal banking agencies referred to  
10 in paragraphs (1) and (2) of subsection (b) shall  
11 jointly prescribe such regulations as necessary to  
12 carry out the purposes of this Act with respect to  
13 any persons identified under paragraphs (1) and (2)  
14 of subsection (b), or to the holding companies and  
15 affiliates of such persons.

16 “(2) The Administrator of the National Credit  
17 Union Administration shall prescribe such regula-  
18 tions as necessary to carry out the purposes of this  
19 Act with respect to any persons identified under  
20 paragraph (3) of subsection (b).”.

21 (b) CONFORMING AMENDMENT.—Section 621(a) of  
22 the Fair Credit Reporting Act (15 U.S.C. 1681s(a)) is  
23 amended by striking paragraph (4).

24 **SEC. 507. RELATION TO OTHER PROVISIONS.**

25 This subtitle shall not apply to any information to  
26 which subtitle D of title III applies.

1 **SEC. 508. STUDY OF INFORMATION SHARING AMONG FI-**  
2 **NANCIAL AFFILIATES.**

3 (a) IN GENERAL.—The Secretary of the Treasury, in  
4 conjunction with the Federal functional regulators and the  
5 Federal Trade Commission, shall conduct a study of infor-  
6 mation sharing practices among financial institutions and  
7 their affiliates. Such study shall include—

8 (1) the purposes for the sharing of confidential  
9 customer information with affiliates or with non-  
10 affiliated third parties;

11 (2) the extent and adequacy of security protec-  
12 tions for such information;

13 (3) the potential risks for customer privacy of  
14 such sharing of information;

15 (4) the potential benefits for financial institu-  
16 tions and affiliates of such sharing of information;

17 (5) the potential benefits for customers of such  
18 sharing of information;

19 (6) the adequacy of existing laws to protect cus-  
20 tomer privacy;

21 (7) the adequacy of financial institution privacy  
22 policy and privacy rights disclosure under existing  
23 law;

24 (8) the feasibility of different approaches, in-  
25 cluding opt-out and opt-in, to permit customers to

1 direct that confidential information not be shared  
2 with affiliates and nonaffiliated third parties; and

3 (9) the feasibility of restricting sharing of infor-  
4 mation for specific uses or of permitting customers  
5 to direct the uses for which information may be  
6 shared.

7 (b) CONSULTATION.—The Secretary shall consult  
8 with representatives of State insurance authorities des-  
9 ignated by the National Association of Insurance Commis-  
10 sioners, and also with financial services industry, con-  
11 sumer organizations and privacy groups, and other rep-  
12 resentatives of the general public, in formulating and con-  
13 ducting the study required by subsection (a).

14 (c) REPORT.—Before the end of the 6-month period  
15 beginning on the date of the enactment of this Act, the  
16 Secretary shall submit a report to the Congress containing  
17 the findings and conclusions of the study required under  
18 subsection (a), together with such recommendations for  
19 legislative or administrative action as may be appropriate.

20 **SEC. 509. DEFINITIONS.**

21 As used in this subtitle:

22 (1) FEDERAL BANKING AGENCY.—The term  
23 “Federal banking agency” has the meanings given  
24 to such terms in section 3 of the Federal Deposit In-  
25 surance Act.

1           (2) FEDERAL FUNCTIONAL REGULATOR.—The  
2       term “Federal functional regulator” means—

3                   (A) the Board of Governors of the Federal  
4       Reserve System;

5                   (B) the Office of the Comptroller of the  
6       Currency;

7                   (C) the Board of Directors of the Federal  
8       Deposit Insurance Corporation;

9                   (D) the Director of the Office of Thrift  
10      Supervision;

11                  (E) the National Credit Union Administra-  
12      tion Board;

13                  (F) the Farm Credit Administration; and

14                  (G) the Securities and Exchange Commis-  
15      sion.

16           (3) FINANCIAL INSTITUTION.—The term “fi-  
17      nancial institution” means any institution the busi-  
18      ness of which is engaging in financial activities or  
19      activities that are incidental to financial activities, as  
20      described in section 6(c) of the Bank Holding Com-  
21      pany Act of 1956.

22           (4) NONPUBLIC PERSONAL INFORMATION.—

23                   (A) The term “nonpublic personal informa-  
24      tion” means personally identifiable financial in-  
25      formation—

1 (i) provided by a consumer to a finan-  
2 cial institution;

3 (ii) resulting from any transaction  
4 with the consumer or the service performed  
5 for the consumer; or

6 (iii) otherwise obtained by the finan-  
7 cial institution.

8 (B) Such term does not include publicly  
9 available information, as such term is defined  
10 by the regulations prescribed under section 504.

11 (C) Notwithstanding subparagraph (B),  
12 such term shall include any list, description, or  
13 other grouping of consumers (and publicly  
14 available information pertaining to them) that  
15 is derived using any personally identifiable in-  
16 formation other than publicly available informa-  
17 tion.

18 (5) NONAFFILIATED THIRD PARTIES.—The  
19 term “nonaffiliated third parties” means any entity  
20 that is not an affiliate of, or related by common  
21 ownership or affiliated by corporate control with, the  
22 financial institution, but does not include a joint em-  
23 ployee of such institution.



1           (6) AFFILIATE.—The term “affiliate” means  
2           any company that controls, is controlled by, or is  
3           under common control with another company.

4           (7) NECESSARY TO EFFECT, ADMINISTER, OR  
5           ENFORCE.—The term “as necessary to effect, ad-  
6           minister or enforce the transaction” means—

7                   (A) the disclosure is required, or is a  
8                   usual, appropriate or acceptable method, to  
9                   carry out the transaction or the product or  
10                  service business of which the transaction is a  
11                  part, and record or service or maintain the con-  
12                  sumer’s account in the ordinary course of pro-  
13                  viding the financial service or financial product,  
14                  or to administer or service benefits or claims re-  
15                  lating to the transaction or the product or serv-  
16                  ice business of which it is a part, and in-  
17                  cludes—

18                           (i) providing the consumer or the con-  
19                           sumer’s agent or broker with a confirma-  
20                           tion, statement, or other record of the  
21                           transaction, or information on the status  
22                           or value of the financial service or financial  
23                           product; and

24                           (ii) the accrual or recognition of in-  
25                           centives or bonuses associated with the

1 transaction that are provided by the finan-  
2 cial institution or any other party;

3 (B) the disclosure is required, or is one of  
4 the lawful or appropriate methods, to enforce  
5 the rights of the financial institution or of other  
6 persons engaged in carrying out the financial  
7 transaction, or providing the product or service;

8 (C) the disclosure is required, or is a  
9 usual, appropriate, or acceptable method, for  
10 insurance underwriting at the consumer's re-  
11 quest or for reinsurance purposes, or for any of  
12 the following purposes as they relate to a con-  
13 sumer's insurance: account administration, re-  
14 porting, investigating, or preventing fraud or  
15 material misrepresentation, processing premium  
16 payments, processing insurance claims, admin-  
17 istering insurance benefits (including utilization  
18 review activities), participating in research  
19 projects, or as otherwise required or specifically  
20 permitted by Federal or State law; or

21 (D) the disclosure is required, or is a  
22 usual, appropriate or acceptable method, in con-  
23 nection with—

24 (i) the authorization, settlement, bill-  
25 ing, processing, clearing, transferring, rec-

1                   oncing, or collection of amounts charged,  
2                   debited, or otherwise paid using a debit,  
3                   credit or other payment card, check, or ac-  
4                   count number, or by other payment means;

5                   (ii) the transfer of receivables, ac-  
6                   counts or interests therein; or

7                   (iii) the audit of debit, credit or other  
8                   payment information.

9                   (8) STATE INSURANCE AUTHORITY.—The term  
10                  “State insurance authority” means, in the case of  
11                  any person engaged in providing insurance, the  
12                  State insurance authority of the State in which the  
13                  person is domiciled.

14                  (9) CONSUMER.—The term “consumer” means  
15                  an individual who obtains, from a financial institu-  
16                  tion, financial products or services which are to be  
17                  used primarily for personal, family, or household  
18                  purposes, and also means the legal representative of  
19                  such an individual.

20                  (10) JOINT AGREEMENT.—The term “joint  
21                  agreement” means a formal written contract pursu-  
22                  ant to which two or more financial institutions joint-  
23                  ly offer, endorse, or sponsor a financial product or  
24                  service, and any payments between the parties are  
25                  based on business or profit generated.

1 **SEC. 510. EFFECTIVE DATE.**

2 This subtitle shall take effect 6 months after the date  
3 on which the rules under section 503 are promulgated, ex-  
4 cept—

5 (1) to the extent that a later date is specified  
6 in such rules; and

7 (2) that section 506 shall be effective upon en-  
8 actment.

9 **Subtitle B—Fraudulent Access to**  
10 **Financial Information**

11 **SEC. 521. PRIVACY PROTECTION FOR CUSTOMER INFORMA-**  
12 **TION OF FINANCIAL INSTITUTIONS.**

13 (a) PROHIBITION ON OBTAINING CUSTOMER INFOR-  
14 MATION BY FALSE PRETENSES.—It shall be a violation  
15 of this subtitle for any person to obtain or attempt to ob-  
16 tain, or cause to be disclosed or attempt to cause to be  
17 disclosed to any person, customer information of a finan-  
18 cial institution relating to another person—

19 (1) by making a false, fictitious, or fraudulent  
20 statement or representation to an officer, employee,  
21 or agent of a financial institution;

22 (2) by making a false, fictitious, or fraudulent  
23 statement or representation to a customer of a fi-  
24 nancial institution; or

25 (3) by providing any document to an officer,  
26 employee, or agent of a financial institution, know-

1       ing that the document is forged, counterfeit, lost, or  
2       stolen, was fraudulently obtained, or contains a  
3       false, fictitious, or fraudulent statement or represen-  
4       tation.

5       (b) PROHIBITION ON SOLICITATION OF A PERSON TO  
6       OBTAIN CUSTOMER INFORMATION FROM FINANCIAL IN-  
7       STITUTION UNDER FALSE PRETENSES.—It shall be a vio-  
8       lation of this subtitle to request a person to obtain cus-  
9       tomer information of a financial institution, knowing that  
10      the person will obtain, or attempt to obtain, the informa-  
11      tion from the institution in any manner described in sub-  
12      section (a).

13      (c) NONAPPLICABILITY TO LAW ENFORCEMENT  
14      AGENCIES.—No provision of this section shall be con-  
15      strued so as to prevent any action by a law enforcement  
16      agency, or any officer, employee, or agent of such agency,  
17      to obtain customer information of a financial institution  
18      in connection with the performance of the official duties  
19      of the agency.

20      (d) NONAPPLICABILITY TO FINANCIAL INSTITUTIONS  
21      IN CERTAIN CASES.—No provision of this section shall be  
22      construed so as to prevent any financial institution, or any  
23      officer, employee, or agent of a financial institution, from  
24      obtaining customer information of such financial institu-  
25      tion in the course of—

1           (1) testing the security procedures or systems  
2           of such institution for maintaining the confiden-  
3           tiality of customer information;

4           (2) investigating allegations of misconduct or  
5           negligence on the part of any officer, employee, or  
6           agent of the financial institution; or

7           (3) recovering customer information of the fi-  
8           nancial institution which was obtained or received by  
9           another person in any manner described in sub-  
10          section (a) or (b).

11          (e) NONAPPLICABILITY TO INSURANCE INSTITU-  
12          TIONS FOR INVESTIGATION OF INSURANCE FRAUD.—No  
13          provision of this section shall be construed so as to prevent  
14          any insurance institution, or any officer, employee, or  
15          agency of an insurance institution, from obtaining infor-  
16          mation as part of an insurance investigation into criminal  
17          activity, fraud, material misrepresentation, or material  
18          nondisclosure that is authorized for such institution under  
19          State law, regulation, interpretation, or order.

20          (f) NONAPPLICABILITY TO CERTAIN TYPES OF CUS-  
21          TOMER INFORMATION OF FINANCIAL INSTITUTIONS.—No  
22          provision of this section shall be construed so as to prevent  
23          any person from obtaining customer information of a fi-  
24          nancial institution that otherwise is available as a public

1 record filed pursuant to the securities laws (as defined in  
2 section 3(a)(47) of the Securities Exchange Act of 1934).

3 (g) NONAPPLICABILITY TO COLLECTION OF CHILD  
4 SUPPORT JUDGMENTS.—No provision of this section shall  
5 be construed to prevent any State-licensed private investi-  
6 gator, or any officer, employee, or agent of such private  
7 investigator, from obtaining customer information of a fi-  
8 nancial institution, to the extent reasonably necessary to  
9 collect child support from a person adjudged to have been  
10 delinquent in his or her obligations by a Federal or State  
11 court, and to the extent that such action by a State-li-  
12 censed private investigator is not unlawful under any other  
13 Federal or State law or regulation, and has been author-  
14 ized by an order or judgment of a court of competent juris-  
15 diction.

16 **SEC. 522. ADMINISTRATIVE ENFORCEMENT.**

17 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-  
18 SION.—Compliance with this subtitle shall be enforced by  
19 the Federal Trade Commission in the same manner and  
20 with the same power and authority as the Commission has  
21 under the title VIII, the Fair Debt Collection Practices  
22 Act, to enforce compliance with such title.

23 (b) NOTICE OF ACTIONS.—The Federal Trade Com-  
24 mission shall—

1           (1) notify the Securities and Exchange Commis-  
2           sion whenever the Federal Trade Commission initi-  
3           ates an investigation with respect to a financial in-  
4           stitution subject to regulation by the Securities and  
5           Exchange Commission;

6           (2) notify the Federal banking agency (as de-  
7           fined in section 3(z) of the Federal Deposit Insur-  
8           ance Act) whenever the Commission initiates an in-  
9           vestigation with respect to a financial institution  
10          subject to regulation by such Federal banking agen-  
11          cy; and

12          (3) notify the appropriate State insurance regu-  
13          lator whenever the Commission initiates an inves-  
14          tigation with respect to a financial institution sub-  
15          ject to regulation by such regulator.

16 **SEC. 523. CRIMINAL PENALTY.**

17          (a) IN GENERAL.—Whoever knowingly and inten-  
18          tionally violates, or knowingly and intentionally attempts  
19          to violate, section 521 shall be fined in accordance with  
20          title 18, United States Code, or imprisoned for not more  
21          than 5 years, or both.

22          (b) ENHANCED PENALTY FOR AGGRAVATED  
23          CASES.—Whoever violates, or attempts to violate, section  
24          521 while violating another law of the United States or  
25          as part of a pattern of any illegal activity involving more



1 than \$100,000 in a 12-month period shall be fined twice  
2 the amount provided in subsection (b)(3) or (c)(3) (as the  
3 case may be) of section 3571 of title 18, United States  
4 Code, imprisoned for not more than 10 years, or both.

5 **SEC. 524. RELATION TO STATE LAWS.**

6 (a) IN GENERAL.—This subtitle shall not be con-  
7 strued as superseding, altering, or affecting the statutes,  
8 regulations, orders, or interpretations in effect in any  
9 State, except to the extent that such statutes, regulations,  
10 orders, or interpretations are inconsistent with the provi-  
11 sions of this subtitle, and then only to the extent of the  
12 inconsistency.

13 (b) GREATER PROTECTION UNDER STATE LAW.—  
14 For purposes of this section, a State statute, regulation,  
15 order, or interpretation is not inconsistent with the provi-  
16 sions of this subtitle if the protection such statute, regula-  
17 tion, order, or interpretation affords any person is greater  
18 than the protection provided under this subtitle as deter-  
19 mined by the Commission, on its own motion or upon the  
20 petition of any interested party.

21 **SEC. 525. AGENCY GUIDANCE.**

22 In furtherance of the objectives of this subtitle, each  
23 Federal banking agency (as defined in section 3(z) of the  
24 Federal Deposit Insurance Act) and the Securities and  
25 Exchange Commission or self-regulatory organizations, as

1 appropriate, shall review regulations and guidelines appli-  
2 cable to financial institutions under their respective juris-  
3 dictions and shall prescribe such revisions to such regula-  
4 tions and guidelines as may be necessary to ensure that  
5 such financial institutions have policies, procedures, and  
6 controls in place to prevent the unauthorized disclosure  
7 of customer financial information and to deter and detect  
8 activities proscribed under section 521.

9 **SEC. 526. REPORTS.**

10 (a) REPORT TO THE CONGRESS.—Before the end of  
11 the 18-month period beginning on the date of the enact-  
12 ment of this Act, the Comptroller General, in consultation  
13 with the Federal Trade Commission, Federal banking  
14 agencies, the Securities and Exchange Commission, appro-  
15 priate Federal law enforcement agencies, and appropriate  
16 State insurance regulators, shall submit to the Congress  
17 a report on the following:

18 (1) The efficacy and adequacy of the remedies  
19 provided in this subtitle in addressing attempts to  
20 obtain financial information by fraudulent means or  
21 by false pretenses.

22 (2) Any recommendations for additional legisla-  
23 tive or regulatory action to address threats to the  
24 privacy of financial information created by attempts

1 to obtain information by fraudulent means or false  
2 pretenses.

3 (b) ANNUAL REPORT BY ADMINISTERING AGEN-  
4 CIES.—The Federal Trade Commission and the Attorney  
5 General shall submit to Congress an annual report on  
6 number and disposition of all enforcement actions taken  
7 pursuant to this subtitle.

8 **SEC. 527. DEFINITIONS.**

9 For purposes of this subtitle, the following definitions  
10 shall apply:

11 (1) CUSTOMER.—The term “customer” means,  
12 with respect to a financial institution, any person (or  
13 authorized representative of a person) to whom the  
14 financial institution provides a product or service,  
15 including that of acting as a fiduciary.

16 (2) CUSTOMER INFORMATION OF A FINANCIAL  
17 INSTITUTION.—The term “customer information of  
18 a financial institution” means any information main-  
19 tained by or for a financial institution which is de-  
20 rived from the relationship between the financial in-  
21 stitution and a customer of the financial institution  
22 and is identified with the customer.

23 (3) DOCUMENT.—The term “document” means  
24 any information in any form.

25 (4) FINANCIAL INSTITUTION.—

1           (A) IN GENERAL.—The term “financial in-  
2           stitution” means any institution engaged in the  
3           business of providing financial services to cus-  
4           tomers who maintain a credit, deposit, trust, or  
5           other financial account or relationship with the  
6           institution.

7           (B) CERTAIN FINANCIAL INSTITUTIONS  
8           SPECIFICALLY INCLUDED.—The term “financial  
9           institution” includes any depository institution  
10          (as defined in section 19(b)(1)(A) of the Fed-  
11          eral Reserve Act), any broker or dealer, any in-  
12          vestment adviser or investment company, any  
13          insurance company, any loan or finance com-  
14          pany, any credit card issuer or operator of a  
15          credit card system, and any consumer reporting  
16          agency that compiles and maintains files on  
17          consumers on a nationwide basis (as defined in  
18          section 603(p)).

19          (C) SECURITIES INSTITUTIONS.—For pur-  
20          poses of subparagraph (B)—

21               (i) the terms “broker” and “dealer”  
22               have the meanings provided in section 3 of  
23               the Securities Exchange Act of 1934 (15  
24               U.S.C. 78e);

(iii) the term “investment company”  
has the meaning provided in section 3 of  
the Investment Company Act of 1940 (15  
U.S.C. 80a-3).

(D) FURTHER DEFINITION BY REGULATION.—The Federal Trade Commission, after consultation with Federal banking agencies and the Securities and Exchange Commission, may prescribe regulations clarifying or describing the types of institutions which shall be treated as financial institutions for purposes of this subtitle.

Passed the House of Representatives July 1, 1999.

Attest: **JEFF TRANDAH**,  
*Clerk.*