

106TH CONGRESS
1ST SESSION

H. R. 823

To modernize and improve the financial services industry.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1999

Mr. BAKER introduced the following bill; which was referred to the Committee on Banking and Financial Services, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To modernize and improve the financial services industry.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Financial Services
5 Competitive Enhancement Act”.

1 TITLE I—FINANCIAL SERVICES COMPETITIVE
2 ENHANCEMENT

3 **SEC. 101. ANTI-AFFILIATION PROVISIONS OF “GLASS-**
4 **STEAGALL ACT” REPEALED.**

5 (a) SECTION 20 REPEALED.—Section 20 of the
6 Banking Act of 1933 (12 U.S.C. 377) is repealed.

7 (b) SECTION 32 REPEALED.—Section 32 of the
8 Banking Act of 1933 (12 U.S.C. 78) is repealed.

9 **SEC. 102. FINANCIAL ACTIVITIES.**

10 Section 4(c)(8) of the Bank Holding Company Act
11 of 1956 (12 U.S.C. 1843(c)(8)) is amended to read as
12 follows:

13 “(8) shares of any company the activities of
14 which the Board, in accordance with subsection (l)
15 has determined (by regulation or order) to be finan-
16 cial in nature or incidental to such financial activi-
17 ties and—

18 “(A) effective 90 days after the date of the
19 enactment of the Financial Services Competitive
20 Equality Act, it shall be financial in nature to
21 provide insurance as principal, agent, or broker
22 in any State, in full compliance with the laws
23 and regulations of such State that uniformly
24 apply to each type of insurance license or au-
25 thorization in such State, except that in no

event shall the company, the bank holding company, or any affiliate of the company or bank holding company be subject to any State law or regulation that restricts a bank from having an affiliate, agent, or employee in such State licensed to provide insurance as principal, agent, or broker; and

“(B) the Board shall prescribe regulations concerning insurance affiliations that provide equivalent treatment for all stock and mutual insurance companies that control or are otherwise affiliated with a bank and fully accommodate and are consistent with State law;”.

SEC. 103. INSURANCE COMPANY INVESTMENTS.

Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended by adding at the end the following new subsection:

“(k) **INSURANCE COMPANY INVESTMENTS.**—Notwithstanding subsection (a), a bank holding company may directly or indirectly acquire or control, whether as principal, on behalf of 1 or more entities (including any subsidiary of the holding company which is not a depository institution or subsidiary of a depository institution) or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership

1 interests, trust certificates or other instruments represent-
2 ing ownership) of a company or other entity, whether or
3 not constituting control of such company or entity, en-
4 gaged in any activity not authorized pursuant to this sec-
5 tion if—

6 “(1) the shares, assets, or ownership interests
7 are not acquired or held by a depository institution
8 or a subsidiary of a depository institution;

9 “(2) such shares, assets, or ownership interests
10 are acquired and held by an insurance company that
11 is predominately engaged in underwriting life, acci-
12 dent and health, or property and casualty insurance
13 (other than credit-related insurance);

14 “(3) such shares, assets, or ownership interests
15 represent an investment made in the ordinary course
16 of business of such insurance company in accordance
17 with relevant State law governing such investments;
18 and

19 “(4) during the period such shares, assets, or
20 ownership interests are held, the bank holding com-
21 pany does not directly or indirectly participate in the
22 day-to-day management or operation of the company
23 or entity except insofar as necessary to achieve the
24 objectives of paragraph (3).”.

1 **SEC. 104. FINANCIAL IN NATURE.**

2 Section 4 of the Bank Holding Company Act of 1956
3 (12 U.S.C. 1843) is amended by inserting after subsection
4 (k) (as added by section 4 of this Act) the following new
5 subsection:

6 “(l) ENGAGING IN ACTIVITIES FINANCIAL IN NA-
7 TURE.—

8 “(1) IN GENERAL.—Notwithstanding section
9 4(a), a bank holding company may engage in any
10 activity which the Board has determined (by regula-
11 tion or order) to be financial in nature or incidental
12 to such financial activities.

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

17 “(A) the purposes of this Act and the Fi-
18 nancial Services Competitive Enhancement Act;

19 “(B) changes or reasonably expected
20 changes in the marketplace in which the bank
21 holding companies compete;

22 “(C) changes or reasonably expected
23 changes in the technology for delivering finan-
24 cial services; and

25 “(D) whether such activity is necessary or
26 appropriate to allow a bank holding company

1 and the affiliates of a bank holding company
2 to—

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

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

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

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

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

21 “(B) Insuring, guaranteeing, or indemnify-
22 ing against loss, harm, damage, illness, disabil-
23 ity, or death, or providing and issuing annu-
24 ities, and acting as principal, agent, or broker
25 for purposes of the foregoing.

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

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

8 “(E) Underwriting, dealing, or making a
9 market in securities.

10 “(F) Engaging in any activity that the
11 Board has determined, by order or regulation
12 that is in effect on the date of enactment of the
13 Financial Services Competitive Enhancement
14 Act, to be so closely related to banking or man-
15 aging or controlling banks as to be a proper in-
16 cident thereto (subject to the same terms and
17 conditions contained in such order or regula-
18 tion, unless modified by the Board).

19 “(G) Engaging, in the United States, in
20 any activity that—

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

23 “(ii) the Board has determined, under
24 regulations issued pursuant to section
25 4(c)(13) of this Act (as in effect on the

1 day before the date of enactment of the Fi-
2 nancial Services Competitive Enhancement
3 Act) to be usual in connection with the
4 transaction of banking or other financial
5 operations abroad.

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

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

23 “(ii) such shares, assets, or ownership
24 interests are acquired and held by a securi-
25 ties affiliate or an affiliate thereof as part

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

6 “(iii) such shares, assets, or owner-
7 ship interests, are held for such a period of
8 time as will permit the sale or disposition
9 thereof on reasonable basis consistent with
10 the nature of the activities described in
11 clause (ii); and

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

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

1 “(A) Lending, exchanging, transferring, in-
2 vesting for others, or safeguarding financial as-
3 sets other than money or securities.

4 “(B) Providing any device or other instru-
5 mentality for transferring money or other finan-
6 cial assets;

7 “(C) Arranging, effecting, or facilitating fi-
8 nancial transactions for the account of third
9 parties.

10 “(5) POST CONSUMMATION NOTIFICATION.—

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

19 “(B) APPROVAL NOT REQUIRED FOR CER-
20 TAIN FINANCIAL ACTIVITIES.—Except as pro-
21 vided in section 4(j) with regard to the acqui-
22 sition of a savings association, a bank holding
23 company may commence any activity, or ac-
24 quire any company, pursuant to paragraph (3)
25 or any regulation prescribed or order issued

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

3 **SEC. 105. STREAMLINING BANK HOLDING COMPANY SU-**
4 **PERVISION.**

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

7 “(c) REPORTS AND EXAMINATIONS.—

8 “(1) REPORTS.—

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

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

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

22 “(B) USE OF EXISTING REPORTS.—

23 “(i) IN GENERAL.—The Board shall,
24 to the fullest extent possible, accept re-
25 ports in fulfillment of the Board’s report-

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

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

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

20 “(iv) REPORTS FILED WITH OTHER
21 AGENCIES.—In the event the Board re-
22 quires a report from a functionally regu-
23 lated nondepository institution subsidiary
24 of a bank holding company of a kind that
25 is not required by another Federal or State

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

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

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

18 “(ii) an investment adviser registered
19 under the Investment Advisers Act of
20 1940, with respect to the investment advi-
21 sory activities of such investment adviser
22 and activities incidental to such investment
23 advisory activities;

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

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

9 “(2) EXAMINATIONS.—

10 “(A) EXAMINATION AUTHORITY.—

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

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

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

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

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

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

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

23 “(ii) inform the Board of—

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

tem that may pose a threat to the safety and soundness of any subsidiary depository institution of such holding company; and

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

“(iii) monitor compliance with the provisions of this Act and those governing transactions and relationships between any subsidiary depository institution and its affiliates.

“(C) RESTRICTED FOCUS OF EXAMINATIONS.—The Board shall, to the fullest extent possible, limit the focus and scope of any examination of a bank holding company to—

“(i) the bank holding company; and

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

“(I) the size, condition, or activities of the subsidiary; or

“(II) the nature or size of transactions between such subsidiary and any depository institution which is also a subsidiary of such holding company,

1 could have a materially adverse effect on
2 the safety and soundness of any depository
3 institution affiliate of the holding company.

4 “(D) DEFERENCE TO BANK EXAMINA-
5 TIONS.—The Board shall, to the fullest extent
6 possible, use for the purposes of this paragraph,
7 the reports of examinations of depository insti-
8 tutions made by the appropriate Federal and
9 State depository institution supervisory author-
10 ity.

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

18 “(i) any registered broker or dealer or
19 registered investment adviser by or on be-
20 half of the Securities and Exchange Com-
21 mission;

22 “(ii) any licensed insurance company
23 by or on behalf of any state regulatory au-
24 thority responsible for the supervision of
25 insurance companies; and

1 “(iii) any other subsidiary that the
2 Board finds to be comprehensively super-
3 vised by a Federal or State authority.

4 “(3) CAPITAL.—

5 “(A) IN GENERAL.—The Board shall not,
6 by regulation, guideline, order or otherwise pre-
7 scribe or impose any capital or capital adequacy
8 rules, guidelines, standards, or requirements on
9 any subsidiary of a bank holding company that
10 is not a depository institution and—

11 “(i) is in compliance with applicable
12 capital requirements of another Federal
13 regulatory authority (including the Securi-
14 ties and Exchange Commission) or State
15 insurance authority; or

16 “(ii) is registered as an investment
17 adviser under the Investment Advisers Act
18 of 1940.

19 “(B) RULE OF CONSTRUCTION.—Subpara-
20 graph (A) shall not be construed as preventing
21 the Board from imposing capital or capital ade-
22 quacy rules, guidelines, standards, or require-
23 ments with respect to activities of a registered
24 investment adviser other than investment advi-

1 sory activities or activities incidental to invest-
2 ment advisory activities.

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

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

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

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

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

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

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

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

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

20 “(A) the Securities and Exchange Commis-
21 sion with regard to all interpretations of, and
22 the enforcement of, applicable Federal securi-
23 ties laws relating to the activities, conduct, and
24 operations of registered brokers, dealers, invest-
25 ment advisers, and investment companies; and

1 “(B) the relevant State insurance authori-
 2 ties with regard to all interpretations of, and
 3 the enforcement of, applicable State insurance
 4 laws relating to the activities, conduct, and op-
 5 erations of insurance companies and insurance
 6 agents.”.

7 **SEC. 106. AMENDMENT TO DIVESTITURE PROCEDURES.**

8 Section 5(e)(1) of the Bank Holding Company Act
 9 of 1956 (12 U.S.C. 1844(e)(1)) is amended—

10 (1) by striking “Financial Institutions Super-
 11 visory Act of 1966, order” and inserting “Financial
 12 Institutions Supervisory Act of 1966, at the election
 13 of the bank holding company—

14 “(A) order”; and

15 (2) by striking “shareholders of the bank hold-
 16 ing company. Such distribution” and inserting
 17 “shareholders of the bank holding company; or

18 “(B) order the bank holding company,
 19 after due notice and opportunity for hearing,
 20 and after consultation with the bank’s primary
 21 supervisor, which shall be the Comptroller of
 22 the Currency in the case of a national bank and
 23 the Federal Deposit Insurance Corporation and
 24 the appropriate State supervisor in the case of
 25 an insured nonmember bank, to terminate

1 (within 120 days or such longer period as the
 2 Board may direct) the ownership or control of
 3 any such bank by such company.

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

5 **SEC. 107. AUTHORITY OF STATE INSURANCE REGULATOR**
 6 **AND SECURITIES AND EXCHANGE COMMIS-**
 7 **SION.**

8 Section 5 of the Bank Holding Company Act of 1956
 9 (12 U.S.C. 1844) is amended by adding at the end the
 10 following new subsection:

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

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

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

21 “(i) a bank holding company that is
 22 an insurance company or is a broker or
 23 dealer registered under the Securities Ex-
 24 change Act of 1934; or

1 “(ii) an affiliate of the depository in-
2 stitution which is an insurance company or
3 a broker or dealer registered under such
4 Act; and

5 “(B) the State insurance authority for the
6 insurance company or the Securities and Ex-
7 change Commission for the registered broker or
8 dealer, as the case may be, determines in writ-
9 ing sent to the holding company and the Board
10 that the holding company shall not provide such
11 funds or assets because such action would have
12 a material adverse effect on the financial condi-
13 tion of the insurance company or the broker or
14 dealer, as the case may be.

15 “(2) NOTICE TO STATE INSURANCE AUTHORITY
16 OF SEC REQUIRED.—If the Board requires a bank
17 holding company, or an affiliate of a bank holding
18 company, which is an insurance company or a
19 broker or dealer described in paragraph (1)(A) to
20 provide funds or assets to an insured depository in-
21 stitution subsidiary of the holding company pursuant
22 to any regulation, order, or other action of the
23 Board referred to in paragraph (1), the Board shall
24 promptly notify the State insurance authority for the
25 insurance company or the Securities and Exchange

1 Commission, as the case may be, of such require-
2 ment.

3 “(3) DIVESTITURE IN LIEU OF OTHER AC-
4 TION.—If the Board receives a notice described in
5 paragraph (1)(B) from a State insurance authority
6 or the Securities and Exchange Commission with re-
7 gard to a bank holding company or affiliate referred
8 to in such paragraph, the Board may order the bank
9 holding company to divest the insured depository in-
10 stitution within 180 days of receiving notice or such
11 longer period as the Board determines consistent
12 with the safe and sound operation of the insured de-
13 pository institution.

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

1 **SEC. 108. PRUDENTIAL SAFEGUARDS.**

2 Section 5 of the Bank Holding Company Act of 1956
3 (12 U.S.C. 1844) is amended by inserting after subsection
4 (g) (as added by section 8 of this Act) the following new
5 subsection:

6 “(h) PRUDENTIAL SAFEGUARDS.—

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

19 “(2) STANDARDS.—The Board may exercise au-
20 thority under paragraph (1) if the Board finds that
21 such action will have any of the following effects:

22 “(A) Avoid any significant risk to the safe-
23 ty and soundness of depository institutions or
24 any Federal deposit insurance fund.

25 “(B) Enhance the financial stability of
26 bank holding companies.

1 “(C) Avoid conflicts of interest or other
2 abuses.

3 “(D) Enhance the privacy of customers of
4 depository institutions.

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

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

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

18 “(B) modify or eliminate any restriction or
19 requirement the Board finds is no longer re-
20 quired for such purposes.”.

21 **SEC. 109. EXAMINATION OF INVESTMENT COMPANIES.**

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

23 (1) **IN GENERAL.**—The Commission shall be the
24 sole agency with authority to inspect and examine

1 any registered investment company that is not a
2 bank holding company.

3 (2) PROHIBITION ON BANKING AGENCIES.—A
4 Federal banking agency may not inspect or examine
5 any registered investment company that is not a
6 bank holding company.

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

14 (c) DEFINITION.—For purposes of this section, the
15 following definitions shall apply:

16 (1) BANK HOLDING COMPANY.—The term
17 “bank holding company” has the meaning given to
18 such term in section 2 of the Bank Holding Com-
19 pany Act of 1956.

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

22 (3) FEDERAL BANKING AGENCY.—The term
23 “Federal banking agency” has the meaning given to
24 such term in section 3(z) of the Federal Deposit In-
25 surance Act.

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

5 **SEC. 110. 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 provisions 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 bank holding company where the purpose
20 or effect of doing so would be to take action indirectly
21 against or with respect to a regulated subsidiary that may
22 not be taken directly against or with respect to such sub-
23 sidiary in accordance with subsection (a).

24 “(c) ACTIONS SPECIFICALLY AUTHORIZED.—Not-
25 withstanding subsection (a), the Board may take action

1 under this Act or section 8 of the Federal Deposit Insur-
2 ance Act to enforce compliance by a regulated subsidiary
3 with Federal law that the Board has specific jurisdiction
4 to enforce against each subsidiary.

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

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

11 “(2) an investment adviser registered under the
12 Investment Advisers Act of 1940, with respect to the
13 investment advisory activities of such investment ad-
14 viser and activities incidental to such investment ad-
15 visory activities;

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

18 “(4) an insurance company or an insurance
19 agency subject to supervision by a State insurance
20 commission, agency, or similar authority; or

21 “(5) an entity subject to regulation by the Com-
22 modity Futures Trading Commission, with respect
23 to the commodities activities of such entity and ac-
24 tivities incidental to such commodities activities.”.

○