

FINANCIAL SERVICES ACT OF 1999

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MARCH 23, 1999.—Ordered to be printed  
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Mr. LEACH, from the Committee on Banking and  
Financial Services, submitted the following

R E P O R T

together with

SUPPLEMENTAL, ADDITIONAL AND  
DISSENTING VIEWS

[To accompany H.R. 10]

The Committee on Banking and Financial Services, to whom was referred the bill (H.R. 10) 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

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

- (a) **SHORT TITLE.**—This Act may be cited as the “Financial Services Act of 1999”.  
(b) **PURPOSES.**—The purposes of this Act are as follows:

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

(2) To ensure the continued safety and soundness of depository institutions.

(3) To provide necessary and appropriate protections for investors and ensure fair and honest markets in the delivery of financial services.

(4) To avoid duplicative, potentially conflicting, and overly burdensome regulatory requirements through the creation of a regulatory framework for financial holding companies that respects the divergent requirements of each of the component businesses of the holding company, and that is based upon principles of strong functional regulation and enhanced regulatory coordination.

(5) To reduce and, to the maximum extent practicable, to eliminate the legal barriers preventing affiliation among depository institutions, securities firms, insurance companies, and other financial service providers and to provide a prudential framework for achieving that result.

(6) To enhance the availability of financial services to citizens of all economic circumstances and in all geographic areas.

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

(8) To ensure compliance by depository institutions with the provisions of the Community Reinvestment Act of 1977 and enhance the ability of depository institutions to meet the capital and credit needs of all citizens and communities, including underserved communities and populations.

(c) TABLE OF CONTENTS.—The table of contents for 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 hearings 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. Reports on ongoing FTC study of consumer privacy issues.
- Sec. 110. GAO study of economic impact on community banks and other small financial institutions.

Subtitle B—Streamlining Supervision of Financial Holding Companies

- Sec. 111. Streamlining financial holding company supervision.
- Sec. 112. Elimination of application requirement for financial holding 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. Interagency consultation.
- Sec. 118. Equivalent regulation and supervision.
- Sec. 119. Prohibition on FDIC assistance to affiliates and subsidiaries.
- Sec. 120. Repeal of savings bank provisions in the Bank Holding Company Act of 1956.
- Sec. 120A. 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. Functional regulation.
- Sec. 125. Repeal of stock loan limit in Federal Reserve Act.

Subtitle D—Wholesale Financial Holding Companies; Wholesale Financial Institutions

CHAPTER 1—WHOLESALE FINANCIAL HOLDING COMPANIES

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

CHAPTER 2—WHOLESALE FINANCIAL INSTITUTIONS

- Sec. 136. Wholesale financial institutions.

Subtitle E—Preservation of FTC Authority

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

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

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

Subtitle G—Federal Home Loan Bank System Modernization

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

- Sec. 176. Customer protection and education regulations.  
 Sec. 177. Depository institution privacy policies.  
 Sec. 178. Confidentiality of health and medical information.  
 Sec. 179. Financial information privacy.  
 Sec. 180. Study of current financial privacy laws.

Subtitle J—Direct Activities of Banks

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

Subtitle K—Deposit Insurance Funds

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

Subtitle L—Miscellaneous Provisions

- Sec. 191. Termination of “Know Your Customer” regulations.  
 Sec. 192. GAO study of conflicts of interest.  
 Sec. 193. Clarification of source of strength doctrine.  
 Sec. 194. Study of cost of all Federal banking regulations.  
 Sec. 195. Study and report on adapting existing legislative requirements to online banking and lending.

Subtitle M—Effective Date of Title

- Sec. 196. 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. Definition and treatment of banking products.  
 Sec. 206. Qualified investor defined.  
 Sec. 207. Government securities defined.  
 Sec. 208. Effective date.  
 Sec. 209. Rule of construction.

Subtitle B—Bank Investment Company Activities

- Sec. 211. Custody of investment company assets by affiliated bank.  
 Sec. 212. Lending to an affiliated investment company.  
 Sec. 213. Independent directors.  
 Sec. 214. Additional SEC disclosure authority.  
 Sec. 215. Definition of broker under the Investment Company Act of 1940.  
 Sec. 216. Definition of dealer under the Investment Company Act of 1940.  
 Sec. 217. Removal of the exclusion from the definition of investment adviser for banks that advise investment companies.  
 Sec. 218. Definition of broker under the Investment Advisers Act of 1940.  
 Sec. 219. Definition of dealer under the Investment Advisers Act of 1940.  
 Sec. 220. Interagency consultation.  
 Sec. 221. Treatment of bank common trust funds.  
 Sec. 222. Investment advisers prohibited from having controlling interest in registered investment company.  
 Sec. 223. Conforming change in definition.  
 Sec. 224. Conforming amendment.  
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Subtitle C—Securities and Exchange Commission Supervision of Investment Bank Holding Companies

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

## Subtitle D—Studies

- Sec. 241. Study of methods to inform investors and consumers of uninsured products.  
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## 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. Certain State affiliation laws preempted for insurance companies and affiliates.

## Subtitle B—National Association of Registered Agents and Brokers

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

## TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES

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

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

### Subtitle A—Affiliations

#### SEC. 101. GLASS-STEAGALL ACT REFORMED.

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

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

#### SEC. 102. ACTIVITY RESTRICTIONS APPLICABLE TO BANK HOLDING COMPANIES WHICH ARE NOT FINANCIAL HOLDING COMPANIES.

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

“(8) shares of any company the activities of which had been determined by the Board by regulation or order under this paragraph as of the day before the date of the enactment of the Financial Services Act of 1999, to be so closely related to banking as to be a proper incident thereto (subject to such terms and conditions contained in such regulation or order, unless modified by the Board);”

(b) CONFORMING CHANGES TO OTHER STATUTES.—

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

(2) AMENDMENT TO THE BANK SERVICE COMPANY ACT.—Section 4(f) of the Bank Service Company Act (12 U.S.C. 1864(f)) is amended by striking the period and adding at the end the following: “as of the day before the date of enactment of the Financial Services Act of 1999.”

#### SEC. 103. FINANCIAL HOLDING COMPANIES.

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

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

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

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

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

“(A) All of the subsidiary depository institutions of the bank holding company are well capitalized.

“(B) All of the subsidiary depository institutions of the bank holding company are well managed.

“(C) All of the subsidiary depository institutions of the bank holding company have achieved a rating of ‘satisfactory record of meeting community credit needs’, or better, at the most recent examination of each such institution:

“(D) In the case of any bank holding company which underwrites or sells, or any affiliate of which underwrites or sells, annuities contracts or contracts insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death—

“(i) the company or affiliate has not been adjudicated in any Federal court, and has not entered into a consent decree filed in a Federal court or into a settlement agreement, premised upon a violation of the Fair Housing Act for the activities described in this subparagraph;

“(ii) if such company or affiliate has entered into any such consent decree or settlement agreement, the company or the affiliate is not in violation of the decree or settlement agreement as determined by a court of competent jurisdiction or the agency with which the decree or agreement was entered into; or

“(iii) the company has been exempted from the requirements of clauses (i) and (ii) by the Board under paragraph (4).

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

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

“(3) **LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSITORY INSTITUTIONS.**—Any depository institution acquired by a bank holding company during the 12-month period preceding the submission of a notice under paragraph (1)(E) and any depository institution acquired after the submission of such notice may be excluded for purposes of paragraph (1)(C) during the 12-month period beginning on the date of such acquisition if—

“(A) the bank holding company has submitted an affirmative plan to the appropriate Federal banking agency to take such action as may be necessary in order for such institution to achieve a rating of ‘satisfactory record of meeting community credit needs’, or better, at the next examination of the institution; and

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

“(4) **VIOLATIONS OF THE FAIR HOUSING ACT.**—The Board may, on a case-by-case basis, exempt a bank holding company from meeting the requirements of clauses (i) and (ii) of paragraph (1)(D).

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

“(1) **FINANCIAL ACTIVITIES.**—

“(A) **IN GENERAL.**—Notwithstanding section 4(a), a financial holding company and a wholesale financial holding company may engage in any activity, and acquire and retain the shares of any company engaged in any activity, that the Board has determined (by regulation or order and in accordance with subparagraph (B)) to be—

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

“(ii) complementary to activities authorized under this subsection to the extent that the amount of such complementary activities remains small.

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

“(i) PROPOSALS RAISED BEFORE THE BOARD.—

“(I) CONSULTATION.—The Board shall notify the Secretary of the Treasury of, and consult with the Secretary of the Treasury concerning, any request, proposal, or application under this subsection, including a regulation or order proposed under paragraph (4), for a determination of whether an activity is financial in nature or incidental to such a financial activity.

“(II) TREASURY VIEW.—The Board shall not determine that any activity is financial in nature or incidental to a financial activity under this subsection if the Secretary of the Treasury notifies the Board in writing, not later than 30 days after the date of receipt of the notice described in subclause (I) (or such longer period as the Board determines to be appropriate in light of the circumstances) that the Secretary of the Treasury believes that the activity is not financial in nature or incidental to a financial activity.

“(ii) PROPOSALS RAISED BY THE TREASURY.—

“(I) TREASURY RECOMMENDATION.—The Secretary of the Treasury may, at any time, recommend in writing that the Board find an activity to be financial in nature or incidental to a financial activity.

“(II) TIME PERIOD FOR BOARD ACTION.—Not later than 30 days after the date of receipt of a written recommendation from the Secretary of the Treasury under subclause (I) (or such longer period as the Secretary of the Treasury and the Board determine to be appropriate in light of the circumstances), the Board shall determine whether to initiate a public rulemaking proposing that the subject recommended activity be found to be financial in nature or incidental to a financial activity under this subsection, and shall notify the Secretary of the Treasury in writing of the determination of the Board and, in the event that the Board determines not to seek public comment on the proposal, the reasons for that determination.

“(2) FACTORS TO BE CONSIDERED.—In determining whether an activity is financial in nature or incidental to financial activities, the Board shall take into account—

“(A) the purposes of this Act and the Financial Services Act of 1999;

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

“(C) changes or reasonably expected changes in the technology for delivering financial services; and

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

“(i) compete effectively with any company seeking to provide financial services in the United States;

“(ii) use any available or emerging technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions, in providing financial services; and

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

“(3) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—The following activities shall be considered to be financial in nature:

“(A) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.

“(B) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing.

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

“(D) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.

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

“(F) Engaging in any activity that the Board has determined, by order or regulation that is in effect on the date of enactment of the Financial Services Act of 1999, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in such order or regulation, unless modified by the Board).

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

“(i) a bank holding company may engage in outside the United States; and

“(ii) the Board has determined, under regulations issued pursuant to section 4(c)(13) of this Act (as in effect on the day before the date of enactment of the Financial Services Act of 1999) to be usual in connection with the transaction of banking or other financial operations abroad.

“(H) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

“(i) the shares, assets, or ownership interests are not acquired or held by a depository institution;

“(ii) such shares, assets, or ownership interests are acquired and held by an affiliate of the bank holding company that is a registered broker or dealer that is engaged in securities underwriting activities, or an affiliate of such broker or dealer, as part of a bona fide underwriting or merchant banking activity, including investment activities engaged in for the purpose of appreciation and ultimate resale or disposition of the investment;

“(iii) such shares, assets, or ownership interests are held only for such a period of time as will permit the sale or disposition thereof on a reasonable basis consistent with the nature of the activities described in clause (ii); and

“(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not actively participate in the day to day management or operation of such company or entity, except insofar as necessary to achieve the objectives of clause (ii).

“(I) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

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

“(ii) such shares, assets, or ownership interests are acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance) or providing and issuing annuities;

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

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

“(4) AUTHORIZATION OF NEW FINANCIAL ACTIVITIES.—The Board shall, by regulation or order and in accordance with paragraph (1)(B), define, consistent with the purposes of this Act, the following activities as, and the extent to which such activities are, financial in nature or incidental to activities which are financial in nature:

“(A) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.

“(B) Providing any device or other instrumentality for transferring money or other financial assets.

“(C) Arranging, effecting, or facilitating financial transactions for the account of third parties.

“(5) POST-CONSUMMATION NOTIFICATION.—

“(A) IN GENERAL.—A financial holding company and a wholesale financial holding company that acquires any company, or commences any activity, pursuant to this subsection shall provide written notice to the Board describing the activity commenced or conducted by the company acquired no later than 30 calendar days after commencing the activity or consummating the acquisition.

“(B) APPROVAL NOT REQUIRED FOR CERTAIN FINANCIAL ACTIVITIES.—Except as provided in section 4(j) with regard to the acquisition of a savings association or in paragraph (6) of this subsection, a financial holding company and a wholesale financial holding company may commence any activity, or acquire any company, pursuant to paragraph (3) or any regulation prescribed or order issued under paragraph (4), without prior approval of the Board.

“(6) NOTICE REQUIRED FOR LARGE COMBINATIONS.—

“(A) IN GENERAL.—No financial holding company or wholesale financial holding company shall directly or indirectly acquire, and no company that becomes a financial holding company or a wholesale financial holding company shall directly or indirectly acquire control of, any company in the United States, including through merger, consolidation, or other type of business combination, that—

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

“(ii) has consolidated total assets in excess of \$40,000,000,000, unless such holding company has provided notice to the Board, not later than 60 days prior to such proposed acquisition or prior to becoming a financial holding company or wholesale financial holding company, and during that time period, or such longer time period not exceeding an additional 60 days, as established by the Board, the Board has not issued a notice disapproving the proposed acquisition or retention.

“(B) FACTORS FOR CONSIDERATION.—In reviewing any prior notice filed under this paragraph, the Board shall take into consideration—

“(i) whether the company is in compliance with all applicable criteria set forth in subsection (b) and the provisions of subsection (d);

“(ii) whether the proposed combination represents an undue aggregation of resources;

“(iii) whether the proposed combination poses a risk to the deposit insurance system;

“(iv) whether the proposed combination poses a risk to State insurance guaranty funds;

“(v) whether the proposed combination can reasonably be expected to be in the best interests of depositors or policyholders of the respective entities; and

“(vi) whether the proposed transaction can reasonably be expected to further the purposes of this Act and produce benefits to the public.

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

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

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

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

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

“(III) the Secretary of the Treasury, the Department of Justice, and the Federal Trade Commission.

“(ii) TIMING.—The views and recommendations of any agency provided notice under this paragraph shall be submitted to the Board not later than 30 calendar days after the date on which notice to the agency was given, unless the Board determines that another shorter time period is appropriate.

“(d) PROVISIONS APPLICABLE TO FINANCIAL HOLDING COMPANIES THAT FAIL TO MEET REQUIREMENTS.—



“(1) IN GENERAL.—If a financial holding company is not in compliance with the requirements of subparagraph (A), (B), or (C) of subsection (b)(1), the appropriate Federal banking agency of the subsidiary depository institution shall notify the Board which shall give notice of such finding to the company.

“(2) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—Not later than 45 days after receipt by a financial holding company of a notice given under paragraph (1) (or such additional period as the Board may permit), the company and any relevant depository institution shall execute an agreement acceptable to the Board and the appropriate Federal banking agency to comply with the requirements applicable to a financial holding company.

“(3) AUTHORITY TO IMPOSE LIMITATIONS.—Until the conditions described in a notice to a financial holding company under paragraph (1) are corrected—

“(A) the Board may impose such limitations on the conduct or activities of the company or any affiliate of the company (other than a depository institution or a subsidiary of a depository institution) as the Board determines to be appropriate under the circumstances; and

“(B) the appropriate Federal banking agency may impose such limitations on the conduct or activities of an affiliated depository institution or subsidiary of a depository institution as the appropriate Federal banking agency determines to be appropriate under the circumstances.

“(4) FAILURE TO CORRECT.—If, after receiving a notice under paragraph (1), a financial holding company or a depository institution affiliate of such company does not—

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

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

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

“(D) in the case of a notice of failure to comply with subparagraph (B) or (C) of subsection (b)(1), restore compliance with any such subparagraph on or before the date on which the next examination of the depository institution subsidiary is completed or by the end of such other period as the Board determines to be appropriate,

the Board may require such company, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the Board’s discretion, to divest control of any depository institution subsidiary or, at the election of the financial holding company, instead to cease to engage in any activity conducted by such company or its subsidiaries pursuant to this section.

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

“(e) SAFEGUARDS FOR BANK SUBSIDIARIES.—A financial holding company shall assure that—

“(1) the procedures of the holding company for identifying and managing financial and operational risks within the company, and the subsidiaries of such company, adequately protect the subsidiaries of such company which are insured depository institutions from such risks;

“(2) the holding company has reasonable policies and procedures to preserve the separate corporate identity and limited liability of such company and the subsidiaries of such company, for the protection of the company’s subsidiary insured depository institutions; and

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

“(f) AUTHORITY TO RETAIN LIMITED NONFINANCIAL ACTIVITIES AND AFFILIATIONS.—

“(1) IN GENERAL.—Notwithstanding section 4(a), a company that is not a bank holding company or a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978) and becomes a financial holding company after the date of the enactment of the Financial Services Act of 1999 may continue to engage in any activity and retain direct or indirect ownership or control of shares of a company engaged in any activity if—

“(A) the holding company lawfully was engaged in the activity or held the shares of such company on September 30, 1997;

“(B) the holding company is predominantly engaged in financial activities as defined in paragraph (2); and

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

“(2) PREDOMINANTLY FINANCIAL.—For purposes of this subsection, a company is predominantly engaged in financial activities if the annual gross revenues derived by the holding company and all subsidiaries of the holding company (excluding revenues derived from subsidiary depository institutions), on a consolidated basis, from engaging in activities that are financial in nature or are incidental to activities that are financial in nature under subsection (c) represent at least 85 percent of the consolidated annual gross revenues of the company.

“(3) NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.—A financial holding company that engages in activities or holds shares pursuant to this subsection, or a subsidiary of such financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company which is engaged in any activity which the Board has not determined to be financial in nature or incidental to activities that are financial in nature under subsection (c).

“(4) CONTINUING REVENUE LIMITATION ON GRANDFATHERED COMMERCIAL ACTIVITIES.—Notwithstanding any other provision of this subsection, a financial holding company may continue to engage in activities or hold shares in companies pursuant to this subsection only to the extent that the aggregate annual gross revenues derived from all such activities and all such companies does not exceed 15 percent of the consolidated annual gross revenues of the financial holding company (excluding revenues derived from subsidiary depository institutions).

“(5) CROSS MARKETING RESTRICTIONS APPLICABLE TO COMMERCIAL ACTIVITIES.—A depository institution controlled by a financial holding company shall not—

“(A) offer or market, directly or through any arrangement, any product or service of a company whose activities are conducted or whose shares are owned or controlled by the financial holding company pursuant to this subsection or subparagraph (H) or (I) of subsection (c)(3); or

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

“(6) TRANSACTIONS WITH NONFINANCIAL AFFILIATES.—An insured depository institution controlled by a financial holding company or wholesale financial holding company may not engage in a covered transaction (as defined by section 23A(b)(7) of the Federal Reserve Act) with any affiliate controlled by the company pursuant to section 10(c), this subsection, or subparagraph (H) or (I) of subsection (c)(3).

“(7) SUNSET OF GRANDFATHER.—A financial holding company engaged in any activity, or retaining direct or indirect ownership or control of shares of a company, pursuant to this subsection, shall terminate such activity and divest ownership or control of the shares of such company before the end of the 10-year period beginning on the date of the enactment of the Financial Services Act of 1999. The Board may, upon application by a financial holding company, extend such 10-year period by a period not to exceed an additional 5 years if such extension would not be detrimental to the public interest.

“(g) DEVELOPING ACTIVITIES.—A financial holding company and a wholesale financial holding company may engage directly or indirectly, or acquire shares of any company engaged, in any activity that the Board has not determined to be financial in nature or incidental to financial activities under subsection (c) if—

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

“(2) the gross revenues from all activities conducted under this subsection represent less than 5 percent of the consolidated gross revenues of the holding company;

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

“(4) the total capital invested in activities conducted under this subsection represents less than 5 percent of the consolidated total capital of the holding company;

“(5) neither the Board nor the Secretary of the Treasury has determined that the activity is not financial in nature or incidental to financial activities under subsection (c);

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

“(7) the holding company provides written notification to the Board describing the activity commenced or conducted by the company acquired no later than 10 business days after commencing the activity or consummating the acquisition.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 4(j) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)) is amended—

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

(2) in paragraph (3)—

(A) by inserting “, other than any complementary activity under section 6(c)(1)(A)(ii),” after “to engage in any activity”; and

(B) by inserting “or a company engaged in any complementary activity under section 6(c)(1)(A)(ii)” after “insured depository institution”.

(c) REPORT.—

(1) IN GENERAL.—By the end of the 4-year period beginning on the date of the enactment of this Act and every 4 years thereafter, the Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall submit a joint report to the Congress containing a summary of new activities which are financial in nature, including grandfathered commercial activities, in which any financial holding company is engaged pursuant to subsection (c)(1) or (f) of section 6 of the Bank Holding Company Act of 1956 (as added by subsection (a)).

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

(A) A discussion of actions by the Board of Governors of the Federal Reserve System and the Secretary of the Treasury, whether by regulation, order, interpretation, or guideline or by approval or disapproval of an application, with regard to activities of financial holding companies which are incidental to activities financial in nature or complementary to such financial activities.

(B) An analysis and discussion of the risks posed by commercial activities of financial holding companies to the safety and soundness of affiliate depository institutions.

(C) An analysis and discussion of the effect of mergers and acquisitions under section 6 of the Bank Holding Company Act of 1956 on market concentration in the financial services industry.

(D) An analysis and discussion, by the Board and the Secretary in consultation with the other Federal banking agencies (as defined in section 3(z) of the Federal Deposit Insurance Act), of the impact of the implementation of this Act, and the amendments made by this Act, on the extent of meeting community credit needs and capital availability under the Community Reinvestment Act of 1977.

#### SEC. 104. OPERATION OF STATE LAW.

(a) AFFILIATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict an insured depository institution or wholesale financial institution, or a subsidiary or affiliate thereof, from being affiliated directly or indirectly or associated with any person or entity, as authorized or permitted by this Act or any other provision of Federal law.

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

(A) requiring any person or entity that proposes to acquire control of an entity that is engaged in the business of insurance and domiciled in that State (hereafter in this subparagraph referred to as the “insurer”) to furnish to the insurance regulatory authority of that State, not later than 60 days before the effective date of the proposed acquisition—

(i) the name and address of each person by whom, or on whose behalf, the affiliation referred to in this subparagraph is to be effected (hereafter in this subparagraph referred to as the “acquiring party”);

(ii) if the acquiring party is an individual, his or her principal occupation and all offices and positions held during the 5 years preceding the date of notification, and any conviction of crimes other than minor traffic violations during the 10 years preceding the date of notification;

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

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

(II) an informative description of the business intended to be done by the acquiring party and any subsidiary thereof; and

(III) a list of all individuals who are, or who have been selected to become, directors or executive officers of the acquiring party or who perform, or will perform, functions appropriate to such positions, including, for each such individual, the information required by clause (ii);

(iv) the source, nature, and amount of the consideration used, or to be used, in effecting the merger or other acquisition of control, a description of any transaction wherein funds were, or are to be, obtained for any such purpose, and the identity of persons furnishing such consideration, except that, if a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests;

(v) fully audited financial information as to the earnings and financial condition of each acquiring party for the 5 fiscal years preceding the date of notification of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar unaudited information as of a date not earlier than 90 days before the date of notification, except that, in the case of an acquiring party that is an insurer actively engaged in the business of insurance, the financial statements of such insurer need not be audited, but such audit may be required if the need therefor is determined by the insurance regulatory authority of the State;

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

(vii) the number of shares of any security of the insurer that each acquiring party proposes to acquire, the terms of any offer, request, invitation, agreement, or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at;

(viii) the amount of each class of any security of the insurer that is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(ix) a full description of any contracts, arrangements, or understandings with respect to any security of the insurer in which any acquiring party is involved, including transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies, and identification of the persons with whom such contracts, arrangements, or understandings have been entered into;

(x) a description of the purchase of any security of the insurer during the 12-month period preceding the date of notification by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid, or agreed to be paid, therefor;

(xi) a description of any recommendations to purchase any security of the insurer made during the 12-month period preceding the date of notification by any acquiring party or by any person based upon interviews or at the suggestion of such acquiring party;

(xii) copies of all tender offers for, requests or invitations for tenders of, exchange offers for and agreements to acquire or exchange any securities of the insurer and, if distributed, of additional soliciting material relating thereto; and

(xiii) the terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of securities of the insurer for tender and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto;

(B) requiring an entity that is acquiring control of an entity that is engaged in the business of insurance and domiciled in that State to maintain or restore the capital requirements of that insurance entity to the level required under the capital regulations of general applicability in that State

to avoid the requirement of preparing and filing with the insurance regulatory authority of that State a plan to increase the capital of the entity, except that any determination by the State insurance regulatory authority with respect to such requirement shall be made not later than 60 days after the date of notification under subparagraph (A);

(C) taking actions with respect to the receivership or conservatorship of any insurance company; or

(D) restricting a change in the ownership of stock in an insurance company, or a company formed for the purpose of controlling such insurance company, for a period of not more than 3 years beginning on the date of the conversion of such company from mutual to stock form.

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

(A) IN GENERAL.—Subject to subsection (c) and the nondiscrimination provisions contained in such subsection, no provision in paragraph (1) shall be construed as affecting State laws, regulations, orders, interpretations, or other actions of general applicability relating to the governance of corporations, partnerships, limited liability companies or other business associations incorporated or formed under the laws of that State or domiciled in that State, or the applicability of the antitrust laws of any State or any State law that is similar to the antitrust laws.

(B) DEFINITION.—The term “antitrust laws” has the same meaning as in subsection (a) of the first section of the Clayton Act, and includes section 5 of the Federal Trade Commission Act to the extent that such section 5 relates to unfair methods of competition.

(b) ACTIVITIES.—

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

(2) INSURANCE SALES.—

(A) IN GENERAL.—In accordance with the legal standards for preemption set forth in the decision of the Supreme Court of the United States in *Barnett Bank of Marion County N.A. v. Nelson*, 116 S. Ct. 1103 (1996), no State may, by statute, regulation, order, interpretation, or other action, prevent or significantly interfere with the ability of an insured depository institution or wholesale financial institution, or a subsidiary or affiliate thereof, to engage, directly or indirectly, either by itself or in conjunction with a subsidiary, affiliate, or any other party, in any insurance sales, solicitation, or cross-marketing activity.

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

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

(ii) Restrictions prohibiting a requirement for any debtor, insurer, or insurance agent or broker to pay a separate charge in connection with the handling of insurance that is required in connection with a loan or other extension of credit or the provision of another traditional banking product, unless such charge would be required when the insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof, is the licensed insurance agent or broker providing the insurance.

(iii) Restrictions prohibiting the use of any advertisement or other insurance promotional material by an insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof, that would cause a reasonable person to believe mistakenly that—

(I) a State or the Federal Government is responsible for the insurance sales activities of, or stands behind the credit of, the institution, affiliate, or subsidiary; or

- (II) a State, or the Federal Government guarantees any returns on insurance products, or is a source of payment on any insurance obligation of or sold by the institution, affiliate, or subsidiary;
- (iv) Restrictions prohibiting the payment or receipt of any commission or brokerage fee or other valuable consideration for services as an insurance agent or broker to or by any person, unless such person holds a valid State license regarding the applicable class of insurance at the time at which the services are performed, except that, in this clause, the term "services as an insurance agent or broker" does not include a referral by an unlicensed person of a customer or potential customer to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions.
- (v) Restrictions prohibiting any compensation paid to or received by any individual who is not licensed to sell insurance, for the referral of a customer that seeks to purchase, or seeks an opinion or advice on, any insurance product to a person that sells or provides opinions or advice on such product, based on the purchase of insurance by the customer.
- (vi) Restrictions prohibiting the release of the insurance information of a customer (defined as information concerning the premiums, terms, and conditions of insurance coverage, including expiration dates and rates, and insurance claims of a customer contained in the records of the insured depository institution or wholesale financial institution, or a subsidiary or affiliate thereof) to any person or entity other than an officer, director, employee, agent, subsidiary, or affiliate of an insured depository institution or a wholesale financial institution, for the purpose of soliciting or selling insurance, without the express consent of the customer, other than a provision that prohibits—
- (I) a transfer of insurance information to an unaffiliated insurance company, agent, or broker in connection with transferring insurance in force on existing insureds of the insured depository institution or wholesale financial institution, or subsidiary or affiliate thereof, or in connection with a merger with or acquisition of an unaffiliated insurance company, agent, or broker; or
- (II) the release of information as otherwise authorized by State or Federal law.
- (vii) Restrictions prohibiting the use of health information obtained from the insurance records of a customer for any purpose, other than for its activities as a licensed agent or broker, without the express consent of the customer.
- (viii) Restrictions prohibiting the extension of credit or any product or service that is equivalent to an extension of credit, lease or sale of property of any kind, or furnishing of any services or fixing or varying the consideration for any of the foregoing, on the condition or requirement that the customer obtain insurance from the insured depository institution, wholesale financial institution, a subsidiary or affiliate thereof, or a particular insurer, agent, or broker, other than a prohibition that would prevent any insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof—
- (I) from engaging in any activity that would not violate section 106 of the Bank Holding Company Act Amendments of 1970, as interpreted by the Board of Governors of the Federal Reserve System; or
- (II) from informing a customer or prospective customer that insurance is required in order to obtain a loan or credit, that loan or credit approval is contingent upon the procurement by the customer of acceptable insurance, or that insurance is available from the insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof.
- (ix) Restrictions requiring, when an application by a consumer for a loan or other extension of credit from an insured depository institution or wholesale financial institution is pending, and insurance is offered or sold to the consumer or is required in connection with the loan or extension of credit by the insured depository institution or wholesale financial institution or any affiliate or subsidiary thereof, that a written disclosure be provided to the consumer or prospective customer indicating that his or her choice of an insurance provider will not affect the credit decision or credit terms in any way, except that the insured de-

pository institution or wholesale financial institution may impose reasonable requirements concerning the creditworthiness of the insurance provider and scope of coverage chosen.

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

(I) is not a deposit;

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

(III) is not guaranteed by the insured depository institution or wholesale financial institution or, if appropriate, its subsidiaries or affiliates or any person soliciting the purchase of or selling insurance on the premises thereof; and

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

(xi) Restrictions requiring that, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from an insured depository institution or wholesale financial institution, or its subsidiaries or affiliates, or any person soliciting the purchase of or selling insurance on the premises thereof, the credit and insurance transactions be completed through separate documents.

(xii) Restrictions prohibiting, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from an insured depository institution or wholesale financial institution or its subsidiaries or affiliates, or any person soliciting the purchase of or selling insurance on the premises thereof, inclusion of the expense of insurance premiums in the primary credit transaction without the express written consent of the customer.

(xiii) Restrictions requiring maintenance of separate and distinct books and records relating to insurance transactions, including all files relating to and reflecting consumer complaints, and requiring that such insurance books and records be made available to the appropriate State insurance regulator for inspection upon reasonable notice.

(C) LIMITATIONS.—

(i) OCC DEFERENCE.—Section 306(e) does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted, or enacted before September 3, 1998, and that is not described in subparagraph (B).

(ii) NONDISCRIMINATION.—Subsection (c) does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted, or enacted before September 3, 1998, and that is not described in subparagraph (B).

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

(iv) LIMITATION ON INFERENCES.—Nothing in this paragraph shall be construed to create any inference with respect to any State statute, regulation, order, interpretation, or other action that is not referred to or described in this paragraph.

(3) INSURANCE ACTIVITIES OTHER THAN SALES.—State statutes, regulations, interpretations, orders, and other actions shall not be preempted under subsection (b)(1) to the extent that they—

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

(B) apply only to persons or entities that are not insured depository institutions or wholesale financial institutions, but that are directly engaged in the business of insurance (except that they may apply to depository institutions engaged in providing savings bank life insurance as principal to the extent of regulating such insurance);

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

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

(4) FINANCIAL ACTIVITIES OTHER THAN INSURANCE.—No State statute, regulation, interpretation, order, or other action shall be preempted under subsection (b)(1) to the extent that—

(A) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, insurance sales, solicitations, or cross marketing activities covered under paragraph (2);

(B) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, the business of insurance activities other than sales, solicitations, or cross marketing activities, covered under paragraph (3);

(C) it does not relate to securities investigations or enforcement actions referred to in subsection (d); and

(D) it—

(i) does not distinguish by its terms between insured depository institutions, wholesale financial institutions, and subsidiaries and affiliates thereof engaged in the activity at issue and other persons or entities engaged in the same activity in a manner that is in any way adverse with respect to the conduct of the activity by any such insured depository institution, wholesale financial institution, or subsidiary or affiliate thereof engaged in the activity at issue;

(ii) as interpreted or applied, does not have, and will not have, an impact on depository institutions, wholesale financial institutions, or subsidiaries or affiliates thereof engaged in the activity at issue, or any person or entity affiliated therewith, that is substantially more adverse than its impact on other persons or entities engaged in the same activity that are not insured depository institutions, wholesale financial institutions, or subsidiaries or affiliates thereof, or persons or entities affiliated therewith;

(iii) does not effectively prevent a depository institution, wholesale financial institution, or subsidiary or affiliate thereof from engaging in activities authorized or permitted by this Act or any other provision of Federal law; and

(iv) does not conflict with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law.

(c) NONDISCRIMINATION.—Except as provided in any restrictions described in subsection (b)(2)(B), no State may, by statute, regulation, order, interpretation, or other action, regulate the insurance activities authorized or permitted under this Act or any other provision of Federal law of an insured depository institution or wholesale financial institution, or subsidiary or affiliate thereof, to the extent that such statute, regulation, order, interpretation, or other action—

(1) distinguishes by its terms between insured depository institutions or wholesale financial institutions, or subsidiaries or affiliates thereof, and other persons or entities engaged in such activities, in a manner that is in any way adverse to any such insured depository institution or wholesale financial institution, or subsidiary or affiliate thereof;

(2) as interpreted or applied, has or will have an impact on depository institutions or wholesale financial institutions, or subsidiaries or affiliates thereof, that is substantially more adverse than its impact on other persons or entities providing the same products or services or engaged in the same activities that are not insured depository institutions, wholesale financial institutions, or subsidiaries or affiliates thereof, or persons or entities affiliated therewith;

(3) effectively prevents a depository institution or wholesale financial institution, or subsidiary or affiliate thereof, from engaging in insurance activities authorized or permitted by this Act or any other provision of Federal law; or

(4) conflicts with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law between insured depository institutions or wholesale financial institutions, or subsidiaries or affiliates thereof, and persons and entities engaged in the business of insurance.

(d) LIMITATION.—Subsections (a) and (b) shall not be construed to affect the jurisdiction of the securities commission (or any agency or office performing like functions) of any State, under the laws of such State, to investigate and bring enforcement actions, consistent with section 18(c) of the Securities Act of 1933, with respect to fraud or deceit or unlawful conduct by any person, in connection with securities or securities transactions.

(e) DEFINITION.—For purposes of this section, the term “State” means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.



**SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHORIZED.**

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

“(2) REGULATIONS.—A bank holding company organized as a mutual holding company shall be regulated on terms, and shall be subject to limitations, comparable to those applicable to any other bank holding company.”.

**SEC. 105A. PUBLIC MEETINGS FOR LARGE BANK ACQUISITIONS AND MERGERS.**

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

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

“(A) IN GENERAL.—In every case”; and

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

“(B) PUBLIC MEETINGS.—In each case involving 1 or more insured depository institutions each of which has total assets of \$1,000,000,000 or more, the Board shall, as necessary and on a timely basis, conduct public meetings in 1 or more areas where the Board believes there will be a substantial public impact.”.

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

“(12) PUBLIC MEETINGS.—In each merger transaction involving 1 or more insured depository institutions each of which has total assets of \$1,000,000,000 or more, the responsible agency shall, as necessary and on a timely basis, conduct public meetings in 1 or more areas where the agency believes there will be a substantial public impact.”.

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

**“SEC. 6. PUBLIC MEETINGS FOR LARGE BANK CONSOLIDATIONS AND MERGERS.**

“In each case of a consolidation or merger under this Act involving 1 or more banks each of which has total assets of \$1,000,000,000 or more, the Comptroller shall, as necessary and on a timely basis, conduct public meetings in 1 or more areas where the Comptroller believes there will be a substantial public impact.”.

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

“(7) PUBLIC MEETINGS FOR LARGE DEPOSITORY INSTITUTION ACQUISITIONS AND MERGERS.—In each case involving 1 or more insured depository institutions each of which has total assets of \$1,000,000,000 or more, the Director shall, as necessary and on a timely basis, conduct public meetings in 1 or more areas where the Director believes there will be a substantial public impact.”.

**SEC. 106. PROHIBITION ON DEPOSIT PRODUCTION OFFICES.**

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

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

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

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

**SEC. 107. CLARIFICATION OF BRANCH CLOSURE REQUIREMENTS.**

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

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

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

(1) in paragraph (2)(A)(ii)—

(A) by striking “and” at the end of subclause (IX);

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

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

“(XI) assets that are derived from, or are incidental to, consumer lending activities in which institutions described in subparagraph (F) or (H) of section 2(c)(2) are permitted to engage;”;  
 (2) in paragraph (2), by striking subparagraph (B) and inserting the following new subparagraphs:

“(B) any bank subsidiary of such company engages in any activity in which the bank was not lawfully engaged as of March 5, 1987, unless the bank is well managed and well capitalized;

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

“(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties; and

“(ii) engages in the business of making commercial loans (and, for purposes of this clause, loans made in the ordinary course of a credit card operation shall not be treated as commercial loans); or

“(D) after the date of the enactment of the Competitive Equality Amendments of 1987, any bank subsidiary of such company permits any overdraft (including any intraday overdraft), or incurs any such overdraft in such bank’s account at a Federal reserve bank, on behalf of an affiliate, other than an overdraft described in paragraph (3).”; and

(3) by striking paragraphs (3) and (4) and inserting the following new paragraphs:

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

“(A) such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the bank and the affiliate;

“(B) such overdraft—

“(i) is permitted or incurred on behalf of an affiliate which is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York; and

“(ii) is fully secured, as required by the Board, by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book entry system; or

“(C) such overdraft—

“(i) is incurred on behalf of an affiliate solely in connection with an activity that is so closely related to banking, or managing or controlling banks, as to be a proper incident thereto, to the extent the bank incurring the overdraft and the affiliate on whose behalf the overdraft is incurred each document that the overdraft is incurred for such purpose; and

“(ii) does not cause the bank to violate any provision of section 23A or 23B of the Federal Reserve Act, either directly, in the case of a member bank, or by virtue of section 18(j) of the Federal Deposit Insurance Act, in the case of a nonmember bank.

“(4) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—If any company described in paragraph (1) fails to qualify for the exemption provided under such paragraph by operation of paragraph (2), such exemption shall cease to apply to such company and such company shall divest control of each bank it controls before the end of the 180-day period beginning on the date that the company receives notice from the Board that the company has failed to continue to qualify for such exemption, unless before the end of such 180-day period, the company has—

“(A) corrected the condition or ceased the activity that caused the company to fail to continue to qualify for the exemption; and

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

The issuance of any notice under this paragraph that relates to the activities of a bank shall not be construed as affecting the authority of the bank to continue to engage in such activities until the expiration of such 180-day period.”.

(b) INDUSTRIAL LOAN COMPANIES AFFILIATE OVERDRAFTS.—Section 2(c)(2)(H) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)) is amended by inserting before the period at the end “, or that is otherwise permissible for a bank controlled by a company described in section 4(f)(1)”.

**SEC. 109. REPORTS ON ONGOING FTC STUDY OF CONSUMER PRIVACY ISSUES.**

With respect to the ongoing multistage study being conducted by the Federal Trade Commission on consumer privacy issues, the Commission shall submit to the

Congress an interim report on the findings and conclusions of the Commission, together with such recommendations for legislative and administrative action as the Commission determines to be appropriate, at the conclusion of each stage of such study and a final report at the conclusion of the study.

**SEC. 110. GAO STUDY OF ECONOMIC IMPACT ON COMMUNITY BANKS AND OTHER SMALL FINANCIAL INSTITUTIONS.**

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

(b) **REPORT TO THE CONGRESS.**—The Comptroller General of the United States shall submit a report to the Congress before the end of the 6-month period beginning on the date of the date of the enactment of this Act containing the findings and conclusions of the Comptroller General with regard to the study required under subsection (a) and such recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate.

## **Subtitle B—Streamlining Supervision of Financial Holding Companies**

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

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

“(c) **REPORTS AND EXAMINATIONS.**—

“(1) **REPORTS.**—

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

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

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

“(B) **USE OF EXISTING REPORTS.**—

“(i) **IN GENERAL.**—The Board shall, to the fullest extent possible, accept reports in fulfillment of the Board’s reporting requirements under this paragraph that a bank holding company or any subsidiary of such company has provided or been required to provide to other Federal and State supervisors or to appropriate self-regulatory organizations.

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

“(iii) **REQUIRED USE OF PUBLICLY REPORTED INFORMATION.**—The Board shall, to the fullest extent possible, accept in fulfillment of any reporting or recordkeeping requirements under this Act information that is otherwise required to be reported publicly and externally audited financial statements.

“(iv) **REPORTS FILED WITH OTHER AGENCIES.**—In the event the Board requires a report from a functionally regulated nondepository institution subsidiary of a bank holding company of a kind that is not required by another Federal or State regulator or appropriate self-regulatory organization, the Board shall request that the appropriate regulator or self-regulatory organization obtain such report. If the report is not made available to the Board, and the report is necessary to assess a material risk to the bank holding company or any of its subsidiary depository institutions or compliance with this Act, the Board may require such subsidiary to provide such a report to the Board.

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

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

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

“(iii) an insurance company subject to supervision by a State insurance commission, agency, or similar authority; and

“(iv) an entity subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities.

“(2) EXAMINATIONS.—

“(A) EXAMINATION AUTHORITY.—

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

“(ii) FUNCTIONALLY REGULATED NONDEPOSITORY INSTITUTION SUBSIDIARIES.—Notwithstanding clause (i), the Board may make examinations of a functionally regulated nondepository institution subsidiary of a bank holding company only if—

“(I) the Board has reasonable cause to believe that such subsidiary is engaged in activities that pose a material risk to an affiliated depository institution, or

“(II) based on reports and other available information, the Board has reasonable cause to believe that a subsidiary is not in compliance with this Act or with provisions relating to transactions with an affiliated depository institution and the Board cannot make such determination through examination of the affiliated depository institution or bank holding company.

“(B) LIMITATIONS ON EXAMINATION AUTHORITY FOR BANK HOLDING COMPANIES AND SUBSIDIARIES.—Subject to subparagraph (A)(ii), the Board may make examinations under subparagraph (A)(i) of each bank holding company and each subsidiary of such holding company in order to—

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

“(ii) inform the Board of—

“(I) the financial and operational risks within the holding company system 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,

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

“(D) DEFERENCE TO BANK EXAMINATIONS.—The Board shall, to the fullest extent possible, use, for the purposes of this paragraph, the reports of examinations of depository institutions made by the appropriate Federal and State depository institution supervisory authority.

“(E) DEFERENCE TO OTHER EXAMINATIONS.—The Board shall, to the fullest extent possible, address the circumstances which might otherwise permit or require an examination by the Board by forgoing an examination and instead reviewing the reports of examination made of—

“(i) any registered broker or dealer by or on behalf of the Securities and Exchange Commission;

“(ii) any registered investment adviser properly registered by or on behalf of either the Securities and Exchange Commission or any State;

“(iii) any licensed insurance company by or on behalf of any state regulatory authority responsible for the supervision of insurance companies; and

“(iv) any other subsidiary that the Board finds to be comprehensively supervised by a Federal or State authority.

“(3) CAPITAL.—

“(A) IN GENERAL.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, guide-

lines, standards, or requirements on any subsidiary of a financial holding company that is not a depository institution and—

“(i) is in compliance with applicable capital requirements of another Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority; or

“(ii) is properly registered as an investment adviser under the Investment Advisers Act of 1940, or with any State.

“(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to activities of a registered investment adviser other than investment advisory activities or activities incidental to investment advisory activities.

“(C) LIMITATIONS ON INDIRECT ACTION.—In developing, establishing, or assessing holding company capital or capital adequacy rules, guidelines, standards, or requirements for purposes of this paragraph, the Board shall not take into account the activities, operations, or investments of an affiliated investment company registered under the Investment Company Act of 1940, if the investment company is not—

“(i) a bank holding company; or

“(ii) controlled by a bank holding company by reason of ownership by the bank holding company (including through all of its affiliates) of 25 percent or more of the shares of the investment company, where the shares owned by the bank holding company have a market value equal to more than \$1,000,000.

“(4) TRANSFER OF BOARD AUTHORITY TO APPROPRIATE FEDERAL BANKING AGENCY.—

“(A) IN GENERAL.—In the case of any bank holding company which is not significantly engaged in nonbanking activities, the Board, in consultation with the appropriate Federal banking agency, may designate the appropriate Federal banking agency of the lead insured depository institution subsidiary of such holding company 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 orders issued by an agency designated under subparagraph (A) in the same manner such sections apply to orders issued by the Board.

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

“(A) the Securities and Exchange Commission with regard to all interpretations of, and the enforcement of, applicable Federal securities laws (and rules, regulations, orders, and other directives issued thereunder) relating to the activities, conduct, and operations of registered brokers, dealers, investment advisers, and investment companies;

“(B) the relevant State securities authorities with regard to all interpretations of, and the enforcement of, applicable State securities laws (and rules, regulations, orders, and other directives issued thereunder) relating to the activities, conduct, and operations of registered brokers, dealers, and investment advisers; and

“(C) the relevant State insurance authorities with regard to all interpretations of, and the enforcement of, applicable State insurance laws (and rules, regulations, orders, and other directives issued thereunder) relating to the activities, conduct, and operations of insurance companies and insurance agents.”.

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

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

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

(1) by striking “Financial Institutions Supervisory Act of 1966, order” and inserting “Financial Institutions Supervisory Act of 1966, at the election of the bank holding company—

“(A) order”; and

(2) by striking “shareholders of the bank holding company. Such distribution” and inserting “shareholders of the bank holding company; or

“(B) order the bank holding company, after due notice and opportunity for hearing, and after consultation with the primary supervisor for the bank, which shall be the Comptroller of the Currency in the case of a national bank, and the Federal Deposit Insurance Corporation and the appropriate State supervisor in the case of an insured nonmember bank, to terminate (within 120 days or such longer period as the Board may direct) the ownership or control of any such bank by such company.

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

**SEC. 113. AUTHORITY OF STATE INSURANCE REGULATOR AND SECURITIES AND EXCHANGE COMMISSION.**

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

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

“(1) IN GENERAL.—Notwithstanding any other provision of law, any regulation, order, or other action of the Board which requires a bank holding company to provide funds or other assets to a subsidiary insured depository institution shall not be effective nor enforceable if—

“(A) such funds or assets are to be provided by—

“(i) a bank holding company that is an insurance company or is a broker or dealer registered under the Securities Exchange Act of 1934;

or

“(ii) an affiliate of the depository institution which is an insurance company or a broker or dealer registered under such Act; and

“(B) the State insurance authority for the insurance company or the Securities and Exchange Commission for the registered broker or dealer, as the case may be, determines in writing sent to the holding company and the Board that the holding company shall not provide such funds or assets because such action would have a material adverse effect on the financial condition of the insurance company or the broker or dealer, as the case may be.

“(2) NOTICE TO STATE INSURANCE AUTHORITY OR SEC REQUIRED.—If the Board requires a bank holding company, or an affiliate of a bank holding company, which is an insurance company or a broker or dealer described in paragraph (1)(A) to provide funds or assets to an insured depository institution subsidiary of the holding company pursuant to any regulation, order, or other action of the Board referred to in paragraph (1), the Board shall promptly notify the State insurance authority for the insurance company or the Securities and Exchange Commission, as the case may be, of such requirement.

“(3) DIVESTITURE IN LIEU OF OTHER ACTION.—If the Board receives a notice described in paragraph (1)(B) from a State insurance authority or the Securities and Exchange Commission with regard to a bank holding company or affiliate referred to in that paragraph, the Board may order the bank holding company to divest the insured depository institution not later than 180 days after receiving the notice, or such longer period as the Board determines consistent with the safe and sound operation of the insured depository institution.

“(4) CONDITIONS BEFORE DIVESTITURE.—During the period beginning on the date an order to divest is issued by the Board under paragraph (3) to a bank holding company and ending on the date the divestiture is completed, the Board may impose any conditions or restrictions on the holding company’s ownership or operation of the insured depository institution, including restricting or pro-

hibiting transactions between the insured depository institution and any affiliate of the institution, as are appropriate under the circumstances.”.

**SEC. 114. PRUDENTIAL SAFEGUARDS.**

(a) **COMPTROLLER OF THE CURRENCY.**—

(1) **IN GENERAL.**—The Comptroller of the Currency may, by regulation or order, impose restrictions or requirements on relationships or transactions between a national bank and a subsidiary of the national bank which the Comptroller finds are consistent with the public interest, the purposes of this Act, title LXII of the Revised Statutes of the United States, and other Federal law applicable to national banks, and the standards in paragraph (2).

(2) **STANDARDS.**—The Comptroller of the Currency may exercise authority under paragraph (1) if the Comptroller finds that such action will have any of the following effects:

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

(B) Enhance the financial stability of banks.

(C) Avoid conflicts of interest or other abuses.

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

(E) Promote the application of national treatment and equality of competitive opportunity between subsidiaries owned or controlled by domestic banks and subsidiaries owned or controlled by foreign banks operating in the United States.

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

(A) review all restrictions or requirements established pursuant to paragraph (1) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including any purpose described in paragraph (2); and

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

(b) **BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.**—

(1) **IN GENERAL.**—The Board of Governors of the Federal Reserve System may, by regulation or order, impose restrictions or requirements on relationships or transactions—

(A) between a depository institution subsidiary of a bank holding company and any affiliate of such depository institution (other than a subsidiary of such institution); or

(B) between a State member bank and a subsidiary of such bank, which the Board finds are consistent with the public interest, the purposes of this Act, the Bank Holding Company Act of 1956, the Federal Reserve Act, and other Federal law applicable to depository institution subsidiaries of bank holding companies or State banks (as the case may be), and the standards in paragraph (2).

(2) **STANDARDS.**—The Board of Governors of the Federal Reserve System may exercise authority under paragraph (1) if the Board finds that such action will have any of the following effects:

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

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

(C) Avoid conflicts of interest or other abuses.

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

(E) Promote the application of national treatment and equality of competitive opportunity between nonbank affiliates owned or controlled by domestic bank holding companies and nonbank affiliates owned or controlled by foreign banks operating in the United States.

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

(A) review all restrictions or requirements established pursuant to paragraph (1) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including any purpose described in paragraph (2); and

(B) modify or eliminate any restriction or requirement the Board finds is no longer required for such purposes.

(4) **FOREIGN BANKS.**—

(A) **IN GENERAL.**—The Board may, by regulation or order, impose restrictions or requirements on relationships or transactions between a branch,

agency, or commercial lending company of a foreign bank in the United States and any affiliate in the United States of such foreign bank that the Board finds are consistent with the public interest, the purposes of this Act, the Bank Holding Company Act of 1956, the Federal Reserve Act, and other Federal law applicable to foreign banks and their affiliates in the United States, and the standards in paragraphs (2) and (3).

(B) EVASION.—In the event that the Board determines that there may be circumstances that would result in an evasion of this paragraph, the Board may also impose restrictions or requirements on relationships or transactions between operations of a foreign bank outside the United States and any affiliate in the United States of such foreign bank that are consistent with national treatment and equality of competitive opportunity.

(c) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(1) IN GENERAL.—The Federal Deposit Insurance Corporation may, by regulation or order, impose restrictions or requirements on relationships or transactions between a State nonmember bank (as defined in section 3 of the Federal Deposit Insurance Act) and a subsidiary of the State nonmember bank which the Corporation finds are consistent with the public interest, the purposes of this Act, the Federal Deposit Insurance Act, or other Federal law applicable to State nonmember banks and the standards in paragraph (2).

(2) STANDARDS.—The Federal Deposit Insurance Corporation may exercise authority under paragraph (1) if the Corporation finds that such action will have any of the following effects:

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

(B) Enhance the financial stability of banks.

(C) Avoid conflicts of interest or other abuses.

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

(E) Promote the application of national treatment and equality of competitive opportunity between subsidiaries owned or controlled by domestic banks and subsidiaries owned or controlled by foreign banks operating in the United States.

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

(A) review all restrictions or requirements established pursuant to paragraph (1) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including any purpose described in paragraph (2); and

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

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

(a) EXCLUSIVE COMMISSION AUTHORITY.—

(1) IN GENERAL.—Except as provided in paragraphs (3), (4), and (5), the Commission shall be the sole Federal agency with authority to inspect and examine any registered investment company that is not a bank holding company or a savings and loan holding company.

(2) PROHIBITION ON BANKING AGENCIES.—Except as provided in paragraph (3), a Federal banking agency may not inspect or examine any registered investment company that is not a bank holding company or a savings and loan holding company.

(3) CERTAIN EXAMINATIONS AUTHORIZED.— Nothing in this subsection prevents the Federal Deposit Insurance Corporation, if the Corporation finds it necessary to determine the condition of an insured depository institution for insurance purposes, from examining an affiliate of any insured depository institution, pursuant to its authority under section 10(b)(4) of the Federal Deposit Insurance Act, as may be necessary to disclose fully the relationship between the depository institution and the affiliate, and the effect of such relationship on the depository institution.

(4) OTS REVIEW OF SAVINGS ASSOCIATIONS.—No provision of this section shall be construed as preventing the Director of the Office of Thrift Supervision, where the Director finds it reasonably necessary to determine the financial condition of a savings association, from examining or requiring reports from an affiliate, service company, or subsidiary of any such savings association pursuant to section 5(d) of the Home Owners' Loan Act, solely for the purposes of disclosing fully the transactions or relationships between such association and such entities and their effect on the financial condition of the association.



(5) OCC REVIEW OF NATIONAL BANKS.—No provision of this section shall be construed as preventing the Comptroller of the Currency, where the Comptroller finds it reasonably necessary to determine the financial condition of a national bank, from examining or requiring reports from an affiliate, service company, or subsidiary of any such national bank pursuant to section 5240 of the Revised Statutes, solely for the purposes of disclosing fully the transactions or relationships between such national bank and such entities and their effect on the financial condition of the national bank.

(b) EXAMINATION RESULTS AND OTHER INFORMATION.—The Commission shall provide to any Federal banking agency, upon request, the results of any examination, reports, records, or other information with respect to any registered investment company to the extent necessary for the agency to carry out its statutory responsibilities.

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

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

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

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

(4) REGISTERED INVESTMENT COMPANY.—The term “registered investment company” means an investment company which is registered with the Commission under the Investment Company Act of 1940.

(5) SAVINGS AND LOAN HOLDING COMPANY.—The term “savings and loan holding company” has the same meaning as in section 10(a)(1)(D) of the Home Owners’ Loan Act.

**SEC. 116. LIMITATION ON RULEMAKING, PRUDENTIAL, SUPERVISORY, AND ENFORCEMENT AUTHORITY OF THE BOARD.**

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

**“SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SUPERVISORY, AND ENFORCEMENT AUTHORITY OF THE BOARD.**

“(a) LIMITATION ON DIRECT ACTION.—

“(1) IN GENERAL.—The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this Act or section 8 of the Federal Deposit Insurance Act against or with respect to a regulated subsidiary of a bank holding company unless the action is necessary to prevent or redress an unsafe or unsound practice or breach of fiduciary duty by such subsidiary that poses a material risk to—

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

“(B) the domestic or international payment system.

“(2) CRITERIA FOR BOARD ACTION.—The Board shall not take action otherwise permitted under paragraph (1) unless the Board finds that it is not reasonably possible to effectively protect against the material risk at issue through action directed at or against the affiliated depository institution or against depository institutions generally.

“(b) LIMITATION ON INDIRECT ACTION.—The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this Act or section 8 of the Federal Deposit Insurance Act against or with respect to a financial holding company or a wholesale financial holding company where the purpose or effect of doing so would be to take action indirectly against or with respect to a regulated subsidiary that may not be taken directly against or with respect to such subsidiary in accordance with subsection (a).

“(c) ACTIONS SPECIFICALLY AUTHORIZED.—Notwithstanding subsection (a), the Board may take action under this Act or section 8 of the Federal Deposit Insurance Act to enforce compliance by a regulated subsidiary with Federal law that the Board has specific jurisdiction to enforce against such subsidiary.

“(d) REGULATED SUBSIDIARY DEFINED.—For purposes of this section, the term ‘regulated subsidiary’ means any company that is not a bank holding company and is—

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

“(2) a registered investment adviser, properly registered by or on behalf of either the Securities and Exchange Commission or any State, with respect to the

investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;

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

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

“(5) an entity subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities.”.

**SEC. 117. INTERAGENCY CONSULTATION.**

(a) **PURPOSE.**—It is the intention of Congress that the Board of Governors of the Federal Reserve System, as the umbrella supervisor for financial holding companies, and the State insurance regulators, as the functional regulators of companies engaged in insurance activities, coordinate efforts to supervise companies that control both a depository institution and a company engaged in insurance activities regulated under State law. In particular, Congress believes that the Board and the State insurance regulators should share, on a confidential basis, information relevant to the supervision of companies that control both a depository institution and a company engaged in insurance activities, including information regarding the financial health of the consolidated organization and information regarding transactions and relationships between insurance companies and affiliated depository institutions. The appropriate Federal banking agencies for depository institutions should also share, on a confidential basis, information with the relevant State insurance regulators regarding transactions and relationships between depository institutions and affiliated companies engaged in insurance activities. The purpose of this section is to encourage this coordination and confidential sharing of information, and to thereby improve both the efficiency and the quality of the supervision of financial holding companies and their affiliated depository institutions and companies engaged in insurance activities.

(b) **EXAMINATION RESULTS AND OTHER INFORMATION.**—

(1) **INFORMATION OF THE BOARD.**—Upon the request of the appropriate insurance regulator of any State, the Board may provide any information of the Board regarding the financial condition, risk management policies, and operations of any financial holding company that controls a company that is engaged in insurance activities and is regulated by such State insurance regulator, and regarding any transaction or relationship between such an insurance company and any affiliated depository institution. The Board may provide any other information to the appropriate State insurance regulator that the Board believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

(2) **BANKING AGENCY INFORMATION.**—Upon the request of the appropriate insurance regulator of any State, the appropriate Federal banking agency may provide any information of the agency regarding any transaction or relationship between a depository institution supervised by such Federal banking agency and any affiliated company that is engaged in insurance activities regulated by such State insurance regulator. The appropriate Federal banking agency may provide any other information to the appropriate State insurance regulator that the agency believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

(3) **STATE INSURANCE REGULATOR INFORMATION.**—Upon the request of the Board or the appropriate Federal banking agency, a State insurance regulator may provide any examination or other reports, records, or other information to which such insurance regulator may have access with respect to a company which—

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

(B) is an affiliate of an insured depository institution, wholesale financial institution, or financial holding company.

(c) **CONSULTATION.**—Before making any determination relating to the initial affiliation of, or the continuing affiliation of, an insured depository institution, wholesale financial institution, or financial holding company with a company engaged in insurance activities, the appropriate Federal banking agency shall consult with the appropriate State insurance regulator of such company and take the views of such insurance regulator into account in making such determination.

(d) **EFFECT ON OTHER AUTHORITY.**—Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to an

insured depository institution, wholesale financial institution, or bank holding company or any affiliate thereof under any provision of law.

(e) CONFIDENTIALITY AND PRIVILEGE.—

(1) CONFIDENTIALITY.—The appropriate Federal banking agency shall not provide any information or material that is entitled to confidential treatment under applicable Federal banking agency regulations, or other applicable law, to a State insurance regulator unless such regulator agrees to maintain the information or material in confidence and to take all reasonable steps to oppose any effort to secure disclosure of the information or material by the regulator. The appropriate Federal banking agency shall treat as confidential any information or material obtained from a State insurance regulator that is entitled to confidential treatment under applicable State regulations, or other applicable law, and take all reasonable steps to oppose any effort to secure disclosure of the information or material by the Federal banking agency.

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

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

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

(2) BOARD; FINANCIAL HOLDING COMPANY; AND WHOLESALE FINANCIAL INSTITUTION.—The terms “Board”, “financial holding company”, and “wholesale financial institution” have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

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

(a) IN GENERAL.—Notwithstanding any other provision of law, the provisions of—

(1) section 5(c) of the Bank Holding Company Act of 1956 (as amended by this Act) that limit the authority of the Board of Governors of the Federal Reserve System to require reports from, to make examinations of, or to impose capital requirements on bank holding companies and their nonbank subsidiaries or that require deference to other regulators; and

(2) section 10A of the Bank Holding Company Act of 1956 (as added by this Act) that limit whatever authority the Board might otherwise have to take direct or indirect action with respect to bank holding companies and their nonbank subsidiaries,

shall also limit whatever authority that a Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act) might otherwise have under any statute to require reports, make examinations, impose capital requirements or take any other direct or indirect action with respect to bank holding companies and their nonbank subsidiaries (including nonbank subsidiaries of depository institutions), subject to the same standards and requirements as are applicable to the Board under such provisions.

(b) CERTAIN EXAMINATIONS AUTHORIZED.—

(1) FDIC REVIEW OF DEPOSITORY INSTITUTIONS.—No provision of this section shall be construed as preventing the Federal Deposit Insurance Corporation, if the Corporation finds it necessary to determine the condition of an insured depository institution for insurance purposes, from examining an affiliate of any insured depository institution, pursuant to its authority under section 10(b)(4) of the Federal Deposit Insurance Act, as may be necessary to disclose fully the relationship between the depository institution and the affiliate, and the effect of such relationship on the depository institution.

(2) OTS REVIEW OF SAVINGS ASSOCIATIONS.—No provision of this section shall be construed as preventing the Director of the Office of Thrift Supervision, where the Director finds it reasonably necessary to determine the financial condition of a savings association, from examining or requiring reports from an affiliate, service company, or subsidiary of any such savings association pursuant to section 5(d) of the Home Owners’ Loan Act, solely for the purposes of disclosing fully the transactions or relationships between such association and such entities and their effect on the financial condition of the association.

(3) OCC REVIEW OF NATIONAL BANKING ASSOCIATIONS.—No provision of this section shall be construed as preventing the Comptroller of the Currency, where the Comptroller finds it reasonably necessary to determine the financial condition of a national bank, from examining or requiring reports from an affiliate,

service company, or subsidiary of any such national bank pursuant to section 5240 of the Revised Statutes, solely for the purposes of disclosing fully the transactions or relationships between such national bank and such entities and their effect on the financial condition of the national bank.

**SEC. 119. PROHIBITION ON FDIC ASSISTANCE TO AFFILIATES AND SUBSIDIARIES.**

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

**SEC. 120. REPEAL OF SAVINGS BANK PROVISIONS IN THE BANK HOLDING COMPANY ACT OF 1956.**

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

**SEC. 120A. TECHNICAL AMENDMENT.**

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

## Subtitle C—Subsidiaries of National Banks

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

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

- (1) by redesignating section 5136A as section 5136C; and
- (2) by inserting after section 5136 (12 U.S.C. 24) the following new section:

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

“(a) SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED TO ENGAGE IN FINANCIAL ACTIVITIES.—

“(1) EXCLUSIVE AUTHORITY.—No provision of section 5136 or any other provision of this title LXII of the Revised Statutes of the United States shall be construed as authorizing a subsidiary of a national bank to engage in, or own any share of or any other interest in any company engaged in, any activity that—

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

“(B) is conducted under terms or conditions other than those that would govern the conduct of such activity by a national bank, unless a national bank is specifically authorized by the express terms of a Federal statute and not by implication or interpretation to acquire shares of or an interest in, or to control, such subsidiary, such as by paragraph (2) of this subsection and section 25A of the Federal Reserve Act.

“(2) SPECIFIC AUTHORIZATION TO CONDUCT ACTIVITIES WHICH ARE FINANCIAL IN NATURE.—Subject to paragraphs (3) and (4), a national bank may control a financial subsidiary, or hold an interest in a financial subsidiary, that is controlled by insured depository institutions or subsidiaries thereof.

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

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

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

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

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

“(4) ACTIVITY LIMITATIONS.—In addition to any other limitation imposed on the activity of subsidiaries of national banks, a subsidiary of a national bank may not, pursuant to paragraph (2)—

“(A) engage as principal in insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death (other than in connection with credit-related insurance) or in providing or issuing annuities;

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

“(C) engage in any activity permissible for a financial holding company under paragraph (3)(I) of section 6(c) of the Bank Holding Company Act of 1956 (relating to insurance company investments).

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

“(6) LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY AFFILIATED DEPOSITORY INSTITUTIONS.—Any depository institution which becomes an affiliate of a national bank during the 12-month period preceding the date of an approval by the Comptroller of the Currency under paragraph (3)(D) for such bank, and any depository institution which becomes an affiliate of the national bank after such date, may be excluded for purposes of paragraph (3)(C) during the 12-month period beginning on the date of such affiliation if—

“(A) the national bank or such depository institution has submitted an affirmative plan to the appropriate Federal banking agency to take such action as may be necessary in order for such institution to achieve a rating of ‘satisfactory record of meeting community credit needs’, or better, at the next examination of the institution; and

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

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

“(A) COMPANY; CONTROL; AFFILIATE; SUBSIDIARY.—The terms ‘company’, ‘control’, ‘affiliate’, and ‘subsidiary’ have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

“(B) FINANCIAL SUBSIDIARY.—The term ‘financial subsidiary’ means a company which is a subsidiary of an insured bank and is engaged in financial activities that have been determined to be financial in nature or incidental to such financial activities in accordance with subsection (b) or permitted in accordance with subsection (b)(4), other than activities that are permissible for a national bank to engage in directly or that are authorized under the Bank Service Company Act, section 25 or 25A of the Federal Reserve Act, or any other Federal statute (other than this section) that specifically authorizes the conduct of such activities by its express terms and not by implication or interpretation.

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

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

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

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

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

or

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

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

“(b) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—

“(1) FINANCIAL ACTIVITIES.—

“(A) IN GENERAL.—For purposes of subsection (a)(7)(B), an activity shall be considered to have been determined to be financial in nature or incidental to such financial activities only if—

“(i) such activity is permitted for a financial holding company pursuant to section 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 financial in nature or incidental to such a financial activity.

“(II) BOARD VIEW.—The Secretary of the Treasury shall not determine that any activity is financial in nature or incidental to a financial activity under this subsection if the Board notifies the Secretary in writing, not later than 30 days after the date of receipt of the notice described in subclause (I) (or such longer period as the Secretary determines to be appropriate in light of the circumstances) that the Board believes that the activity is not financial in nature or incidental to a financial activity.

“(ii) PROPOSALS RAISED BY THE BOARD.—

“(I) BOARD RECOMMENDATION.—The Board may, at any time, recommend in writing that the Secretary of the Treasury find an activity to be financial in nature or incidental to a financial activity (other than an activity which the Board has sole authority to regulate under subparagraph (C)).

“(II) TIME PERIOD FOR SECRETARIAL ACTION.—Not later than 30 days after the date of receipt of a written recommendation from the Board under subclause (I) (or such longer period as the Secretary of the Treasury and the Board determine to be appropriate in light of the circumstances), the Secretary shall determine whether to initiate a public rulemaking proposing that the subject recommended activity be found to be financial in nature or incidental to a financial activity under this subsection, and shall notify the Board in writing of the determination of the Secretary and, in the event that the Secretary determines not to seek public comment on the proposal, the reasons for that determination.

“(C) AUTHORITY OVER MERCHANT BANKING.—The Board shall have sole authority to prescribe regulations and issue interpretations to implement this paragraph with respect to activities described in section 6(c)(3)(H) of the Bank Holding Company Act of 1956.

“(2) FACTORS TO BE CONSIDERED.—In determining whether an activity is financial in nature or incidental to financial activities, the Secretary shall take into account—

“(A) the purposes of this Act and the Financial Services Act of 1999;

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

“(C) changes or reasonably expected changes in the technology for delivering financial services; and

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

“(i) compete effectively with any company seeking to provide financial services in the United States;

“(ii) use any available or emerging technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions, in providing financial services; and

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

“(3) AUTHORIZATION OF NEW FINANCIAL ACTIVITIES.—The Secretary of the Treasury shall, by regulation or order and in accordance with paragraph (1)(B), define, consistent with the purposes of this Act, the following activities as, and the extent to which such activities are, financial in nature or incidental to activities which are financial in nature:

“(A) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.

“(B) Providing any device or other instrumentality for transferring money or other financial assets.

“(C) Arranging, effecting, or facilitating financial transactions for the account of third parties.

“(4) DEVELOPING ACTIVITIES.—Subject to subsection (a)(2), a financial subsidiary of a national bank may engage directly or indirectly, or acquire shares of any company engaged, in any activity that the Secretary has not determined to be financial in nature or incidental to financial activities under this subsection if—

“(A) the subsidiary reasonably concludes that the activity is financial in nature or incidental to financial activities;

“(B) the gross revenues from all activities conducted under this paragraph represent less than 5 percent of the consolidated gross revenues of the national bank;

“(C) the aggregate total assets of all companies the shares of which are held under this paragraph do not exceed 5 percent of the national bank’s consolidated total assets;

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

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

“(F) the national bank provides written notice to the Secretary of the Treasury describing the activity commenced by the subsidiary or conducted by the company acquired no later than 10 business days after commencing the activity or consummating the acquisition.

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

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

“(2) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—Not later than 45 days after receipt by a national bank of a notice given under paragraph (1) (or such additional period as the Comptroller of the Currency may permit), the national bank and any relevant affiliated depository institution shall execute an agreement acceptable to the Comptroller of the Currency and the other appropriate Federal banking agencies, if any, to comply with the requirements applicable under subsection (a)(3).

“(3) COMPTROLLER OF THE CURRENCY MAY IMPOSE LIMITATIONS.—Until the conditions described in a notice to a national bank under paragraph (1) are corrected—

“(A) the Comptroller of the Currency may impose such limitations on the conduct or activities of the national bank or any subsidiary of the bank as the Comptroller of the Currency determines to be appropriate under the circumstances; and

“(B) the appropriate Federal banking agency may impose such limitations on the conduct or activities of an affiliated depository institution or any subsidiary of the depository institution as such agency determines to be appropriate under the circumstances.

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

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

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

“(C) in the case of a notice of failure to comply with subsection (a)(3)(A), restore the national bank or any depository institution affiliate of the bank to well capitalized status before the end of the 180-day period beginning on the date such notice is received by the national bank (or such other period permitted by the Comptroller of the Currency); or

“(D) in the case of a notice of failure to comply with subparagraph (B) or (C) of subsection (a)(3), restore compliance with any such subparagraph on or before the date on which the next examination of the depository institution subsidiary is completed or by the end of such other period as the Comptroller of the Currency determines to be appropriate,

the Comptroller of the Currency may require such national bank, under such terms and conditions as may be imposed by the Comptroller of the Currency and subject to such extension of time as may be granted in the Comptroller of

the Currency's discretion, to divest control of any subsidiary engaged in activities pursuant to subsection (a)(2) or, at the election of the national bank, instead to cease to engage in any activity conducted by a subsidiary of the national bank pursuant to subsection (a)(2).

"(5) CONSULTATION.—In taking any action under this subsection, the Comptroller of the Currency shall consult with all relevant Federal and State regulatory agencies."

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

- (1) by redesignating the item relating to section 5136A as section 5136C; and
- (2) by inserting after the item relating to section 5136 the following new item:

"5136A. Subsidiaries of national banks."

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

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

- (1) to protect the safety and soundness of any insured bank that has a financial subsidiary;
- (2) to apply to any transaction between the bank and the financial subsidiary (including a loan, extension of credit, guarantee, or purchase of assets), other than an equity investment, the same restrictions and requirements as would apply if the financial subsidiary were a subsidiary of a bank holding company having control of the bank; and
- (3) to apply to any equity investment of the bank in the financial subsidiary restrictions and requirements equivalent to those that would apply if—
  - (A) the bank paid a dividend in the same dollar amount to a bank holding company having control of the bank; and
  - (B) the bank holding company used the proceeds of the dividend to make an equity investment in a subsidiary that was engaged in the same activities as the financial subsidiary of the bank.

(b) SAFETY AND SOUNDNESS FIREWALLS APPLICABLE TO SUBSIDIARIES OF BANKS.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

**"SEC. 45. SAFETY AND SOUNDNESS FIREWALLS APPLICABLE TO SUBSIDIARIES OF BANKS.**

"(a) LIMITING THE EQUITY INVESTMENT OF A BANK IN A SUBSIDIARY.—

"(1) CAPITAL DEDUCTION.—In determining whether an insured bank complies with applicable regulatory capital standards—

"(A) the appropriate Federal banking agency shall deduct from the assets and tangible equity of the bank the aggregate amount of the outstanding equity investments of the bank in financial subsidiaries of the bank; and

"(B) the assets and liabilities of such financial subsidiaries shall not be consolidated with those of the bank.

"(2) INVESTMENT LIMITATION.—An insured bank shall not, without the prior approval of the appropriate Federal banking agency, make any equity investment in a financial subsidiary of the bank if that investment would, when made, exceed the amount that the bank could pay as a dividend without obtaining prior regulatory approval.

"(3) TREATMENT OF RETAINED EARNINGS.—The amount of any net earnings retained by a financial subsidiary of an insured depository institution shall be treated as an outstanding equity investment of the bank in the subsidiary for purposes of paragraph (1).

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

"(c) MAINTENANCE OF SEPARATE CORPORATE IDENTITY AND SEPARATE LEGAL STATUS.—

"(1) IN GENERAL.—Each insured bank shall ensure that the bank maintains and complies with reasonable policies and procedures to preserve the separate corporate identity and legal status of the bank and any financial subsidiary or affiliate of the bank.

"(2) EXAMINATIONS.—The appropriate Federal banking agency, as part of each examination, shall review whether an insured bank is observing the separate corporate identity and separate legal status of any subsidiaries and affiliates of the bank.

"(d) FINANCIAL SUBSIDIARY DEFINED.—For purposes of this section, the term 'financial subsidiary' has the meaning given to such term in section 5136A(a)(7)(B) of the Revised Statutes of the United States.



“(e) REGULATIONS.—The appropriate Federal banking agencies shall jointly prescribe regulations implementing this section.”.

(c) TRANSACTIONS BETWEEN FINANCIAL SUBSIDIARIES AND OTHER AFFILIATES.—Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d), the following new subsection:

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

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

“(2) APPLICATION TO TRANSACTIONS BETWEEN A FINANCIAL SUBSIDIARY OF A BANK AND THE BANK.—For purposes of applying this section and section 23B to a transaction between a financial subsidiary of a bank and the bank (or between such financial subsidiary and any other subsidiary of the bank which is not a financial subsidiary) and notwithstanding subsection (b)(2) and section 23B(d)(1), the financial subsidiary of the bank—

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

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

“(3) APPLICATION TO TRANSACTIONS BETWEEN FINANCIAL SUBSIDIARY AND NONBANK AFFILIATES.—

“(A) IN GENERAL.—A transaction between a financial subsidiary and an affiliate of the financial subsidiary shall not be deemed to be a transaction between a subsidiary of a national bank and an affiliate of the bank for purposes of section 23A or section 23B of the Federal Reserve Act.

“(B) CERTAIN AFFILIATES EXCLUDED.—For purposes of subparagraph (A) and notwithstanding paragraph (4), the term ‘affiliate’ shall not include a bank, or a subsidiary of a bank, which is engaged exclusively in activities permissible for a national bank to engage in directly or which are authorized by any Federal law other than section 5136A of the Revised Statutes of the United States.

“(4) EQUITY INVESTMENTS EXCLUDED SUBJECT TO THE APPROVAL OF THE BANKING AGENCY.—Subsection (a)(1) shall not apply so as to limit the equity investment of a bank in a financial subsidiary of such bank, except that any investment that exceeds the amount of a dividend that the bank could pay at the time of the investment without obtaining prior approval of the appropriate Federal banking agency and is in excess of the limitation which would apply under subsection (a)(1), but for this paragraph, may be made only with the approval of the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act) with respect to such bank.”.

(d) ANTI-TYPING.—Section 106(a) of the Bank Holding Company Act Amendments of 1970 is amended by adding at the end the following new sentence: “For purposes of this section, a subsidiary of a national bank which engages in activities pursuant to subsection (a)(2) or (b)(4) of section 5136A of the Revised Statutes of the United States shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank.”.

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

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

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

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

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

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

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

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

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

**SEC. 124. FUNCTIONAL REGULATION.**

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), is amended by inserting after section 45 (as added by section 122 of this subtitle) the following new section:

**“SEC. 46. FUNCTIONAL REGULATION OF SECURITIES SUBSIDIARIES AND INSURANCE AGENCY SUBSIDIARIES OF INSURED DEPOSITORY INSTITUTIONS.**

“(a) BROKER OR DEALER SUBSIDIARY.—A broker or dealer that is a subsidiary of an insured depository institution shall be subject to regulation under the Securities Exchange Act of 1934 in the same manner and to the same extent as a broker or dealer that—

“(1) is controlled by the same bank holding company as controls the insured depository institution; and

“(2) is not an insured depository institution or a subsidiary of an insured depository institution.

“(b) INSURANCE AGENCY SUBSIDIARY.—An insurance agency or brokerage that is a subsidiary of an insured depository institution shall be subject to regulation by a State insurance authority in the same manner and to the same extent as an insurance agency or brokerage that—

“(1) is controlled by the same bank holding company as controls the insured depository institution; and

“(2) is not an insured depository institution or a subsidiary of an insured depository institution.

“(c) DEFINITIONS.—For purposes of this section, the terms ‘broker’ and ‘dealer’ have the same meanings as in section 3 of the Securities Exchange Act of 1934.”.

**SEC. 125. REPEAL OF STOCK LOAN LIMIT IN FEDERAL RESERVE ACT.**

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

## **Subtitle D—Wholesale Financial Holding Companies; Wholesale Financial Institutions**

### **CHAPTER 1—WHOLESALE FINANCIAL HOLDING COMPANIES**

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

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

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

“(a) COMPANIES THAT CONTROL WHOLESALE FINANCIAL INSTITUTIONS.—

“(1) WHOLESALE FINANCIAL HOLDING COMPANY DEFINED.—The term ‘wholesale financial holding company’ means any company that—

“(A) is registered as a bank holding company;

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

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

“(D) does not control—

“(i) a bank other than a wholesale financial institution;

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

“(iii) a savings association; and

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

“(2) SAVINGS ASSOCIATION TRANSITION PERIOD.—Notwithstanding paragraph (1)(D)(iii), the Board may permit a company that controls a savings association and that otherwise meets the requirements of paragraph (1) to become supervised under paragraph (1), if the company divests control of any such savings association within such period, not to exceed 5 years after becoming supervised under paragraph (1), as permitted by the Board.

“(b) SUPERVISION BY THE BOARD.—

“(1) IN GENERAL.—The provisions of this section shall govern the reporting, examination, and capital requirements of wholesale financial holding companies.

“(2) REPORTS.—

“(A) IN GENERAL.—The Board from time to time may require any wholesale financial holding company and any subsidiary of such company to submit reports under oath to keep the Board informed as to—

“(i) the company’s or subsidiary’s activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions with depository institution subsidiaries of the holding company; and

“(ii) the extent to which the company or subsidiary has complied with the provisions of this Act and regulations prescribed and orders issued under this Act.

“(B) USE OF EXISTING REPORTS.—

“(i) IN GENERAL.—The Board shall, to the fullest extent possible, accept reports in fulfillment of the Board’s reporting requirements under this paragraph that the wholesale financial holding company or any subsidiary of such company has provided or been required to provide to other Federal and State supervisors or to appropriate self-regulatory organizations.

“(ii) AVAILABILITY.—A wholesale financial holding company or a subsidiary of such company shall provide to the Board, at the request of the Board, a report referred to in clause (i).

“(C) EXEMPTIONS FROM REPORTING REQUIREMENTS.—

“(i) IN GENERAL.—The Board may, by regulation or order, exempt any company or class of companies, under such terms and conditions and for such periods as the Board shall provide in such regulation or order, from the provisions of this paragraph and any regulation prescribed under this paragraph.

“(ii) CRITERIA FOR CONSIDERATION.—In making any determination under clause (i) with regard to any exemption under such clause, the Board shall consider, among such other factors as the Board may determine to be appropriate, the following factors:

“(I) Whether information of the type required under this paragraph is available from a supervisory agency (as defined in section 1101(7) of the Right to Financial Privacy Act of 1978) or a foreign regulatory authority of a similar type.

“(II) The primary business of the company.

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

“(3) EXAMINATIONS.—

“(A) LIMITED USE OF EXAMINATION AUTHORITY.—The Board may make examinations of each wholesale financial holding company and each subsidiary of such company in order to—

“(i) inform the Board regarding the nature of the operations and financial condition of the wholesale financial holding company and its subsidiaries;

“(ii) inform the Board regarding—

“(I) the financial and operational risks within the wholesale financial holding company system that may affect any depository institution owned by such holding company; and

“(II) the systems of the holding company and its subsidiaries for monitoring and controlling those risks; and

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

“(B) RESTRICTED FOCUS OF EXAMINATIONS.—The Board shall, to the fullest extent possible, limit the focus and scope of any examination of a wholesale financial holding company under this paragraph to—

“(i) the holding company; and

“(ii) any subsidiary (other than an insured depository institution subsidiary) of the holding company that, because of the size, condition, or activities of the subsidiary, the nature or size of transactions between such subsidiary and any affiliated depository institution, or the centralization of functions within the holding company system, could have

a materially adverse effect on the safety and soundness of any depository institution affiliate of the holding company.

“(C) DEFERENCE TO BANK EXAMINATIONS.—The Board shall, to the fullest extent possible, use the reports of examination of depository institutions made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision or the appropriate State depository institution supervisory authority for the purposes of this section.

“(D) DEFERENCE TO OTHER EXAMINATIONS.—The Board shall, to the fullest extent possible, address the circumstances which might otherwise permit or require an examination by the Board by forgoing an examination and by instead reviewing the reports of examination made of—

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

“(ii) any licensed insurance company by or on behalf of any State government insurance agency responsible for the supervision of the insurance company.

“(E) CONFIDENTIALITY OF REPORTED INFORMATION.—

“(i) IN GENERAL.—Notwithstanding any other provision of law, the Board shall not be compelled to disclose any nonpublic information required to be reported under this paragraph, or any information supplied to the Board by any domestic or foreign regulatory agency, that relates to the financial or operational condition of any wholesale financial holding company or any subsidiary of such company.

“(ii) COMPLIANCE WITH REQUESTS FOR INFORMATION.—No provision of this subparagraph shall be construed as authorizing the Board to withhold information from the Congress, or preventing the Board from complying with a request for information from any other Federal department or agency for purposes within the scope of such department’s or agency’s jurisdiction, or from complying with any order of a court of competent jurisdiction in an action brought by the United States or the Board.

“(iii) COORDINATION WITH OTHER LAW.—For purposes of section 552 of title 5, United States Code, this subparagraph shall be considered to be a statute described in subsection (b)(3)(B) of such section.

“(iv) DESIGNATION OF CONFIDENTIAL INFORMATION.—In prescribing regulations to carry out the requirements of this subsection, the Board shall designate information described in or obtained pursuant to this paragraph as confidential information.

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

“(4) CAPITAL ADEQUACY GUIDELINES.—

“(A) CAPITAL ADEQUACY PROVISIONS.—Subject to the requirements of, and solely in accordance with, the terms of this paragraph, the Board may adopt capital adequacy rules or guidelines for wholesale financial holding companies.

“(B) METHOD OF CALCULATION.—In developing rules or guidelines under this paragraph, the following provisions shall apply:

“(i) FOCUS ON DOUBLE LEVERAGE.—The Board shall focus on the use by wholesale financial holding companies of debt and other liabilities to fund capital investments in subsidiaries.

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

“(iii) NO CAPITAL REQUIREMENT ON REGULATED ENTITIES.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, standards, guidelines, or requirements upon any subsidiary that—

“(I) is not a depository institution; and

“(II) is in compliance with applicable capital requirements of another Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority.

“(iv) CERTAIN SUBSIDIARIES.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, standards, guidelines, or requirements upon any subsidiary that is not a depository institution and that is registered as an investment adviser under the Investment Advisers Act of 1940, except

that this clause shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to activities of a registered investment adviser other than investment advisory activities or activities incidental to investment advisory activities.

“(v) LIMITATIONS ON INDIRECT ACTION.—In developing, establishing, or assessing holding company capital or capital adequacy rules, guidelines, standards, or requirements for purposes of this paragraph, the Board shall not take into account the activities, operations, or investments of an affiliated investment company registered under the Investment Company Act of 1940, if the investment company is not—

“(I) a bank holding company; or

“(II) controlled by a bank holding company by reason of ownership by the bank holding company (including through all of its affiliates) of 25 percent or more of the shares of the investment company, where the shares owned by the bank holding company have a market value equal to more than \$1,000,000.

“(vi) APPROPRIATE EXCLUSIONS.—The Board shall take full account of—

“(I) the capital requirements made applicable to any subsidiary that is not a depository institution by another Federal regulatory authority or State insurance authority; and

“(II) industry norms for capitalization of a company’s unregulated subsidiaries and activities.

“(vii) INTERNAL RISK MANAGEMENT MODELS.—The Board may incorporate internal risk management models of wholesale financial holding companies into its capital adequacy guidelines or rules and may take account of the extent to which resources of a subsidiary depository institution may be used to service the debt or other liabilities of the wholesale financial holding company.

“(c) NONFINANCIAL ACTIVITIES AND INVESTMENTS.—

“(1) GRANDFATHERED ACTIVITIES.—

“(A) IN GENERAL.—Notwithstanding section 4(a), a company that becomes a wholesale financial holding company may continue to engage, directly or indirectly, in any activity and may retain ownership and control of shares of a company engaged in any activity if—

“(i) on the date of the enactment of the Financial Services Act of 1999, such wholesale financial holding company was lawfully engaged in that nonfinancial activity, held the shares of such company, or had entered into a contract to acquire shares of any company engaged in such activity; and

“(ii) the company engaged in such activity continues to engage only in the same activities that such company conducted on the date of the enactment of the Financial Services Act of 1999, and other activities permissible under this Act.

“(B) NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.—A wholesale financial holding company that engages in activities or holds shares pursuant to this paragraph, or a subsidiary of such wholesale financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company which is engaged in any activity which the Board has not determined to be financial in nature or incidental to activities that are financial in nature under section 6(c).

“(C) LIMITATION TO SINGLE EXEMPTION.—No company that engages in any activity or controls any shares under subsection (f) of section 6 may engage in any activity or own any shares pursuant to this paragraph.

“(2) COMMODITIES.—

“(A) IN GENERAL.—Notwithstanding section 4(a), a wholesale financial holding company which was predominately engaged as of January 1, 1997, in financial activities in the United States (or any successor to any such company) may engage in, or directly or indirectly own or control shares of a company engaged in, activities related to the trading, sale, or investment in commodities and underlying physical properties that were not permissible for bank holding companies to conduct in the United States as of January 1, 1997, if such wholesale financial holding company, or any subsidiary of such holding company, was engaged directly, indirectly, or through any such company in any of such activities as of January 1, 1997, in the United States.

“(B) LIMITATION.—The attributed aggregate consolidated assets of a wholesale financial holding company held under the authority granted under this paragraph and not otherwise permitted to be held by all wholesale financial holding companies under this section may not exceed 5 percent of the total consolidated assets of the wholesale financial holding company, except that the Board may increase such percentage of total consolidated assets by such amounts and under such circumstances as the Board considers appropriate, consistent with the purposes of this Act.

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

“(A) any company whose shares it owns or controls pursuant to paragraph (1) or (2) to offer or market any product or service of an affiliated wholesale financial institution; or

“(B) any affiliated wholesale financial institution to offer or market any product or service of any company whose shares are owned or controlled by such wholesale financial holding company pursuant to such paragraphs.

“(d) QUALIFICATION OF FOREIGN BANK AS WHOLESALE FINANCIAL HOLDING COMPANY.—

“(1) IN GENERAL.—Any foreign bank, or any company that owns or controls a foreign bank, that operates a branch, agency, or commercial lending company in the United States, including a foreign bank or company that owns or controls a wholesale financial institution, may request a determination from the Board that such bank or company be treated as a wholesale financial holding company (other than for purposes of subsection (c)), subject to such conditions as the Board deems appropriate, giving due regard to the principle of national treatment and equality of competitive opportunity and the requirements imposed on domestic banks and companies.

“(2) CONDITIONS FOR TREATMENT AS A WHOLESALE FINANCIAL HOLDING COMPANY.—A foreign bank and a company that owns or controls a foreign bank may not be treated as a wholesale financial holding company unless the bank and company meet and continue to meet the following criteria:

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

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

“(C) TRANSACTION WITH AFFILIATES.—Transactions between a branch, agency, or commercial lending company subsidiary of the foreign bank in the United States, and any securities affiliate or company in which the foreign bank (or any company that owns or controls such foreign bank), has invested and which engages in any activity authorized only as a result of the application of subsection (c) or (g) of section 6, comply with the provisions of sections 23A and 23B of the Federal Reserve Act in the same manner and to the same extent as such transactions would be required to comply with such sections if the foreign bank were a member bank.

“(3) TREATMENT AS A WHOLESALE FINANCIAL INSTITUTION.—Any foreign bank which is, or is affiliated with a company which is, treated as a wholesale financial holding company under this subsection shall be treated as a wholesale financial institution for purposes of paragraphs (1)(C) and (3) of section 9B(c) of the Federal Reserve Act, and any such foreign bank or company shall be subject to paragraphs (3), (4), and (5) of section 9B(d) of the Federal Reserve Act, except that the Board may adopt such modifications, conditions, or exemptions as the Board deems appropriate, giving due regard to the principle of national treatment and equality of competitive opportunity.

“(4) SUPERVISION OF FOREIGN BANK WHICH MAINTAINS NO BANKING PRESENCE OTHER THAN CONTROL OF A WHOLESALE FINANCIAL INSTITUTION.—A foreign bank that owns or controls a wholesale financial institution but does not operate a branch, agency, or commercial lending company in the United States (and any company that owns or controls such foreign bank) may request a determination from the Board that such bank or company be treated as a wholesale financial holding company, except that such bank or company shall be subject to the restrictions of paragraphs (2)(A) and (3) of this subsection.

“(5) NO EFFECT ON OTHER PROVISIONS.—This section shall not be construed as limiting the authority of the Board under the International Banking Act of 1978

with respect to the regulation, supervision, or examination of foreign banks and their offices and affiliates in the United States.”.

(b) UNINSURED BANKS.—

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

“(24) ENFORCEMENT AUTHORITY OVER UNINSURED STATE MEMBER BANKS.—Section 3(u) of the Federal Deposit Insurance Act, subsections (j) and (k) of section 7 of such Act, and subsections (b) through (n), (s), (u), and (v) of section 8 of such Act shall apply to an uninsured member bank in the same manner and to the same extent such provisions apply to an insured member bank and any reference in any such provision to ‘insured depository institution’ shall be deemed to be a reference to ‘uninsured member bank’ for purposes of this paragraph.”.

(2) UNINSURED NATIONAL BANKS.—Section 5239 of the Revised Statutes of the United States (12 U.S.C. 93) is amended—

(A) by redesignating the 2d of the 2 subsections designated as subsection (d) as subsection (e); and

(B) by adding at the end the following new subsection:

“(f) ENFORCEMENT AUTHORITY OVER UNINSURED NATIONAL BANKS.—Section 3(u) of the Federal Deposit Insurance Act, subsections (j) and (k) of section 7 of such Act, and subsections (b) through (n), (s), (u), and (v) of section 8 of such Act shall apply to an uninsured national bank in the same manner and to the same extent such provisions apply to an insured national bank and any reference in any such provision to ‘insured depository institution’ shall be deemed to be a reference to ‘uninsured national bank’ for purposes of this subsection.”.

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

(a) FEDERAL RESERVE ACT.—The last sentence of the eighth undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 326) is amended to read as follows: “The Board of Governors of the Federal Reserve System, at its discretion, may furnish reports of examination or other confidential supervisory information concerning State member banks or any other entities examined under any other authority of the Board to any Federal or State authorities with supervisory or regulatory authority over the examined entity, to officers, directors, or receivers of the examined entity, and to any other person that the Board determines to be proper.”.

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

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

(A) by redesignating subparagraphs (G) and (H) as subparagraphs (H) and (I), respectively; and

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

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

(2) in section 1112(e) (12 U.S.C. 3412(e)), by striking “and the Securities and Exchange Commission” and inserting “, the Securities and Exchange Commission, and the Commodity Futures Trading Commission”.

**SEC. 133. CONFORMING AMENDMENTS.**

(a) BANK HOLDING COMPANY ACT OF 1956.—

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

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

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

“(r) DEPOSITORY INSTITUTION.—The term ‘depository institution’—

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

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

(2) DEFINITION OF BANK INCLUDES WHOLESALE FINANCIAL INSTITUTION.—Section 2(c)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(1)) is amended by adding at the end the following new subparagraph:

“(C) A wholesale financial institution.”.

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

(4) EXCEPTION TO DEPOSIT INSURANCE REQUIREMENT.—Section 3(e) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(e)) is amended by adding

at the end the following: “This subsection shall not apply to a wholesale financial institution.”

(b) **FEDERAL DEPOSIT INSURANCE ACT.**—

(1) Section 3(q)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)(2)(A)) is amended by inserting “national wholesale financial institution authorized by the Comptroller of the Currency pursuant to section 5136B of the Revised Statutes of the United States,” after “District bank,”.

(2) Section 3(q)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)(2)(A)) is amended to read as follows:

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

**CHAPTER 2—WHOLESALE FINANCIAL INSTITUTIONS**

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

(a) **NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.**—

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

**“SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.**

**“(a) AUTHORIZATION OF THE COMPTROLLER REQUIRED.**—

“(1) **IN GENERAL.**—A national bank may apply to the Comptroller on such forms and in accordance with such regulations as the Comptroller may prescribe, for permission to operate as a wholesale financial institution.

“(2) **NATIONAL WHOLESALE FINANCIAL INSTITUTION.**—Any national bank that is approved by the Comptroller of the Currency to operate as a wholesale financial institution under paragraph (1) shall be known as a national wholesale financial institution.

“(b) **REGULATION.**—A national wholesale financial institution may exercise, in accordance with such institution’s articles of incorporation and regulations issued by the Comptroller, all the powers and privileges of a national bank formed in accordance with section 5133 of the Revised Statutes of the United States, subject to section 9B of the Federal Reserve Act and the limitations and restrictions contained therein.

“(c) **COMMUNITY REINVESTMENT ACT OF 1977.**—A national wholesale financial institution shall be subject to the Community Reinvestment Act of 1977.

“(d) **LIMIT ON NUMBER.**—Not more than 5 national wholesale financial institutions may be chartered by the Comptroller of the Currency.”.

(2) **CLERICAL AMENDMENT.**—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136A (as added by section 121(d) of this title) the following new item:

“5136B. National wholesale financial institutions.”.

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

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

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

**“(1) APPLICATION REQUIRED.**—

“(A) **IN GENERAL.**—Any bank may apply to the Board of Governors of the Federal Reserve System to become a State wholesale financial institution, or to the Comptroller of the Currency under section 5136B of the Revised Statutes of the United States to be a national wholesale financial institution, and, as a wholesale financial institution, to subscribe to the stock of the Federal reserve bank organized within the district where the applying bank is located.

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

“(C) **LIMIT ON NUMBER.**—Not more than 5 wholesale financial institutions may be approved by the Board under this subsection.

“(2) **INSURANCE TERMINATION.**—No bank the deposits of which are insured under the Federal Deposit Insurance Act may become a wholesale financial institution unless it has met all requirements under that Act for voluntary termination of deposit insurance.



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

“(1) FEDERAL RESERVE ACT.—Except as otherwise provided in this section, wholesale financial institutions shall be member banks and shall be subject to the provisions of this Act that apply to member banks to the same extent and in the same manner as State member insured banks or national banks, except that a wholesale financial institution may terminate membership under this Act only with the prior written approval of the Board and on terms and conditions that the Board determines are appropriate to carry out the purposes of this Act.

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

“(A) the relevant capital levels and capital measures for each capital category shall be the levels specified by the Board for wholesale financial institutions;

“(B) subject to subparagraph (A), all references to the appropriate Federal banking agency or to the Corporation in that section shall be deemed to be references to the Comptroller of the Currency, in the case of a national wholesale financial institution authorized under section 5136B(a)(1) of the Revised Statutes of the United States, and to the Board, in the case of other wholesale financial institutions; and

“(C) in the case of wholesale financial institutions, the purpose of prompt corrective action shall be to protect taxpayers and the financial system from risks associated with the operation and activities of wholesale financial institutions.

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

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

“(5) BANK MERGER ACT.—A wholesale financial institution shall be subject to sections 18(c) and 44 of the Federal Deposit Insurance Act in the same manner and to the same extent the wholesale financial institution would be subject to such sections if the institution were a State member insured bank or a national bank.

“(6) BRANCHING.—Notwithstanding any other provision of law, a wholesale financial institution may establish and operate a branch at any location—

“(A) on such terms and conditions as established, in the case of a State-chartered wholesale financial institution, by the Board or, in the case of a national wholesale financial institution, by the Comptroller of the Currency; and

“(B) in the case of a State-chartered wholesale financial institution, with the approval of the Board, and, in the case of a national bank wholesale financial institution, with the approval of the Comptroller of the Currency.

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

“(A) GENERAL.—A State-chartered wholesale financial institution shall be deemed to be a State bank and an insured State bank for purposes of paragraphs (1), (2), and (3) of section 24(j) of the Federal Deposit Insurance Act, and a national wholesale financial institution shall be deemed to be a national bank for purposes of section 5155(f) of the Revised Statutes of the United States.

“(B) DEFINITIONS.—The following definitions shall apply solely for purposes of applying paragraph (1):

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

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

“(II) with respect to a State-chartered wholesale financial institution, the State by which the institution is chartered.

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

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

“(8) DISCRIMINATION REGARDING INTEREST RATES.—Section 27 of the Federal Deposit Insurance Act shall apply to State-chartered wholesale financial institutions in the same manner and to the same extent as such provisions apply to State member insured banks and any reference in such section to a State-chartered insured depository institution shall be deemed to include a reference to a State-chartered wholesale financial institution.

“(9) PREEMPTION OF STATE LAWS REQUIRING DEPOSIT INSURANCE FOR WHOLESALE FINANCIAL INSTITUTIONS.—The appropriate State banking authority may grant a charter to a wholesale financial institution notwithstanding any State constitution or statute requiring that the institution obtain insurance of its deposits and any such State constitution or statute is hereby preempted solely for purposes of this paragraph.

“(10) PARITY FOR WHOLESALE FINANCIAL INSTITUTIONS.—A State bank that is a wholesale financial institution under this section shall have all of the rights, powers, privileges, and immunities (including those derived from status as a federally chartered institution) of and as if it were a national bank, subject to such terms and conditions as established by the Board.

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

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

“(1) LIMITATIONS ON DEPOSITS.—

“(A) MINIMUM AMOUNT.—

“(i) IN GENERAL.—No wholesale financial institution may receive initial deposits of \$100,000 or less, other than on an incidental and occasional basis.

“(ii) LIMITATION ON DEPOSITS OF LESS THAN \$100,000.—No wholesale financial institution may receive initial deposits of \$100,000 or less if such deposits constitute more than 5 percent of the institution’s total deposits.

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

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

“(2) MINIMUM CAPITAL LEVELS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—The Board shall, by regulation, adopt capital requirements for wholesale financial institutions—

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

“(B) to provide for the safe and sound operation of the wholesale financial institution without undue risk to creditors or other persons, including Federal reserve banks, engaged in transactions with the bank.

“(3) ADDITIONAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—In addition to any requirement otherwise applicable to State member insured banks or applicable, under this section, to wholesale financial institutions, the Board may impose, by regulation or order, upon wholesale financial institutions—

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

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

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

“(B) special clearing balance requirements; and

“(C) any additional requirements that the Board determines to be appropriate or necessary to—

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

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

“(iii) protect creditors and other persons, including Federal reserve banks, engaged in transactions with the wholesale financial institution.

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

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

“(B) the protection of the deposit insurance funds; and

“(C) the protection of creditors and other persons, including Federal reserve banks, engaged in transactions with the wholesale financial institution.

“(5) LIMITATION ON TRANSACTIONS BETWEEN A WHOLESale FINANCIAL INSTITUTION AND AN INSURED BANK.—For purposes of section 23A(d)(1) of the Federal Reserve Act, a wholesale financial institution that is affiliated with an insured bank shall not be a bank.

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

“(d) CAPITAL AND MANAGERIAL REQUIREMENTS.—

“(1) IN GENERAL.—A wholesale financial institution shall be well capitalized and well managed.

“(2) NOTICE TO COMPANY.—The Board, in the case of a State-chartered wholesale financial institution, or the Comptroller of the Currency, in the case of a national wholesale financial institution, shall promptly provide notice to a company that controls a wholesale financial institution whenever such wholesale financial institution is not well capitalized or well managed.

“(3) AGREEMENT TO RESTORE INSTITUTION.—Not later than 45 days after the date of receipt of a notice under paragraph (2) (or such additional period not to exceed 90 days as the Board or the Comptroller of the Currency, as the case may be, may permit), the company shall execute an agreement acceptable to the Board or the Comptroller of the Currency, as the case may be, to restore the wholesale financial institution to compliance with all of the requirements of paragraph (1).

“(4) LIMITATIONS UNTIL INSTITUTION RESTORED.—Until the wholesale financial institution is restored to compliance with all of the requirements of paragraph (1), the Board or the Comptroller of the Currency, as the case may be, may impose such limitations on the conduct or activities of the company or any affiliate of the company as the Board or the Comptroller of the Currency determines to be appropriate under the circumstances.

“(5) FAILURE TO RESTORE.—If the company does not execute and implement an agreement in accordance with paragraph (3), comply with any limitation imposed under paragraph (4), restore the wholesale financial institution to well capitalized status not later than 180 days after the date of receipt by the company of the notice described in paragraph (2), or restore the wholesale financial institution to well managed status within such period as the Board may permit, the company shall, under such terms and conditions as may be imposed by the Board or the Comptroller of the Currency, as the case may be and subject to such extension of time as may be granted in the discretion of the Board or the Comptroller of the Currency, divest control of its subsidiary depository institutions.

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

“(e) RESOLUTION OF WHOLESale FINANCIAL INSTITUTIONS.—

“(1) CONSERVATORSHIP OR RECEIVERSHIP.—

“(A) APPOINTMENT.—The Board may appoint a conservator or receiver for a State-chartered wholesale financial institution to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator or receiver for a national bank.

“(B) POWERS.—The conservator or receiver for a wholesale financial institution shall exercise the same powers, functions, and duties, subject to the same limitations, as a conservator or receiver for a national bank.

“(2) BOARD AUTHORITY.—The Board shall have the same authority with respect to any conservator or receiver appointed for a State-chartered wholesale financial institution under paragraph (1), and the wholesale financial institution for which it has been appointed, as the Comptroller of the Currency has with respect to a conservator or receiver for a national bank and the national bank for which the conservator or receiver has been appointed.

“(3) BANKRUPTCY PROCEEDINGS.—The Comptroller of the Currency (in the case of a national wholesale financial institution approved by the Comptroller of the Currency under section 5136B(a)(1) of the Revised Statutes of the United States) or the Board (in the case of other wholesale financial institutions) may direct the conservator or receiver of a wholesale financial institution to file a petition pursuant to title 11, United States Code, in which case, title 11, United States Code, shall apply to the wholesale financial institution in lieu of otherwise applicable Federal or State insolvency law.

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

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

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

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (10) as paragraphs (1) through (9), respectively.

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

“SEC. 8A. VOLUNTARY TERMINATION OF STATUS AS INSURED DEPOSITORY INSTITUTION.

“(a) IN GENERAL.—Except as provided in subsection (b), an insured State bank or a national bank may voluntarily terminate such bank’s status as an insured depository institution in accordance with regulations of the Corporation if—

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

“(A) to the Corporation and the Board of Governors of the Federal Reserve System, in the case of an insured State bank, or to the Corporation and the Comptroller of the Currency, in the case of an insured national bank authorized to operate as a wholesale financial institution, not less than 6 months before the effective date of such termination; and

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

“(2) either—

“(A) the deposit insurance fund of which such bank is a member equals or exceeds the fund’s designated reserve ratio as of the date the bank provides a written notice under paragraph (1) and the Corporation determines that the fund will equal or exceed the applicable designated reserve ratio for the 2 semiannual assessment periods immediately following such date; or

“(B) the Corporation and the Board of Governors of the Federal Reserve System, in the case of an insured State bank, or the Corporation and the Comptroller of the Currency, in the case of an insured national bank authorized to operate as a wholesale financial institution, has approved the termination of the bank’s insured status and the bank pays an exit fee in accordance with subsection (e).

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

“(1) an insured savings association; or

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

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

“(d) INSTITUTION MUST BECOME WHOLESALE FINANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING ACTIVITIES.—Any depository institution which voluntarily terminates such institution’s status as an insured depository institution under this section may not, upon termination of insurance, accept any deposits unless the institution is a wholesale financial institution subject to section 9B of the Federal Reserve Act.

“(e) EXIT FEES.—

“(1) IN GENERAL.—Any bank that voluntarily terminates such bank’s status as an insured depository institution under this section shall pay an exit fee in an amount that the Corporation determines is sufficient to account for the institution’s pro rata share of the amount (if any) which would be required to restore the relevant deposit insurance fund to the fund’s designated reserve ratio as of the date the bank provides a written notice under subsection (a)(1).

“(2) PROCEDURES.—The Corporation shall prescribe, by regulation, procedures for assessing any exit fee under this subsection.

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

“(1) TRANSITION PERIOD.—The insured deposits of each depositor in a State bank or a national bank on the effective date of the voluntary termination of the bank’s insured status, less all subsequent withdrawals from any deposits of such depositor, shall continue to be insured for a period of not less than 6 months and not more than 2 years, as determined by the Corporation. During such period, no additions to any such deposits, and no new deposits in the depository institution made after the effective date of such termination shall be insured by the Corporation.

“(2) TEMPORARY ASSESSMENTS; OBLIGATIONS AND DUTIES.—During the period specified in paragraph (1) with respect to any bank, the bank shall continue to pay assessments under section 7 as if the bank were an insured depository institution. The bank shall, in all other respects, be subject to the authority of the Corporation and the duties and obligations of an insured depository institution under this Act during such period, and in the event that the bank is closed due to an inability to meet the demands of the bank’s depositors during such period, the Corporation shall have the same powers and rights with respect to such bank as in the case of an insured depository institution.

“(g) ADVERTISEMENTS.—

“(1) IN GENERAL.—A bank that voluntarily terminates the bank’s insured status under this section shall not advertise or hold itself out as having insured deposits, except that the bank may advertise the temporary insurance of deposits under subsection (f) if, in connection with any such advertisement, the advertisement also states with equal prominence that additions to deposits and new deposits made after the effective date of the termination are not insured.

“(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS, AND SECURITIES.—Any certificate of deposit or other obligation or security issued by a State bank or a national bank after the effective date of the voluntary termination of the bank’s insured status under this section shall be accompanied by a conspicuous, prominently displayed notice that such certificate of deposit or other obligation or security is not insured under this Act.

“(h) NOTICE REQUIREMENTS.—

“(1) NOTICE TO THE CORPORATION.—The notice required under subsection (a)(1)(A) shall be in such form as the Corporation may require.

“(2) NOTICE TO DEPOSITORS.—The notice required under subsection (a)(1)(B) shall be—

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

“(B) in such manner and form as the Corporation finds to be necessary and appropriate for the protection of depositors.”

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

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

(1) BANKRUPTCY CODE DEBTORS.—Section 109(b)(2) of title 11, United States Code, is amended by striking “, or” and inserting the following: “, except that—

“(A) a wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of 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 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 Fed-

eral 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.”

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

“(22) ‘financial institution’ means a person that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act, or corporation organized under section 25A of the Federal Reserve Act and, when any such person is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741 of this title, such customer.”

(4) SUBCHAPTER V OF CHAPTER 7.—

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

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

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

“(e) Subchapter V of chapter 7 of this title applies only in a case under such chapter concerning the liquidation of a wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act, or a corporation organized under section 25A of the Federal Reserve Act.”

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

“SUBCHAPTER V—WHOLESALE BANK LIQUIDATION

“§ 781. Definitions for subchapter

“In this subchapter—

“(1) the term ‘Board’ means the Board of Governors of the Federal Reserve System;

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

“(3) the term ‘national wholesale financial institution’ means a wholesale financial institution established under section 5136B of the Revised Statutes of the United States; and

“(4) the term ‘wholesale bank’ means a national wholesale financial institution, a wholesale financial institution established under section 9B of the Federal Reserve Act, or a corporation organized under section 25A of the Federal Reserve Act.

“§ 782. Selection of trustee

“Notwithstanding any other provision of this title, the conservator or receiver who files the petition shall be the trustee under this chapter, unless the Comptroller of the Currency (in the case of a national wholesale financial institution for which it appointed the conservator or receiver) or the Board (in the case of any wholesale bank for which it appointed the conservator or receiver) designates an alternative trustee. The Comptroller of the Currency or the Board (as applicable) may designate a successor trustee, if required.

“§ 783. Additional powers of trustee

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

“(1) to sell the wholesale bank to a depository institution or consortium of depository institutions (which consortium may agree on the allocation of the wholesale bank among the consortium);

“(2) to merge the wholesale bank with a depository institution;

“(3) to transfer contracts to the same extent as could a receiver for a depository institution under paragraphs (9) and (10) of section 11(e) of the Federal Deposit Insurance Act;

“(4) to transfer assets or liabilities to a depository institution;

“(5) to distribute property not of the estate, including distributions to customers that are mandated by subchapters III and IV of this chapter; or

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

“(A) the bridge bank shall be treated as a wholesale bank for the purpose of this subsection; and

“(B) any references in any such provision of law to the Federal Deposit Insurance Corporation shall be construed to be references to the appointing agency and that references to deposit insurance shall be omitted.

“(b) Any reference in this section to transfers of liabilities includes a ratable transfer of liabilities within a priority class.

**“§ 784. Right to be heard**

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

**“§ 785. Expedited transfers**

“The trustee may make a transfer pursuant to section 783 without prior judicial approval, if the Comptroller of the Currency (in the case of a national wholesale financial institution for which it appointed the conservator or receiver) or the Board (in the case of any wholesale bank for which it appointed the conservator or receiver) determines that the transfer would be necessary to avert serious adverse effects on economic conditions or financial stability.”.

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

“785. Expedited transfers.”.

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

“(16) APPOINTMENT OF RECEIVER OR CONSERVATOR.—

“(A) IN GENERAL.—The Board may appoint a conservator or receiver for a corporation organized under the provisions of this section to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator or receiver for a national bank, and the conservator or receiver for such corporation shall exercise the same powers, functions, and duties, subject to the same limitations, as a conservator or receiver for a national bank.

“(B) EQUIVALENT AUTHORITY.—The Board shall have the same authority with respect to any conservator or receiver appointed for a corporation organized under the provisions of this section under this paragraph and any such corporation as the Comptroller of the Currency has with respect to a conservator or receiver of a national bank and the national bank for which a conservator or receiver has been appointed.

“(C) TITLE 11 PETITIONS.—The Board may direct the conservator or receiver of a corporation organized under the provisions of this section to file a petition pursuant to title 11, United States Code, in which case, title 11, United States Code, shall apply to the corporation in lieu of otherwise applicable Federal or State insolvency law.”.

(f) LIMITATION ON ACCESS TO DISCOUNT WINDOW AND PAYMENT SYSTEM.—Section 19(b)(1) of the Federal Reserve Act (12 U.S.C. 461(b)(1)) is amended by adding at the end the following new subparagraph:

“(G) LIMITATION ON WHOLESALE FINANCIAL INSTITUTIONS.—Not more than 10 wholesale financial institutions subject to section 9B of the Federal Reserve Act may be treated by the Board as depository institutions, as defined in subparagraph (A), for purposes of this paragraph.”.

## 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.

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

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

To the extent not prohibited by other law, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System shall make available to the Attorney General and the Federal Trade Commission any data in the possession of any such banking agency that the antitrust agency deems necessary for antitrust review of any transaction requiring notice to any such antitrust agency or the approval of such agency under section 3, 4, or 6 of the Bank Holding Company 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 AMENDMENT.**—Section 7A(c)(7) of the Clayton Act (15 U.S.C. 18a(c)(7)) is amended by inserting before the semicolon at the end thereof the following: “, except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) requires notice under section 6 of the Bank Holding Company Act of 1956; and (B) does not require approval under section 3 or 4 of the Bank Holding Company Act of 1956”.

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

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

(b) **ANALYSIS.**—Each report submitted under subsection (a) shall contain an analysis of—

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

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

(3) the acquisition patterns among depository institutions, depository institution holding companies, securities firms, and insurance companies including acquisitions among the largest 20 percent of firms and acquisitions within regions or other limited geographical areas.

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

**SEC. 151. APPLYING THE PRINCIPLES OF NATIONAL TREATMENT AND EQUALITY OF COMPETITIVE OPPORTUNITY TO FOREIGN BANKS THAT ARE FINANCIAL HOLDING COMPANIES.**

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

“(3) **TERMINATION OF GRANDFATHERED RIGHTS.**—

“(A) **IN GENERAL.**—If any foreign bank or foreign company files a declaration under section 6(b)(1)(E) of the Bank Holding Company Act of 1956, or receives a determination under section 10(d)(1) of the Bank Holding Com-



pany Act of 1956, any authority conferred by this subsection on any foreign bank or company to engage in any activity which the Board has determined to be permissible for financial holding companies under section 6 of such Act shall terminate immediately.

“(B) RESTRICTIONS AND REQUIREMENTS AUTHORIZED.—If a foreign bank or company that engages, directly or through an affiliate pursuant to paragraph (1), in an activity which the Board has determined to be permissible for financial holding companies under section 6 of the Bank Holding Company Act of 1956 has not filed a declaration with the Board of its status as a financial holding company under such section or received a determination under section 10(d)(1) by the end of the 2-year period beginning on the date of enactment of the Financial Services Act of 1999, the Board, giving due regard to the principle of national treatment and equality of competitive opportunity, may impose such restrictions and requirements on the conduct of such activities by such foreign bank or company as are comparable to those imposed on a financial holding company organized under the laws of the United States, including a requirement to conduct such activities in compliance with any prudential safeguards established under section 114 of the Financial Services Act of 1999.”.

**SEC. 152. APPLYING THE PRINCIPLES OF NATIONAL TREATMENT AND EQUALITY OF COMPETITIVE OPPORTUNITY TO FOREIGN BANKS AND FOREIGN FINANCIAL INSTITUTIONS THAT ARE WHOLESALE FINANCIAL INSTITUTIONS.**

Section 8A of the Federal Deposit Insurance Act (as added by section 136(c)(2) of this Act) is amended by adding at the end the following new subsection:

“(i) VOLUNTARY TERMINATION OF DEPOSIT INSURANCE.—The provisions on voluntary termination of insurance in this section shall apply to an insured branch of a foreign bank (including a Federal branch) in the same manner and to the same extent as they apply to an insured State bank or a national bank.”.

**SEC. 153. REPRESENTATIVE OFFICES.**

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

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

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

**SEC. 161. SHORT TITLE.**

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

**SEC. 162. DEFINITIONS.**

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

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

(2) by striking paragraph (3) and inserting the following:

“(3) STATE.—The term ‘State’, in addition to the States of the United States, includes the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.”; and

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

“(13) COMMUNITY FINANCIAL INSTITUTION.—

“(A) IN GENERAL.—The term ‘community financial institution’ means a member—

“(i) the deposits of which are insured under the Federal Deposit Insurance Act; and

“(ii) that has, as of the date of the transaction at issue, less than \$500,000,000 in average total assets, based on an average of total assets over the 3 years preceding that date.

“(B) ADJUSTMENTS.—The \$500,000,000 limit referred to in subparagraph (A)(ii) shall be adjusted annually by the Finance Board, based on the annual percentage increase, if any, in the Consumer Price Index for all urban consumers, as published by the Department of Labor.”.

**SEC. 163. SAVINGS ASSOCIATION MEMBERSHIP.**

Section 5(f) of the Home Owners’ Loan Act (12 U.S.C. 1464(f)) is amended to read as follows:

“(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—On and after January 1, 1999, a Federal savings association may become a member of the Federal Home Loan Bank System, and shall qualify for such membership in the manner provided by the Federal Home Loan Bank Act.”.

**SEC. 164. ADVANCES TO MEMBERS; COLLATERAL.**

(a) IN GENERAL.—Section 10(a) of the Federal Home Loan Bank Act (12 U.S.C. 1430(a)) is amended—

(1) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and indenting appropriately;

(2) by striking “(a) Each” and inserting the following:

“(a) IN GENERAL.—

“(1) ALL ADVANCES.—Each”;

(3) by striking the 2d sentence and inserting the following:

“(2) PURPOSES OF ADVANCES.—A long-term advance may only be made for the purposes of—

“(A) providing funds to any member for residential housing finance; and

“(B) providing funds to any community financial institution for small business, agricultural, rural development, or low-income community development lending.”;

(4) by striking “A Bank” and inserting the following:

“(3) COLLATERAL.—A Bank”;

(5) in paragraph (3) (as so designated by paragraph (4) of this subsection)—  
(A) in subparagraph (C) (as so redesignated by paragraph (1) of this subsection) by striking “Deposits” and inserting “Cash or deposits”;

(B) in subparagraph (D) (as so redesignated by paragraph (1) of this subsection), by striking the 2d sentence; and

(C) by inserting after subparagraph (D) (as so redesignated by paragraph (1) of this subsection) the following new subparagraph:

“(E) Secured loans for small business, agriculture, rural development, or low-income community development, or securities representing a whole interest in such secured loans, in the case of any community financial institution.”;

(6) in paragraph (5)—

(A) in the 2d sentence, by striking “and the Board”;

(B) in the 3d sentence, by striking “Board” and inserting “Federal home loan bank”; and

(C) by striking “(5) Paragraphs (1) through (4)” and inserting the following:

“(4) ADDITIONAL BANK AUTHORITY.—Subparagraphs (A) through (E) of paragraph (3)”;

(7) by adding at the end the following:

“(5) REVIEW OF CERTAIN COLLATERAL STANDARDS.—The Board may review the collateral standards applicable to each Federal home loan bank for the classes of collateral described in subparagraphs (D) and (E) of paragraph (3), and may, if necessary for safety and soundness purposes, require an increase in the collateral standards for any or all of those classes of collateral.

“(6) DEFINITIONS.—For purposes of this subsection, the terms ‘small business’, ‘agriculture’, ‘rural development’, and ‘low-income community development’ shall have the meanings given those terms by rule or regulation of the Finance Board.”.

(b) CLERICAL AMENDMENT.—The section heading for section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended to read as follows:

**“SEC. 10. ADVANCES TO MEMBERS.”.**

(c) CONFORMING AMENDMENTS RELATING TO MEMBERS WHICH ARE NOT QUALIFIED THRIFT LENDERS.—The 1st of the 2 subsections designated as subsection (e) of section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430(e)(1)) is amended—

(1) in the last sentence of paragraph (1), by inserting “or, in the case of any community financial institution, for the purposes described in subsection (a)(2)” before the period; and

(2) in paragraph (5)(C), by inserting “except that, in determining the actual thrift investment percentage of any community financial institution for purposes of this subsection, the total investment of such member in loans for small business, agriculture, rural development, or low-income community development, or securities representing a whole interest in such loans, shall be treated as a qualified thrift investment (as defined in such section 10(m))” before the period.

**SEC. 165. ELIGIBILITY CRITERIA.**

Section 4(a) of the Federal Home Loan Bank Act (12 U.S.C. 1424(a)) is amended—

(1) in paragraph (2)(A), by inserting, “(other than a community financial institution)” after “institution”; and

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

“(3) LIMITED EXEMPTION FOR COMMUNITY FINANCIAL INSTITUTIONS.—A community financial institution that otherwise meets the requirements of paragraph (2) may become a member without regard to the percentage of its total assets that is represented by residential mortgage loans, as described in subparagraph (A) of paragraph (2).”.

**SEC. 166. MANAGEMENT OF BANKS.**

(a) BOARD OF DIRECTORS.—Section 7(d) of the Federal Home Loan Bank Act (12 U.S.C. 1427(d)) is amended—

(1) by striking “(d) The term” and inserting the following:

“(d) TERMS OF OFFICE.—The term”; and

(2) by striking “shall be two years”.

(b) COMPENSATION.—Section 7(i) of the Federal Home Loan Bank Act (12 U.S.C. 1427(i)) is amended by striking “, subject to the approval of the board”.

(c) REPEAL OF SECTIONS 22A AND 27.—The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by striking sections 22A (12 U.S.C. 1442a) and 27 (12 U.S.C. 1447).

(d) SECTION 12.—Section 12 of the Federal Home Loan Bank Act (12 U.S.C. 1432) is amended—

(1) in subsection (a)—

(A) by striking “, but, except” and all that follows through “ten years”;  
(B) by striking “subject to the approval of the Board” the first place that term appears;

(C) by striking “and, by its Board of directors,” and all that follows through “agent of such bank,” and inserting “and, by the board of directors of the bank, to prescribe, amend, and repeal by-laws governing the manner in which its affairs may be administered, consistent with applicable laws and regulations, as administered by the Finance Board. No officer, employee, attorney, or agent of a Federal home loan bank”; and

(D) by striking “Board of directors” where such term appears in the penultimate sentence and inserting “board of directors”; and

(2) in subsection (b), by striking “loans banks” and inserting “loan banks”.

(e) POWERS AND DUTIES OF FEDERAL HOUSING FINANCE BOARD.—

(1) ISSUANCE OF NOTICES OF VIOLATIONS.—Section 2B(a) of the Federal Home Loan Bank Act (12 U.S.C. 1422b(a)) is amended by adding at the end the following new paragraphs:

“(5) To issue and serve a notice of charges upon a Federal home loan bank or upon any executive officer or director of a Federal home loan bank if, in the determination of the Finance Board, the bank, executive officer, or director is engaging or has engaged in, or the Finance Board has reasonable cause to believe that the bank, executive officer, or director is about to engage in, any conduct that violates any provision of this Act or any law, order, rule, or regulation or any condition imposed in writing by the Finance Board in connection with the granting of any application or other request by the bank, or any written agreement entered into by the bank with the agency, in accordance with the procedures provided in section 1371(c) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992. Such authority includes the same authority to take affirmative action to correct conditions resulting from violations or practices or to limit activities of a bank or any executive officer or director of a bank as appropriate Federal banking agencies have to take with respect to insured depository institutions under paragraphs (6) and (7) of section 8(b) of the Federal Deposit Insurance Act, and to have all other powers, rights, and duties to enforce this Act with respect to the Federal home loan banks and their executive officers and directors as the Office of Federal Housing Enterprise Oversight has to enforce the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the Federal National Mortgage Association Charter Act,

or the Federal Home Loan Mortgage Corporation Act with respect to the Federal housing enterprises under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

“(6) To address any insufficiencies in capital levels resulting from the application of section 5(f) of the Home Owners’ Loan Act.

“(7) To sue and be sued, by and through its own attorneys.”

(2) TECHNICAL AMENDMENT.—Section 111 of Public Law 93–495 (12 U.S.C. 250) is amended by striking “Federal Home Loan Bank Board,” and inserting “Director of the Office of Thrift Supervision, “the Federal Housing Finance Board.”

(f) ELIGIBILITY TO SECURE ADVANCES.—

(1) SECTION 9.—Section 9 of the Federal Home Loan Bank Act (12 U.S.C. 1429) is amended—

(A) in the 2d sentence, by striking “with the approval of the Board”; and

(B) in the 3d sentence, by striking “, subject to the approval of the Board.”

(2) SECTION 10.—Section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended—

(A) in subsection (c)—

(i) in the 1st sentence, by striking “Board” and inserting “Federal home loan bank”; and

(ii) by striking the 2d sentence;

(B) in subsection (d)—

(i) in the 1st sentence, by striking “and the approval of the Board”; and

(ii) by striking “Subject to the approval of the Board, any” and inserting “Any”; and

(C) in subsection (j)(1)—

(i) by striking “to subsidize the interest rate on advances” and inserting “to provide subsidies, including subsidized interest rates on advances”;

(ii) by striking “Pursuant” and inserting the following:

“(A) ESTABLISHMENT.—Pursuant”; and

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

“(B) NONDELEGATION OF APPROVAL AUTHORITY.—Subject to such regulations as the Finance Board may prescribe, the board of directors of each Federal home loan bank may approve or disapprove requests from members for Affordable Housing Program subsidies, and may not delegate such authority.”

(g) SECTION 16.—Section 16(a) of the Federal Home Loan Bank Act (12 U.S.C. 1436(a)) is amended—

(1) in the 3d sentence—

(A) by striking “net earnings” and inserting “previously retained earnings or current net earnings”; and

(B) by striking “, and then only with the approval of the Federal Housing Finance Board”; and

(2) by striking the 4th sentence.

(h) SECTION 18.—Section 18(b) of the Federal Home Loan Bank Act (12 U.S.C. 1438(b)) is amended by striking paragraph (4).

**SEC. 167. RESOLUTION FUNDING CORPORATION.**

(a) IN GENERAL.—Section 21B(f)(2)(C) of the Federal Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(C)) is amended to read as follows:

“(C) PAYMENTS BY FEDERAL HOME LOAN BANKS.—

“(i) IN GENERAL.—To the extent that the amounts available pursuant to subparagraphs (A) and (B) are insufficient to cover the amount of interest payments, each Federal home loan bank shall pay to the Funding Corporation in each calendar year, 20.75 percent of the net earnings of that bank (after deducting expenses relating to section 10(j) and operating expenses).

“(ii) ANNUAL DETERMINATION.—The Board annually shall determine the extent to which the value of the aggregate amounts paid by the Federal home loan banks exceeds or falls short of the value of an annuity of \$300,000,000 per year that commences on the issuance date and ends on the final scheduled maturity date of the obligations, and shall select appropriate present value factors for making such determinations.

“(iii) PAYMENT TERM ALTERATIONS.—The Board shall extend or shorten the term of the payment obligations of a Federal home loan bank under this subparagraph as necessary to ensure that the value of all payments made by the banks is equivalent to the value of an annuity referred to in clause (ii).

“(iv) TERM BEYOND MATURITY.—If the Board extends the term of payments beyond the final scheduled maturity date for the obligations, each Federal home loan bank shall continue to pay 20.75 percent of its net earnings (after deducting expenses relating to section 10(j) and operating expenses) to the Treasury of the United States until the value of all such payments by the Federal home loan banks is equivalent to the value of an annuity referred to in clause (ii). In the final year in which the Federal home loan banks are required to make any payment to the Treasury under this subparagraph, if the dollar amount represented by 20.75 percent of the net earnings of the Federal home loan banks exceeds the remaining obligation of the banks to the Treasury, the Finance Board shall reduce the percentage pro rata to a level sufficient to pay the remaining obligation.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on January 1, 1999. Payments made by a Federal home loan bank before that effective date shall be counted toward the total obligation of that bank under section 21B(f)(2)(C) of the Federal Home Loan Bank Act, as amended by this section.

**SEC. 168. CAPITAL STRUCTURE OF FEDERAL HOME LOAN BANKS.**

Section 6 of the Federal Home Loan Bank Act (12 U.S.C. 1426) is amended to read as follows:

**“SEC. 6. CAPITAL STRUCTURE OF FEDERAL HOME LOAN BANKS.**

**“(a) REGULATIONS.—**

**“(1) CAPITAL STANDARDS.—**Not later than 1 year after the date of enactment of the Financial Services Act of 1999, the Finance Board shall issue regulations prescribing uniform capital standards applicable to each Federal home loan bank, which shall require each such bank to meet—

**“(A) the leverage requirement specified in paragraph (2); and**

**“(B) the risk-based capital requirements, in accordance with paragraph (3).**

**“(2) LEVERAGE REQUIREMENT.—**

**“(A) IN GENERAL.—**The leverage requirement shall require each Federal home loan bank to maintain a minimum amount of total capital based on the aggregate on-balance sheet assets of the bank and shall be 5 percent.

**“(B) TREATMENT OF STOCK AND RETAINED EARNINGS.—**In determining compliance with the minimum leverage ratio established under subparagraph (A), the paid-in value of the outstanding Class B stock shall be multiplied by 1.5, the paid-in value of the outstanding Class C stock and the amount of retained earnings shall be multiplied by 2.0, and such higher amounts shall be deemed to be capital for purposes of meeting the 5 percent minimum leverage ratio.

**“(3) RISK-BASED CAPITAL STANDARDS.—**

**“(A) IN GENERAL.—**Each Federal home loan bank shall maintain permanent capital in an amount that is sufficient, as determined in accordance with the regulations of the Finance Board, to meet—

**“(i) the credit risk to which the Federal home loan bank is subject; and**

**“(ii) the market risk, including interest rate risk, to which the Federal home loan bank is subject, based on a stress test established by the Finance Board that rigorously tests for changes in market variables, including changes in interest rates, rate volatility, and changes in the shape of the yield curve.**

**“(B) CONSIDERATION OF OTHER RISK-BASED STANDARDS.—**In establishing the risk-based standard under subparagraph (A)(ii), the Finance Board shall take due consideration of any risk-based capital test established pursuant to section 1361 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4611) for the enterprises (as defined in that Act), with such modifications as the Finance Board determines to be appropriate to reflect differences in operations between the Federal home loan banks and those enterprises.

**“(4) OTHER REGULATORY REQUIREMENTS.—**The regulations issued by the Finance Board under paragraph (1) shall—

“(A) permit each Federal home loan bank to issue, with such rights, terms, and preferences, not inconsistent with this Act and the regulations issued hereunder, as the board of directors of that bank may approve, any 1 or more of—

“(i) Class A stock, which shall be redeemable in cash and at par 6 months following submission by a member of a written notice of its intent to redeem such shares;

“(ii) Class B stock, which shall be redeemable in cash and at par 5 years following submission by a member of a written notice of its intent to redeem such shares; and

“(iii) Class C stock, which shall be nonredeemable;

“(B) provide that the stock of a Federal home loan bank may be issued to and held by only members of the bank, and that a bank may not issue any stock other than as provided in this section;

“(C) prescribe the manner in which stock of a Federal home loan bank may be sold, transferred, redeemed, or repurchased; and

“(D) provide the manner of disposition of outstanding stock held by, and the liquidation of any claims of the Federal home loan bank against, an institution that ceases to be a member of the bank, through merger or otherwise, or that provides notice of intention to withdraw from membership in the bank.—

“(5) DEFINITIONS OF CAPITAL.—For purposes of determining compliance with the capital standards established under this subsection—

“(A) permanent capital of a Federal home loan bank shall include (as determined in accordance with generally accepted accounting principles)—

“(i) the amounts paid for the Class C stock and any other nonredeemable stock approved by the Finance Board;

“(ii) the amounts paid for the Class B stock, in an amount not to exceed 1 percent of the total assets of the bank; and

“(iii) the retained earnings of the bank; and

“(B) total capital of a Federal home loan bank shall include—

“(i) permanent capital;

“(ii) the amounts paid for the Class A stock, Class B stock (excluding any amount treated as permanent capital under subparagraph (5)(A)(ii)), or any other class of redeemable stock approved by the Finance Board;

“(iii) consistent with generally accepted accounting principles, and subject to the regulation of the Finance Board, a general allowance for losses, which may not include any reserves or allowances made or held against specific assets; and

“(iv) any other amounts from sources available to absorb losses incurred by the bank that the Finance Board determines by regulation to be appropriate to include in determining total capital.

“(6) TRANSITION PERIOD.—Notwithstanding any other provisions of this Act, the requirements relating to purchase and retention of capital stock of a Federal home loan bank by any member thereof in effect on the day before the date of enactment of the Federal Home Loan Bank System Modernization Act of 1999, shall continue in effect with respect to each Federal home loan bank until the regulations required by this subsection have taken effect and the capital structure plan required by subsection (b) has been approved by the Finance Board and implemented by such bank.

“(b) CAPITAL STRUCTURE PLAN.—

“(1) APPROVAL OF PLANS.—Not later than 270 days after the date of publication by the Finance Board of final regulations in accordance with subsection (a), the board of directors of each Federal home loan bank shall submit for Finance Board approval a plan establishing and implementing a capital structure for such bank that—

“(A) the board of directors determines is best suited for the condition and operation of the bank and the interests of the members of the bank;

“(B) meets the requirements of subsection (c); and

“(C) meets the minimum capital standards and requirements established under subsection (a) and other regulations prescribed by the Finance Board.

“(2) APPROVAL OF MODIFICATIONS.—The board of directors of a Federal home loan bank shall submit to the Finance Board for approval any modifications that the bank proposes to make to an approved capital structure plan.

“(c) CONTENTS OF PLAN.—The capital structure plan of each Federal home loan bank shall contain provisions addressing each of the following:

“(1) MINIMUM INVESTMENT.—

“(A) IN GENERAL.—Each capital structure plan of a Federal home loan bank shall require each member of the bank to maintain a minimum investment in the stock of the bank, the amount of which shall be determined in a manner to be prescribed by the board of directors of each bank and to be included as part of the plan.

“(B) INVESTMENT ALTERNATIVES.—

“(i) IN GENERAL.—In establishing the minimum investment required for each member under subparagraph (A), a Federal home loan bank may, in its discretion, include any 1 or more of the requirements referred to in clause (ii), or any other provisions approved by the Finance Board.

“(ii) AUTHORIZED REQUIREMENTS.—A requirement is referred to in this clause if it is a requirement for—

“(I) a stock purchase based on a percentage of the total assets of a member; or

“(II) a stock purchase based on a percentage of the outstanding advances from the bank to the member.

“(C) MINIMUM AMOUNT.—Each capital structure plan of a Federal home loan bank shall require that the minimum stock investment established for members shall be set at a level that is sufficient for the bank to meet the minimum capital requirements established by the Finance Board under subsection (a).

“(D) ADJUSTMENTS TO MINIMUM REQUIRED INVESTMENT.—The capital structure plan of each Federal home loan bank shall impose a continuing obligation on the board of directors of the bank to review and adjust the minimum investment required of each member of that bank, as necessary to ensure that the bank remains in compliance with applicable minimum capital levels established by the Finance Board, and shall require each member to comply promptly with any adjustments to the required minimum investment.

“(2) TRANSITION RULE.—

“(A) IN GENERAL.—The capital structure plan of each Federal home loan bank shall specify the date on which it shall take effect, and may provide for a transition period of not longer than 3 years to allow the bank to come into compliance with the capital requirements prescribed under subsection (a), and to allow any institution that was a member of the bank on the date of enactment of the Financial Services Act of 1999, to come into compliance with the minimum investment required pursuant to the plan.

“(B) INTERIM PURCHASE REQUIREMENTS.—The capital structure plan of a Federal home loan bank may allow any member referred to in subparagraph (A) that would be required by the terms of the capital structure plan to increase its investment in the stock of the bank to do so in periodic installments during the transition period.

“(3) DISPOSITION OF SHARES.—The capital structure plan of a Federal home loan bank shall provide for the manner of disposition of any stock held by a member of that bank that terminates its membership or that provides notice of its intention to withdraw from membership in that bank.

“(4) CLASSES OF STOCK.—

“(A) IN GENERAL.—The capital structure plan of a Federal home loan bank shall afford each member of that bank the option of maintaining its required investment in the bank through the purchase of any combination of classes of stock authorized by the board of directors of the bank and approved by the Finance Board in accordance with its regulations.

“(B) RIGHTS REQUIREMENT.—A Federal home loan bank shall include in its capital structure plan provisions establishing terms, rights, and preferences, including minimum investment, dividends, voting, and liquidation preferences of each class of stock issued by the bank, consistent with Finance Board regulations and market requirements.

“(C) REDUCED MINIMUM INVESTMENT.—The capital structure plan of a Federal home loan bank may provide for a reduced minimum stock investment for any member of that bank that elects to purchase Class B, Class C, or any other class of nonredeemable stock, in a manner that is consistent with meeting the minimum capital requirements of the bank, as established by the Finance Board.

“(D) LIQUIDATION OF CLAIMS.—The capital structure plan of a Federal home loan bank shall provide for the liquidation in an orderly manner, as determined by the bank, of any claim of that bank against a member, in-

cluding claims for any applicable prepayment fees or penalties resulting from prepayment of advances prior to stated maturity.

“(5) LIMITED TRANSFERABILITY OF STOCK.—The capital structure plan of a Federal home loan bank shall—

“(A) provide that—

“(i) any stock issued by that bank shall be available only to, held only by, and tradable only among members of that bank and between that bank and its members; and

“(ii) a bank has no obligation to repurchase its outstanding Class C stock but may do so, provided it is consistent with Finance Board regulations and is at a price that is mutually agreeable to the bank and the member; and

“(B) establish standards, criteria, and requirements for the issuance, purchase, transfer, retirement, and redemption of stock issued by that bank.

“(6) BANK REVIEW OF PLAN.—Before filing a capital structure plan with the Finance Board, each Federal home loan bank shall conduct a review of the plan by—

“(A) an independent certified public accountant, to ensure, to the extent possible, that implementation of the plan would not result in any write-down of the redeemable bank stock investment of its members; and

“(B) at least 1 major credit rating agency, to determine, to the extent possible, whether implementation of the plan would have any material effect on the credit ratings of the bank.

“(d) TERMINATION OF MEMBERSHIP.—

“(1) VOLUNTARY WITHDRAWAL.—Any member may withdraw from a Federal home loan bank by providing written notice to the bank of its intent to do so. The applicable stock redemption notice periods shall commence upon receipt of the notice by the bank. Upon the expiration of the applicable notice period for each class of redeemable stock, the member may surrender such stock to the bank, and shall be entitled to receive in cash the par value of the stock. During the applicable notice periods, the member shall be entitled to dividends and other membership rights commensurate with continuing stock ownership.

“(2) INVOLUNTARY WITHDRAWAL.—

“(A) IN GENERAL.—The board of directors of a Federal home loan bank may terminate the membership of any institution if, subject to Finance Board regulations, it determines that—

“(i) the member has failed to comply with a provision of this Act or any regulation prescribed under this Act; or

“(ii) the member has been determined to be insolvent, or otherwise subject to the appointment of a conservator, receiver, or other legal custodian, by a State or Federal authority with regulatory and supervisory responsibility for the member.

“(B) STOCK DISPOSITION.—An institution, the membership of which is terminated in accordance with subparagraph (A)—

“(i) shall surrender redeemable stock to the Federal home loan bank, and shall receive in cash the par value of the stock, upon the expiration of the applicable notice period under subsection (a)(4)(A);

“(ii) shall receive any dividends declared on its redeemable stock, during the applicable notice period under subsection (a)(4)(A); and

“(iii) shall not be entitled to any other rights or privileges accorded to members after the date of the termination.

“(C) COMMENCEMENT OF NOTICE PERIOD.—With respect to an institution, the membership of which is terminated in accordance with subparagraph (A), the applicable notice period under subsection (a)(4) for each class of redeemable stock shall commence on the earlier of—

“(i) the date of such termination; or

“(ii) the date on which the member has provided notice of its intent to redeem such stock.

“(3) LIQUIDATION OF INDEBTEDNESS.—Upon the termination of the membership of an institution for any reason, the outstanding indebtedness of the member to the bank shall be liquidated in an orderly manner, as determined by the bank and, upon the extinguishment of all such indebtedness, the bank shall return to the member all collateral pledged to secure the indebtedness.

“(e) REDEMPTION OF EXCESS STOCK.—

“(1) IN GENERAL.—A Federal home loan bank, in its sole discretion, may redeem or repurchase, as appropriate, any shares of Class A or Class B stock issued by the bank and held by a member that are in excess of the minimum stock investment required of that member.



“(2) EXCESS STOCK.—Shares of stock held by a member shall not be deemed to be ‘excess stock’ for purposes of this subsection by virtue of a member’s submission of a notice of intent to withdraw from membership or termination of its membership in any other manner.

“(3) PRIORITY.—A Federal home loan bank may not redeem any excess Class B stock prior to the end of the 5-year notice period, unless the member has no Class A stock outstanding that could be redeemed as excess.

“(f) IMPAIRMENT OF CAPITAL.—If the Finance Board or the board of directors of a Federal home loan bank determines that the bank has incurred or is likely to incur losses that result in or are expected to result in charges against the capital of the bank, the bank shall not redeem or repurchase any stock of the bank without the prior approval of the Finance Board while such charges are continuing or are expected to continue. In no case may a bank redeem or repurchase any applicable capital stock if, following the redemption, the bank would fail to satisfy any minimum capital requirement.

“(g) REJOINING AFTER DIVESTITURE OF ALL SHARES.—

“(1) IN GENERAL.—Except as provided in paragraph (2), and notwithstanding any other provision of this Act, an institution that divests all shares of stock in a Federal home loan bank may not, after such divestiture, acquire shares of any Federal home loan bank before the end of the 5-year period beginning on the date of the completion of such divestiture, unless the divestiture is a consequence of a transfer of membership on an uninterrupted basis between banks.

“(2) EXCEPTION FOR WITHDRAWALS FROM MEMBERSHIP BEFORE 1998.—Any institution that withdrew from membership in any Federal home loan bank before December 31, 1997, may acquire shares of a Federal home loan bank at any time after that date, subject to the approval of the Finance Board and the requirements of this Act.

“(h) TREATMENT OF RETAINED EARNINGS.—

“(1) IN GENERAL.—The holders of the Class C stock of a Federal home loan bank, and any other classes of nonredeemable stock approved by the Finance Board (to the extent provided in the terms thereof), shall own the retained earnings, surplus, undivided profits, and equity reserves, if any, of the bank.

“(2) NO NONREDEEMABLE CLASSES OF STOCK.—If a Federal home loan bank has no outstanding Class C or other such nonredeemable stock, then the holders of any other classes of stock of the bank then outstanding shall have ownership in, and a private property right in, the retained earnings, surplus, undivided profits, and equity reserves, if any, of the bank.

“(3) EXCEPTION.—Except as specifically provided in this section or through the declaration of a dividend or a capital distribution by a Federal home loan bank, or in the event of liquidation of the bank, a member shall have no right to withdraw or otherwise receive distribution of any portion of the retained earnings of the bank.

“(4) LIMITATION.—A Federal home loan bank may not make any distribution of its retained earnings unless, following such distribution, the bank would continue to meet all applicable capital requirements.”.

## Subtitle H—ATM Fee Reform

### SEC. 171. SHORT TITLE.

This subtitle may be cited as the “ATM Fee Reform Act of 1999”.

### SEC. 172. ELECTRONIC FUND TRANSFER FEE DISCLOSURES AT ANY HOST ATM.

Section 904(d) of the Electronic Fund Transfer Act (15 U.S.C. 1693b(d)) is amended by adding at the end the following new paragraph:

“(3) FEE DISCLOSURES AT AUTOMATED TELLER MACHINES.—

“(A) IN GENERAL.—The regulations prescribed under paragraph (1) shall require any automated teller machine operator who imposes a fee on any consumer for providing host transfer services to such consumer to provide notice in accordance with subparagraph (B) to the consumer (at the time the service is provided) of—

“(i) the fact that a fee is imposed by such operator for providing the service; and

“(ii) the amount of any such fee.

“(B) NOTICE REQUIREMENTS.—

“(i) ON THE MACHINE.—The notice required under clause (i) of subparagraph (A) with respect to any fee described in such subparagraph shall be posted in a prominent and conspicuous location on or at the

automated teller machine at which the electronic fund transfer is initiated by the consumer; and

“(ii) ON THE SCREEN.—The notice required under clauses (i) and (ii) of subparagraph (A) with respect to any fee described in such subparagraph shall appear on the screen of the automated teller machine, or on a paper notice issued from such machine, after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

“(C) PROHIBITION ON FEES NOT PROPERLY DISCLOSED AND EXPLICITLY ASSUMED BY CONSUMER.—No fee may be imposed by any automated teller machine operator in connection with any electronic fund transfer initiated by a consumer for which a notice is required under subparagraph (A), unless—

“(i) the consumer receives such notice in accordance with subparagraph (B); and

“(ii) the consumer elects to continue in the manner necessary to effect the transaction after receiving such notice.

“(D) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

“(i) ELECTRONIC FUND TRANSFER.—The term ‘electronic fund transfer’ includes a transaction which involves a balance inquiry initiated by a consumer in the same manner as an electronic fund transfer, whether or not the consumer initiates a transfer of funds in the course of the transaction.

“(ii) AUTOMATED TELLER MACHINE OPERATOR.—The term ‘automated teller machine operator’ means any person who—

“(I) operates an automated teller machine at which consumers initiate electronic fund transfers; and

“(II) is not the financial institution which holds the account of such consumer from which the transfer is made.

“(iii) HOST TRANSFER SERVICES.—The term ‘host transfer services’ means any electronic fund transfer made by an automated teller machine operator in connection with a transaction initiated by a consumer at an automated teller machine operated by such operator.”.

**SEC. 173. DISCLOSURE OF POSSIBLE FEES TO CONSUMERS WHEN ATM CARD IS ISSUED.**

Section 905(a) of the Electronic Fund Transfer Act (15 U.S.C. 1693c(a)) is amended—

(1) by striking “and” at the end of paragraph (8);

(2) by striking the period at the end of paragraph (9) and inserting “; and”; and

(3) by inserting after paragraph (9) the following new paragraph:

“(10) a notice to the consumer that a fee may be imposed by—

“(A) an automated teller machine operator (as defined in section 904(d)(3)(D)(ii)) if the consumer initiates a transfer from an automated teller machine which is not operated by the person issuing the card or other means of access; and

“(B) any national, regional, or local network utilized to effect the transaction.”.

**SEC. 174. FEASIBILITY STUDY.**

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the feasibility of requiring, in connection with any electronic fund transfer initiated by a consumer through the use of an automated teller machine—

(1) a notice to be provided to the consumer before the consumer is irrevocably committed to completing the transaction, which clearly states the amount of any fee which will be imposed upon the consummation of the transaction by—

(A) any automated teller machine operator (as defined in section 904(d)(2)(D)(ii) of the Electronic Fund Transfer Act) involved in the transaction;

(B) the financial institution holding the account of the consumer;

(C) any national, regional, or local network utilized to effect the transaction; and

(D) any other party involved in the transfer; and

(2) the consumer to elect to consummate the transaction after receiving the notice described in paragraph (1).

(b) FACTORS TO BE CONSIDERED.—In conducting the study required under subsection (a) with regard to the notice requirement described in such subsection, the Comptroller General shall consider the following factors:

(1) The availability of appropriate technology.

- (2) Implementation and operating costs.
  - (3) The competitive impact any such notice requirement would have on various sizes and types of institutions, if implemented.
  - (4) The period of time which would be reasonable for implementing any such notice requirement.
  - (5) The extent to which consumers would benefit from any such notice requirement.
  - (6) Any other factor the Comptroller General determines to be appropriate in analyzing the feasibility of imposing any such notice requirement.
- (c) REPORT TO THE CONGRESS.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress containing—
- (1) the findings and conclusions of the Comptroller General in connection with the study required under subsection (a); and
  - (2) the recommendation of the Comptroller General with regard to the question of whether a notice requirement described in subsection (a) should be implemented and, if so, how such requirement should be implemented.

**SEC. 175. NO LIABILITY IF POSTED NOTICES ARE DAMAGED.**

Section 910 of the Electronic Fund Transfer Act (15 U.S.C 1693h) is amended by adding at the end the following new subsection:

“(d) EXCEPTION FOR DAMAGED NOTICES.—If the notice required to be posted pursuant to section 904(d)(3)(B)(i) by an automated teller machine operator has been posted by such operator in compliance with such section and the notice is subsequently removed, damaged, or altered by any person other than the operator of the automated teller machine, the operator shall have no liability under this section for failure to comply with section 904(d)(3)(B)(i).”.

## Subtitle I—Customer Service, Education, and Privacy

**SEC. 176. CUSTOMER SERVICE AND EDUCATION REGULATIONS.**

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 46 (as added by section 124 of this title) the following new section:

**“SEC. 47. CUSTOMER SERVICE AND EDUCATION REGULATIONS.**

“(a) REGULATIONS REQUIRED.—

“(1) IN GENERAL.—The Federal banking agencies shall prescribe and publish in final form, before the end of the 1-year period beginning on the date of enactment of the Financial Services Act of 1999, customer protection regulations (which the agencies jointly determine to be appropriate) that—

“(A) apply to retail sales practices, solicitations, advertising, or offers of any nondeposit product by any insured depository institution or any person who is engaged in such activities at an office of the institution or on behalf of the institution; and

“(B) are consistent with the requirements of this Act and provide such additional protections for customers to whom such sales, solicitations, advertising, or offers are directed as the agency determines to be appropriate.

“(2) APPLICABILITY TO SUBSIDIARIES.—The regulations prescribed pursuant to paragraph (1) shall extend such protections to any subsidiary of an insured depository institution, as deemed appropriate by the regulators referred to in paragraph (3), where such extension is determined to be necessary to ensure the customer protections provided by this section.

“(3) CONSULTATION AND JOINT REGULATIONS.—The Federal banking agencies shall consult with each other and prescribe joint regulations pursuant to paragraph (1), after consultation with the Securities and Exchange Commission and the State insurance regulators, as appropriate.

“(4) NONDEPOSIT PRODUCT DEFINED.—For purposes of this section, the term ‘nondeposit product’—

“(A) means any investment and insurance product which is not a deposit;

“(B) includes shares issued by a registered investment company; and

“(C) does not include—

“(i) any loan or any other extension of credit by an insured depository institution;

“(ii) any letter of credit;

“(iii) any trust services;

“(iv) any discount; or

“(v) any other instrument or insurance or investment product specifically excluded from the definition of such term by regulations prescribed jointly by the Federal banking agencies, to the extent necessary to carry out the purposes of this Act.

“(5) INSURANCE PRODUCT DEFINED.—For purposes of this section, the term ‘insurance product’ includes an annuity contract the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.

“(b) SALES PRACTICES.—

“(1) ANTICOERCION RULES.—The regulations prescribed pursuant to subsection (a) shall include anticoercion rules applicable to the sale of nondeposit products which prohibit an insured depository institution from engaging in any practice that would lead a customer to believe an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970, is conditional upon—

“(A) the purchase of a nondeposit product from the institution or any of its affiliates; or

“(B) an agreement by the customer not to obtain, or a prohibition on the customer from obtaining, a nondeposit product from an unaffiliated entity.

“(2) SUITABILITY OF PRODUCT.—

“(A) IN GENERAL.—The regulations prescribed pursuant to subsection (a) with respect to the sale of nondeposit products shall include standards to ensure that an investment product sold to a customer is suitable and any other nondeposit product is appropriate for the customer based on financial information disclosed by the customer.

“(B) RULES OF FAIR PRACTICE.—In prescribing the standards under subparagraph (A) with respect to the sale of investments, the Federal banking agencies shall take into account the Rules of Fair Practice of the National Association of Securities Dealers.

“(c) DISCLOSURES AND ADVERTISING.—The regulations prescribed pursuant to subsection (a) shall include the following provisions relating to disclosures and advertising in connection with the initial purchase of a nondeposit product:

“(1) DISCLOSURES.—

“(A) IN GENERAL.—Requirements that the following disclosures be made orally and in writing before the completion of the initial sale and, in the case of clause (iv), at the time of application for an extension of credit:

“(i) UNINSURED STATUS.—As appropriate, the product is not insured by the Federal Deposit Insurance Corporation, the United States Government, or the insured depository institution.

“(ii) INSURANCE PRODUCT.—In the case of an insurance policy which is sold by the depository institution, or any affiliate of the institution, as agent, the product is not an obligation of or guaranteed by the depository institution.

“(iii) INVESTMENT RISK.—In the case of an investment product, variable annuity, or other product which involves an investment risk, that there is an investment risk associated with the product, including possible loss of value.

“(iv) COERCION.—The approval of an extension of credit may not be conditioned on—

“(I) the purchase of a nondeposit product from the institution in which the application for credit is pending or any of affiliate of the institution; or

“(II) an agreement by the customer not to obtain, or a prohibition on the customer from obtaining, a nondeposit product from an unaffiliated entity.

“(B) MAKING DISCLOSURE READILY UNDERSTANDABLE.—Regulations prescribed under subparagraph (A) shall encourage the use of disclosure that is conspicuous, simple, direct, and readily understandable, such as the following:

“(i) ‘NOT FDIC-INSURED’.

“(ii) ‘NOT GUARANTEED BY THE BANK’.

“(iii) ‘MAY GO DOWN IN VALUE’.

“(iv) ‘NOT INSURED BY ANY GOVERNMENT AGENCY’.

“(C) ADJUSTMENTS FOR ALTERNATIVE METHODS OF PURCHASE.—In prescribing the requirements under subparagraphs (A) and (D), necessary adjustments shall be made for purchase in person, by telephone, or by electronic media to provide for the most appropriate and complete form of disclosure and acknowledgments.

“(D) CUSTOMER ACKNOWLEDGMENT.—A requirement that an insured depository institution shall require any person selling a nondeposit product at any office of, or on behalf of, the institution to obtain, at the time a customer receives the disclosures required under this paragraph or at the time of the initial purchase by the customer of such product, an acknowledgment by such customer of the receipt of the disclosure required under this paragraph with respect to such product.

“(2) PROHIBITION ON MISREPRESENTATIONS.—A prohibition on any practice, or any advertising, at any office of, or on behalf of, the insured depository institution, or any subsidiary as appropriate, which could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to—

“(A) the uninsured nature of any nondeposit product sold, or offered for sale, by the institution or any subsidiary of the institution;

“(B) in the case of a nondeposit product that involves an investment risk, the investment risk associated with any such product; or

“(C) in the case of a nondeposit product, the approval of an extension of credit is not conditioned on the purchase of such nondeposit product and the customer is not prohibited from purchasing such nondeposit product from another institution.

“(d) SEPARATION OF BANKING AND NONBANKING ACTIVITIES.—

“(1) REGULATIONS REQUIRED.—The regulations prescribed pursuant to subsection (a) shall include such provisions as the Federal banking agencies consider appropriate to ensure that the routine acceptance of deposits is kept, to the extent practicable, physically segregated from nondeposit product activity.

“(2) REQUIREMENTS.—Regulations prescribed pursuant to paragraph (1) shall include the following requirements:

“(A) SEPARATE SETTING.—A clear delineation of the setting in which, and the circumstances under which, transactions involving nondeposit products should be conducted in a location physically segregated from an area where retail deposits are routinely accepted.

“(B) REFERRALS.—Standards which permit any person accepting deposits from the public in an area where such transactions are routinely conducted in an insured depository institution to refer a customer who seeks to purchase any nondeposit 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 nondeposit 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) CUSTOMER GRIEVANCE PROCESS.—The Federal banking agencies shall jointly establish a customer complaint mechanism, for receiving and expeditiously addressing customer complaints alleging a violation of regulations issued under this section, which mechanism shall—

“(1) establish a group within each regulatory agency to receive such complaints;

“(2) develop procedures for investigating such complaints;

“(3) develop procedures for informing customers of rights they may have in connection with such complaints; and

“(4) develop procedures for addressing concerns raised by such complaints, as appropriate, including procedures for the recovery of losses to the extent appropriate.

“(f) EFFECT ON OTHER AUTHORITY.—

“(1) IN GENERAL.—No provision of this section shall be construed as granting, limiting, or otherwise affecting—

“(A) any authority of the Securities and Exchange Commission, any self-regulatory organization, the Municipal Securities Rulemaking Board, or the Secretary of the Treasury under any Federal securities law; or

“(B) except as provided in paragraph (2), any authority of any State insurance commissioner or other State authority under any State law.

“(2) COORDINATION WITH STATE LAW.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), regulations prescribed by a Federal banking agency under this section shall not apply to retail sales, solicitations, advertising, or offers of any nondeposit product by any insured depository institution or to any person who is engaged in such activities at an office of such institution or on behalf of the institution,

in a State where the State has in effect statutes, regulations, orders, or interpretations, that are inconsistent with or contrary to the regulations prescribed by the Federal banking agencies.

“(B) PREEMPTION.—If, with respect to any provision of the regulations prescribed under this section, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, and the Board of Directors of the Federal Deposit Insurance Corporation determine jointly that the protection afforded by such provision for consumers is greater than the protection provided by a comparable provision of the statutes, regulations, orders, or interpretations referred to in subparagraph (A) of any State, such provision of the regulations prescribed under this section shall supersede the comparable provision of such State statute, regulation, order, or interpretation.”.

**SEC. 177. DEPOSITORY INSTITUTION PRIVACY POLICIES.**

Section 6 of the Bank Holding Company Act of 1956 (as added by section 103 of this title) is amended by adding at the end the following new subsection:

“(h) DEPOSITORY INSTITUTION PRIVACY POLICIES.—

“(1) DISCLOSURE REQUIRED.—In the case of any insured depository institution which becomes affiliated under this section with a financial holding company, the privacy policy of such depository institution shall be clearly and conspicuously disclosed—

“(A) with respect to any person who becomes a customer of the depository institution any time after the depository institution becomes affiliated with such company, to such person at the time at which the business relationship between the customer and the institution is initiated; and

“(B) with respect to any person who already is a customer of the depository institution at the time the depository institution becomes affiliated with such company, to such person within a reasonable time after the affiliation is consummated.

“(2) INFORMATION TO BE INCLUDED.—The privacy policy of an insured depository institution which is disclosed pursuant to paragraph (1) shall include—

“(A) the policy of the institution with respect to disclosing customer information to third parties, other than agents of the depository institution, for marketing purposes; and

“(B) the disclosures required under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act with regard to the right of the customer, at any time, to direct that information referred to in such section not be shared with affiliates of the depository institution.

“(3) APPLICABILITY.—For purposes of section 10 of the Home Owners’ Loan Act, this subsection and subsection (i) shall apply with regard to a savings and loan holding company and any affiliate or insured depository institution subsidiary of such holding company to the same extent and in the same manner this subsection and subsection (i) apply with respect to a financial holding company, affiliate of a financial holding company, or insured depository institution subsidiary of a financial holding company.”.

**SEC. 178. CONFIDENTIALITY OF HEALTH AND MEDICAL INFORMATION.**

(a) IN GENERAL.—Section 6 of the Bank Holding Company Act of 1956 is amended by inserting after subsection (h) (as added by section 171 of this subtitle) the following new subsection:

“(i) CONFIDENTIALITY OF HEALTH AND MEDICAL INFORMATION.—

“(1) IN GENERAL.—If a company which underwrites or sells annuities contracts or contracts insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death (other than credit-related insurance) is or becomes a financial holding company or an affiliate of a financial holding company, such company shall maintain a practice of protecting the confidentiality of individually identifiable customer health and medical information and may disclose such information only—

“(A) with the consent, or at the direction, of the customer;

“(B) for insurance underwriting and reinsuring policies, account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims or defending any action relating to such claims, administering insurance benefits (including utilization review activities), providing information to the customer’s physician or other health care provider, participating in research projects, enabling the purchase, transfer, merger, or sale of any insurance-related business, or as otherwise required or specifically permitted by Federal or State law; or

- “(C) in connection with—
- “(i) the authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card or account number, or by other payment means;
  - “(ii) the transfer of receivables, accounts, or interest therein;
  - “(iii) the audit of the debit, credit, or other payment information;
  - “(iv) compliance with Federal, State, or local law;
  - “(v) compliance with a properly authorized civil, criminal, or regulatory investigation by Federal, State, or local authorities as governed by the requirements of this section; or
  - “(vi) fraud protection, risk control, resolving customer disputes or inquiries, communicating with the person to whom the information relates, or reporting to consumer reporting agencies.
- “(2) EFFECTIVE DATE; SUNSET.—
- “(A) EFFECTIVE DATE.—Except as provided in subparagraph (B), paragraph (1) shall take effect on February 1, 2000.
  - “(B) SUNSET.—Paragraph (1) shall not take effect if, or shall cease to be effective on and after the date on which, legislation is enacted that satisfies the requirements in section 264(c)(1) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 2033).
- “(3) CONSULTATION.—While paragraph (1) is in effect, the Board shall consult with the Secretary of Health and Human Services in connection with the administration of such paragraph.”.

**SEC. 179. FINANCIAL INFORMATION PRIVACY.**

(a) IN GENERAL.—The Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by adding at the end the following:

**“TITLE X—FINANCIAL INFORMATION PRIVACY  
PROTECTION**

**“SEC. 1001. SHORT TITLE; TABLE OF CONTENTS.**

“(a) SHORT TITLE.—This title may be cited as the ‘Financial Information Privacy Act of 1999’.

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

“TITLE X—FINANCIAL INFORMATION PRIVACY PROTECTION

- “Sec. 1001. Short title; table of contents.
- “Sec. 1002. Definitions.
- “Sec. 1003. Privacy protection for customer information of financial institutions.
- “Sec. 1004. Administrative enforcement.
- “Sec. 1005. Civil liability.
- “Sec. 1006. Criminal penalty.
- “Sec. 1007. Relation to State laws.
- “Sec. 1008. Agency guidance.

**“SEC. 1002. DEFINITIONS.**

“For purposes of this title, the following definitions shall apply:

“(1) CUSTOMER.—The term ‘customer’ means, with respect to a financial institution, any individual (or authorized representative of a person) to whom the financial institution provides a product or service, including that of acting as a fiduciary.

“(2) CUSTOMER INFORMATION OF A FINANCIAL INSTITUTION.—The term ‘customer information of a financial institution’ means any information maintained by a financial institution which is derived from the relationship between the financial institution and a customer of the financial institution and is identified with the customer.

“(3) DOCUMENT.—The term ‘document’ means any information in any form.

“(4) FINANCIAL INSTITUTION.—

“(A) IN GENERAL.—The term ‘financial institution’ means any institution engaged in the business of providing financial services to customers who maintain a credit, deposit, trust, or other financial account or relationship with the institution.

“(B) CERTAIN FINANCIAL INSTITUTIONS SPECIFICALLY INCLUDED.—The term ‘financial institution’ includes any depository institution (as defined in section 19(b)(1)(A) of the Federal Reserve Act), any loan or finance company, any credit card issuer or operator of a credit card system, and any con-

sumer reporting agency that compiles and maintains files on consumers on a nationwide basis (as defined in section 603(p)).

“(C) FURTHER DEFINITION BY REGULATION.—The Board of Governors of the Federal Reserve System may prescribe regulations further defining the term ‘financial institution’, in accordance with subparagraph (A), for purposes of this title.

**“SEC. 1003. PRIVACY PROTECTION FOR CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS.**

“(a) PROHIBITION ON OBTAINING CUSTOMER INFORMATION BY FALSE PRETENSES.—It shall be a violation of this title for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person—

“(1) by knowingly making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution with the intent to deceive the officer, employee, or agent into relying on that statement or representation for purposes of releasing the customer information;

“(2) by knowingly making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution with the intent to deceive the customer into relying on that statement or representation for purposes of releasing the customer information or authorizing the release of such information; or

“(3) by knowingly providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation, if the document is provided with the intent to deceive the officer, employee, or agent into relying on that document for purposes of releasing the customer information.

“(b) PROHIBITION ON SOLICITATION OF A PERSON TO OBTAIN CUSTOMER INFORMATION FROM A FINANCIAL INSTITUTION UNDER FALSE PRETENSES.—It shall be a violation of this title to request a person to obtain customer information of a financial institution, knowing or consciously avoiding knowing that the person will obtain, or attempt to obtain, the information from the institution in any manner described in subsection (a).

“(c) NON APPLICABILITY TO LAW ENFORCEMENT AGENCIES.—No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain customer information of a financial institution in connection with the performance of the official duties of the agency.

“(d) NON APPLICABILITY TO FINANCIAL INSTITUTIONS IN CERTAIN CASES.—No provision of this section shall be construed to prevent any financial institution, or any officer, employee, or agent of a financial institution, from obtaining customer information of such financial institution in the course of—

“(1) testing the security procedures or systems of such institution for maintaining the confidentiality of customer information;

“(2) investigating allegations of misconduct or negligence on the part of any officer, employee, or agent of the financial institution; or

“(3) recovering customer information of the financial institution which was obtained or received by another person in any manner described in subsection (a) or (b).

“(e) NON APPLICABILITY TO CERTAIN TYPES OF CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS.—No provision of this section shall be construed to prevent any person from obtaining customer information of a financial institution that otherwise is available as a public record filed pursuant to the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934).

“(f) NON APPLICABILITY TO COLLECTION OF CHILD SUPPORT JUDGMENTS.—No provision of this section shall be construed to prevent any State-licensed private investigator, or any officer, employee, or agent of such private investigator, from obtaining customer information of a financial institution, to the extent reasonably necessary to collect child support from a person adjudged to have been delinquent in his or her obligations by a Federal or State court, and to the extent that such action by a State-licensed private investigator is not unlawful under any other Federal or State law or regulation.

**“SEC. 1004. ADMINISTRATIVE ENFORCEMENT.**

“(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—Except as provided in subsection (b), compliance with this title shall be enforced by the Federal Trade Commission in the same manner and with the same power and authority as the Com-



mission has under the Fair Debt Collection Practices Act to enforce compliance with that title.

“(b) ENFORCEMENT BY OTHER AGENCIES IN CERTAIN CASES.—

“(1) IN GENERAL.—Compliance with this title shall be enforced under—

“(A) section 8 of the Federal Deposit Insurance Act, in the case of—

“(i) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

“(ii) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act, by the Board;

“(iii) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System and national non-member banks) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

“(iv) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Director of the Office of Thrift Supervision; and

“(B) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

“(2) VIOLATIONS OF THIS TITLE TREATED AS VIOLATIONS OF OTHER LAWS.—For the purpose of the exercise by any agency referred to in paragraph (1) of its powers under any Act referred to in that paragraph, a violation of this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (1), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with this title, any other authority conferred on such agency by law.

“(c) STATE ACTION FOR VIOLATIONS.—

“(1) AUTHORITY OF STATES.—In addition to such other remedies as are provided under State law, if the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this title, the State—

“(A) may bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction;

“(B) may bring an action on behalf of the residents of the State to recover damages of not more than \$1,000 for each violation; and

“(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

“(2) RIGHTS OF FEDERAL REGULATORS.—

“(A) PRIOR NOTICE.—The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission and, in the case of an action which involves a financial institution described in section 1004(b)(1), the agency referred to in such section with respect to such institution and provide the Federal Trade Commission and any such agency with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action.

“(B) RIGHT TO INTERVENE.—The Federal Trade Commission or an agency described in subsection (b) shall have the right—

“(i) to intervene in an action under paragraph (1);

“(ii) upon so intervening, to be heard on all matters arising therein;

“(iii) to remove the action to the appropriate United States district court; and

“(iv) to file petitions for appeal.

“(3) INVESTIGATORY POWERS.—For purposes of bringing any action under this subsection, no provision of this subsection shall be construed as preventing the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

“(4) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Federal Trade Commission or any agency described in subsection (b) has instituted a civil action for a violation of this title, no State may, during the pend-

ency of such action, bring an action under this section against any defendant named in the complaint of the Federal Trade Commission or such agency for any violation of this title that is alleged in that complaint.

**“SEC. 1005. CIVIL LIABILITY.**

“Any person, other than a financial institution, who fails to comply with any provision of this title with respect to any financial institution or any customer information of a financial institution shall be liable to such financial institution or the customer to whom such information relates in an amount equal to the sum of the amounts determined under each of the following paragraphs:

“(1) ACTUAL DAMAGES.—The greater of—

“(A) the amount of any actual damage sustained by the financial institution or customer as a result of such failure; or

“(B) any amount received by the person who failed to comply with this title, including an amount equal to the value of any non monetary consideration, as a result of the action which constitutes such failure.

“(2) ADDITIONAL DAMAGES.—Such additional amount as the court may allow.

“(3) ATTORNEYS’ FEES.—In the case of any successful action to enforce any liability under paragraph (1) or (2), the costs of the action, together with reasonable attorneys’ fees.

**“SEC. 1006. CRIMINAL PENALTY.**

“(a) IN GENERAL.—Whoever violates, or attempts to violate, section 1003 shall be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.

“(b) ENHANCED PENALTY FOR AGGRAVATED CASES.—Whoever violates, or attempts to violate, section 1003 while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both.

**“SEC. 1007. RELATION TO STATE LAWS.**

“(a) IN GENERAL.—This title shall not be construed as superseding, altering, or affecting the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that such statutes, regulations, orders, or interpretations are inconsistent with the provisions of this title, and then only to the extent of the inconsistency.

“(b) GREATER PROTECTION UNDER STATE LAW.—For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this title if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this title.

**“SEC. 1008. AGENCY GUIDANCE.**

“In furtherance of the objectives of this title, each Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act) shall issue advisories to depository institutions under the jurisdiction of the agency, in order to assist such depository institutions in deterring and detecting activities proscribed under section 1003.”

(b) REPORT TO CONGRESS ON FINANCIAL PRIVACY.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States, in consultation with the Federal Trade Commission, the Federal banking agencies, and other appropriate Federal law enforcement agencies, shall submit to the Congress a report on—

(1) the efficacy and adequacy of the remedies provided in the amendments made by subsection (a) in addressing attempts to obtain financial information by fraudulent means or by false pretenses; and

(2) any recommendations for additional legislative or regulatory action to address threats to the privacy of financial information created by attempts to obtain information by fraudulent means or false pretenses.

**SEC. 180. STUDY OF CURRENT FINANCIAL PRIVACY LAWS.**

(a) IN GENERAL.—The Federal banking agencies shall conduct a study of whether existing laws which regulate the sharing of customer information by insured depository institutions with affiliates of such institutions adequately protect the privacy rights of customers of such institutions.

(b) REPORT.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Federal banking agencies shall submit a report to the Congress containing the findings and conclusions of the agency with respect to the

study required under subsection (a), together with such recommendations for legislative or administrative action as the agencies may determine to be appropriate.

(c) DEFINITIONS.—For purposes of this section, the terms “affiliate”, “Federal banking agency”, and “insured depository institution” have the meanings given to such terms in section 3 of the Federal Deposit Insurance Act.

## Subtitle J—Direct Activities of Banks

### SEC. 181. AUTHORITY OF NATIONAL BANKS TO UNDERWRITE CERTAIN MUNICIPAL BONDS.

The paragraph designated the Seventh of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24(7)) is amended by adding at the end the following new sentence: “In addition to the provisions in this paragraph for dealing in, underwriting or purchasing securities, the limitations and restrictions contained in this paragraph as to dealing in, underwriting, and purchasing investment securities for the national bank’s own account shall not apply to obligations (including limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of section 142(b)(1) of the Internal Revenue Code of 1986) issued by or on behalf of any state or political subdivision of a state, including any municipal corporate instrumentality of 1 or more states, or any public agency or authority of any state or political subdivision of a state, if the national banking association is well capitalized (as defined in section 38 of the Federal Deposit Insurance Act).”.

## Subtitle K—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 which either fund is exposed to higher risks due to a regional concentration of members or an insufficient membership base relative to the size of member institutions.

(3) MERGER ISSUES.—Issues relating to the planned merger of the funds, including the cost of merging the funds and the manner in which such costs will be distributed among the members of the respective funds.

(b) REPORT REQUIRED.—

(1) IN GENERAL.—Before the end of the 9-month period beginning on the date of the enactment of this Act, the Board of Directors of the Federal Deposit Insurance Corporation shall submit a report to the Congress on the study conducted pursuant to subsection (a).

(2) CONTENTS OF REPORT.—The report shall include—

(A) detailed findings of the Board of Directors with regard to the issues described in subsection (a);

(B) a description of the plans developed by the Board of Directors for merging the Bank Insurance Fund and the Savings Association Insurance Fund, including an estimate of the amount of the cost of such merger which would be borne by Savings Association Insurance Fund members; and

(C) such recommendations for legislative and administrative action as the Board of Directors determines to be necessary or appropriate to preserve the safety and soundness of the deposit insurance funds, reduce the risks to such funds, provide for an efficient merger of such funds, and for other purposes.

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

(1) INSURED DEPOSITORY INSTITUTION.—The term “insured depository institution” has the same meaning as in section 3(c) of the Federal Deposit Insurance Act.

(2) BIF AND SAIF MEMBERS.—The terms “Bank Insurance Fund member” and “Savings Association Insurance Fund member” have the same meanings as in section 7(l) of the Federal Deposit Insurance Act.

**SEC. 187. ELIMINATION OF SAIF AND IF SPECIAL RESERVES.**

(a) SAIF SPECIAL RESERVES.—Section 11(a)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6)) is amended by striking subparagraph (L).

(b) IF SPECIAL RESERVES.—Section 2704 of the Deposit Insurance Funds Act of 1996 (12 U.S.C. 1821 note) is amended—

(1) by striking subsection (b); and

(2) in subsection (d)—

(A) by striking paragraph (4);

(B) in paragraph (6)(C)(i), by striking “(6) and (7)” and inserting “(5), (6), and (7)”; and

(C) in paragraph (6)(C), by striking clause (ii) and inserting the following: “(ii) by redesignating paragraph (8) as paragraph (5).”.

## Subtitle L—Miscellaneous Provisions

**SEC. 191. TERMINATION OF “KNOW YOUR CUSTOMER” REGULATIONS.**

(a) IN GENERAL.—None of the proposed regulations described in subsection (b) may be published in final form and, to the extent any such regulation has become effective before the date of the enactment of this Act, such regulation shall cease to be effective as of such date.

(b) PROPOSED REGULATIONS DESCRIBED.—The proposed regulations referred to in subsection (a) are as follows:

(1) The regulation proposed by the Comptroller of the Currency to amend part 21 of title 12 of the Code of Federal Regulations, as published in the Federal Register on December 7, 1998.

(2) The regulation proposed by the Director of the Office of Thrift Supervision to amend part 563 of title 12 of the Code of Federal Regulations, as published in the Federal Register on December 7, 1998.

(3) The regulation proposed by the Board of Governors of the Federal Reserve System to amend parts 208, 211, and 225 of title 12 of the Code of Federal Regulations, as published in the Federal Register on December 7, 1998.

(4) The regulation proposed by the Federal Deposit Insurance Corporation to amend part 326 of title 12 of the Code of Federal Regulations, as published in the Federal Register on December 7, 1998.

**SEC. 192. GENERAL ACCOUNTING OFFICE STUDY OF CONFLICTS OF INTEREST**

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study analyzing the conflict of interest faced by the Board of Governors of the Federal Reserve System between its role as a primary regulator of the banking industry and its role as a vendor of services to the banking and financial services industry.

(b) SPECIFIC CONFLICT REQUIRED TO BE ADDRESSED.—In the course of the study required under subsection (a), the Comptroller General shall address the conflict of interest faced by the Board of Governors of the Federal Reserve System between the role of the Board as a regulator of the payment system, generally, and its participation in the payment system as a competitor with private entities who are providing payment services.

(c) REPORT TO CONGRESS.—Before the end of the 1-year period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress containing the findings and conclusions of the Comptroller General in connection with the study required under this section, together with such recommendations for such legislative or administrative actions as the Comptroller General may determine to be appropriate, including recommendations for resolving any such conflict of interest.

**SEC. 193. CLARIFICATION OF SOURCE OF STRENGTH DOCTRINE.**

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

“(t) LIMITATION ON CLAIMS.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, no person shall have any claim against any Federal banking agency, in any capacity, or against any conservator or receiver appointed by any Federal banking agency (including the Corporation as conservator or receiver), arising from or relating

to the transfer of money, assets, or other property to a depository institution by a controlling stockholder or a depository institution holding company, or any affiliate or subsidiary of such depository institution holding company, if, at the time of the transfer, the depository institution—

“(A) is subject to a direction by a Federal banking agency to increase its capital; or

“(B) is undercapitalized, significantly undercapitalized, or critically undercapitalized as defined in section 38.

“(2) EXCEPTION.—No provision of this subsection shall be construed as limiting the right of a depository institution, a controlling stockholder, or a depository institution holding company to seek direct review of an order or directive issued by a Federal banking agency in accordance with the procedures provided by this Act, the National Bank Receivership Act, the Bank Conservation Act, or the Home Owner’s Loan Act.”.

**SEC. 194. STUDY OF COST OF ALL FEDERAL BANKING REGULATIONS.**

(a) IN GENERAL.—In accordance with the finding in the Board of Governors of the Federal Reserve System Staff Study Numbered 171 (April, 1998) that “Further research covering more and different types of regulations and regulatory requirements is clearly needed to make informed decisions about regulations”, the Board of Governors of the Federal Reserve System, in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act) shall conduct a comprehensive study of the total annual costs and benefits of all Federal financial regulations and regulatory requirements applicable to banks.

(b) REPORT REQUIRED.—Before the end of the 2-year period beginning on the date of the enactment of this Act, the Board of Governors of the Federal Reserve System shall submit a comprehensive report to the Congress containing the findings and conclusions of the Board in connection with the study required under subsection (a) and such recommendations for legislative and administrative action as the Board may determine to be appropriate.

**SEC. 195. STUDY AND REPORT ON ADAPTING EXISTING LEGISLATIVE REQUIREMENTS TO ONLINE BANKING AND LENDING.**

(a) STUDY REQUIRED.—The Federal banking agencies shall conduct a study of banking regulations regarding the delivery of financial services, including those regulations that may assume that there will be person-to-person contact during the course of a financial services transaction, and report their recommendations on adapting those existing requirements to online banking and lending.

(b) REPORT REQUIRED.—Within 1 year of the date of the enactment of this Act, the Federal banking agencies shall submit a report to the Congress on the findings and conclusions of the agencies with respect to the study required under subsection (a), together with such recommendations for legislative or regulatory action as the agencies may determine to be appropriate.

(c) DEFINITION.—For purposes of this section, the term “Federal banking agencies” means each Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act).

## Subtitle M—Effective Date of Title

**SEC. 196. EFFECTIVE DATE.**

Except with regard to any subtitle or other provision of this title for which a specific effective date is provided, this title and the amendments made by this title shall take effect at the end of the 270-day period beginning on the date of the enactment of this Act.

## TITLE II—FUNCTIONAL REGULATION

### Subtitle A—Brokers and Dealers

**SEC. 201. DEFINITION OF BROKER.**

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

“(4) BROKER.—

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

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

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

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

“(II) the broker or dealer performs brokerage services in an area that is clearly marked and, to the extent practicable, physically separate from the routine deposit-taking activities of the bank;

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

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

“(V) bank employees (other than associated persons of a broker or dealer who are qualified pursuant to the rules of a self-regulatory organization) perform only clerical or ministerial functions in connection with brokerage transactions including scheduling appointments with the associated persons of a broker or dealer, except that bank employees may forward customer funds or securities and may describe in general terms the range of investment vehicles available from the bank and the broker or dealer under the contractual or other arrangement;

“(VI) bank employees do not directly receive incentive compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the rules of a self-regulatory 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 in a customary custodian or trustee capacity; 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 are not insured by the Federal Deposit Insurance Corporation.

“(ii) TRUST ACTIVITIES.—The bank effects transactions in a trustee capacity, or effects transactions in a fiduciary capacity in its trust department or other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards, and (in either case)—

“(I) is primarily compensated for such transactions on the basis of an administration or annual fee (payable on a monthly, quarterly, or other basis), a percentage of assets under management, or a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers, or any combination of such fees, consistent with fiduciary principles and standards; and

“(II) does not publicly solicit brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities.

“(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in—

“(I) commercial paper, bankers acceptances, or commercial bills;

“(II) exempted securities;

“(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

“(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

“(iv) CERTAIN STOCK PURCHASE PLANS.—

“(I) EMPLOYEE BENEFIT PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of any pension, retirement, profit-sharing, bonus, thrift, savings, incentive, or other similar benefit plan for the employees of that issuer or its subsidiaries, if—

“(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan; and

“(bb) the bank’s compensation for such plan or program consists primarily of administration fees, or flat or capped per order processing fees, or both.

“(II) DIVIDEND REINVESTMENT PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of that issuer’s dividend reinvestment plan, if—

“(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan;

“(bb) the bank does not net shareholders’ buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission; and

“(cc) the bank’s compensation for such plan or program consists primarily of administration fees, or flat or capped per order processing fees, or both.

“(III) ISSUER PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of a plan or program for the purchase or sale of that issuer’s shares, if—

“(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan or program;

“(bb) the bank does not net shareholders’ buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission; and

“(cc) the bank’s compensation for such plan or program consists primarily of administration fees, or flat or capped per order processing fees, or both.

“(IV) PERMISSIBLE DELIVERY OF MATERIALS.—The exception to being considered a broker for a bank engaged in activities described in subclauses (I), (II), and (III) will not be affected by a bank’s delivery of written or electronic plan materials to employees of the issuer, shareholders of the issuer, or members of affinity groups of the issuer, so long as such materials are—

“(aa) comparable in scope or nature to that permitted by the Commission as of the date of the enactment of the Financial Services Act of 1999; or

“(bb) otherwise permitted by the Commission.

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

“(vi) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate of the bank (as defined in section 2 of the Bank Holding Company Act of 1956) other than—

“(I) a registered broker or dealer; or

“(II) an affiliate that is engaged in merchant banking, as described in section 6(c)(3)(H) of the Bank Holding Company Act of 1956.

“(vii) PRIVATE SECURITIES OFFERINGS.—The bank—

“(I) effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 or the rules and regulations issued thereunder;

“(II) at any time after the date that is 1 year after the date of enactment of the Financial Services Act of 1999, is not affiliated with a broker or dealer that has been registered for more than 1 year in accordance with this Act, and engages in dealing, market making, or underwriting activities, other than with respect to exempted securities; and

“(III) effects transactions exclusively with qualified investors.

“(viii) SAFEKEEPING AND CUSTODY ACTIVITIES.—

“(I) IN GENERAL.—The bank, as part of customary banking activities—

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

“(bb) facilitates the transfer of funds or securities, as a custodian or a clearing agency, in connection with the clearance and settlement of its customers’ transactions in securities;

“(cc) effects securities lending or borrowing transactions with or on behalf of customers as part of services provided to customers pursuant to division (aa) or (bb) or invests cash collateral pledged in connection with such transactions; or

“(dd) holds securities pledged by a customer to another person or securities subject to purchase or resale agreements involving a customer, or facilitates the pledging or transfer of such securities by book entry or as otherwise provided under applicable law.

“(II) EXCEPTION FOR CARRYING BROKER ACTIVITIES.—The exception to being considered a broker for a bank engaged in activities described in subclause (I) shall not apply if the bank, in connection with such activities, acts in the United States as a carrying broker (as such term, and different formulations thereof, are used in section 15(c)(3) and the rules and regulations thereunder) for any broker or dealer, unless such carrying broker activities are engaged in with respect to government securities (as defined in paragraph (42) of this subsection).

“(ix) BANKING PRODUCTS.—The bank effects transactions in traditional banking products, as defined in section 205(a) of the Financial Services Act of 1999.

“(x) DE MINIMIS EXCEPTION.—The bank effects, other than in transactions referred to in clauses (i) through (ix), not more than 500 transactions in securities in any calendar year, and such transactions are not effected by an employee of the bank who is also an employee of a broker or dealer.

“(C) BROKER DEALER EXECUTION.—The exception to being considered a broker for a bank engaged in activities described in clauses (ii), (iv), and (viii) of subparagraph (B) shall not apply if the activities described in such provisions result in the trade in the United States of any security that is a publicly traded security in the United States, unless—

“(i) the bank directs such trade to a registered broker or dealer for execution;

“(ii) the trade is a cross trade or other substantially similar trade of a security that—

“(I) is made by the bank or between the bank and an affiliated fiduciary; and

“(II) is not in contravention of fiduciary principles established under applicable Federal or State law; or

“(iii) the trade is conducted in some other manner permitted under rules, regulations, or orders as the Commission may prescribe or issue.

“(D) NO EFFECT OF BANK EXEMPTIONS ON OTHER COMMISSION AUTHORITY.—The exception to being considered a broker for a bank engaged in activities described in subparagraphs (B) and (C) shall not affect the authority of the Commission under any other provision of this Act or any other securities law.



“(E) FIDUCIARY CAPACITY.—For purposes of subparagraph (B)(ii), the term ‘fiduciary capacity’ means—

“(i) in the capacity as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gift to minor act, or as an investment adviser if the bank receives a fee for its investment advice;

“(ii) in any capacity in which the bank possesses investment discretion on behalf of another; or

“(iii) in any other similar capacity.

“(F) EXCEPTION FOR ENTITIES SUBJECT TO SECTION 15(e).—The term ‘broker’ does not include a bank that—

“(i) was, immediately prior to the enactment of the Financial Services Act of 1999, subject to section 15(e); and

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

**SEC. 202. DEFINITION OF DEALER.**

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

“(5) DEALER.—

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

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

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

“(i) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank buys or sells—

“(I) commercial paper, bankers acceptances, or commercial bills;

“(II) exempted securities;

“(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes of the United States, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

“(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

“(ii) INVESTMENT, TRUSTEE, AND FIDUCIARY TRANSACTIONS.—The bank buys or sells securities for investment purposes—

“(I) for the bank; or

“(II) for accounts for which the bank acts as a trustee or fiduciary.

“(iii) ASSET-BACKED TRANSACTIONS.—The bank engages in the issuance or sale to qualified investors, through a grantor trust or otherwise, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations predominantly originated by the bank, or a syndicate of banks of which the bank is a member, or an affiliate of any such bank other than a broker or dealer.

“(iv) BANKING PRODUCTS.—The bank buys or sells traditional banking products, as defined in section 205(a) of the Financial Services Act of 1999.”.

**SEC. 203. REGISTRATION FOR SALES OF PRIVATE SECURITIES OFFERINGS.**

Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3) is amended by inserting after subsection (i) the following new subsection:

“(j) REGISTRATION FOR SALES OF PRIVATE SECURITIES OFFERINGS.—A registered securities association shall create a limited qualification category for any associated person of a member who effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder, and shall deem qualified in such limited qualification category, without testing, any bank employee who, in the

six month period preceding the date of enactment of this Act, engaged in effecting such sales.”.

**SEC. 204. INFORMATION SHARING.**

Section 18 of the Federal Deposit Insurance Act is amended by adding at the end the following new subsection:

“(u) RECORDKEEPING REQUIREMENTS.—

“(1) REQUIREMENTS.—Each appropriate Federal banking agency, after consultation with and consideration of the views of the Commission, shall establish recordkeeping requirements for banks relying on exceptions contained in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934. Such recordkeeping requirements shall be sufficient to demonstrate compliance with the terms of such exceptions and be designed to facilitate compliance with such exceptions. Each appropriate Federal banking agency shall make any such information available to the Commission upon request.

“(2) DEFINITIONS.—As used in this subsection the term ‘Commission’ means the Securities and Exchange Commission.”.

**SEC. 205. DEFINITION AND TREATMENT OF BANKING PRODUCTS.**

(a) DEFINITION OF TRADITIONAL BANKING PRODUCT.—For purposes of paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4), (5)), the term “traditional banking product” means—

(1) a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank;

(2) a banker’s acceptance;

(3) a letter of credit issued or loan made by a bank;

(4) a debit account at a bank arising from a credit card or similar arrangement;

(5) a participation in a loan which the bank or an affiliate of the bank (other than a broker or dealer) funds, participates in, or owns that is sold—

(A) to qualified investors; or

(B) to other persons that—

(i) have the opportunity to review and assess any material information, including information regarding the borrower’s creditworthiness; and

(ii) based on such factors as financial sophistication, net worth, and knowledge and experience in financial matters, have the capability to evaluate the information available, as determined under generally applicable banking standards or guidelines; and

(6) any swap agreement (as defined in section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act) including credit and equity swaps, unless the appropriate Federal banking agency determines that credit and equity swaps shall not be included within the definition of such term for purposes of paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934, except that the appropriate Federal banking agency shall presume, absent a finding to the contrary, that equity swaps shall not be sold to any person other than a qualified investor (as defined in section 3(a)(54) of the Securities Act of 1934).

(b) AMENDMENT TO THE SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following new subsection:

“(i) TRANSACTIONS INVOLVING HYBRID PRODUCTS.—

“(1) COMMISSION AUTHORITY.—

“(A) IN GENERAL.—The Commission may, after consultation with the Board, determine, by regulation published in the Federal Register, that a bank that effects transactions in, or buys or sells, a new product should be subject to the registration requirements of this section.

“(B) LIMITATION.—The Commission may not impose the registration requirements of this section on any bank that effects transactions in, or buys or sells, a product under this subsection unless the Commission determines in the regulations described in subparagraph (A) that—

“(i) the subject product is a new product;

“(ii) the subject product is a security; and

“(iii) imposing the registration requirements of this section is necessary or appropriate in the public interest and for the protection of investors.

“(2) OBJECTION TO COMMISSION REGULATION.—

“(A) FILING OF PETITION FOR REVIEW.—The Board, or any aggrieved party, may obtain review of any final regulation described in paragraph (1) in the United States Court of Appeals for the District of Columbia Circuit by filing

in such court, not later than 60 days after the date of publication of the final regulation, a written petition requesting that the regulation be set aside.

“(B) TRANSMITTAL OF PETITION AND RECORD.—A copy of a petition described in subparagraph (A) shall be transmitted as soon as possible by the Clerk of the Court to an officer or employee of the Commission designated for that purpose. Upon receipt of the petition, the Commission shall file with the court the regulation under review and any documents referred to therein, and any other relevant materials prescribed by the court.

“(C) EXCLUSIVE JURISDICTION.—On the date of the filing of the petition under subparagraph (A), the court has jurisdiction, which becomes exclusive on the filing of the materials set forth in subparagraph (B), to affirm and enforce or to set aside the regulation at issue.

“(D) STANDARD OF REVIEW.—

“(i) IN GENERAL.—The court shall determine to affirm and enforce or set aside a regulation of the Commission under this subsection, based on the determination of the court as to whether the subject product—

“(I) is a new product, as defined in this subsection;

“(II) is a security; and

“(III) would be more appropriately regulated under the Federal securities laws or the Federal banking laws, giving equal deference to the views of the Commission and the Board.

“(ii) CONSIDERATIONS.—In making a determination under clause (i)(III), the court shall consider—

“(I) the nature of the subject new product;

“(II) the history, purpose, extent, and appropriateness of the regulation of the new product under the Federal securities laws; and

“(III) the history, purpose, extent, and appropriateness of the regulation of the new product under the Federal banking laws.

“(E) JUDICIAL STAY.—The filing of a petition by the Board or an aggrieved party pursuant to subparagraph (A) shall operate as a judicial stay, until the date on which the court makes a final determination under this paragraph, of—

“(i) any Commission requirement that a bank register as a broker or dealer under this section, because the bank engages in any transaction in, or buys or sells, the new product that is the subject of the petition; and

“(ii) any Commission action against a bank for a failure to comply with a requirement described in clause (i).

“(3) DEFINITIONS.—For purposes of this subsection—

“(A) the term ‘Board’ means the Board of Governors of the Federal Reserve System; and

“(B) the term ‘new product’ means a product or instrument offered or provided by a bank that—

“(i) was not subject to regulation by the Commission as a security under this Act before the date of enactment of this subsection; and

“(ii) is not a traditional banking product, as defined in paragraphs (1) through (6) of section 205(a) of the Financial Services Act of 1999.”

(c) CLASSIFICATION LIMITED.—Classification of a particular product or instrument as a traditional banking product pursuant to this section or the amendments made by this section shall not be construed as finding or implying that such product or instrument is or is not a security for any purpose under the securities laws, or is or is not an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.

(d) NO LIMITATION ON OTHER AUTHORITY TO CHALLENGE.—Nothing in this section or the amendments made by this section shall affect the right or authority of the Board of Governors of the Federal Reserve System, any appropriate Federal banking agency, or any interested party under any other provision of law to object to or seek judicial review as to whether a product or instrument is or is not appropriately classified as a traditional banking product under paragraphs (1) through (6) of section 205(a).

(e) INCORPORATED DEFINITIONS.—For purposes of this section—

(1) the term “appropriate Federal banking agency” has the same meaning as in section 3 of the Federal Deposit Insurance Act;

(2) the term “bank” has the same meaning as in section 3(a)(6) of the Securities Exchange Act of 1934;

(3) the term “Board” means the Board of Governors of the Federal Reserve System;

(4) the term “government securities” has the same meaning as in section 3(a)(42) of the Securities Exchange Act of 1934, and, for purposes of this subsection, commercial paper, bankers acceptances, and commercial bills shall be treated in the same manner as government securities; and

(5) the term “qualified investor” has the same meaning as in section 3(a)(54) of the Securities Exchange Act of 1934, as amended by this Act.

**SEC. 206. QUALIFIED INVESTOR DEFINED.**

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

“(54) QUALIFIED INVESTOR.—

“(A) DEFINITION.—For purposes of this title, the term ‘qualified investor’ means—

“(i) any investment company registered with the Commission under section 8 of the Investment Company Act of 1940;

“(ii) any issuer eligible for an exclusion from the definition of investment company pursuant to section 3(c)(7) of the Investment Company Act of 1940;

“(iii) any bank (as defined in paragraph (6) of this subsection), savings association (as defined in section 3(b) of the Federal Deposit Insurance Act), broker, dealer, insurance company (as defined in section 2(a)(13) of the Securities Act of 1933), or business development company (as defined in section 2(a)(48) of the Investment Company Act of 1940);

“(iv) any small business investment company licensed by the United States Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958;

“(v) any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, other than an individual retirement account, if the investment decisions are made by a plan fiduciary, as defined in section 3(21) of that Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser;

“(vi) any trust whose purchases of securities are directed by a person described in clauses (i) through (v) of this subparagraph;

“(vii) any market intermediary exempt under section 3(c)(2) of the Investment Company Act of 1940;

“(viii) any associated person of a broker or dealer other than a natural person;

“(ix) any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978);

“(x) the government of any foreign country;

“(xi) any corporation, company, or partnership that owns and invests on a discretionary basis, not less than \$10,000,000 in investments;

“(xii) any natural person who owns and invests on a discretionary basis, not less than \$10,000,000 in investments;

“(xiii) any government or political subdivision, agency, or instrumentality of a government who owns and invests on a discretionary basis not less than \$50,000,000 in investments; or

“(xiv) any multinational or supranational entity or any agency or instrumentality thereof.

“(B) ADDITIONAL AUTHORITY.—The Commission may, by rule or order, define a ‘qualified investor’ as any other person, taking into consideration such factors as the financial sophistication of the person, net worth, and knowledge and experience in financial matters.”.

**SEC. 207. GOVERNMENT SECURITIES DEFINED.**

Section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)) is amended—

(1) by striking “or” at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting “; or”; and

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

“(E) for purposes of section 15C as applied to a bank, a qualified Canadian government obligation as defined in section 5136 of the Revised Statutes.”.

**SEC. 208. EFFECTIVE DATE.**

This subtitle shall take effect at the end of the 270-day period beginning on the date of the enactment of this Act.

**SEC. 209. RULE OF CONSTRUCTION.**

Nothing in this Act shall supersede, affect, or otherwise limit the scope and applicability of the Commodity Exchange Act (7 U.S.C. 1 et seq.).

## Subtitle B—Bank Investment Company Activities

**SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY AFFILIATED BANK.**

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

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

(2) by striking “(f) Every registered” and inserting the following:

“(f) **CUSTODY OF SECURITIES.**—

“(1) Every registered”;

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

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

“(6) **SERVICES AS TRUSTEE OR CUSTODIAN.**—The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person, promoter, organizer, or sponsor of, or principal underwriter for, a registered management company may serve as custodian of that registered management company.”

(b) **UNIT INVESTMENT TRUSTS.**—Section 26 of the Investment Company Act of 1940 (15 U.S.C. 80a-26) is amended—

(1) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively; and

(2) by inserting after subsection (a) the following new subsection:

“(b) The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person of a principal underwriter for, or depositor of, a registered unit investment trust, may serve as trustee or custodian under subsection (a)(1).”

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

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

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

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

“(3) as custodian.”

**SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COMPANY.**

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

(1) by striking “or” at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting “; or”; and

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

“(4) to loan money or other property to such registered company, or to any company controlled by such registered company, in contravention of such rules, regulations, or orders as the Commission may prescribe or issue consistent with the protection of investors.”

**SEC. 213. INDEPENDENT DIRECTORS.**

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

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

“(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

“(I) the investment company;

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

“(III) any account over which the investment company’s investment adviser has brokerage placement discretion,”;

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

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

“(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

“(I) the investment company;

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

“(III) any account for which the investment company’s investment adviser has borrowing authority,”.

(b) CONFORMING AMENDMENT.—Section 2(a)(19)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)(B)) is amended—

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

“(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

“(I) any investment company for which the investment adviser or principal underwriter serves as such;

“(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

“(III) any account over which the investment adviser has brokerage placement discretion,”;

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

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

“(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

“(I) any investment company for which the investment adviser or principal underwriter serves as such;

“(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

“(III) any account for which the investment adviser has borrowing authority,”.

(c) AFFILIATION OF DIRECTORS.—Section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-10(c)) is amended by striking “bank, except” and inserting “bank (together with its affiliates and subsidiaries) or any one bank holding company (together with its affiliates and subsidiaries) (as such terms are defined in section 2 of the Bank Holding Company Act of 1956), except”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect at the end of the 1-year period beginning on the date of enactment of this subtitle.

**SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

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

“(a) MISREPRESENTATION OF GUARANTEES.—

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

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

“(B) has been insured by the Federal Deposit Insurance Corporation; or  
“(C) is guaranteed by or is otherwise an obligation of any bank or insured depository institution.

“(2) DISCLOSURES.—Any person issuing or selling the securities of a registered investment company that is advised by, or sold through, a bank shall prominently disclose that an investment in the company is not insured by the Federal Deposit Insurance Corporation or any other government agency. The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the manner in which the disclosure under this paragraph shall be provided.

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

**SEC. 215. DEFINITION OF BROKER UNDER THE INVESTMENT COMPANY ACT OF 1940.**

Section 2(a)(6) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(6)) is amended to read as follows:

“(6) The term ‘broker’ has the same meaning as in section 3 of the Securities Exchange Act of 1934, except that such term does not include any person solely by reason of the fact that such person is an underwriter for one or more investment companies.”.

**SEC. 216. DEFINITION OF DEALER UNDER THE INVESTMENT COMPANY ACT OF 1940.**

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

“(11) The term ‘dealer’ has the same meaning as in section 3 of the Securities Exchange Act of 1934, but does not include an insurance company or investment company.”.

**SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINITION OF INVESTMENT ADVISER FOR BANKS THAT ADVISE INVESTMENT COMPANIES.**

(a) INVESTMENT ADVISER.—Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is amended in subparagraph (A), by striking “investment company” and inserting “investment company, except that the term ‘investment adviser’ includes any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company, but if, in the case of a bank, such services or actions are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser”.

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

“(26) The term ‘separately identifiable department or division’ of a bank means a unit—

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

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

**SEC. 218. DEFINITION OF BROKER UNDER THE INVESTMENT ADVISERS ACT OF 1940.**

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

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

**SEC. 219. DEFINITION OF DEALER UNDER THE INVESTMENT ADVISERS ACT OF 1940.**

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

“(7) The term ‘dealer’ has the same meaning as in section 3 of the Securities Exchange Act of 1934, but does not include an insurance company or investment company.”.

**SEC. 220. INTERAGENCY CONSULTATION.**

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

**“SEC. 210A. CONSULTATION.**

**“(a) EXAMINATION RESULTS AND OTHER INFORMATION.—**

**“(1) The appropriate Federal banking agency shall provide the Commission upon request the results of any examination, reports, records, or other information to which such agency may have access with respect to the investment advisory activities—**

**“(A) of any—**

**“(i) bank holding company;**

**“(ii) bank; or**

**“(iii) separately identifiable department or division of a bank, that is registered under section 203 of this title; and**

**“(B) in the case of a bank holding company or bank that has a subsidiary or a separately identifiable department or division registered under that section, of such bank or bank holding company.**

**“(2) The Commission shall provide to the appropriate Federal banking agency upon request the results of any examination, reports, records, or other information with respect to the investment advisory activities of any bank holding company, bank, or separately identifiable department or division of a bank, any of which is registered under section 203 of this title.**

**“(b) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to such bank holding company, bank, or department or division under any provision of law.**

**“(c) DEFINITION.—For purposes of this section, the term ‘appropriate Federal banking agency’ has the same meaning as in section 3 of the Federal Deposit Insurance Act.”.**

**SEC. 221. TREATMENT OF BANK COMMON TRUST FUNDS.**

**(a) SECURITIES ACT OF 1933.—Section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended by striking “or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian” and inserting “or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term ‘investment company’ under section 3(c)(3) of the Investment Company Act of 1940”.**

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

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

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

**“(A) such fund is employed by the bank solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose;**

**“(B) except in connection with the ordinary advertising of the bank’s fiduciary services, interests in such fund are not—**

**“(i) advertised; or**

**“(ii) offered for sale to the general public; and**

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

**SEC. 222. INVESTMENT ADVISERS PROHIBITED FROM HAVING CONTROLLING INTEREST IN REGISTERED INVESTMENT COMPANY.**

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

**“(g) CONTROLLING INTEREST IN INVESTMENT COMPANY PROHIBITED.—**

**“(1) IN GENERAL.—If an investment adviser to a registered investment company, or an affiliated person of that investment adviser, holds a controlling in-**



terest in that registered investment company in a trustee or fiduciary capacity, such person shall—

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

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

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

“(I) the beneficial owners of the shares;

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

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

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

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

“(2) EXEMPTION.—Paragraph (1) shall not apply to any investment adviser to a registered investment company, or any affiliated person of that investment adviser, that holds shares of the investment company in a trustee or fiduciary capacity if that registered investment company consists solely of assets held in such capacities.

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

**SEC. 223. CONFORMING CHANGE IN DEFINITION.**

Section 2(a)(5) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(5)) is amended by striking “(A) a banking institution organized under the laws of the United States” and inserting “(A) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or a branch or agency of a foreign bank (as such terms are defined in section 1(b) of the International Banking Act of 1978)”.

**SEC. 224. CONFORMING AMENDMENT.**

Section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2) is amended by adding at the end the following new subsection:

“(c) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rule-making and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.”.

**SEC. 225. EFFECTIVE DATE.**

This subtitle shall take effect 90 days after the date of the enactment of this Act.

## **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.**

(a) AMENDMENT.—Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended—

- (1) by redesignating subsection (i) as subsection (k); and
- (2) by inserting after subsection (h) the following new subsections:

“(i) INVESTMENT BANK HOLDING COMPANIES.—

“(1) ELECTIVE SUPERVISION OF AN INVESTMENT BANK HOLDING COMPANY NOT HAVING A BANK OR SAVINGS ASSOCIATION AFFILIATE.—

“(A) IN GENERAL.—An investment bank holding company that is not—

“(i) an affiliate of an insured bank (other than an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956) or a savings association;

“(ii) a foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978; or

“(iii) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act, may elect to become supervised by filing with the Commission a notice of intention to become supervised, pursuant to subparagraph (B) of this paragraph. Any investment bank holding company filing such a notice shall be supervised in accordance with this section and comply with the rules promulgated by the Commission applicable to supervised investment bank holding companies.

“(B) NOTIFICATION OF STATUS AS A SUPERVISED INVESTMENT BANK HOLDING COMPANY.—An investment bank holding company that elects under subparagraph (A) to become supervised by the Commission shall file with the Commission a written notice of intention to become supervised by the Commission in such form and containing such information and documents concerning such investment bank holding company as the Commission, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of this section. Unless the Commission finds that such supervision is not necessary or appropriate in furtherance of the purposes of this section, such supervision shall become effective 45 days after the date of receipt of such written notice by the Commission, or within such shorter time period as the Commission, by rule or order, may determine.

“(2) ELECTION NOT TO BE SUPERVISED BY THE COMMISSION AS AN INVESTMENT BANK HOLDING COMPANY.—

“(A) VOLUNTARY WITHDRAWAL.—A supervised investment bank holding company that is supervised pursuant to paragraph (1) may, upon such terms and conditions as the Commission deems necessary or appropriate, elect not to be supervised by the Commission by filing a written notice of withdrawal from Commission supervision. Such notice shall not become effective until one year after receipt by the Commission, or such shorter or longer period as the Commission deems necessary or appropriate to ensure effective supervision of the material risks to the supervised investment bank holding company and to the affiliated broker or dealer, or to prevent evasion of the purposes of this section.

“(B) DISCONTINUATION OF COMMISSION SUPERVISION.—If the Commission finds that any supervised investment bank holding company that is supervised pursuant to paragraph (1) is no longer in existence or has ceased to be an investment bank holding company, or if the Commission finds that continued supervision of such a supervised investment bank holding company is not consistent with the purposes of this section, the Commission may discontinue the supervision pursuant to a rule or order, if any, promulgated by the Commission under this section.

“(3) SUPERVISION OF INVESTMENT BANK HOLDING COMPANIES.—

“(A) RECORDKEEPING AND REPORTING.—

“(i) IN GENERAL.—Every supervised investment bank holding company and each affiliate thereof shall make and keep for prescribed periods such records, furnish copies thereof, and make such reports, as the Commission may require by rule, in order to keep the Commission informed as to—

“(I) the company’s or affiliate’s activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions and relationships between any broker or dealer affiliate of the supervised investment bank holding company; and

“(II) the extent to which the company or affiliate has complied with the provisions of this Act and regulations prescribed and orders issued under this Act.

“(ii) FORM AND CONTENTS.—Such records and reports shall be prepared in such form and according to such specifications (including certification by an independent public accountant), as the Commission

may require and shall be provided promptly at any time upon request by the Commission. Such records and reports may include—

“(I) a balance sheet and income statement;

“(II) an assessment of the consolidated capital of the supervised investment bank holding company;

“(III) an independent auditor’s report attesting to the supervised investment bank holding company’s compliance with its internal risk management and internal control objectives; and

“(IV) reports concerning the extent to which the company or affiliate has complied with the provisions of this title and any regulations prescribed and orders issued under this title.

“(B) USE OF EXISTING REPORTS.—

“(i) IN GENERAL.—The Commission shall, to the fullest extent possible, accept reports in fulfillment of the requirements under this paragraph that the supervised investment bank holding company or its affiliates have been required to provide to another appropriate regulatory agency or self-regulatory organization.

“(ii) AVAILABILITY.—A supervised investment bank holding company or an affiliate of such company shall provide to the Commission, at the request of the Commission, any report referred to in clause (i).

“(C) EXAMINATION AUTHORITY.—

“(i) FOCUS OF EXAMINATION AUTHORITY.—The Commission may make examinations of any supervised investment bank holding company and any affiliate of such company in order to—

“(I) inform the Commission regarding—

“(aa) the nature of the operations and financial condition of the supervised investment bank holding company and its affiliates;

“(bb) the financial and operational risks within the supervised investment bank holding company that may affect any broker or dealer controlled by such supervised investment bank holding company; and

“(cc) the systems of the supervised investment bank holding company and its affiliates for monitoring and controlling those risks; and

“(II) monitor compliance with the provisions of this subsection, provisions governing transactions and relationships between any broker or dealer affiliated with the supervised investment bank holding company and any of the company’s other affiliates, and applicable provisions of subchapter II of chapter 53, title 31, United States Code (commonly referred to as the ‘Bank Secrecy Act’) and regulations thereunder.

“(ii) RESTRICTED FOCUS OF EXAMINATIONS.—The Commission shall limit the focus and scope of any examination of a supervised investment bank holding company to—

“(I) the company; and

“(II) any affiliate of the company that, because of its size, condition, or activities, the nature or size of the transactions between such affiliate and any affiliated broker or dealer, or the centralization of functions within the holding company system, could, in the discretion of the Commission, have a materially adverse effect on the operational or financial condition of the broker or dealer.

“(iii) DEFERENCE TO OTHER EXAMINATIONS.—For purposes of this subparagraph, the Commission shall, to the fullest extent possible, use the reports of examination of an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956 made by the appropriate regulatory agency, or of a licensed insurance company made by the appropriate State insurance regulator.

“(4) HOLDING COMPANY CAPITAL.—

“(A) AUTHORITY.—If the Commission finds that it is necessary to adequately supervise investment bank holding companies and their broker or dealer affiliates consistent with the purposes of this subsection, the Commission may adopt capital adequacy rules for supervised investment bank holding companies.

“(B) METHOD OF CALCULATION.—In developing rules under this paragraph:

“(i) DOUBLE LEVERAGE.—The Commission shall consider the use by the supervised investment bank holding company of debt and other liabilities to fund capital investments in affiliates.

“(ii) NO UNWEIGHTED CAPITAL RATIO.—The Commission shall not impose under this section a capital ratio that is not based on appropriate risk-weighting considerations.

“(iii) NO CAPITAL REQUIREMENT ON REGULATED ENTITIES.—The Commission shall not, by rule, regulation, guideline, order or otherwise, impose any capital adequacy provision on a nonbanking affiliate (other than a broker or dealer) that is in compliance with applicable capital requirements of another Federal regulatory authority or State insurance authority.

“(iv) APPROPRIATE EXCLUSIONS.—The Commission shall take full account of the applicable capital requirements of another Federal regulatory authority or State insurance regulator.

“(C) INTERNAL RISK MANAGEMENT MODELS.—The Commission may incorporate internal risk management models into its capital adequacy rules for supervised investment bank holding companies.

“(5) FUNCTIONAL REGULATION OF BANKING AND INSURANCE ACTIVITIES OF SUPERVISED INVESTMENT BANK HOLDING COMPANIES.—The Commission shall defer to—

“(A) the appropriate regulatory agency with regard to all interpretations of, and the enforcement of, applicable banking laws relating to the activities, conduct, ownership, and operations of banks, and institutions described in subparagraph (D), (F), and (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956; and

“(B) the appropriate State insurance regulators with regard to all interpretations of, and the enforcement of, applicable State insurance laws relating to the activities, conduct, and operations of insurance companies and insurance agents.

“(6) DEFINITIONS.—For purposes of this subsection and subsection (j)—

“(A) the term ‘investment bank holding company’ means—

“(i) any person other than a natural person that owns or controls one or more brokers or dealers; and

“(ii) the associated persons of the investment bank holding company;

“(B) the term ‘supervised investment bank holding company’ means any investment bank holding company that is supervised by the Commission pursuant to this subsection;

“(C) the terms ‘affiliate’, ‘bank’, ‘bank holding company’, ‘company’, ‘control’, and ‘savings association’ have the same meanings as in section 2 of the Bank Holding Company Act of 1956;

“(D) the term ‘insured bank’ has the same meaning as in section 3 of the Federal Deposit Insurance Act;

“(E) the term ‘foreign bank’ has the same meaning as in section 1(b)(7) of the International Banking Act of 1978; and

“(F) the terms ‘person associated with an investment bank holding company’ and ‘associated person of an investment bank holding company’ mean any person directly or indirectly controlling, controlled by, or under common control with, an investment bank holding company.

“(j) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under subsection (h) or (i) or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a broker or dealer, investment bank holding company, or any affiliate of an investment bank holding company. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraphs (A), (B), and (C) of subsection (i)(5) as confidential information for purposes of section 24(b)(2) of this title.”

(b) CONFORMING AMENDMENTS.—

(1) Section 3(a)(34) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)) is amended by adding at the end the following new subparagraph:

“(H) When used with respect to an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956—

“(i) the Comptroller of the Currency, in the case of a national bank or a bank in the District of Columbia examined by the Comptroller of the Currency;

“(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System or any corporation chartered under section 25A of the Federal Reserve Act;

“(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act; or

“(iv) the Commission in the case of all other such institutions.”.

(2) Section 1112(e) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412(e)) is amended—

(A) by striking “this title” and inserting “law”; and

(B) by inserting “, examination reports” after “financial records”.

## Subtitle D—Studies

### SEC. 241. STUDY OF METHODS TO INFORM INVESTORS AND CONSUMERS OF UNINSURED PRODUCTS.

Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress regarding the efficacy, costs, and benefits of requiring that any depository institution that accepts federally insured deposits and that, directly or through a contractual or other arrangement with a broker, dealer, or agent, buys from, sells to, or effects transactions for retail investors in securities or consumers of insurance to inform such investors and consumers through the use of a logo or seal that the security or insurance is not insured by the Federal Deposit Insurance Corporation.

### SEC. 242. STUDY OF LIMITATION ON FEES ASSOCIATED WITH ACQUIRING FINANCIAL PRODUCTS.

Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress regarding the impact of regulations limiting any commissions, fees, markups, or other costs incurred by customers in the acquisition of financial products.

## TITLE III—INSURANCE

### Subtitle A—State Regulation of Insurance

#### SEC. 301. STATE REGULATION OF THE BUSINESS OF INSURANCE.

The Act entitled “An Act to express the intent of the Congress with reference to the regulation of the business of insurance” and approved March 9, 1945 (15 U.S.C. 1011 et seq.), commonly referred to as the “McCarran-Ferguson Act” remains the law of the United States.

#### SEC. 302. MANDATORY INSURANCE LICENSING REQUIREMENTS.

No person or entity shall provide insurance in a State as principal or agent unless such person or entity is licensed as required by the appropriate insurance regulator of such State in accordance with the relevant State insurance law, subject to section 104.

#### SEC. 303. FUNCTIONAL REGULATION OF INSURANCE.

The insurance sales activity of any person or entity shall be functionally regulated by the States, subject to section 104.

#### SEC. 304. INSURANCE UNDERWRITING IN NATIONAL BANKS.

(a) IN GENERAL.—Except as provided in section 305, a national bank and the subsidiaries of a national bank may not provide insurance in a State as principal except that this prohibition shall not apply to authorized products.

(b) AUTHORIZED PRODUCTS.—For the purposes of this section, a product is authorized if—

(1) as of January 1, 1999, the Comptroller of the Currency had determined in writing that national banks may provide such product as principal, or national banks were in fact lawfully providing such product as principal;

(2) no court of relevant jurisdiction had, by final judgment, overturned a determination of the Comptroller of the Currency that national banks may provide such product as principal; and

(3) the product is not title insurance, or an annuity contract the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.

(c) DEFINITION.—For purposes of this section, the term “insurance” means—

(1) any product regulated as insurance as of January 1, 1999, in accordance with the relevant State insurance law, in the State in which the product is provided;

(2) any product first offered after January 1, 1999, which—

(A) a State insurance regulator determines shall be regulated as insurance in the State in which the product is provided because the product insures, guarantees, or indemnifies against liability, loss of life, loss of health, or loss through damage to or destruction of property, including, but not limited to, surety bonds, life insurance, health insurance, title insurance, and property and casualty insurance (such as private passenger or commercial automobile, homeowners, mortgage, commercial multiperil, general liability, professional liability, workers’ compensation, fire and allied lines, farm owners 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 financial contract, or a financial guaranty, it would qualify for treatment for losses incurred with respect to such product under section 832(b)(5) of the Internal Revenue Code of 1986, if the bank were subject to tax as an insurance company under section 831 of that Code; or

(3) any annuity contract, the income on which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.

**SEC. 305. TITLE INSURANCE ACTIVITIES OF NATIONAL BANKS AND THEIR AFFILIATES.**

(a) AUTHORITY.—Notwithstanding any other provision of this Act or any other law, no national bank, and no subsidiary of a national bank, may engage in any activity involving the underwriting of title insurance, other than title insurance underwriting activities in which such national bank or subsidiary was actively and lawfully engaged before the date of the enactment of this Act.

(b) INSURANCE AFFILIATE.—In the case of a national bank which has an affiliate which provides insurance as principal and is not a subsidiary of the bank, the national bank and any subsidiary of the national bank may not engage in any activity involving the underwriting of title insurance pursuant to subsection (a).

(c) INSURANCE SUBSIDIARY.—In the case of a national bank which has a subsidiary which provides insurance as principal and has no affiliate which provides insurance as principal and is not a subsidiary, the national bank may not engage in any activity involving the underwriting of title insurance pursuant to subsection (a).

(d) LIMITATION ON OTHER TITLE INSURANCE ACTIVITIES.—Notwithstanding any other provision of law, no national bank may engage, directly or indirectly, in any activity involving the sale of title insurance, other than title insurance sales activities in which such national bank was actively and lawfully engaged, directly or through a subsidiary, as of the date of the enactment of this Act.

(e) “AFFILIATE” AND “SUBSIDIARY” DEFINED.—For purposes of this section, the terms “affiliate” and “subsidiary” have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

(f) **RULE OF CONSTRUCTION.**—No provision of this Act or any other Federal law shall be construed as superseding or affecting a State law which was in effect before the date of the enactment of this Act and which prohibits title insurance from being offered, provided, or sold in such State, or from being underwritten with respect to real property in such State, by any person whatsoever.

**SEC. 306. EXPEDITED AND EQUALIZED DISPUTE RESOLUTION FOR FEDERAL REGULATORS.**

(a) **FILING IN COURT OF APPEALS.**—In the case of a regulatory conflict between a State insurance regulator and a Federal regulator as to whether any product is or is not insurance, as defined in section 304(c) of this Act, or whether a State statute, regulation, order, or interpretation regarding any insurance sales or solicitation activity is properly treated as preempted under Federal law, either regulator may seek expedited judicial review of such determination by the United States Court of Appeals for the circuit in which the State is located or in the United States Court of Appeals for the District of Columbia Circuit by filing a petition for review in such court.

(b) **EXPEDITED REVIEW.**—The United States Court of Appeals in which a petition for review is filed in accordance with subsection (a) shall complete all action on such petition, including rendering a judgment, before the end of the 60-day period beginning on the date on which such petition is filed, unless all parties to such proceeding agree to any extension of such period.

(c) **SUPREME COURT REVIEW.**—Any request for certiorari to the Supreme Court of the United States of any judgment of a United States Court of Appeals with respect to a petition for review under this section shall be filed with the Supreme Court of the United States as soon as practicable after such judgment is issued.

(d) **STATUTE OF LIMITATION.**—No action may be filed under this section challenging an order, ruling, determination, or other action of a Federal regulator or State insurance regulator after the later of—

(1) the end of the 12-month period beginning on the date on which the first public notice is made of such order, ruling, determination or other action in its final form; or

(2) the end of the 6-month period beginning on the date on which such order, ruling, determination, or other action takes effect.

(e) **STANDARD OF REVIEW.**—The court shall decide an action filed under this section based on its review on the merits of all questions presented under State and Federal law, including the nature of the product or activity and the history and purpose of its regulation under State and Federal law, without unequal deference.

**SEC. 307. CERTAIN STATE AFFILIATION LAWS PREEMPTED FOR INSURANCE COMPANIES AND AFFILIATES.**

Except as provided in section 104(a)(2), no State may, by law, regulation, order, interpretation, or otherwise—

(1) prevent or significantly interfere with the ability of any insurer, or any affiliate of an insurer (whether such affiliate is organized as a stock company, mutual holding company, or otherwise), to become a financial holding company or to acquire control of an insured depository institution;

(2) limit the amount of an insurer's assets that may be invested in the voting securities of an insured depository institution (or any company which controls such institution), except that the laws of an insurer's State of domicile may limit the amount of such investment to an amount that is not less than 5 percent of the insurer's admitted assets; or

(3) prevent, significantly interfere with, or have the authority to review, approve, or disapprove a plan of reorganization by which an insurer proposes to reorganize from mutual form to become a stock insurer (whether as a direct or indirect subsidiary of a mutual holding company or otherwise) unless such State is the State of domicile of the insurer.

## **Subtitle B—National Association of Registered Agents and Brokers**

**SEC. 321. STATE FLEXIBILITY IN MULTISTATE LICENSING REFORMS.**

(a) **IN GENERAL.**—The provisions of this subtitle shall take effect unless, not later than 3 years after the date of enactment of this Act, at least a majority of the States—

(1) have enacted uniform laws and regulations governing the licensure of individuals and entities authorized to sell and solicit the purchase of insurance within the State; or

- (2) have enacted reciprocity laws and regulations governing the licensure of nonresident individuals and entities authorized to sell and solicit insurance within those States.
- (b) UNIFORMITY REQUIRED.—States shall be deemed to have established the uniformity necessary to satisfy subsection (a)(1) if the States—
- (1) establish uniform criteria regarding the integrity, personal qualifications, education, training, and experience of licensed insurance producers, including the qualification and training of sales personnel in ascertaining the appropriateness of a particular insurance product for a prospective customer;
  - (2) establish uniform continuing education requirements for licensed insurance producers;
  - (3) establish uniform ethics course requirements for licensed insurance producers in conjunction with the continuing education requirements under paragraph (2);
  - (4) establish uniform criteria to ensure that an insurance product, including any annuity contract, sold to a consumer is suitable and appropriate for the consumer based on financial information disclosed by the consumer; and
  - (5) do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that counter-signature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.
- (c) RECIPROcity REQUIRED.—States shall be deemed to have established the reciprocity required to satisfy subsection (a)(2) if the following conditions are met:
- (1) ADMINISTRATIVE LICENSING PROCEDURES.—At least a majority of the States permit a producer that has a resident license for selling or soliciting the purchase of insurance in its home State to receive a license to sell or solicit the purchase of insurance in such majority of States as a nonresident to the same extent that such producer is permitted to sell or solicit the purchase of insurance in its State, if the producer's home State also awards such licenses on such a reciprocal basis, without satisfying any additional requirements other than submitting—
    - (A) a request for licensure;
    - (B) the application for licensure that the producer submitted to its home State;
    - (C) proof that the producer is licensed and in good standing in its home State; and
    - (D) the payment of any requisite fee to the appropriate authority.
  - (2) CONTINUING EDUCATION REQUIREMENTS.—A majority of the States accept an insurance producer's satisfaction of its home State's continuing education requirements for licensed insurance producers to satisfy the States' own continuing education requirements if the producer's home State also recognizes the satisfaction of continuing education requirements on such a reciprocal basis.
  - (3) NO LIMITING NONRESIDENT REQUIREMENTS.—A majority of the States do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that countersignature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.
  - (4) RECIPROCAL RECIPROcity.—Each of the States that satisfies paragraphs (1), (2), and (3) grants reciprocity to residents of all of the other States that satisfy such paragraphs.
- (d) DETERMINATION.—
- (1) NAIC DETERMINATION.—At the end of the 3-year period beginning on the date of the enactment of this Act, the National Association of Insurance Commissioners shall determine, in consultation with the insurance commissioners or chief insurance regulatory officials of the States, whether the uniformity or reciprocity required by subsections (b) and (c) has been achieved.
  - (2) JUDICIAL REVIEW.—The appropriate United States district court shall have exclusive jurisdiction over any challenge to the National Association of Insurance Commissioners' determination under this section and such court shall apply the standards set forth in section 706 of title 5, United States Code, when reviewing any such challenge.



(e) CONTINUED APPLICATION.—If, at any time, the uniformity or reciprocity required by subsections (b) and (c) no longer exists, the provisions of this subtitle shall take effect 2 years after the date on which such uniformity or reciprocity ceases to exist, unless the uniformity or reciprocity required by those provisions is satisfied before the expiration of that 2-year period.

(f) SAVINGS PROVISION.—No provision of this section shall be construed as requiring that any law, regulation, provision, or action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including countersignature laws, be altered or amended in order to satisfy the uniformity or reciprocity required by subsections (b) and (c), unless any such law, regulation, provision, or action is inconsistent with a specific requirement of any such subsection and then only to the extent of such inconsistency.

(g) UNIFORM LICENSING.—Nothing in this section shall be construed to require any State to adopt new or additional licensing requirements to achieve the uniformity necessary to satisfy subsection (a)(1).

**SEC. 322. NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS.**

(a) ESTABLISHMENT.—There is established the National Association of Registered Agents and Brokers (hereafter in this subtitle referred to as the “Association”).

(b) STATUS.—The Association shall—

- (1) be a nonprofit corporation;
- (2) have succession until dissolved by an Act of Congress;
- (3) not be an agent or instrumentality of the United States Government; and
- (4) except as otherwise provided in this Act, be subject to, and have all the powers conferred upon a nonprofit corporation by the District of Columbia Non-profit Corporation Act (D.C. Code, sec. 29y–1001 et seq.).

**SEC. 323. PURPOSE.**

The purpose of the Association shall be to provide a mechanism through which uniform licensing, appointment, continuing education, and other insurance producer sales qualification requirements and conditions can be adopted and applied on a multistate basis, while preserving the right of States to license, supervise, and discipline insurance producers and to prescribe and enforce laws and regulations with regard to insurance-related consumer protection and unfair trade practices.

**SEC. 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT.**

The Association shall be subject to the supervision and oversight of the National Association of Insurance Commissioners (hereafter in this subtitle referred to as the “NAIC”).

**SEC. 325. MEMBERSHIP.**

(a) ELIGIBILITY.—

(1) IN GENERAL.—Any State-licensed insurance producer shall be eligible to become a member in the Association.

(2) INELIGIBILITY FOR SUSPENSION OR REVOCATION OF LICENSE.—Notwithstanding paragraph (1), a State-licensed insurance producer shall not be eligible to become a member if a State insurance regulator has suspended or revoked such producer’s license in that State during the 3-year period preceding the date on which such producer applies for membership.

(3) RESUMPTION OF ELIGIBILITY.—Paragraph (2) shall cease to apply to any insurance producer if—

- (A) the State insurance regulator renews the license of such producer in the State in which the license was suspended or revoked; or
- (B) the suspension or revocation is subsequently overturned.

(b) AUTHORITY TO ESTABLISH MEMBERSHIP CRITERIA.—The Association shall have the authority to establish membership criteria that—

- (1) bear a reasonable relationship to the purposes for which the Association was established; and
- (2) do not unfairly limit the access of smaller agencies to the Association membership.

(c) ESTABLISHMENT OF CLASSES AND CATEGORIES.—

(1) CLASSES OF MEMBERSHIP.—The Association may establish separate classes of membership, with separate criteria, if the Association reasonably determines that performance of different duties requires different levels of education, training, or experience.

(2) CATEGORIES.—The Association may establish separate categories of membership for individuals and for other persons. The establishment of any such categories of membership shall be based either on the types of licensing cat-

egories that exist under State laws or on the aggregate amount of business handled by an insurance producer. No special categories of membership, and no distinct membership criteria, shall be established for members which are insured depository institutions or wholesale financial institutions or for their employees, agents, or affiliates.

(d) MEMBERSHIP CRITERIA.—

(1) IN GENERAL.—The Association may establish criteria for membership which shall include standards for integrity, personal qualifications, education, training, and experience.

(2) MINIMUM STANDARD.—In establishing criteria under paragraph (1), the Association shall consider the highest levels of insurance producer qualifications established under the licensing laws of the States.

(e) EFFECT OF MEMBERSHIP.—Membership in the Association shall entitle the member to licensure in each State for which the member pays the requisite fees, including licensing fees and, where applicable, bonding requirements, set by such State.

(f) ANNUAL RENEWAL.—Membership in the Association shall be renewed on an annual basis.

(g) CONTINUING EDUCATION.—The Association shall establish, as a condition of membership, continuing education requirements which shall be comparable to or greater than the continuing education requirements under the licensing laws of a majority of the States.

(h) SUSPENSION AND REVOCATION.—The Association may—

(1) inspect and examine the records and offices of the members of the Association to determine compliance with the criteria for membership established by the Association; and

(2) suspend or revoke the membership of an insurance producer if—

(A) the producer fails to meet the applicable membership criteria of the Association; or

(B) the producer has been subject to disciplinary action pursuant to a final adjudicatory proceeding under the jurisdiction of a State insurance regulator, and the Association concludes that retention of membership in the Association would not be in the public interest.

(i) OFFICE OF CONSUMER COMPLAINTS.—

(1) IN GENERAL.—The Association shall establish an office of consumer complaints that shall—

(A) receive and investigate complaints from both consumers and State insurance regulators related to members of the Association; and

(B) recommend to the Association any disciplinary actions that the office considers appropriate, to the extent that any such recommendation is not inconsistent with State law.

(2) RECORDS AND REFERRALS.—The office of consumer complaints of the Association shall—

(A) maintain records of all complaints received in accordance with paragraph (1) and make such records available to the NAIC and to each State insurance regulator for the State of residence of the consumer who filed the complaint; and

(B) refer, when appropriate, any such complaint to any appropriate State insurance regulator.

(3) TELEPHONE AND OTHER ACCESS.—The office of consumer complaints shall maintain a toll-free telephone number for the purpose of this subsection and, as practicable, other alternative means of communication with consumers, such as an Internet home page.

**SEC. 326. BOARD OF DIRECTORS.**

(a) ESTABLISHMENT.—There is established the board of directors of the Association (hereafter in this subtitle referred to as the “Board”) for the purpose of governing and supervising the activities of the Association and the members of the Association.

(b) POWERS.—The Board shall have such powers and authority as may be specified in the bylaws of the Association.

(c) COMPOSITION.—

(1) MEMBERS.—The Board shall be composed of 7 members appointed by the NAIC.

(2) REQUIREMENT.—At least 4 of the members of the Board shall have significant experience with the regulation of commercial lines of insurance in at least 1 of the 20 States in which the greatest total dollar amount of commercial-lines insurance is placed in the United States.

## (3) INITIAL BOARD MEMBERSHIP.—

(A) IN GENERAL.—If, by the end of the 2-year period beginning on the date of enactment of this Act, the NAIC has not appointed the initial 7 members of the Board of the Association, the initial Board shall consist of the 7 State insurance regulators of the 7 States with the greatest total dollar amount of commercial-lines insurance in place as of the end of such period.

(B) ALTERNATE COMPOSITION.—If any of the State insurance regulators described in subparagraph (A) declines to serve on the Board, the State insurance regulator with the next greatest total dollar amount of commercial-lines insurance in place, as determined by the NAIC as of the end of such period, shall serve as a member of the Board.

(C) INOPERABILITY.—If fewer than 7 State insurance regulators accept appointment to the Board, the Association shall be established without NAIC oversight pursuant to section 332.

(d) TERMS.—The term of each director shall, after the initial appointment of the members of the Board, be for 3 years, with  $\frac{1}{3}$  of the directors to be appointed each year.

(e) BOARD VACANCIES.—A vacancy on the Board shall be filled in the same manner as the original appointment of the initial Board for the remainder of the term of the vacating member.

(f) MEETINGS.—The Board shall meet at the call of the chairperson, or as otherwise provided by the bylaws of the Association.

**SEC. 327. OFFICERS.**

## (a) IN GENERAL.—

(1) POSITIONS.—The officers of the Association shall consist of a chairperson and a vice chairperson of the Board, a president, secretary, and treasurer of the Association, and such other officers and assistant officers as may be deemed necessary.

(2) MANNER OF SELECTION.—Each officer of the Board and the Association shall be elected or appointed at such time and in such manner and for such terms not exceeding 3 years as may be prescribed in the bylaws of the Association.

(b) CRITERIA FOR CHAIRPERSON.—Only individuals who are members of the NAIC shall be eligible to serve as the chairperson of the board of directors.

**SEC. 328. BYLAWS, RULES, AND DISCIPLINARY ACTION.**

## (a) ADOPTION AND AMENDMENT OF BYLAWS.—

(1) COPY REQUIRED TO BE FILED WITH THE NAIC.—The board of directors of the Association shall file with the NAIC a copy of the proposed bylaws or any proposed amendment to the bylaws, accompanied by a concise general statement of the basis and purpose of such proposal.

(2) EFFECTIVE DATE.—Except as provided in paragraph (3), any proposed bylaw or proposed amendment shall take effect—

(A) 30 days after the date of the filing of a copy with the NAIC;

(B) upon such later date as the Association may designate; or

(C) upon such earlier date as the NAIC may determine.

(3) DISAPPROVAL BY THE NAIC.—Notwithstanding paragraph (2), a proposed bylaw or amendment shall not take effect if, after public notice and opportunity to participate in a public hearing—

(A) the NAIC disapproves such proposal as being contrary to the public interest or contrary to the purposes of this subtitle and provides notice to the Association setting forth the reasons for such disapproval; or

(B) the NAIC finds that such proposal involves a matter of such significant public interest that public comment should be obtained, in which case it may, after notifying the Association 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 finds such longer period to be appropriate and sets forth its reasons for so finding, or as to which the Association consents, the NAIC shall—
- (A) by order approve such proposed rule or amendment; or
  - (B) institute proceedings to determine whether such proposed rule or amendment should be modified or disapproved.
- (3) NAIC PROCEEDINGS.—
- (A) IN GENERAL.—Proceedings instituted by the NAIC with respect to a proposed rule or amendment pursuant to paragraph (2) shall—
    - (i) include notice of the grounds for disapproval under consideration;
    - (ii) provide opportunity for hearing; and
    - (iii) be concluded not later than 180 days after the date of the Association's filing of such proposed rule or amendment.
  - (B) DISPOSITION OF PROPOSAL.—At the conclusion of any proceeding under subparagraph (A), the NAIC shall, by order, approve or disapprove the proposed rule or amendment.
  - (C) EXTENSION OF TIME FOR CONSIDERATION.—The NAIC may extend the time for concluding any proceeding under subparagraph (A) for—
    - (i) not more than 60 days if the NAIC finds good cause for such extension and sets forth its reasons for so finding; or
    - (ii) for such longer period as to which the Association consents.
- (4) STANDARDS FOR REVIEW.—
- (A) GROUNDS FOR APPROVAL.—The NAIC shall approve a proposed rule or amendment if the NAIC finds that the rule or amendment is in the public interest and is consistent with the purposes of this Act.
  - (B) APPROVAL BEFORE END OF NOTICE PERIOD.—The NAIC shall not approve any proposed rule before the end of the 30-day period beginning on the date on which the Association files proposed rules or amendments in accordance with paragraph (1), unless the NAIC finds good cause for so doing and sets forth the reasons for so finding.
- (5) ALTERNATE PROCEDURE.—
- (A) IN GENERAL.—Notwithstanding any provision of this subsection other than subparagraph (B), a proposed rule or amendment relating to the administration or organization of the Association shall take effect—
    - (i) upon the date of filing with the NAIC, if such proposed rule or amendment is designated by the Association as relating solely to matters which the NAIC, consistent with the public interest and the purposes of this subsection, determines by rule do not require the procedures set forth in this paragraph; or
    - (ii) upon such date as the NAIC shall for good cause determine.
  - (B) ABROGATION BY THE NAIC.—
    - (i) IN GENERAL.—At any time within 60 days after the date of filing of any proposed rule or amendment under subparagraph (A)(i) or clause (ii) of this subparagraph, the NAIC may repeal such rule or amendment and require that the rule or amendment be refiled and reviewed in accordance with this paragraph, if the NAIC finds that such action is necessary or appropriate in the public interest, for the protection of insurance producers or policyholders, or otherwise in furtherance of the purposes of this subtitle.
    - (ii) EFFECT OF RECONSIDERATION BY THE NAIC.—Any action of the NAIC pursuant to clause (i) shall—
      - (I) not affect the validity or force of a rule change during the period such rule or amendment was in effect; and
      - (II) not be considered to be a final action.
- (c) ACTION REQUIRED BY THE NAIC.—The NAIC may, in accordance with such rules as the NAIC determines to be necessary or appropriate to the public interest or to carry out the purposes of this subtitle, require the Association to adopt, amend, or repeal any bylaw, rule or amendment of the Association, whenever adopted.
- (d) DISCIPLINARY ACTION BY THE ASSOCIATION.—
- (1) SPECIFICATION OF CHARGES.—In any proceeding to determine whether membership shall be denied, suspended, revoked, or not renewed (hereafter in this section referred to as a "disciplinary action"), the Association shall bring specific charges, notify such member of such charges, give the member an opportunity to defend against the charges, and keep a record.
  - (2) SUPPORTING STATEMENT.—A determination to take disciplinary action shall be supported by a statement setting forth—

(A) any act or practice in which such member has been found to have been engaged;

(B) the specific provision of this subtitle, the rules or regulations under this subtitle, or the rules of the Association which any such act or practice is deemed to violate; and

(C) the sanction imposed and the reason for such sanction.

(e) NAIC REVIEW OF DISCIPLINARY ACTION.—

(1) NOTICE TO THE NAIC.—If the Association orders any disciplinary action, the Association shall promptly notify the NAIC of such action.

(2) REVIEW BY THE NAIC.—Any disciplinary action taken by the Association shall be subject to review by the NAIC—

(A) on the NAIC's own motion; or

(B) upon application by any person aggrieved by such action if such application is filed with the NAIC not more than 30 days after the later of—

(i) the date the notice was filed with the NAIC pursuant to paragraph (1); or

(ii) the date the notice of the disciplinary action was received by such aggrieved person.

(f) EFFECT OF REVIEW.—The filing of an application to the NAIC for review of a disciplinary action, or the institution of review by the NAIC on the NAIC's own motion, shall not operate as a stay of disciplinary action unless the NAIC otherwise orders.

(g) SCOPE OF REVIEW.—

(1) IN GENERAL.—In any proceeding to review such action, after notice and the opportunity for hearing, the NAIC shall—

(A) determine whether the action should be taken;

(B) affirm, modify, or rescind the disciplinary sanction; or

(C) remand to the Association for further proceedings.

(2) DISMISSAL OF REVIEW.—The NAIC may dismiss a proceeding to review disciplinary action if the NAIC finds that—

(A) the specific grounds on which the action is based exist in fact;

(B) the action is in accordance with applicable rules and regulations; and

(C) such rules and regulations are, and were, applied in a manner consistent with the purposes of this subtitle.

**SEC. 329. ASSESSMENTS.**

(a) INSURANCE PRODUCERS SUBJECT TO ASSESSMENT.—The Association may establish such application and membership fees as the Association finds necessary to cover the costs of its operations, including fees made reimbursable to the NAIC under subsection (b), except that, in setting such fees, the Association may not discriminate against smaller insurance producers.

(b) NAIC ASSESSMENTS.—The NAIC may assess the Association for any costs that the NAIC incurs under this subtitle.

**SEC. 330. FUNCTIONS OF THE NAIC.**

(a) ADMINISTRATIVE PROCEDURE.—Determinations of the NAIC, for purposes of making rules pursuant to section 328, shall be made after appropriate notice and opportunity for a hearing and for submission of views of interested persons.

(b) EXAMINATIONS AND REPORTS.—

(1) EXAMINATIONS.—The NAIC may make such examinations and inspections of the Association and require the Association to furnish to the NAIC such reports and records or copies thereof as the NAIC may consider necessary or appropriate in the public interest or to effectuate the purposes of this subtitle.

(2) REPORT BY ASSOCIATION.—As soon as practicable after the close of each fiscal year, the Association shall submit to the NAIC a written report regarding the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year. The NAIC shall transmit such report to the President and the Congress with such comment thereon as the NAIC determines to be appropriate.

**SEC. 331. LIABILITY OF THE ASSOCIATION AND THE DIRECTORS, OFFICERS, AND EMPLOYEES OF THE ASSOCIATION.**

(a) IN GENERAL.—The Association shall not be deemed to be an insurer or insurance producer within the meaning of any State law, rule, regulation, or order regulating or taxing insurers, insurance producers, or other entities engaged in the business of insurance, including provisions imposing premium taxes, regulating insurer

solvency or financial condition, establishing guaranty funds and levying assessments, or requiring claims settlement practices.

(b) **LIABILITY OF THE ASSOCIATION, ITS DIRECTORS, OFFICERS, AND EMPLOYEES.**—Neither the Association nor any of its directors, officers, or employees shall have any liability to any person for any action taken or omitted in good faith under or in connection with any matter subject to this subtitle.

**SEC. 332. ELIMINATION OF NAIC OVERSIGHT.**

(a) **IN GENERAL.**—The Association shall be established without NAIC oversight and the provisions set forth in section 324, subsections (a), (b), (c), and (e) of section 328, and sections 329(b) and 330 of this subtitle shall cease to be effective if, at the end of the 2-year period beginning on the date on which the provisions of this subtitle take effect pursuant to section 321—

(1) at least a majority of the States representing at least 50 percent of the total United States commercial-lines insurance premiums have not satisfied the uniformity or reciprocity requirements of subsections (a), (b), and (c) of section 321; and

(2) the NAIC has not approved the Association's bylaws as required by section 328 or is unable to operate or supervise the Association, or the Association is not conducting its activities as required under this Act.

(b) **BOARD APPOINTMENTS.**—If the repeals required by subsection (a) are implemented, the following shall apply:

(1) **GENERAL APPOINTMENT POWER.**—The President, with the advice and consent of the Senate, shall appoint the members of the Association's Board established under section 326 from lists of candidates recommended to the President by the National Association of Insurance Commissioners.

(2) **PROCEDURES FOR OBTAINING NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS APPOINTMENT RECOMMENDATIONS.**—

(A) **INITIAL DETERMINATION AND RECOMMENDATIONS.**—After the date on which the provisions of subsection (a) take effect, the NAIC shall, not later than 60 days thereafter, provide a list of recommended candidates to the President. If the NAIC fails to provide a list by that date, or if any list that is provided does not include at least 14 recommended candidates or comply with the requirements of section 326(c), the President shall, with the advice and consent of the Senate, make the requisite appointments without considering the views of the NAIC.

(B) **SUBSEQUENT APPOINTMENTS.**—After the initial appointments, the NAIC shall provide a list of at least 6 recommended candidates for the Board to the President by January 15 of each subsequent year. If the NAIC fails to provide a list by that date, or if any list that is provided does not include at least 6 recommended candidates or comply with the requirements of section 326(c), the President, with the advice and consent of the Senate, shall make the requisite appointments without considering the views of the NAIC.

(C) **PRESIDENTIAL OVERSIGHT.**—

(i) **REMOVAL.**—If the President determines that the Association is not acting in the interests of the public, the President may remove the entire existing Board for the remainder of the term to which the members of the Board were appointed and appoint, with the advice and consent of the Senate, new members to fill the vacancies on the Board for the remainder of such terms.

(ii) **SUSPENSION OF RULES OR ACTIONS.**—The President, or a person designated by the President for such purpose, may suspend the effectiveness of any rule, or prohibit any action, of the Association which the President or the designee determines is contrary to the public interest.

(c) **ANNUAL REPORT.**—As soon as practicable after the close of each fiscal year, the Association shall submit to the President and to the Congress a written report relative to the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year.

**SEC. 333. RELATIONSHIP TO STATE LAW.**

(a) **PREEMPTION OF STATE LAWS.**—State laws, regulations, provisions, or other actions purporting to regulate insurance producers shall be preempted as provided in subsection (b).

(b) **PROHIBITED ACTIONS.**—No State shall—

(1) impede the activities of, take any action against, or apply any provision of law or regulation to, any insurance producer because that insurance producer or any affiliate plans to become, has applied to become, or is a member of the Association;

(2) impose any requirement upon a member of the Association that it pay different fees to be licensed or otherwise qualified to do business in that State, including bonding requirements, based on its residency;

(3) impose any licensing, appointment, integrity, personal or corporate qualifications, education, training, experience, residency, or continuing education requirement upon a member of the Association that is different from the criteria for membership in the Association or renewal of such membership, except that counter-signature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section; or

(4) implement the procedures of such State's system of licensing or renewing the licenses of insurance producers in a manner different from the authority of the Association under section 325.

(c) SAVINGS PROVISION.—Except as provided in subsections (a) and (b), no provision of this section shall be construed as altering or affecting the continuing effectiveness of any law, regulation, provision, or other action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including countersignature laws.

**SEC. 334. COORDINATION WITH OTHER REGULATORS.**

(a) COORDINATION WITH STATE INSURANCE REGULATORS.—The Association shall have the authority to—

(1) issue uniform insurance producer applications and renewal applications that may be used to apply for the issuance or removal of State licenses, while preserving the ability of each State to impose such conditions on the issuance or renewal of a license as are consistent with section 333;

(2) establish a central clearinghouse through which members of the Association may apply for the issuance or renewal of licenses in multiple States; and

(3) establish or utilize a national database for the collection of regulatory information concerning the activities of insurance producers.

(b) COORDINATION WITH THE NATIONAL ASSOCIATION OF SECURITIES DEALERS.—The Association shall coordinate with the National Association of Securities Dealers in order to ease any administrative burdens that fall on persons that are members of both associations, consistent with the purposes of this subtitle and the Federal securities laws.

**SEC. 335. JUDICIAL REVIEW.**

(a) JURISDICTION.—The appropriate United States district court shall have exclusive jurisdiction over litigation involving the Association, including disputes between the Association and its members that arise under this subtitle. Suits brought in State court involving the Association shall be deemed to have arisen under Federal law and therefore be subject to jurisdiction in the appropriate United States district court.

(b) EXHAUSTION OF REMEDIES.—An aggrieved person shall be required to exhaust all available administrative remedies before the Association and the NAIC before it may seek judicial review of an Association decision.

(c) STANDARDS OF REVIEW.—The standards set forth in section 553 of title 5, United States Code, shall be applied whenever a rule or bylaw of the Association is under judicial review, and the standards set forth in section 554 of title 5, United States Code, shall be applied whenever a disciplinary action of the Association is judicially reviewed.

**SEC. 336. DEFINITIONS.**

For purposes of this subtitle, the following definitions shall apply:

(1) HOME STATE.—The term “home State” means the State in which the insurance producer maintains its principal place of residence and is licensed to act as an insurance producer.

(2) INSURANCE.—The term “insurance” means any product, other than title insurance, defined or regulated as insurance by the appropriate State insurance regulatory authority.

(3) INSURANCE PRODUCER.—The term “insurance producer” means any insurance agent or broker, surplus lines broker, insurance consultant, limited insurance representative, and any other person that solicits, negotiates, effects, pro-

cures, delivers, renews, continues or binds policies of insurance or offers advice, counsel, opinions or services related to insurance.

(4) STATE.—The term “State” includes any State, the District of Columbia, American Samoa, Guam, Puerto Rico, and the United States Virgin Islands.

(5) STATE LAW.—The term “State law” includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

## TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES

### SEC. 401. PROHIBITION ON NEW UNITARY SAVINGS AND LOAN HOLDING COMPANIES.

(a) IN GENERAL.—Section 10(c) of the Home Owners’ Loan Act (12 U.S.C. 1467a(c)) is amended by adding at the end the following new paragraph:

“(9) TERMINATION OF EXPANDED POWERS FOR NEW UNITARY HOLDING COMPANY.—

“(A) IN GENERAL.—Subject to subparagraph (B) and notwithstanding paragraph (3), no company may directly or indirectly, including through any merger, consolidation, or other type of business combination, acquire control of a savings association after March 4, 1999, unless the company is engaged, directly or indirectly (including through a subsidiary other than a savings association), only in activities that are permitted—

“(i) under paragraph (1)(C) or (2); or

“(ii) for financial holding companies under section 6(c) of the Bank Holding Company Act of 1956.

“(B) EXISTING UNITARY HOLDING COMPANIES AND THE SUCCESSORS TO SUCH COMPANIES.—Subparagraph (A) shall not apply, and paragraph (3) shall continue to apply, to a company (or any subsidiary of such company) that—

“(i) either—

“(I) acquired 1 or more savings associations described in paragraph (3) pursuant to applications at least 1 of which was filed on or before March 4, 1999; or

“(II) became a savings and loan holding company by acquiring control of the company described in subclause (I); and

“(ii) continues to control the savings association referred to in clause (i)(II) or the successor to any such savings association.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 10(c)(3) of the Home Owners’ Loan Act (12 U.S.C. 1467a(c)(3)) is amended by striking “Notwithstanding” and inserting “Except as provided in paragraph (9) and notwithstanding”.

(c) CONFORMING AMENDMENT.—Section 10(o)(5) of the Home Owners’ Loan Act (12 U.S.C. 1467a(o)(5)) is amended—

(1) in subparagraph (E), by striking “, except subparagraph (B)”; and

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

“(F) In the case of a mutual holding company which is a savings and loan holding company described in subsection (c)(3), engaging in the activities permitted for financial holding companies under section 6(c) of the Bank Holding Company Act of 1956.”.

### SEC. 402. RETENTION OF “FEDERAL” IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.

Section 2 of the Act entitled “An Act to enable national banking associations to increase their capital stock and to change their names or locations”, approved May 1, 1886 (12 U.S.C. 30), is amended by adding at the end the following new subsection:

“(d) RETENTION OF ‘FEDERAL’ IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.—

“(1) IN GENERAL.—Notwithstanding subsection (a) or any other provision of law, any depository institution the charter of which is converted from that of a Federal savings association to a national bank or a State bank after the date of the enactment of the Financial Services Act of 1999 may retain the term ‘Federal’ in the name of such institution if such depository institution remains an insured depository institution.



“(2) DEFINITIONS.—For purposes of this subsection, the terms ‘depository institution’, ‘insured depository institution’, ‘national bank’, and ‘State bank’ have the same meanings as in section 3 of the Federal Deposit Insurance Act.”.

#### PURPOSE AND SUMMARY

The purpose of H.R. 10, the “Financial Services Act of 1999” (the “Act”), as reported out of the Committee on Banking and Financial Services with an amendment, is to modernize the laws governing our nation’s financial system by establishing a comprehensive framework to permit affiliations between and among commercial banks, securities firms, insurance companies, and other financial services providers. The primary objective of allowing such affiliations is to enhance consumer choice in the financial services marketplace, level the playing field among providers of financial services, and increase competition. The only way to level the competitive playing field—particularly for small banks, insurance agents and regional securities firms—is through legislation empowering all financial services providers, as proposed in the Act. The Act contains a number of prudential safeguards designed to avoid risk to the federal deposit insurance funds and the payment system, enhance the safety and soundness of insured depository institutions, and protect consumers.

While there have been significant changes in the type of savings, investment, and financing products available and the companies offering those products during the last two decades because of technology, interest rate deregulation, and increased corporate and consumer access to the equity and credit markets, there has not been a corresponding change in the statutory framework governing the financial marketplace. This tension has forced the regulators, banks, securities firms, and insurance companies to creatively use laws that have not evolved as fast as the market. In this regard, the Act provides for a more rational regulatory system with similar rules being applied to all financial institutions. In addition, the objective of the legislation is to enhance the ability of financial institutions to meet the capital and credit needs of the communities in which they operate, including underserved communities and populations, as well as to make U.S. financial firms more competitive both domestically and internationally.

Due to technological and marketplace innovations, the traditional role of banks as financial intermediaries turning short term deposits into longer term loans is becoming obsolete. For example, corporate borrowers are relying less on traditional bank loans for their funding needs and more on securities issued directly in the marketplace. If Congress fails to enact legislation of this nature, American international preeminence in financial markets will come into question, American consumers will be denied the benefits which would flow from greater competition within the financial arena, and many rural areas and small communities will be precluded access to a broad range of financial products.

#### TITLE I

Title I establishes the statutory framework pursuant to which banks, insurance companies, securities firms, and other financial entities may affiliate. Recognizing that financial organizations may

desire to structure their operations in different ways, it authorizes most new activities and affiliations to take place for the most part in either a holding company structure or in an operating subsidiary controlled by a bank. To avoid regulatory arbitrage, Title I establishes a mechanism for coordination of the approval of new financial activities by the Board of Governors of the Federal Reserve and the Secretary of the Treasury. Allowing new affiliations also calls for a functional regulation model that is efficient and effective in permitting the new affiliations to work while at the same time allowing the regulators to insure both safety and soundness and consumer protections. Title I incorporates such a functional regulation approach to supervision.

To achieve the new affiliations, Title I repeals the outdated and artificial restrictions contained in the Glass-Steagall Act of 1933. Specifically, the Act repeals the prohibitions on banks affiliating with securities firms, permitting banks to be affiliated with securities firms engaged in securities underwriting and dealing without restriction and sponsoring and distributing mutual funds. The Act also repeals the Bank Holding Company Act prohibitions on insurance underwriting, allowing holding companies to underwrite and broker any type of insurance product. In addition to authorizing securities and insurance activities, Title I contains a list of other activities that are deemed to be financial. This list includes merchant banking and insurance company portfolio investment activities. These activities may be engaged in without seeking the prior approval of the Federal Reserve. The framework for permitting new financial affiliations incorporates functional regulation with the Federal Reserve serving as an umbrella regulator to oversee the new financial holding company structure. The Federal Reserve would be required to defer to the Securities and Exchange Commission ("SEC") and state regulators on interpretation of state securities law and to state insurance regulators on interpretation of state insurance law as it relates to functionally-regulated nonbank affiliates.

One of the significant issues faced by the Committee in constructing a new framework for the financial system is the appropriate role of the Secretary of the Treasury. As the Cabinet secretary who attends to the financial condition of the country, the Secretary of the Treasury clearly should play a role in the evolution of the financial system. In order to achieve the appropriate balance and to limit regulatory arbitrage that could occur as expanded affiliations are allowed to take place in either the holding company or in an operating subsidiary, Title I establishes a system of coordination between the Federal Reserve and the Secretary of the Treasury for the approval of new financial activities. Under this system, both the Federal Reserve and the Secretary of the Treasury may approve new financial activities for holding companies and national bank operating subsidiaries, respectively, after consultation with each other. Both agencies are given the right to propose to each other that an activity be deemed to be financial or to object to a determination that an activity is financial. Under this structure, an objection by one will have the effect of prohibiting the determination by the other.

Consideration was given to establishing a joint rulemaking process rather than a coordination mechanism. After review, it was determined that a joint rulemaking process would result in a significant restructuring of the current application procedures for authorizing new activities. For a joint rulemaking process to be effective, an application would have to be reviewed by both agencies and published for notice and comment. The effect would have been the addition of significant burden and delay to the applicant and the elimination of many of the benefits that have already been achieved in streamlining the application process. As such, the Committee believes that the same result can be achieved through a coordination process and that giving the agencies the ability to essentially veto a determination made by the other will cause the agencies to consult, achieving the goal of coordination without constructing a process that is burdensome and unnecessary. In addition to the above mentioned concerns, the Committee also noted the problems of precedent associated with joint rulemaking as it applies to the independent structure of the Federal Reserve Board. While the Treasury Department was open to proceeding with joint rulemaking, the Federal Reserve objected and the Committee gave deference to the Federal Reserve's concerns on this issue.

The Committee also addressed the difficult question of the appropriate location within a banking organization for the conduct of the newly authorized financial activities. In weighing this decision, the Committee considered many factors including the question of corporate flexibility and choice, safety and soundness, the potential for spreading any subsidy associated with the Federal safety net, and regulatory jurisdiction and arbitrage.

In testimony before the Committee, the Treasury Department and representatives from the banking industry advocated giving banking organizations the option of conducting activities in the structure that they find would best serve their customers. The Federal Deposit Insurance Corporation ("FDIC") also supported that choice. Chairman Tanoue, echoing testimony and statements from three of her predecessors, testified that:

The properly insulated operating subsidiary structure and the holding company structure can provide similar safety and soundness protection when the bank is sound and the affiliate/subsidiary is financially troubled. However, when it is the bank that is financially troubled and the affiliate/subsidiary is sound, the value of the subsidiary serves to directly reduce the exposure of the FDIC. If the firm is a nonbank subsidiary of the parent holding company, none of these values is available to insured bank subsidiaries, or to the FDIC if the bank should fail. Thus, the subsidiary structure can provide superior safety and soundness protection.<sup>1</sup>

The Federal Reserve Board, along with insurance companies and the Independent Bankers Association of America advocated prohibiting subsidiaries of banks from conducting newly authorized financial activities as principal. The Federal Reserve expressed concern

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<sup>1</sup> Testimony of Donna Tanoue, Chairman, FDIC, before the Committee on Banking and Financial Services, U.S. House of Representatives, February 12, 1999.

that a subsidiary would receive a subsidy because of its relationship with its parent bank and thereby derive a competitive advantage that could skew the financial markets. The Federal Reserve also voiced a concern that bank subsidiaries would pose risks to the safety and soundness of their parent banks in a way that affiliates would not.

The Treasury noted that there is disagreement among independent economists regarding whether such a subsidy exists and, in the event that a subsidy does exist, the limitations and restrictions on funds transfers between a parent bank and a subsidiary protect against such a subsidy transfer. Treasury also argued that if there is a net subsidy, a bank can currently pass it along to its holding company parent which can directly or indirectly benefit a nonbank affiliate.

With regard to the subsidy issue, the Committee concluded that while there was a degree of validity to the Federal Reserve's concerns, the issue was economically *de minimis*. Given the stipulation of Chairman Greenspan that the cost of regulation exceeded the cost of funds advantage a federally insured institution enjoys, and given the marginality of the case, if one exists, that the cost of funds for affiliates might be higher than costs for operating subsidiaries, the Committee opted for greater financial institution flexibility, with the understanding that it was important to ensure maintenance of the dual banking system rather than instill that system with disincentives for an institution to charter as a national bank.

The Committee decided to authorize national bank operating subsidiaries to engage in activities that are financial in nature, with the exception of insurance underwriting and real estate investment and development. The Committee's decision was based in part on the fact that there has been some limited experience with operating subsidiaries of banks. Subsidiaries of national banks can currently engage overseas in some of the same activities which this Act would permit domestically, such as securities underwriting and dealing. In addition, a number of states have authorized subsidiaries of state banks to engage as principal in a range of activities. The FDIC has had the primary federal supervisory role over these state bank operating subsidiaries and has not presented any evidence of a safety and soundness concern.

Because the experience of the regulators with operating subsidiaries has been relatively limited and to provide additional safety and soundness protection for a parent bank, the Act reported by the Committee contains restrictions on the funding of subsidiaries which the Treasury Department recommended. These restrictions are:

Every dollar of a bank's equity investment in a subsidiary would be deducted from the bank's capital—and the bank would have to remain well-capitalized even after the deduction. Thus, even if a subsidiary were to fail and the parent bank's equity investment in it were totally lost, the bank would remain well-capitalized.

A bank could not make an equity investment in a subsidiary that would exceed the amount that the bank could pay as a

dividend to its holding company without regulatory authorization.

The bank could lend no more to a subsidiary than to an affiliate: 10 percent of its capital to any one such subsidiary (or affiliate), 20 percent to all subsidiaries and affiliates combined. Also in keeping with current law, any such loans would have to be on an arm's length basis, subject to market terms, and fully secured by high quality collateral.

The Committee also adopted an amendment offered by Rep. Marge Roukema which clarifies that the required capital deduction includes an operating subsidiary's retained earnings in addition to the original equity investment in the operating subsidiary. This amendment reflects the current capital treatment required by the FDIC for state nonmember bank operating subsidiaries.

During committee consideration, concern was also expressed that banks would end up being liable for the debts of their subsidiaries—beyond their own investment and loans. The Office of the Comptroller of the Currency ("OCC") believes that this concern is addressed for the following reasons. First, as a general matter under corporate law, a shareholder is not liable for the debts of a company in which it owns stock. This is true regardless of whether the shareholder is an individual or another corporation. Second, it is unlikely that courts will "pierce the corporate veil" and require the bank to repay creditors of the subsidiary. According to the OCC, studies have shown that "piercing the corporate veil" is a rarely used exception to the rule of limited shareholder liability, and it generally applies only where there is some combination of fraud and a failure to follow corporate formalities, such that creditors thought they were dealing with the shareholder (i.e. the parent bank). In addition, the system of supervision and examination provides protection against inadequate capital and the disregard of corporate formalities that can lead to piercing the corporate veil. H.R. 10 expressly directs the agencies to ensure that corporate formalities are observed.

The Committee also notes that permitting operating subsidiaries to engage in financial activities is consistent with functional regulation. Although banks currently enjoy an exemption from broker-dealer registration, the exemption does not apply to subsidiaries of banks. Thus, subsidiaries of banks currently engaged in securities brokerage or underwriting activities are required to be registered broker-dealers supervised under the securities laws today. Under H.R. 10, a subsidiary engaging in any such securities activities would have to register as a broker-dealer and be subject to full SEC supervision and regulation. To leave no ambiguity on this point, section 124 of H.R. 10 specifies that the SEC has exactly the same authority over a subsidiary as over an affiliate.

Title I also includes several provisions that will preserve the jurisdiction of the Federal Reserve Board regardless of how banking organizations decided to structure themselves. First, any bank with more than \$10 billion in assets must establish or retain a holding company, with the Federal Reserve as umbrella supervisor. Second, regardless of the size of the bank, if a financial services firm that includes a bank wishes to underwrite insurance, it must do so through a holding company affiliate. Third, the Federal Reserve

has sole authority to issue all rules and interpretations regarding merchant banking, whether conducted in an affiliate or bank operating subsidiary. Fourth, the Federal Reserve will continue to be the exclusive regulator of overseas subsidiaries of national banks.

To facilitate the new affiliation rights provided for in this Act, Title I preempts state anti-affiliation laws which prevent banks from affiliating with financial companies. In addition, except with respect to insurance sales, the title preempts state laws related to activities authorized or permitted by the Act. This general preemption standard provides that no state may take any action to “prevent or restrict” the ability of an insured depository institution, or subsidiary or affiliate thereof, from engaging, directly or indirectly, either by itself or in conjunction with a subsidiary, affiliate, or any other entity or person, in an activity authorized by this Act.

Because of the long history of state regulation of insurance, Title I establishes separate preemption standards for determining whether state insurance sales, solicitation, and cross-marketing laws are to be preempted. First, the title distinguishes between those state laws enacted prior to September 3, 1998, and those enacted on or after that date. Second, the title lists thirteen kinds of state laws which are protected from this preemption framework. Third, the title mandates that the preemption analysis for state insurance sales, solicitation, and cross-marketing laws be conducted in accordance with the legal standards for preemption set forth in the U.S. Supreme Court decision in *Barnett Bank of Marion County N.A. v. Nelson*, 116 S.Ct. 1103 (1996). The Supreme Court held in the *Barnett* case that states cannot “prevent or significantly interfere” with a national bank from exercising insurance agency activities authorized under section 92 of the National Bank Act (12 U.S.C. 992). Finally, under Title I, state laws regulating the insurance activities of depository institutions or their subsidiaries or affiliates are preempted to the extent they unfairly discriminate against such depository institutions. The title lists four kinds of state laws which would constitute discrimination and therefore would be impermissible.

Under this preemption framework, Title I provides that state laws enacted prior to September 3, 1998, and not covered by the thirteen safe harbors, are preempted if they “prevent or significantly interfere” with the ability of a national bank or any other depository institution to engage directly or indirectly in any insurance sales, solicitation, or cross-marketing activities. The standard of review requiring “without unequal deference” established in title III for disputes between state insurance and federal regulators does not apply in determining whether these state laws are preempted. State laws on insurance sales enacted on or after September 3, 1998, and that are not also covered by the thirteen safe harbors, are subject to the *Barnett* preemption standard, the “without unequal deference” standard established in Title III, and the non-discrimination test established in Title I.

Title I creates a new type of uninsured bank charter known as a wholesale financial institution (“WFIs”) which can either be a national or state bank. WFIs may not receive initial deposits of \$100,000 or less (except on an incidental basis). WFIs would be subject to the Community Reinvestment Act.

Reforms are made in Title I to the Federal Home Loan Bank System ("FHLBS"). Specifically, Title I provides small community banks with greater access to FHLBank advances. Banks with less than \$500 million in assets are permitted to pledge small business, agriculture, rural development, and community development loans as collateral and use the advances to fund these types of loans. The 10% residential mortgage asset test for such banks to become members is waived. Title I makes FHLBank membership voluntary for federal savings associations. A new capital structure is established for the FHLBanks, including a leverage limit and a risk based capital requirement met with permanent capital. The FHLBanks' Resolution Funding Corporation obligation is converted from a stated dollar amount to a fixed percentage of each Bank's earnings. Significant management authority is transferred from the Federal Housing Finance Board to the FHLBanks.

Given that banks will now be able to affiliate with a wide array of financial services providers, the Committee was concerned that the financial and medical information of customers of these new financial holding companies be accorded certain basic privacy protections. To ensure that consumers are able to make informed choices among the options available to them in the new financial services marketplace, Title I requires insured depository institutions affiliated with financial or savings and loan holding companies to provide their customers with clear and conspicuous statements of their privacy policies, including the institution's policy on divulging customer information to third parties for marketing purposes, and the disclosures required under the Fair Credit Reporting Act relating to the customer's right to "opt out" of having certain information shared among affiliates of a holding company. In instances where an insurance company becomes part of a financial or savings and loan holding company, it may disclose individually identifiable health or medical information only with the consent, or at the direction of the customer, or in certain other narrowly-circumscribed circumstances.

The legislation also incorporates the provisions of the Financial Information Privacy Act, making it a crime to obtain or solicit account information from a financial institution or one of its customers under false pretenses. Similar legislation was approved by the Committee in the 105th Congress on a broad bipartisan basis, after oversight hearings examining the privacy threat posed by an emerging industry of so-called "information brokers," who employ fraud and other forms of deception to collect personal financial information from consumers and their financial services providers.

To address the concerns of many Committee members regarding the sharing of customer information among affiliates of a financial services holding company, this Title directs the federal banking agencies to study whether current laws governing such disclosures adequately protect consumers' privacy rights, and to report the agencies' findings to Congress within six months of the legislation's enactment.

## TITLE II

Title II of the Act amends the securities laws in order to provide for the functional regulation of bank securities activities. The Act

lists specific activities that banks are exempt from regulation as a broker-dealer under the Securities Exchange Act. Title II adopts a new procedure for determining whether a product is a banking product or a security that must be forced out of the bank. The SEC, after consultation with the Federal Reserve, may determine by regulation that a new product a bank offers is a security and as a result should be pushed out of the bank. The Federal Reserve, or an aggrieved party, would then be able to initiate an expedited judicial appeal process to challenge the SEC's rulemaking.

#### TITLE III

Title III ensures state functional regulation of insurance, addresses the insurance powers of national banks, and establishes a scheme for the creation of uniform, national licensing standards for insurance agents.

The precept of state functional regulation of insurance is ensured by restating that the McCarran-Ferguson Act remains the law of the United States, that no person can provide insurance in a state unless such person is licensed by the appropriate state insurance authority and that insurance activities of any entity or person are to be functionally regulated by the state. This precept of state regulation of insurance as it relates to depository institutions and their affiliates and subsidiaries, however, is subject to the state preemption provisions contained in Title I of the bill. In addition, Title III provides for the preemption of certain state laws which prevent or place certain limitations on affiliations between insurance underwriters and insured depository institutions.

With regard to national bank insurance powers, Title III clarifies that national banks cannot underwrite insurance within the bank, except for those products which national banks were authorized to engage in as of January 1, 1999. For purposes of this clarification, insurance is defined as those products regulated as insurance as of January 1, 1999 with new products after that date being treated as insurance if regulated as insurance, unless the product has a banking component and is not treated as insurance under the tax code.

The title also prohibits national banks from underwriting or selling title insurance unless the national bank or its subsidiary was actively and lawfully engaged in doing so before the date of enactment of this Act.

Because of the unique regulatory framework in which states primarily regulate the insurance activities of federally insured or federally chartered financial institutions, an expedited and equalized dispute resolution process is established for judicial review of disputes concerning depository institution insurance activities. This expedited dispute resolution process covers those conflicts arising between a state insurance regulator and a federal regulator on whether a product is insurance for purposes of the bank on insurance underwriting within a national bank and whether state laws regulating bank insurance agency activities should be preempted. The dispute resolution process is equalized by providing that the court in reviewing conflicts between state insurance and federal regulators shall decide the case "based on its review on the merits



of all questions presented under state and federal law . . . without unequal deference.”

Finally, Title III creates the National Association of Registered Agents and Brokers for the purpose of establishing uniform standards for qualification, training, and education of insurance agents. Meeting these standards would permit an agent to sell insurance in any state.

#### TITLE IV

Title IV is a continuation of efforts to provide a more uniform regulatory framework among federally insured depository institutions. In that regard, Title IV provides that a commercial entity cannot own or affiliate with a savings association after March 4, 1999, unless such commercial entity had owned (or applied to acquire) a savings association on or before March 4, 1999, or such commercial entity acquired control of an existing unitary saving and loan holding company.

#### LEGISLATIVE BACKGROUND AND HEARINGS

During the last ten years, the Committee has made a number of attempts to modernize the nation's banking laws. In 1988, the Senate passed S. 1886, the “Financial Modernization Act of 1988,” which would have repealed the provisions of the Glass-Steagall Act that prohibit affiliations between commercial banks and investment banks. That same year the House Banking Committee reported out H.R. 5094, the “Depository Institutions Act of 1988.” This legislation never reached the House floor. In 1991, in response to the Bush Administration's call for financial services reform, the Senate passed S. 534, the “Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991.” On the House side, the Committee voted to favorably report H.R. 6, the “Financial Institutions Safety and Consumer Choice Act of 1991,” which allowed banks to affiliate with securities firms, insurance companies, and commercial entities under a diversified holding company structure. H.R. 6, however, was defeated on the House floor on November 11, 1991 by a vote of 89–324. In 1995, the Committee reported out H.R. 1062, the “Financial Services Competitiveness Act of 1995” which allowed banks to affiliate with securities firms and engage in activities that are financial in nature. Later that year, as part of H.R. 1858, the “Financial Institutions Regulatory Relief Act of 1995,” the Committee approved an amendment to the Bank Holding Company Act allowing banks to affiliate with insurance companies. Neither H.R. 1062 nor the Bank Holding Company Act amendment was considered by the full House in the 104th Congress. In 1997, the Committee again reported financial services modernization legislation as provided for in H.R. 10, the “Financial Services Competitiveness Act of 1997.” The full House passed H.R. 10 on May 13, 1998. The legislation did not reach the Senate Floor. On January 6, 1999, Chairman Leach and other senior committee Republicans introduced H.R. 10, the “Financial Services Act of 1999.” This legislation built on the regulatory framework developed during consideration of H.R. 10 in the 105th Congress.

The full Committee held three days of hearings on H.R. 10. Testifying before the Committee on February 10, 1999, were David H. Komansky, Chairman and CEO, Merrill Lynch & Co., Inc.; Michael Patterson, Vice Chairman, J.P. Morgan & Co. and Chairman, Financial Services Council; John B. McCoy, President, and CEO, Aetna Inc.; Roy J. Zuckerberg, Limited Partner, Goldman, Sachs & Co. and Chairman, Securities Industry Association; R. Scott Jones, Chairman and CEO, Goodhue County National Bank, Red Wing, MN and President, American Bankers Association; William L. Quillan, Chairman, President and CEO, The City National Bank, Greeley, NE and President, Independent Bankers Association of America; E. Lee Beard, President and CEO, First Federal Bank, Hazelton, PA and Chair, America's Community Bankers; Matthew P. Fink, President, Investment Company Institute; Michael P. Smith, President, New York Bankers Association; William B. Greenwood, President, Lawton Insurance, Central City, KY and President, Independent Insurance Agents of America; Mark A. Pope, Vice President and Director of Federal Relations, Lincoln National Corporation, Fort Wayne, IN on behalf of the American Insurance Association; James J. Kilbride, Chairman and CEO, Morse, Payson & Noyes Insurance, Portland, ME and Chairman, Council of Insurance Agents and Brokers; W. Neal Menefee, President and CEO, Rockingham Group of Insurance Companies, on behalf of the National Association of Mutual Insurance Companies; and David O. Creighton, Sr., President, Bryton Companies, West Des Moines, IA, on behalf of the National Association of Professional Insurance Agents.

On February 11, 1999, the following testified before the Committee: Alan Greenspan, Chairman, Board of Governors of the Federal Reserve System; Thomas J. Curry, Commissioner of Banks for the Commonwealth of Massachusetts, on behalf of the Conference of State Bank Supervisors; Thomas E. Geyer, Commissioner of Ohio Division of Securities, on behalf of North American Securities Administrators Association; George Reider, Jr., Connecticut Commissioner of Insurance and President, National Association of Insurance Commissioners; Mary Griffin, Insurance Counsel, Consumers Union; Edmund Mierzwinski, Consumer Program Director, U.S. Public Interest Research Group; Ralph Nader, Consumer Advocate; John Taylor, President and CEO, National Community Reinvestment Coalition; and Debbie Goldberg, Reinvestment Specialist, Center for Community Change.

Testifying before the Committee on February 12, 1999, were: Robert E. Rubin, Secretary, Department of the Treasury; Donna Tanoue, Chairman, Federal Deposit Insurance Corporation; John D. Hawke, Jr., Comptroller, Office of the Comptroller of the Currency; Ellen Seidman, Director, Office of Thrift Supervision; and Harvey Goldschmid, General Counsel, Securities and Exchange Commission.

#### COMMITTEE CONSIDERATION AND VOTES

On March 4, 1999, the Committee met in open session to mark up H.R. 10. The Committee considered as original text for purposes of amendment a Committee Print. The Committee considered a

number of amendments to the print, accepting many of them by voice vote. Roll call votes were taken on the following amendments.

The Committee adopted by recorded vote an amendment offered by Rep. Lee to provide that a bank holding company would not be eligible to become a financial holding company if any of its affiliates engaging in insurance underwriting are in violation of the Fair Housing Act of settlement agreements under such act. The amendment passed 28–27.

## YEAS

Mr. Leach  
Mr. Bachus  
Mr. Campbell  
Mr. LaFalce  
Mr. Vento  
Mr. Frank  
Mr. Kanjorski  
Ms. Waters  
Mr. Sanders  
Mrs. Maloney  
Mr. Gutierrez  
Ms. Velazquez  
Mr. Watt  
Mr. Ackerman  
Mr. Bentsen  
Mr. Maloney  
Ms. Hooley  
Mr. Weygand  
Mr. Sherman  
Mr. Sandlin  
Ms. Lee  
Mr. Mascara  
Mr. Inslee  
Ms. Schakowsky  
Mr. Moore  
Mr. Gonzalez  
Mrs. Jones  
Mr. Capuano

## NAYS

Mrs. Roukema  
Mr. Bereuter  
Mr. Baker  
Mr. Lazio  
Mr. Castle  
Mr. King  
Mr. Royce  
Mr. Lucas  
Mr. Metcalf  
Mr. Ney  
Mr. Barr  
Dr. Paul  
Dr. Weldon  
Mr. Ryun (KS)  
Mr. Cook  
Mr. Riley  
Mr. LaTourette  
Mr. Manzullo  
Mr. Jones  
Mr. Ryan (WI)  
Mr. Ose  
Mr. Sweeney  
Mrs. Biggert  
Mr. Terry  
Mr. Green  
Mr. Toomey  
Mr. Goode

The Committee defeated an amendment offered by Rep. Waters to require insured depository institutions of a holding company to offer low-cost bank accounts as an eligibility requirement for becoming a financial holding company. The amendment failed by a vote of 27–31.

## YEAS

Mr. LaFalce  
Mr. Vento  
Mr. Frank  
Mr. Kanjorski  
Ms. Waters  
Mr. Sanders  
Mrs. Maloney  
Mr. Gutierrez  
Ms. Velazquez

## NAYS

Mr. Leach  
Mrs. Roukema  
Mr. Bereuter  
Mr. Baker  
Mr. Lazio  
Mr. Bachus  
Mr. Castle  
Mr. King  
Mr. Campbell

Mr. Watt	Mr. Royce
Mr. Ackerman	Mr. Lucas
Mr. Bentsen	Mr. Metcalf
Mr. Maloney	Mr. Ney
Ms. Hooley	Mr. Barr
Ms. Carson	Mrs. Kelly
Mr. Weygand	Dr. Paul
Mr. Sherman	Dr. Weldon
Mr. Sandlin	Mr. Ryun (KS)
Mr. Meeks	Mr. Cook
Ms. Lee	Mr. Riley
Mr. Mascara	Mr. LaTourette
Mr. Inslee	Mr. Manzullo
Ms. Schakowsky	Mr. Jones
Mr. Moore	Mr. Ryan (WI)
Mr. Gonzalez	Mr. Ose
Mrs. Jones	Mr. Sweeney
Mr. Capuano	Mrs. Biggert
	Mr. Terry
	Mr. Green
	Mr. Toomey
	Mr. Goode

The Committee defeated an amendment offered by Reps. Gutierrez, Waters, Sanders, and Capuano to require that all of the nonbank affiliates of the bank holding company are meeting community credit, capital, investment and consumer needs as a condition for becoming a financial holding company. The amendment failed by a roll call vote of 17–39.

YEAS	NAYS
Mr. LaFalce	Mr. Leach
Mr. Vento	Mrs. Roukema
Mr. Frank	Mr. Bereuter
Mr. Kanjorski	Mr. Baker
Ms. Waters	Mr. Lazio
Mr. Sanders	Mr. Bachus
Mr. Gutierrez	Mr. Castle
Ms. Velazquez	Mr. King
Mr. Watt	Mr. Campbell
Ms. Carson	Mr. Royce
Mr. Meeks	Mr. Lucas
Ms. Lee	Mr. Metcalf
Mr. Mascara	Mr. Ney
Ms. Schakowsky	Mr. Barr
Mr. Gonzalez	Mrs. Kelly
Mrs. Jones	Mr. Weldon
Mr. Capuano	Mr. Ryun (KS)
	Mr. Cook
	Mr. Riley
	Mr. Hill
	Mr. LaTourette
	Mr. Manzullo
	Mr. Jones
	Mr. Ryan (WI)

Mr. Ose  
 Mr. Sweeney  
 Mrs. Biggert  
 Mr. Terry  
 Mr. Green  
 Mr. Toomey  
 Mr. Ackerman  
 Mr. Bentsen  
 Mr. Maloney  
 Ms. Hooley  
 Mr. Sherman  
 Mr. Sandlin  
 Mr. Goode  
 Mr. Inslee  
 Mr. Moore

An amendment offered by Rep. Gutierrez to require banks and bank affiliates that underwrite or sell insurance to collect information on the race, gender, ethnicity, income level and census tract of the applicants and purchasers of their products was defeated by a vote of 22-28-1.

YEAS	NAYS	PRESENT
Mr. LaFalce	Mr. Leach	Mrs. Roukema
Mr. Frank	Mr. Bereuter	
Mr. Kanjorski	Mr. Baker	
Ms. Waters	Mr. Bachus	
Mr. Sanders	Mr. Castle	
Mr. Gutierrez	Mr. King	
Ms. Velazquez	Mr. Campbell	
Mr. Watt	Mr. Royce	
Mr. Bentsen	Mr. Lucas	
Mr. Maloney	Mr. Metcalf	
Ms. Hooley	Mr. Barr	
Ms. Carson	Mrs. Kelly	
Mr. Weygand	Dr. Paul	
Mr. Sherman	Dr. Weldon	
Mr. Sandlin	Mr. Ryun (KS)	
Mr. Meeks	Mr. Cook	
Ms. Lee	Mr. Riley	
Mr. Mascara	Mr. LaTourette	
Mr. Inslee	Mr. Manzullo	
Ms. Schakowsky	Mr. Jones	
Mr. Moore	Mr. Ryan (WI)	
Mr. Capuano	Mr. Ose	
	Mr. Sweeney	
	Mrs. Biggert	
	Mr. Terry	
	Mr. Green	
	Mr. Toomey	
	Mr. Goode.	

An amendment offered by Rep. Vento to require the Federal Reserve Board to hold public hearings in the case where a merger, acquisition, or consolidation involves one or more insured depository

institutions with assets in excess of \$1 billion was approved by the Committee 22–21.

YEAS	NAYS
Mr. Leach	Mr. Lazio
Mr. Bereuter	Mr. Castle
Mr. Bachus	Mr. King
Mr. Metcalf	Mr. Campbell
Mr. LaFalce	Mr. Royce
Mr. Vento	Mr. Lucas
Mr. Kaniorski	Mrs. Kelly
Ms. Waters	Dr. Weldon
Mr. Sanders	Mr. Ryun (KS)
Mrs. Maloney	Mr. Cook
Mr. Gutierrez	Mr. Riley
Mr. Watt	Mr. Manzullo
Mr. Maloney	Mr. Ryan (WI)
Ms. Carson	Mr. Ose
Mr. Meeks	Mr. Sweeney
Ms. Lee	Mrs. Biggert
Mr. Goode	Mr. Terry
Mr. Inslee	Mr. Green
Ms. Schakowsky	Mr. Toomey
Mr. Moore	Mr. Bentsen
Mrs. Jones	Mr. Sherman
Mr. Capuano	

On March 10, 1999, Reps. Sanders, Lee, and Schakowsky offered an amendment to prohibit the imposition of surcharges in connection with the use of automatic teller machines (ATMs). Reps. Leach, Roukema, and LaFalce offered a substitute to the amendment to require disclosures on ATMs that impose surcharges. The substitute amendment passed by a vote of 35–10.

YEAS	NAYS
Mr. Leach	Mrs. Biggert
Mr. McCollum	Mr. Frank
Mr. Bereuter	Mr. Kanjorski
Mr. Baker	Mr. Sanders
Mr. Lazio	Ms. Carson
Mr. Bachus	Ms. Lee
Mr. King	Mr. Mascara
Mr. Campbell	Ms. Schakowsky
Mr. Royce	Mrs. Jones
Mr. Metcalf	Mr. Capuano
Mrs. Kelly	
Dr. Paul	
Dr. Weldon	
Mr. Ryun (KS)	
Mr. Cook	
Mr. Riley	
Mr. Hill	
Mr. LaTaurette	
Mr. Manzullo	
Mr. Jones	

Mr. Ryan (WIS)  
 Mr. Ose  
 Mr. Terry  
 Mr. Green  
 Mr. Toomey  
 Mr. LaFalce  
 Mr. Vento  
 Mr. Watt  
 Mr. Maloney  
 Ms. Hooley  
 Mr. Sandlin  
 Mr. Goode  
 Mr. Inslee  
 Mr. Moore  
 Mr. Gonzalez

The Committee approved the Sanders, Lee, Schakowsky amendment, as amended, by a vote of 48–1.

YEAS

Mr. Leach  
 Mr. Bereuter  
 Mr. Baker  
 Mr. Lazio  
 Mr. Bachus  
 Mr. King  
 Mr. Royce  
 Mr. Metcalf  
 Mrs. Kelly  
 Dr. Paul  
 Dr. Weldon  
 Mr. Ryun (KS)  
 Mr. Cook  
 Mr. Riley  
 Mr. Hill  
 Mr. LaTourette  
 Mr. Manzullo  
 Mr. Jones  
 Mr. Ryan (WI)  
 Mr. Ose  
 Mr. Sweeney  
 Mr. Terry  
 Mr. Green  
 Mr. Toomey  
 Mr. LaFalce  
 Mr. Vento  
 Mr. Frank  
 Mr. Kanjorski  
 Mr. Sanders  
 Mrs. Maloney  
 Mr. Gutierrez  
 Ms. Velazquez  
 Mr. Watt  
 Mr. Ackerman  
 Mr. Bentsen

NAYS

Mrs. Biggert

Mr. Maloney  
 Ms. Hooley  
 Ms. Carson  
 Mr. Sandlin  
 Ms. Lee  
 Mr. Goode  
 Mr. Mascara  
 Mr. Inslee  
 Ms. Schakowsky  
 Mr. Moore  
 Mr. Gonzalez  
 Mrs. Jones  
 Mr. Capuano

Reps. Sweeney and Ryan offered an amendment to provide that the Federal Reserve may conduct public meetings in major metropolitan areas which may be affected by the merger, consolidation or acquisition of one or more insured depository institutions with assets of \$1 billion or more. This amendment amended Mr. Vento's amendment adopted March 4. The amendment passed 30–28.

YEAS	NAYS
Mr. McCollum	Mr. Leach
Mrs. Roukema	Mr. Bereuter
Mr. Baker	Mr. LaFalce
Mr. Lazio	Mr. Vento
Mr. Bachus	Mr. Frank
Mr. Castle	Mr. Kanjorski
Mr. King	Ms. Waters
Mr. Campbell	Mr. Sanders
Mr. Royce	Mrs. Maloney
Mr. Lucas	Mr. Gutierrez
Mr. Metcalf	Ms. Velazquez
Mr. Ney	Mr. Watt
Mrs. Kelly	Mr. Ackerman
Dr. Paul	Mr. Bentsen
Dr. Weldon	Mr. Maloney
Mr. Ryun (KS)	Ms. Hooley
Mr. Cook	Ms. Carson
Mr. Riley	Mr. Weygand
Mr. Hill	Mr. Sandlin
Mr. LaTourette	Mr. Meeks
Mr. Manzullo	Ms. Lee
Mr. Jones	Mr. Mascara
Mr. Ryan (WI)	Mr. Inslee
Mr. Ose	Ms. Schakowsky
Mr. Sweeney	Mr. Moore
Mrs. Biggert	Mr. Gonzalez
Mr. Terry	Mrs. Jones
Mr. Green	Mr. Capuano
Mr. Toomey	
Mr. Goode	

On March 11, 1999, Reps. Royce, LaFalce, McCollum, Frank, Metcalf, Jones, Gonzalez, Inslee, and Carson offered an amendment to strike Title IV of the Committee Print (which provided for a ban



on future commercial affiliations with thrifts), replacing it with language to allow a savings and loan holding company organized as a mutual holding company to engage in the same activities as bank holding companies. The amendment was defeated 29–30.

YEAS	NAYS
Mr. McCollum	Mr. Leach
Mr. Bachus	Mrs. Roukema
Mr. King	Mr. Bereuter
Mr. Royce	Mr. Baker
Mr. Metcalf	Mr. Castle
Mr. Ney	Mr. Campbell
Dr. Paul	Mr. Lucas
Dr. Weldon	Mr. Barr
Mr. Hill	Mrs. Kelly
Mr. LaTourette	Mr. Ryun (KS)
Mr. Jones	Mr. Cook
Mr. Ose	Mr. Riley
Mr. Sweeney	Mr. Manzullo
Mr. LaFalce	Mr. Ryan (WI)
Mr. Frank	Mrs. Biggert
Mr. Kanjorski	Mr. Terry
Ms. Waters	Mr. Green
Mr. Gutierrez	Mr. Toomey
Mr. Ackerman	Mr. Vento
Mr. Bentsen	Mr. Sanders
Ms. Carson	Mrs. Maloney
Mr. Weygand	Ms. Velázquez
Mr. Meeks	Mr. Watt
Ms. Lee	Mr. Maloney
Mr. Mascara	Ms. Hooley
Mr. Inslee	Mr. Sherman
Mr. Gonzalez	Mr. Sandlin
Mrs. Jones	Mrs. Goode
Mr. Capuano	Ms. Schakowsky
	Mr. Moore

Rep. Bentsen offered an amendment to permit the transferability of grandfathered unitary thrifts to nonfinancial companies. Rep. Baker offered an amendment to the amendment to exempt the first \$100,000,000 of the Bank Insurance Fund (“BIF”) assessable deposits of any BIF member with consolidated total assets of \$500 million or less from the FICO assessment. The Baker amendment to the Bentsen amendment failed 22–31.

YEAS	NAYS
Mr. Leach	Mrs. Roukema
Mr. McCollum	Mr. King
Mr. Baker	Mr. Royce
Mr. Lazio	Mr. Ney
Mr. Bachus	Mr. Barr
Mr. Campbell	Mr. Manzullo
Mr. Lucas	Mr. Ryan (WI)
Mr. Metcalf	Mr. Ose
Mrs. Kelly	Mrs. Biggert

Mr. Paul  
 Dr. Weldon  
 Mr. Ryun (KS)  
 Mr. Cook  
 Mr. Riley  
 Mr. Hill  
 Mr. LaTourette  
 Mr. Jones  
 Mr. Terry  
 Mr. LaFalce  
 Mr. Watt  
 Mr. Bentsen  
 Mr. Goode

Mr. Green  
 Mr. Toomey  
 Mr. Vento  
 Ms. Waters  
 Mrs. Maloney  
 Ms. Velázquez  
 Mr. Ackerman  
 Mr. Maloney  
 Ms. Hooley  
 Ms. Carson  
 Mr. Weygand  
 Mr. Sherman  
 Mr. Sandlin  
 Mr. Meeks  
 Ms. Lee  
 Mr. Mascara  
 Mr. Inslee  
 Ms. Schakowsky  
 Mr. Moore  
 Mr. Gonzalez  
 Mrs. Jones  
 Mr. Capuano

Rep. Bentsen's amendment was approved by a vote of 29–26.

## YEAS

Mr. McCollum  
 Mr. Baker  
 Mr. Bachus  
 Mr. King  
 Mr. Royce  
 Mr. Metcalf  
 Mr. Ney  
 Dr. Paul  
 Dr. Weldon  
 Mr. Hill  
 Mr. LaTourette  
 Mr. Jones  
 Mr. Ryan (WI)  
 Mr. Ose  
 Mr. Sweeney  
 Mr. Green  
 Mr. LaFalce  
 Mr. Frank  
 Ms. Waters  
 Mrs. Maloney  
 Mr. Ackerman  
 Mr. Bentsen  
 Ms. Hooley  
 Mr. Meeks  
 Ms. Lee  
 Mr. Mascara  
 Mr. Inslee  
 Mr. Gonzalez  
 Mrs. Jones

## NAYS

Mr. Leach  
 Mrs. Roukema  
 Mr. Lazio  
 Mr. Castle  
 Mr. Campbell  
 Mr. Lucas  
 Mr. Barr  
 Mrs. Kelly  
 Mr. Cook  
 Mr. Riley  
 Mr. Manzullo  
 Mrs. Biggert  
 Mr. Terry  
 Mr. Toomey  
 Mr. Vento  
 Mr. Sanders  
 Ms. Velázquez  
 Mr. Watt  
 Mr. Maloney  
 Ms. Carson  
 Mr. Weygand  
 Mr. Sherman  
 Mr. Sandlin  
 Mr. Goode  
 Ms. Schakowsky  
 Mr. Moore

Rep. Inslee offered an amendment to restrict the sharing of a customer's information among affiliates of a financial holding company and to restrict the sharing of a customer's health and medical information generally. Reps. Leach and Vento offered a substitute to the amendment to require depository institutions of financial holding companies to disclose their privacy policies, to require insurance companies which affiliate with a bank to keep confidential customer health and medical information, and to prohibit the obtaining of financial information from financial institutions by false means. Rep. Ose offered an amendment to Mr. Leach's substitute to strike all parts except for the study, which was defeated by a vote of 25–31.

## YEAS

Mr. McCollum  
 Mr. Baker  
 Mr. Bachus  
 Mr. King  
 Mr. Royce  
 Mr. Lucas  
 Mr. Ney  
 Mr. Barr  
 Mrs. Kelly  
 Dr. Paul  
 Dr. Weldon  
 Mr. Cook  
 Mr. Riley  
 Mr. Hill  
 Mr. LaTourette  
 Mr. Manzullo  
 Mr. Jones  
 Mr. Ryan (WI)  
 Mr. Ose  
 Mr. Sweeney  
 Mr. Terry  
 Mr. Green  
 Mr. Toomey  
 Mr. Watt  
 Mr. Goode

## NAYS

Mr. Leach  
 Mrs. Roukema  
 Mr. Bereuter  
 Mr. Lazio  
 Mr. Castle  
 Mr. Campbell  
 Mrs. Biggert  
 Mr. LaFalce  
 Mr. Vento  
 Mr. Kanjorski  
 Ms. Waters  
 Mr. Sanders  
 Mrs. Maloney  
 Mr. Gutierrez  
 Ms. Velázquez  
 Mr. Ackerman  
 Mr. Bentsen  
 Mr. Maloney  
 Ms. Carson  
 Mr. Weygand  
 Mr. Sherman  
 Mr. Sandlin  
 Mr. Meeks  
 Ms. Lee  
 Mr. Mascara  
 Mr. Inslee  
 Ms. Schakowsky  
 Mr. Moore  
 Mr. Gonzalez  
 Mrs. Jones  
 Mr. Capuano

The Committee approved the Leach substitute by a vote of 34–22.

## YEAS

Mr. Leach  
 Mr. McCollum  
 Mr. Bereuter  
 Mr. Baker  
 Mr. Lazio

## NAYS

Mrs. Roukema  
 Dr. Paul  
 Mr. LaFalce  
 Mr. Kanjorski  
 Ms. Waters

Mr. Bachus	Mr. Sanders
Mr. Castle	Mr. Gutierrez
Mr. King	Ms. Velázquez
Mr. Campbell	Mr. Watt
Mr. Royce	Mr. Ackerman
Mr. Lucas	Ms. Carson
Mr. Ney	Mr. Weygand
Mr. Barr	Mr. Sandlin
Mrs. Kelly	Mr. Meeks
Dr. Weldon	Ms. Lee
Mr. Cook	Mr. Mascara
Mr. Riley	Mr. Inslee
Mr. Hill	Ms. Schakowsky
Mr. LaTourette	Mr. Moore
Mr. Manzullo	Mr. Gonzalez
Mr. Jones	Mrs. Jones
Mr. Ryan (WI)	Mr. Capuano
Mr. Ose	
Mr. Sweeney	
Mrs. Biggert	
Mr. Terry	
Mr. Green	
Mr. Toomey	
Mr. Vento	
Mrs. Maloney	
Mr. Bentsen	
Mr. Maloney	
Mr. Sherman	
Mr. Goode	

Rep. Inslee's amendment, as amended, passed by a vote of 52-6.

YEAS	NAYS
Mr. Leach	Mr. Royce
Mr. McCollum	Mr. Ney
Mrs. Roukema	Mr. Barr
Mr. Bereuter	Mrs. Kelly
Mr. Baker	Dr. Paul
Mr. Lazio	Mr. Manzullo
Mr. Bachus	
Mr. Castle	
Mr. King	
Mr. Campbell	
Mr. Lucas	
Dr. Weldon	
Mr. Ryun (KS)	
Mr. Cook	
Mr. Riley	
Mr. Hill	
Mr. LaTourette	
Mr. Jones	
Mr. Ryan (WI)	
Mr. Ose	
Mr. Sweeney	

Mrs. Biggert  
 Mr. Terry  
 Mr. Green  
 Mr. Toomey  
 Mr. LaFalce  
 Mr. Vento  
 Mr. Kanjorski  
 Ms. Waters  
 Mr. Sanders  
 Mrs. Maloney  
 Mr. Gutierrez  
 Ms. Velazquez  
 Mr. Watt  
 Mr. Ackerman  
 Mr. Bentsen  
 Mr. Maloney  
 Ms. Hooley  
 Ms. Carson  
 Mr. Weygand  
 Mr. Sherman  
 Mr. Sandlin  
 Mr. Meeks  
 Ms. Lee  
 Mr. Goode  
 Mr. Mascara  
 Mr. Inslee  
 Ms. Schakowsky  
 Mr. Moore  
 Mr. Gonzalez  
 Mrs. Jones  
 Mr. Capuano

The Committee brought up H.R. 10 and struck everything after the enacting clause and inserted in lieu thereof the Committee Print, as amended. The motion passed by voice vote. The Committee favorably reported H.R. 10 as amended to the full House by a vote of 51-8.

## YEAS

Mr. Leach  
 Mr. McCollum  
 Mrs. Roukema  
 Mr. Bereuter  
 Mr. Baker  
 Mr. Lazio  
 Mr. Bachus  
 Mr. Castle  
 Mr. King  
 Mr. Royce  
 Mr. Lucas  
 Mr. Metcalf  
 Mr. Ney  
 Mr. Barr  
 Mrs. Kelly  
 Dr. Weldon

## NAYS

Mr. Campbell  
 Dr. Paul  
 Ms. Waters  
 Mr. Sanders  
 Ms. Carson  
 Mr. Meeks  
 Ms. Lee  
 Ms. Schakowsky

Mr. Ryun (KS)  
Mr. Cook  
Mr. Riley  
Mr. Hill  
Mr. LaTourette  
Mr. Manzullo  
Mr. Jones  
Mr. Ryan (WI)  
Mr. Ose  
Mr. Sweeney  
Mrs. Biggert  
Mr. Terry  
Mr. Green  
Mr. Toomey  
Mr. LaFalce  
Mr. Vento  
Mr. Kanjorski  
Mr. Maloney  
Mr. Gutierrez  
Ms. Velazquez  
Mr. Watt  
Mr. Ackerman  
Mr. Bentsen  
Mrs. Maloney  
Mr. Hooley  
Mr. Weygand  
Mr. Sherman  
Mr. Sandlin  
Mr. Goode  
Mr. Mascara  
Mr. Inslee  
Mr. Moore  
Mr. Gonzalez  
Mrs. Jones  
Mr. Capuano

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

#### COMMITTEE ON GOVERNMENT REFORM

No findings and recommendations of the Committee on Government Reform were received as referred to in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives.

#### CONSTITUTIONAL AUTHORITY

In compliance with clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the constitutional authority for Congress to enact this legislation is derived from the interstate commerce

clause (Clause 3, Article I). In addition, the power “to coin money” and “regulate the value thereof” provided for in Clause 5, Article I, has been broadly construed to allow for the Federal regulation of the provision of credit via the financial services industry.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### CONGRESSIONAL ACCOUNTABILITY ACT

The reporting requirement under section 102(b)(3) of the Congressional Accountability Act (P.L. 104–1) is inapplicable because this legislation does not relate to terms and conditions of employment or access to public services or accommodations.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE AND UNFUNDED MANDATES ANALYSIS

The cost estimate pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974 had been requested but not prepared as of the filing of volume I of this report. The estimate will be contained in a future volume.

#### SECTION-BY-SECTION ANALYSIS

##### SECTION 1. SHORT TITLE; PURPOSES

Section 1 designates the bill as the “Financial Services Act of 1999” (the “Act”). Further, the section states that the purposes of the Act are: (1) to enhance competition in the financial services industry in order to foster innovation and efficiency; (2) to ensure the continued safety and soundness of depository institutions; (3) to provide necessary and appropriate protections for investors and ensure fair and honest markets in the delivery of financial services; (4) to avoid duplicative, potentially conflicting, and overly burdensome regulatory requirements through the creation of a regulatory framework for financial holding companies that respects the divergent requirements of each of the component businesses of the holding company, and that is based upon principles of strong functional regulation and enhanced regulatory coordination; (5) to reduce and, to the maximum extent practicable, to eliminate the legal barriers to affiliations between depository institutions, securities firms, insurance companies, and other financial services providers through a prudential framework; (6) to enhance the availability of financial services to citizens of all economic circumstances and all geographic areas; (7) to enhance the competitiveness of United States financial service providers internationally; and (8) to ensure compliance by

depository institutions with the provisions of the Community Reinvestment Act (“CRA”).

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

SUBTITLE A—AFFILIATIONS

SECTION 101. GLASS-STEAGALL ACT REFORMED

Section 101 repeals section 20 and amends section 32 of the Banking Act of 1933. (Sections 16, 20, 21, and 32 of the Banking Act of 1933 are known as the “Glass-Steagall Act.”)

Section 20 currently prohibits any bank that is a member of the Federal Reserve System from affiliating with any company that is “engaged principally in the issue, floatation, underwriting, public sale or distribution” of securities. 12 U.S.C. § 377. The effect of repealing section 20 is to permit affiliations between banks and securities firms regardless of the type or volume of securities activities conducted by the firm. Under this Act, affiliations between banks and securities firms are permitted through either a nonbank subsidiary of a holding company or an operating subsidiary of a bank.

Section 32 currently prohibits any officer, director, or employee of a company “primarily engaged in the issue, floatation, underwriting, public sale, or distribution” of securities from serving simultaneously as an officer, director, or employee of any member bank, except as allowed by the Board of Governors of the Federal Reserve System (the “Board”). 12 U.S.C. § 78. Repealing section 32 will permit banks and securities firms to have interlocking officers, directors, and employees.

SECTION 102. ACTIVITY RESTRICTIONS APPLICABLE TO BANK HOLDING  
COMPANIES WHICH ARE NOT FINANCIAL HOLDING COMPANIES

Section 102 amends the Bank Holding Company Act of 1956 (“BHCA”) to permit bank holding companies (“BHCs”) to continue to engage in activities that the Board had found to be so closely related to banking as to be a proper incident thereto under section 4(c)(8) as of the date before the date of enactment of this Act.

SECTION 103. FINANCIAL HOLDING COMPANIES

Section 103 creates a new section 6 of the BHCA, entitled “financial Holding Companies.” Section 6 establishes the framework for affiliations between banks and securities firms, insurance companies, and other financial entities. The framework adopted in section 6 is significantly different than that currently found in section 4 of the BHCA. Recognizing that banks, securities firms, insurance companies, and other financial services providers are frequently offering the same or functionally similar products and services, section 6 greatly expands permissible affiliations for BHCs from the current requirement in section 4 that affiliations must be “closely related to banking” to those that are “financial in nature.” Section 6 contains a broad list of activities that are deemed by statute to be “financial in nature.” These expanded financial affiliations are permissible for holding companies that meet the criteria set forth to be financial holding companies (“FHCs”). BHCs that wish to



limit their activities to those that are permissible under section 4 of the BHCA as of the date of enactment may do so without meeting the requirements for being a FHC.

*a. Financial holding companies*

As set forth in section 6(a), an FHC must meet the following criteria. All of the holding company's subsidiary depository institutions must be well capitalized, well managed, and have a satisfactory or better rating under the CRA as of the most recent examination of the depository institution. In addition, a holding company and any of its affiliates that underwrite or sell annuities or insurance must be in compliance with any applicable consent decree filed in federal court or any settlement agreement relating to a violation of the Fair Housing Act. This section grants the Board the authority to exempt, on a case-by-case basis, FHCs from meeting the condition relating to the Fair Housing Act.

A BHC that meets the requirements set forth above must file a declaration with the Board that it meets the criteria for being an FHC.

*b. Financial activities*

FHCs may engage in a broad range of activities that are "financial in nature" or incidental to financial activities or complementary to activities authorized under subsection 6 to the extent that the amount of such complementary activities remain small. Section 6(a)(3) contains a list of activities that are deemed to be "financial" which includes:

- Lending and other traditional bank activities;
- Insurance underwriting and agency activities;
- Providing financial, investment, or economic advisory services;
- Issuing instruments representing interests in pools of assets that a bank may own directly;
- Securities underwriting and dealing, and mutual fund distribution;
- Insurance company portfolio investments as permitted by applicable state insurance laws;
- Merchant banking;
- Any activity that the Board has deemed "closely related to banking" under the BHCA; and
- Any activity that the Board has already approved for U.S. banks operating abroad.

In addition, the Board may determine by regulation or order that activities are financial in nature, incidental to financial activities, or complementary. In determining whether an activity is financial in nature or incidental to financial activities, the Board must take into account the purposes of the Act, changes in the market in which BHCs compete, changes in technology for delivering financial services, and whether such activity is necessary to allow BHCs and their affiliates to: (1) compete effectively with any company seeking to provide financial services in the U.S.; (2) use any available or emerging technological means including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions; and (3) offer customers any avail-

able or emerging technological means for using financial services. Activities such as administering, marketing, advising or assisting with health, welfare, compensation, retirement or similar plans, or claim administration or similar programs shall be deemed to be incidental to insurance activities as described in section 6(c)(3)(B).

The Board must coordinate and consult with the Secretary of the Treasury (the "Secretary") concerning any request for a determination regarding whether an activity is financial or incidental to a financial activity. The Board may not make such a determination if the Secretary believes that it is not financial or incidental to a financial activity and provides written notice to the Board to that effect as provided in the Act. The Secretary may also recommend that an activity be deemed financial, and the Board must determine within 30 days whether to initiate a public rulemaking regarding the proposal. A similar procedure is included in section 5136A(b)(1)(B) of the Revised Statutes regarding determinations by the Secretary that activities are financial and therefore permissible for national bank financial subsidiaries. The Board has sole authority to issue regulations and interpretations regarding merchant banking activities conducted by FHCs and national bank financial subsidiaries.

#### *Merchant banking*

The authorization of merchant banking activities as provided in section 6(c)(3)(H) is designed to recognize the essential role that investment banking, also known as merchant banking, plays in modern finance and permits an FHC that has a broker-dealer subsidiary engaged in securities underwriting or a national bank financial subsidiary that has an affiliated broker-dealer engaged in securities underwriting to conduct such activities so long as these investments do not result in breaching the barrier between banking and commerce. Under this provision, the FHC or a national bank financial subsidiary may directly or indirectly acquire or control any kind of ownership interest (including debt and equity securities, partnership interests, trust certificates, or other instruments representing ownership) in an entity engaged in any kind of trade or business whatsoever. (Such entities are customarily referred to as portfolio companies). The FHC or national bank financial subsidiary may make such an acquisition whether acting as principal, on behalf of one or more entities (e.g., as adviser to a fund, regardless of whether the FHC or national bank financial subsidiary is also an investor in the fund), including entities that the FHC controls (other than a depository institution), or otherwise.

The Committee recognizes that the investment may result in the FHC, affiliate, or national bank financial subsidiary acquiring control of a portfolio company or employees of the FHC, an affiliate, or a national bank financial subsidiary constituting a majority of the board of directors of a portfolio company. However, section 6(c)(3)(H) imposes on all investments three conditions designed to maintain the separation between banking and commerce. First, the ownership interests in question may not be acquired or held by a depository institution. Only a broker-dealer affiliate engaged in securities underwriting, a nonbanking affiliate, or a national bank financial subsidiary may make such investments. In this regard, sec-

tion 6(f)(5) restricts any joint marketing and lending activities between a depository institution and portfolio companies. Second, the ownership interests must be acquired or held for the purpose of appreciation and ultimate resale or other disposition and for such a period of time as will permit the sale or disposition of the investment on a reasonable basis consistent with the nature of the investment activity. The Committee recognizes that this broad language contemplates a variety of factors which may affect the decision to sell or dispose of the investment, including but not limited to overall conditions in the financial or other markets, the nature of the portfolio company's business, the financial condition and results of operation of the portfolio company, opportunities for selling or disposing of all or part of the investment or portfolio company in a manner which will maximize investment return, and any fiduciary, contractual, or other duties to co-investors and advisory clients. In this regard, the Committee also recognizes that the nature of certain investments is such that they must often be held for a considerable period of time in order to realize their potential value. Third, during the period such ownership interests are held, the FHC, an affiliate, or a national bank financial subsidiary may not actively manage or operate portfolio company except insofar as necessary to achieve the investment objectives. The Committee anticipates that employees of the FHC, affiliate, or national bank financial subsidiary may have certain dealings with the management of a portfolio company. The Committee recognizes that there may be special circumstances when active, day-to-day management or operation may be necessary to achieve the objectives of the investment.

The Committee believes that compliance with these requirements of section 6(c)(3)(H) can be ascertained either by periodic reports from or by examination of the FHC, affiliate, or national bank financial subsidiary making the investment and that no reporting by or examination of the portfolio company itself is necessary or appropriate other than in the unusual case in which reports or examinations are necessary to assure compliance with the BHCA and other statutory restrictions governing transactions involving depository institutions and portfolio companies.

Furthermore, the Committee intends section 6(c)(3)(H) to permit investment banking firms to continue to conduct their principal investing in substantially the same manner as at present. The Board shall take into account that investment banking firms affiliated with depository institutions should be able to compete on an equal basis for principal investments with firms unaffiliated with any depository institutions so that the effectiveness of these organizations in their investment banking activities is not compromised. For this reason, the Committee intends that the Board not require, even informally, any pre-clearance of principal investments and not impose unduly restrictive limitations on the holding period for such investments. The Committee intends that the Board may adopt appropriate rules governing activities under section 6(c)(3)(H) and section 5135A(b)(1)(C) to assure that the purposes of this Act, including the separation of banking and commerce and the protection of affiliated depository institutions, are carried out.

*Insurance company portfolio investments*

Section 6(c)(3)(I) recognizes that as part of the ordinary course of business, insurance companies frequently invest funds received from policyholders by acquiring most or all the shares of stock of a company not engaged in the insurance business. These investments are made in the ordinary course of business pursuant to state insurance laws governing investments by insurance companies, and are subject to ongoing review and approval by the applicable state regulator. Section 6(c)(3)(I) permits an insurance company that is affiliated with a depository institution to continue to directly or indirectly acquire or control any kind of ownership interest in any company if certain requirements are met. The shares held by such a company: (i) must not be acquired or held by a depository institution or a subsidiary of a depository institution; (ii) must be acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property casualty (other than credit-related insurance) or in providing and issuing annuities; and (iii) must represent an investment made in the ordinary course of business of such insurance company in accordance with relevant state law governing such investments. In addition, during the period such ownership interests are held, the FHC must not directly or indirectly participate in the day-to-day management or operation of the company except insofar as necessary to achieve the objectives of the requirements in clauses (ii) and (iii).

In the FHC structure envisioned by H.R. 10, in which the BHC is not an insurance company, it is unlikely that the FHC itself would participate in the day-to-day management or operation of a company in which the insurance company subsidiary has invested (“portfolio company”). Instead, the FHC would leave to its insurance company subsidiary the responsibility of oversight of its investments, subject, of course, to state regulation. To the extent that the FHC might actually participate in the management or operation of a portfolio company, such participation would ordinarily be for the purpose of safeguarding its indirect investment in accordance with the applicable requirements of state insurance law. This is true irrespective of any overlap between board members and nominal officers of the FHC and the portfolio company. If the FHC should be an insurance company, similar principles should apply.

*c. Authority to engage in financial activities*

Section 6(c) provides that in most cases, an FHC and a wholesale financial holding company can engage in any activity to the extent permissible under section 6 without giving prior notice to or receiving approval from the Board. An FHC and a wholesale financial holding company are required to provide notice to the Board within 30 days after commencing the activity or acquiring a company engaged in the activity. Prior notice is required for acquisitions of financial firms by an FHC or a wholesale financial holding company if the firm to be acquired has consolidated total assets in excess of \$40 billion. The notice must be filed no later than 60 days prior to the proposed acquisition. Prior notice and approval is required pursuant to section 4(j) of the BHCA for an FHC to engage in complementary activities. Acquisitions of depository institutions re-

main subject to the approval requirements under section 3 of the BHCA.

*d. Noncompliance with the criteria for qualifying bank holding companies*

Section 6(d) sets out the procedures to be followed if the subsidiary depository institutions of an FHC fail to meet the requirements set out in section 6(a) for such companies. This section is specifically intended to address situations in which a BHC and its subsidiary depository institutions were in compliance with the requirements set out in section 6(a) at the time the company became an FHC but subsequently falls out of compliance. If a subsidiary depository institution of an FHC is not in compliance with those requirements, the appropriate federal banking agency for the subsidiary depository institution must notify the Board who will then notify the company. The company and any relevant subsidiary depository institution must, within 45 days of receipt of such notice (or such additional period as the Board may permit), execute an agreement with the Board and the appropriate federal banking agency to comply with the requirements. Until the condition is corrected, the board may impose restrictions on the conduct or activities of the company or any affiliate of the company (other than a depository institution or a subsidiary of the institution) and the appropriate Federal banking agency may impose limitations on a subsidiary depository institution or a subsidiary of the institution. After receiving notice from the Board, the company or a subsidiary depository institution must execute and implement an agreement, comply with the restrictions imposed, if any, and restore the capital of the relevant subsidiary depository institution within 180 days of receiving the notice, or come into compliance with the requirement to be well-managed and have a satisfactory CRA rating at the time of the next examination. If a company or affiliated depository institution fails to meet these requirements, the Board can require a company to either divest control of any subsidiary depository institution or cease activities (other than through a depository institution or subsidiary thereof) that are broader than the activities that were permissible under section 4(c) of the BHCA. During this period, a BHC may continue to engage in financial activities authorized for FHCs unless ordered by the Board to restrict or to cease engaging in such activities.

*e. Safeguards for bank subsidiaries*

Section 6(e) requires an FHC to have appropriate internal controls to assure that its procedures for identifying financial and operational risks within the company and its subsidiaries adequately protect the company's subsidiary insured depository institutions from such risks and that it has reasonable policies and procedures to preserve the separate corporate identity and limited liability of the company and its subsidiaries for the protection of the subsidiary insured depository institutions.

*f. Authority to retain limited nonfinancial activities*

Section 6(f) permits a company (other than a BHC) that becomes an FHC to continue to engage in any activity and retain control of

any company engaged in nonfinancial activities provided certain conditions are met. The company must have been engaged in the activity as of September 30, 1997. The holding company must derive at least 85% of its consolidated gross revenues from financial activities (excluding depository institution revenues), and the company may engage only in the same nonfinancial activities that it conducted on September 30, 1997 and activities permissible under this Act. The company may continue to conduct such nonfinancial activities for a 10-year period beginning on the date of enactment of this Act. The Board may permit a 5-year extension if such extension would not be detrimental to the public interest. During the grandfather period, the company may not engage in new nonfinancial activities through the acquisition of another company and may not expand the grandfathered commercial activity through a merger or acquisition. The section also contains prohibitions on cross-marketing between subsidiary depository institutions and grandfathered nonfinancial affiliates as well as companies held under the merchant banking and insurance company investment provisions found in sections 6(c)(3) (H) and (I). Finally, an insured depository institution may not engage in any transactions with an affiliate engaged in nonfinancial activities pursuant to sections 6(f), 6(c)(3)(H) and (I) or 10(c).

*g. Developing activities*

Section 6(g) permits an FHC and a wholesale financial company to engage in any activity that the Board has not determined to be financial in nature or incidental to financial activities provided certain conditions are met. The company must reasonably believe that the activity is financial, the gross revenues from all such activities must represent less than 5% of the consolidated gross revenues of the company, the aggregate total assets of the companies engaged in developing activities under this subsection must not exceed 5% of the holding company's consolidated total assets, the total capital invested in developing activities under this subsection must represent less than 5% of the consolidated total capital of the holding company, and neither the Board nor the Secretary have determined that the activity is not financial. In addition, the holding company may not acquire a firm under this subsection that would require prior approval by the Board under section 6(c)(6) and the holding company must provide the Board with written notice within 10 days of commencing the activity or consummating the acquisition.

*h. Report*

The Board and the Secretary are required to prepare and submit a joint report to Congress by the end of the 4-year period beginning on the date of the enactment of this Act, and every 4 years thereafter. The report is to contain a summary of new activities which are financial in nature, including grandfathered commercial activities. Each report shall also contain a discussion of (1) actions by the Board and the Secretary with regard to activities which are incidental or complementary to financial activities, (2) an analysis and discussion of the risks posed by commercial activities of FHCs to the safety and soundness of affiliate depository institutions, (3) an analysis and discussion of the effect of mergers and acquisitions

on market concentration in the financial services industry, and (4) an analysis and discussion by the Board and the Secretary, in consultation with the other federal banking agencies, of the impact of the implementation of this Act on the extent of meeting community credit needs and capital availability by the CRA.

#### SECTION 104. OPERATION OF STATE LAW

Section 104(a), in general, pre-empts a state's ability to prevent or restrict affiliations between financial entities, except that a state insurance regulatory may continue to require, not later than 60 days before the effective date of the proposed acquisition, notice and specified information about potential purchasers of insurance companies in order to ensure that all mandated capital requirements are met and maintained; to place an insurance company into receivership or conservatorship; and to restrict a change in the ownership for a period of three years for recently demutualized insurers. In addition, state anti-trust and general corporate laws are not subject to the preemption provision of section 104(a)(1), but are subject to the antidiscrimination provisions of section 104(c).

Section 104(b)(1), in general, pre-empts a state's ability to prevent or restrict the sales activities authorized under this Act of an insured depository institution with the exception of insurance sales and other insurance activities.

Section 104(b)(2) governs state regulation of insurance sales so that states may not prevent or significantly interfere with the insurance sales of a depository institution, except that a state may enact restrictions contained in the thirteen harbors listed in section 104(b)(2)(B).

With respect to state laws on insurance sales enacted prior to September 3, 1998, but which fall outside the provisions of 104(b)(2)(B), those laws are subject to the Supreme Court's *Barnett* decision and, in connection with those laws, section 307(e) (which provides for a standard of judicial review of "without unequal deference") will not apply.

With respect to state laws on insurance sales enacted on or after September 3, 1998, but which fall outside the provisions of 104(b)(2)(B), those laws are subject to the anti-discrimination test contained in section 104(c) and can also be subject to the Supreme Court's *Barnett* decision. However, the standard of review provided under Section 307(e) will apply.

Section 104(b)(3) ensures that insurance companies affiliated with depository institutions continue to be regulated by the domiciliary state as envisioned under the McCarran-Ferguson Act, provided that the laws are consistent with the provisions of Section 104(c).

Section 104(b)(4) preserves the right of states to regulate the non-insurance affiliates of banks.

Section 104(c) creates a standard for state regulation of insurance that prevents a state from discriminating against the insurance activities of depository institutions. This nondiscrimination standard does not apply to state laws on insurance sales enacted prior to September 3, 1998.

Section 104(d) clarifies that subsections (a) and (b) shall not be construed to affect the jurisdiction of the securities commission of

any state to investigate and bring enforcement actions in connection with securities or securities transactions.

#### SECTION 105. MUTUAL BANK HOLDING COMPANIES AUTHORIZED

Section 105 amends the BHCA to expand the types of BHCs organized in mutual form to which the BHCA applies. Such mutual bank holding companies will be regulated similarly to other BHCs.

#### SECTION 105A. PUBLIC MEETINGS FOR LARGE BANK ACQUISITIONS AND MERGERS

Section 105A amends section 3 of the BHCA to require that in each case involving one or more insured depository institutions each of which has total assets of more than \$1 billion, the Board shall, as necessary and on a timely basis, conduct public meetings in one or more areas where the Board believes there will be a substantial public impact. This section contains similar amendments to the Bank Merger Act, the National Bank Act, and the Home Owners' Loan Act.

#### SECTION 106. PROHIBITION ON DEPOSIT PRODUCTION OFFICE

Section 106 applies the provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 regarding deposit production offices and out-of-state lending to any interstate branch established or acquired under this Act. In addition, this section expands the definition of interstate branch for purposes of the deposit production provisions to include all branches of a bank owned by an out-of-state holding company.

#### SECTION 107. CLARIFICATION OF BRANCH CLOSURE REQUIREMENTS

Section 107 applies the provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act regarding branch closures by an interstate bank to any branch of a bank that is controlled by an out-of-state holding company.

#### SECTION 108. AMENDMENTS RELATING TO LIMITED PURPOSE BANKS

Section 108(a) amends Section 4(f) of the BHCA. Section 4(f) provides that certain companies that control banks are not treated as BHCs. These are companies that control banks that, prior to the Competitive Equality Banking Act of 1987 ("CEBA"), either made commercial loans or accepted demand deposits but did not do both. These banks are known as "CEBA banks." Under Section 4(f)(2)(A)(ii), such companies may not acquire control of more than 5 percent of the shares or assets of an additional bank or savings association, other than pursuant to certain enumerated exception. Section 108(a) amends Section 4(f)(2)(a)(ii) to allow these companies to acquire assets derived from or incidental to consumer lending activities in which credit card banks or industrial loan companies are permitted to engage, without losing their exemption from treatment as BHCs under the BHCA.

Section 108(a) also lifts the activities restrictions imposed on CEBA banks provided the bank is well managed and well capitalized but maintains the restriction whereby CEBA banks are permitted to either accept demand deposits or make commercial loans,



but not both. CEBA banks that accept demand deposits would continue to be restricted in their ability engage in making traditional commercial loans, but the section would permit them to issue corporate credit cards (e.g. cards used by business employees for travel and entertainment expenses). This section also amends current law to permit limited purpose banks to cross market affiliate products.

In addition, section 108(a) establishes an 180-day cure period for CEBA banks and their parent companies to correct violations of the conditions of their exception. The authority of a CEBA bank to conduct expanded activities is not affected so long as any violation is corrected by the end of the cure period.

This section also expands the types of overdrafts which CEBA banks may incur on behalf of an affiliate to include overdrafts that are solely in connection with an activity that is so closely related to banking, or managing or controlling banks, as to be a proper incident thereto, to the extent the bank incurring the overdraft and the affiliate on whose behalf the overdraft is incurred each document that the overdraft is for that purpose.

Section 108(b) amends Section 2(c)(2)(H) of the BHCA. Section 2(c)(2)(H) exempts industrial loan companies from the definition of “bank” for purposes of the BHCA. Under Section 2(c)(2)(H), the exemption is conditioned on an industrial loan company’s not permitting an overdraft on behalf of an affiliate, or incurring an overdraft on behalf of an affiliate at its account at a Federal Reserve bank, unless such overdraft is the result of an inadvertent computer or accounting error. Section 108(b) amends Section 2(c)(2)(H) to allow industrial loan companies to incur the same overdrafts on behalf of affiliates as are permitted for CEBA banks described in Section 4(f)(1) of the BHCA (banks that, prior to the enactment of the CEBA, either made commercial loans or accepted insured deposits but did not do both).

SECTION 109. REPORTS ON ONGOING FEDERAL TRADE COMMISSION  
STUDY OR CONSUMER PRIVACY ISSUES

Section 109 requires the Federal Trade Commission (“FTC”) to submit interim reports on its study of consumer privacy issues.

SECTION 110. GENERAL ACCOUNTING OFFICE STUDY OF ECONOMIC IM-  
PACT ON COMMUNITY BANKS AND OTHER SMALL FINANCIAL INSTI-  
TUTIONS

Section 110 requires the General Accounting Office (“GAO”) to study the projected impact of this Act on financial institutions with assets of \$100 million or less.

SUBTITLE B—STREAMLINING SUPERVISION OF FINANCIAL HOLDING  
COMPANIES

SECTION 111. STREAMLINING FINANCIAL HOLDING COMPANY  
SUPERVISION

Section 111 provides that the Board may require any BHC or subsidiary thereof to submit reports informing the Board of its financial condition, financial systems and statutory compliance. The Board is directed to use existing examination reports prepared by

other regulators, publicly reported information and reports filed with other agencies to the fullest extent possible.

The Board is authorized to examine each BHC and its subsidiaries. However, it may examine functionally-regulated nondepository institution holding company subsidiaries only if the Board has reasonable cause to believe that the subsidiary is engaged in activities that pose a material risk to the depository institution or is not in compliance with certain statutory and regulatory restrictions. The Board is directed to use the fullest extent possible examinations made by appropriate federal and state regulators.

If a BHC is not “significantly engaged” in non-banking activities (e.g., a shell holding company), the bill would authorize the Board to designate the appropriate bank regulatory agency of the lead depository institution subsidiary as the appropriate federal banking agency for the BHC.

The Board is required to defer:

- to the Securities and Exchange Commission (“SEC”) to interpret all federal securities laws applicable to the activities, conduct, and operations of registered brokers, dealers, investment advisers, and investment companies;

- to the relevant state securities authorities to interpret state securities laws relating to the activities, conduct and operations of registered brokers, dealers, and investment advisers; and

- to the relevant state insurance regulators to interpret insurance laws relating to the activities, conduct and operations of insurance companies and insurance agents.

The Board is not authorized to prescribe capital requirements for any functionally-related nondepository subsidiary of an FHC. In development, establishing, and assessing holding company capital or capital adequacy rules, guidelines, standards, or requirements, the Board also has been prohibited from taking into account the activities, operations, or investments of an affiliated investment company, unless the investment company is a bank holding company or a bank holding company owns more than 25 percent of the shares of the investment company (other than certain small investment companies). Investment companies are regulated entities that must meet diversification, liquidity, and other requirements specifically suited to their role as investment vehicles. Consequently, the Committee believed that it was important to ensure that the Board not indirectly regulate these entities through the imposition of capital requirements at the holding company level, except in the very limited circumstances noted above.

#### SECTION 112. ELIMINATION OF APPLICATION REQUIREMENT FOR FINANCIAL HOLDING COMPANIES

Section 112 amends Section 5(a) of the BHCA to provide that a declaration filed in accordance with Section 6(b)(1)(E) will satisfy the requirements of Section 5(a) with regard to the registration of a BHC, but not a requirement to file an application pursuant to Section 3. This eliminates duplicative filing requirements.

SECTION 113. AUTHORITY OF STATE INSURANCE REGULATOR AND  
SECURITIES AND EXCHANGE COMMISSION

Section 113 amends Section 5 of the BHCA to prohibit the Board from requiring a broker-dealer or insurance company that is a BHC to infuse funds into an insured depository subsidiary if the holding company's functional regulator, the SEC or state insurance company or the broker or dealer, as the case may be." If the SEC or state insurance regulator makes such a determination, the Board can order the holding company to divest the insured depository institution.

SECTION 114. PRUDENTIAL SAFEGUARDS

Section 114 permits the Office of the Comptroller of the Currency ("OCC"), the Board, and the Federal Deposit Insurance Corporation ("FDIC") to impose restrictions on transactions between a bank and a subsidiary and the Board to impose restrictions on transactions between a bank and affiliate. Such restrictions may be imposed if the effect would be to avoid significant risk to the safety and soundness of a bank or to the federal deposit insurance fund. Restrictions also may be imposed for the purpose of enhancing the financial stability of BHCs, avoiding conflicts of interest, enhancing the privacy of customers, and promoting the application of national treatment and equality of competitive opportunity between domestic and foreign bank holding companies. Each agency is required to regulatory review the continuing need for any such restrictions that have been imposed.

SECTION 115. EXAMINATION OF INVESTMENT COMPANIES

Section 115 authorizes the SEC to be the sole federal agency with authority to inspect and examine any registered investment company that is not a BHC or savings and loan holding company, except when a designated banking agency finds that an examination of transactions and relationships with affiliated investment companies is reasonably necessary to determine the financial condition of specific depository institutions. In addition, the FDIC is authorized to examine an affiliate of any insured depository institution as necessary to determine the financial condition of specific depository institutions. The FDIC may examine any affiliate of an insured depository institution if such an examination is necessary to disclose fully the relationship between the depository institution and affiliate and the effect of such relationship on the institution so that the FDIC may determine the condition of the institution for insurance purposes.

SECTION 116. LIMITATION ON RULEMAKING, PRUDENTIAL,  
SUPERVISORY AND ENFORCEMENT AUTHORITY OF THE BOARD

Section 116 adds a new Section 10A to the BHCA. Section 10A is intended to protect regulated subsidiaries, which already are subject to extensive regulation at the hands of their functional regulators, from additional and duplicative regulation by the Board. Section 10A prohibits the Board from becoming involved in or interfering with the regular, day-to-day business and operations of regulated subsidiaries. Section 10A also prohibits the Board from

taking any action under specified statutes where the purpose or effect of doing so would be to exclude regulated subsidiaries from a line of business that is financial in nature or prevent regulated subsidiaries from offering a product or service that is financial in nature. None of the above would prevent the Board from taking action in an individual case where the manner in which an activity is conducted renders action necessary to prevent or redress an unsafe or unsound practice or breach of fiduciary duty by a regulated subsidiary that poses a material risk to the financial safety, soundness or stability of an affiliated depository institution or to the domestic or international payment system.

The Committee intends the term “material risk” to mean a risk of serious harm to the financial safety, soundness, or stability of the particular depository institution at issue or to the payment system. In considering whether it is not reasonably possible to effectively protect against risk through action directed at an affiliated depository institution or depository institutions generally, the Board must consider the full scope of any statutory authority it and the other federal banking agencies may have over any type of depository institution, including national banks and state nonmember banks, under any statute which the a Board and the other federal banking agencies are authorized to administer. In this regard, the Committee expects the Board, if necessary and possible, to request other federal banking agencies to exercise their authority in order to protect against any federal risk, and the Committee expects the other agencies to coordinate with and accommodate requests for action by the Board.

#### SECTION 117. INTERAGENCY CONSULTATION

Section 117 states that the Board as the umbrella regulator, the appropriate federal banking regulator, and the state insurance regulator as the functional regulator of insurance activities, should consult with each other and share examination reports and other information. It provides that upon the request of a state insurance regulator, the Board may provide any information regarding the financial condition, risk management policies, and operations of any financial holding company that controls an insurance company regulated by that state insurance regulator, and vice versa. It further provides that upon the request of a state insurance regulator, the appropriate federal banking agency may provide information about any transaction or relationship between a depository institution and affiliated insurance company regulated by that state insurance regulator, and vice versa. In addition, the appropriate federal banking regulator is required to consult with the appropriate state insurance regulator before making determinations between a depository institution, wholesale financial institution, or HFC with an insurance company.

#### SECTION 118. EQUIVALENT REGULATORY AND SUPERVISION

Section 118 provides that the provisions of both Section 5(c) of the BHCA and Section 10A of the BHCA also limit any authority that a federal banking agency might otherwise have under any statute to require reports, make examinations, impose capital requirements, or take any other action with respect to BHCs and

their nonbank subsidiaries. Section 5(c) of the BHCA limits the authority of the Board to require reports of, make examination of, and to impose capital requirements of BHCs and their nonbank subsidiaries. Section 10A of the BHCA limits any Board authority to take action with respect to bank holding companies and their nonbank subsidiaries. The FDIC, OCC, and Office of Thrift Supervision (“OTS”) are subject to the same standards and requirements as are applicable to the Board under these provisions, with the exception that the FDIC, OCC, and OTS are authorized to examine an affiliate of any insured depository institution as necessary to determine the condition of an insured depository institution supervised by the respective agency.

SECTION 119. PROHIBITION ON FDIC ASSISTANCE TO AFFILIATES AND SUBSIDIARIES

Section 119 amends Section 11(a)(4)(B) of the Federal Deposit Insurance Act generally to prohibit the use of the Bank Insurance Fund (“BIF”) and the Savings Association Insurance Fund (“SAIF”) to benefit any shareholder, subsidiary or nondepository or nondepository affiliate.

The general prohibition of the use of the BIF and the SAIF to benefit any shareholder, funds, as well as the American taxpayer, will not bear the burden of providing a safety net for insurance companies, securities firms, and other nonbanking financial entities that may become part of FHCs as a result of this Act. These firms do not pay for deposit insurance and also do not have CRA-like responsibilities as banks, and will not have bailout assistance from the FDIC in the event of dire financial or liquidity problems, regardless of any banking services these firms provide. This section does not affect the ability of the Treasury or the Board to be involved in activities that would mitigate disorderly activity in the financial markets or reduce systemic risk to the economy.

SECTION 120. REPEAL OF SAVINGS BANK PROVISIONS IN THE BANK HOLDING COMPANY ACT OF 1956

Section 120 repeals section 3(f) of the BHCA to conform the regulation of savings bank life insurance with the regulations governing all other financial institutions in a BHC structure.

SECTION 120A. TECHNICAL AMENDMENT

SUBTITLE C—SUBSIDIARIES OF NATIONAL BANKS

SECTION 121. PERMISSIBLE ACTIVITIES FOR SUBSIDIARIES OF NATIONAL BANKS

Section 121 provides that national bank subsidiaries may engage only in activities permissible for national banks to engage in directly, activities otherwise expressly authorized by statute, and activities that are financial in nature or incidental to financial activities. Subsidiaries engaged in financial activities under this Act are defined as “financial subsidiaries.” This section also requires a national bank which has total assets of \$10 billion or more to be a subsidiary of a holding company if it desires to control a subsidiary engaged in financial activity pursuant to this section. There is a

limited exclusion from the community needs requirements for newly acquired depository institutions.

This section defines financial activities as those activities permitted for a financial holding company pursuant to section 6(c)(3) of the BHCA or activities that the Secretary determines to be financial in nature or incidental to financial activities in accordance with the procedures set forth in the bill. Excluded from the list of permissible financial activities for subsidiaries of national banks are insurance underwriting (including insurance company portfolio investments) and real estate investment and development. In addition to the activities that are permitted for bank holding companies pursuant to section 6(c)(3), national bank financial subsidiaries may also engage in developing financial activities. The Board has sole authority to prescribe regulations and issue interpretations regarding merchant banking activities.

In defining what activities are financial in nature or incidental to such financial activities, both the Secretary and the Board are required to notify and consult with each other regarding any request, proposal, or application for a determination of whether an activity is financial in nature or incidental to a financial activity. The Secretary and the Board may veto a determination made by the other. The intent of this procedure, which is set forth in parallel provisions in this section for the Secretary and in section 103 for the Board, is to ensure consistency in interpretations and encourage regulatory coordination.

In order for a financial subsidiary to engage in activities that are financial in nature or incidental to financial activities, its parent national bank and all its depository institution affiliates must be well capitalized, well managed, and have a satisfactory CRA rating. Procedures are set out in this section to address situations where there is a failure to comply with these conditions.

#### SECTION 122. SAFETY AND SOUNDNESS FIREWALLS BETWEEN BANKS AND THEIR FINANCIAL SUBSIDIARIES

Section 122 is intended to establish firewalls between an insured bank and a financial subsidiary in the areas of capital and transactions with affiliates. It amends the Federal Deposit Insurance Act to require that in determining whether an insured bank complies with applicable regulatory capital standards, the appropriate federal banking agency must deduct the aggregate amount of the outstanding equity investments of the bank in financial subsidiaries permitted under this bill, including the amount of any net earnings retained by such subsidiary and the assets and liabilities of such financial subsidiaries must not be consolidated with those of the parent bank. In addition, this section provides that an insured bank must not, without the prior approval of the appropriate federal banking agency, make any equity investment in a financial subsidiary if the investment would, when made, exceed that amount that the bank could pay as a dividend without obtaining prior regulatory approval. Each insured bank that has a financial subsidiary or affiliate is required to maintain and comply with policies and procedures to preserve the separate corporate identity and legal status of the bank. Finally, section 122 amends the Federal Reserve Act to apply the restrictions on transactions with affiliates

contained in sections 23A and 23B of that Act to transactions between a bank and a financial subsidiary. It is intended that the restrictions contained in those sections will apply in the same manner as they apply to transactions between a bank and an affiliate with the exception that a parent bank may make an equity investment in a financial subsidiary which would exceed the section 23A limits on transactions with affiliates provided the bank's appropriate federal banking agency has approved the investment and the bank meets the capital deduction requirement.

SECTION 123. MISREPRESENTATIONS REGARDING DEPOSITORY  
INSTITUTION LIABILITY FOR OBLIGATIONS OF AFFILIATES

Section 123 makes it a crime for bank personnel to fraudulently represent that the bank will be liable for any obligation of an affiliate or subsidiary of a bank.

SECTION 124. FUNCTIONAL REGULATION

Section 124 provides for the functional regulation of subsidiaries of insured depository institutions. Specifically, a broker or dealer that is a subsidiary of an insured depository institution shall be subject to regulation under the Securities and Exchange Act of 1934 and an insurance agency or brokerage subsidiary shall be subject to regulation by a state insurance authority.

SECTION 125. REPEAL OF STOCK LOAN LIMIT IN FEDERAL RESERVE ACT

Section 125 repeals the restrictions in section 11(m) of the Federal Reserve Act on loans by Federal Reserve member banks secured by stock or bond collateral. Limitations on loans to one borrower imposed pursuant to other statutory authority are not affected.

SUBTITLE D—WHOLESALE FINANCIAL HOLDING COMPANIES;  
WHOLESALE FINANCIAL INSTITUTIONS

CHAPTER 1—WHOLESALE FINANCIAL HOLDING COMPANIES

SECTION 131. WHOLESALE FINANCIAL HOLDING COMPANIES  
ESTABLISHED

Section 131 establishes Wholesale Financial Holding Companies ("WFHC"), defining a WFHC as an FHC that is predominantly financial, controls one or more Wholesale Financial Institutions ("WFIs"), and is not affiliated with an insured bank or savings association. WFHCs are subject to supervision by the Board, which may adopt capital adequacy rules for them. It is expected that the Board would reexamine its current holding company capital guidelines to include approaches that focus on excessive use of double leverage by holding companies to fund investments in stock of its subsidiaries. It is also expected that the Board will take full and appropriate account of the different classes of holding companies that may exist, such as those that do not control insured depository institutions or are predominately engaged in activities other than controlling insured depository institutions. The Board should further take into account that certain holding companies predominantly engaged in nonbanking financial activities have been orga-

nized in non-corporate structures, and should treat as common equity such interests as limited company memberships and partnerships interests where such interests are accepted in the marketplace as equity available to absorb losses. Commercial activities of WFHCs are grandfathered, but may not be expanded through merger or consolidation.

#### SECTION 132. AUTHORIZATION TO RELEASE REPORTS

Section 132 authorizes the release of certain reports under the Federal Reserve Act, and includes the Commodity Futures Trading Commission (“CFTC”) under the definitions of the Right to Financial Privacy Act.

#### SECTION 133. CONFORMING AMENDMENTS

Section 133 makes conforming amendments to the BHCA and the Federal Deposit Insurance Act.

### CHAPTER 2—WHOLESALE FINANCIAL INSTITUTIONS

#### SECTION 136. WHOLESALE FINANCIAL INSTITUTIONS

Section 136 authorizes the establishment of wholesale financial institutions (“WFIs”). A WFI can either be a national bank or a state member bank. A national bank is required to apply to the Comptroller for permission to operate as a WFI in accordance with regulations issued by the Comptroller. The approval of the Board is required for a state bank to operate as a WFI. Section 136(f) limits at ten the number of WFIs which can be members of the Federal Reserve System and have access to the Federal Reserve’s payment system and discount window. There may be no more than 5 national WFIs and 5 state WFIs.

Section 136(b) amends the Federal Reserve Act by adding a new section 9B which requires WFIs to become members of the Federal Reserve System. Section 9B states that unless otherwise provided, WFIs will be subject to the Federal Reserve Act to the same extent and in the same manner as a state member insured banks or national banks, except that a WFI may only terminate membership on the terms and conditions set by the Board and with prior written approval from the Board.

Capital requirements for all WFIs must be established by the Board, which may also impose limitations on transactions with affiliates, set special clearing balance requirements, and take other actions to protect the payments system and the discount window. The Board may also exempt WFIs from provisions applying to member banks if it finds that the exemption is consistent with the promotion of safety and soundness, the protection of the deposit insurance funds, and the protection of creditors and other persons, including Federal Reserve banks.

State WFIs have all of the powers and privileges of national banks, and thus of national WFIs. This includes branching rights and preemption of state laws.

All WFIs must be well capitalized and well managed, and those failing these standards must take corrective action within prescribed time periods, or face divestiture. Section 9B also provides that WFIs will be subject to the prompt corrective action provisions



contained in section 38 of the FDIA. The Board is responsible for setting the relevant capital levels and capital measures for each capital category under prompt corrective action for all WFIs. Except for the setting of capital levels, national WFIs are subject to prompt corrective action by the OCC and state WFIs are subject to action by the Board. Subsection 136(a) subjects WFIs to the CRA.

SUBTITLE E—PRESERVATION OF FTC AUTHORITY

SECTION 141. AMENDMENT TO THE BANK HOLDING COMPANY ACT OF 1956 TO MODIFY NOTIFICATION AND POST-APPROVAL WAITING PERIOD FOR SECTION 3 TRANSACTIONS.

Section 141 sets forth a statutory requirement that the Board immediately notify the FTC about transactions by a BHC to merge with or acquire another BHC if the transaction involves the acquisition of nonbank assets.

SECTION 142. INTERAGENCY DATA SHARING

Section 142 provides that federal banking regulators share with the Attorney General and the FTC any information that the antitrust agencies deem necessary for antitrust review of appropriate transactions.

SECTION 143. CLARIFICATION OF STATUS OF SUBSIDIARIES AND AFFILIATES

Section 143 provides that FHCs proposing to acquire a nonbank company engaged in financial activities must provide the antitrust agencies with prior notice of the transaction under the Hart-Scott-Rodino Act. It also clarifies that any person affiliated with a depository institution that is not itself a depository institution shall not be deemed a “bank” or “savings association” for purposes of the FTC Act or other law enforced by the FTC. The jurisdiction of the FTC over transactions involving the non-bank affiliates and subsidiaries of banks and savings associations under the FTC Act is affirmed by stating that such entities will not be treated as banks or savings associations.

SECTION 144. ANNUAL GAO REPORT

Section 144 requires the Comptroller General of the U.S. to annually report to Congress on market concentration in the financial services industry and its impact on consumers. The annual report is to focus on affiliations and acquisitions involving depository institutions, depository institution holding companies, securities firms, and insurance companies.

SUBTITLE F—APPLYING THE PRINCIPLES OF NATIONAL TREATMENT AND EQUALITY OF COMPETITIVE OPPORTUNITY TO FOREIGN BANKS AND FOREIGN FINANCIAL INSTITUTIONS

SECTION 151. APPLYING THE PRINCIPLES OF NATIONAL TREATMENT AND EQUALITY OF COMPETITIVE OPPORTUNITY TO FOREIGN BANKS THAT ARE FINANCIAL HOLDING COMPANIES

Section 151 amends Section 8(c) of the International Banking Act of 1978 (“IBA”) by adding a new paragraph (3) to permit termi-

nation of the financial grandfathering authority granted by the IBA and other statutes to foreign banks to engage in certain financial activities. This grandfathering was necessary because of current law restrictions. With the repeal of these restrictions, foreign banks with financial grandfathered affiliates would be permitted to retain these grandfathered companies on the same terms that domestic banking organizations are permitted to establish.

The legislation provides that foreign banks should no longer be entitled to financial grandfathered rights authorized under new section 6 of the BHCA after the bank has filed a declaration under section 6(b)(1)(D) of the BHCA or receives a Board determination under Section 10(d)(1) of the BHCA (other grandfathered rights would not be affected). In order to provide both competitive equality between domestic and foreign banks and fairness to the foreign banks that have relied for many years on their grandfathering rights, the foreign bank is granted two years which to have an application approved under section 6. Failing such approval within this time period, the Board may impose restrictions and requirements comparable to those on FHC, including those to conduct grandfathered activities in compliance with the safeguards of section 6 of the BHCA.

SECTION 152. APPLYING THE PRINCIPLES OF NATIONAL TREATMENT AND EQUALITY OF COMPETITIVE OPPORTUNITY TO FOREIGN BANKS AND FOREIGN FINANCIAL INSTITUTIONS THAT ARE WHOLESALE FINANCIAL INSTITUTIONS

Section 152 amends Section 8A of the Federal Deposit Insurance Act by adding a new subsection (i) which allows an insured branch of a foreign bank to terminate voluntarily its deposit insurance under the same conditions and extent as insured state and national banks.

SECTION 153. REPRESENTATIVE OFFICES

Section 153 would require prior approval by the Board for the establishment of representative offices by a foreign bank.

SUBTITLE G—FEDERAL HOME LOAN BANK SYSTEM MODERNIZATION

SECTION 161. SHORT TITLE

Section 161 designates this subtitle as the “Federal Home Loan Bank System Modernization Act of 1999”.

SECTION 162. DEFINITIONS

Section 162 provides technical changes to definitions within the Federal Home Loan Bank Act. It also creates a new class of “community financial institutions” with assets less than \$500 million.

SECTION 163. SAVINGS ASSOCIATION MEMBERSHIP

This section eliminates mandatory membership for federal savings associations and federal savings banks, which under current law may not withdraw from the Federal Home Loan Bank (“FHLBanks”) System. This allows any mandatory member to withdraw from membership on the same terms and conditions as any

voluntary member may do under current law. The right of federal savings associations and savings banks to leave the System is not limited by the inclusion elsewhere in the bill of a transition provision that preserves the current capital structure of the FHLBanks (which includes a bar on withdrawals by such institutions) until the new capital structure can be implemented. It is intended that the amendments made by Section 163 are the sole provision governing the ability of mandatory members to withdraw from the System.

#### SECTION 164. ADVANCES TO MEMBERS; COLLATERAL

Current law allows the FHLBanks to make long-term advances to their members only for providing funds for residential housing finance. To give "community financial institutions" (CFIs) greater access to the FHLBanks System, Section 164 authorizes CFIs (banks with less than \$500 million in assets) to obtain long-term advances for providing funds for small business, agricultural, rural development, or low-income community development leading. Section 164 also allows a CFI to secure its advances with new categories of collateral, i.e., secured loans made for the purpose of small business, agriculture, rural development, or low-income community development, or securities representing interests in such loans. Separately, Section 164 repeals a cap (30 percent of a member's capital) on the amount of advances that may be secured by "other real estate related collateral," but requires that the FHLBank accepting such collateral must be able to ascertain the value of the collateral and to perfect a security interest in the collateral. As they do with currently authorized types of collateral, the FHLBanks are expected to establish appropriate discounts for all of these new categories of collateral.

Section 164 authorizes the Finance Board to review the collateral standards of any FHLBank relating to the new categories of collateral for CFIs and for the expanded category of "other real estate related collateral." The Finance Board may order a FHLBank to make its standards for those types of collateral more stringent, if necessary for reasons of safety and soundness. The addition of this provision is intended to ensure that the new collateral provisions are implemented prudently, and does not limit the authority of the Finance Board to review or revise any other collateral standards or practices of the FHLBanks. The Finance Board, as the safety and soundness regulator for the FHLBanks, has the authority under current law to address such matters.

#### SECTION 165. ELIGIBILITY CRITERIA

Section 165 waives the ten percent residential mortgage asset test for FDIC-insured institutions with less \$500 million in assets. All institutions are currently required to have ten percent of their total assets in residential mortgage loans in order to become members of the system.

#### SECTION 166. MANAGEMENT OF BANKS

Section 166 transfer from the Finance Board to the individual FHLBanks authority over a number of operational areas, including

director and employee compensation, terms and conditions for advances, interest rates on advances, dividends, and forms for advance applications. The section also clarifies other powers and duties of the Finance Board with regard to enforcement.

#### SECTION 167. RESOLUTION FUNDING CORPORATION

Section 167 changes the current annual \$300 million funding formula for the Resolution Funding Corporation obligations of the FHLBanks to a percentage of annual net earnings. The Committee does not intend a REFCorp fix that will result in a significant payment increase for the FHLBanks. The Committee will continue to review whether 20.75% is the most appropriate figure.

#### SECTION 168. CAPITAL STRUCTURE OF FEDERAL HOME LOAN BANKS

Section 168 replaces the existing redeemable stock structure of the FHLBank System with a capital structure that requires each FHLBank to meet a leverage limit and a risk-based permanent capital requirement. The bill authorizes the FHLBanks to issue three classes of stock; one class could be redeemed on 6-months notice (Class A), one class could be redeemed on 5-years notice (Class B), and one class would be non-redeemable (Class C). After the Finance Board adopts new capital regulations, each FHLBank must submit a capital structure plan establishing the manner in which it is to be capitalized.

The bill includes a leverage capital requirement, under which each FHLBank must maintain at a minimum total capital in an amount equal to 5 percent of the total on-balance sheet assets of the FHLBank. Total capital includes all of a FHLBank's permanent capital as well as all of its Class A stock, all Class B stock (other than the limited amounts that count as permanent capital), certain general loss reserves, and other items determined by the Finance Board as capable of absorbing losses. The permanent capital of a FHLBank includes only its Class C stock, retained earnings, and limited amounts of Class B stock (not to exceed 1 percent of the assets of the FHLBank).

To encourage the FHLBanks to build their permanent capital, the bill includes a weighting provision, under which the capital items with the most permanence (Class C stock and retained earnings) count more toward the leverage requirement than do capital items with less permanence (Class B and Class A). Accordingly, the Class C stock and retained earnings are weighted at two times the paid-in face value, while the Class B stock is weighted at one and one-half times the paid-in face value. Class A stock is counted at paid-in face value for leverage purposes. The rationale for the weighting provision is that the permanent and longer-term stock is better able to absorb losses than is the short-term redeemable stock, and it is the intent to include incentives, both for the FHLBanks and their members, to build permanent capital at each FHLBank. As a further incentive, each FHLBank is authorized to establish preferences—such as greater dividends, additional voting rights, liquidation preferences, or reduced minimum investments—for holders of its permanent and longer-term stock that are not available to the Class A stock.

To ensure that the amount of a FHLBank's capital is commensurate with the risks (both on- and off-balance sheet) that it undertakes, the bill requires the Finance Board to establish a risk-based capital requirement that can be met only with permanent capital, i.e., Class C stock, retained earnings, and limited amounts of Class B stock. Requiring permanent capital is intended to provide a degree of market discipline on the risks undertaken by the FHLBanks.

The risk-based capital requirement must take into account both the credit risk and the market risk (which includes interest rate risk) to which the FHLBanks are exposed. The risk-based requirement will operate in conjunction with the leverage requirement, and a FHLBank must at all times be in compliance with both requirements. If a FHLBank takes greater risks in its operations, the risk-based capital requirement may well cause it to maintain a greater amount of capital than would be required under the leverage limit alone. The assessment of market risks is to be determined by use of a stress test to be developed by the Finance Board. The stress test must take into account how certain market variables, such as changes in interest rates, rate volatility, and changes in the shape of the yield curve, would affect the FHLBanks. The Finance Board must give due consideration to any risk-based capital test established by the Office of Federal Housing Enterprise Oversight ("OFHEO") for Fannie Mae and Freddie Mac, and may incorporate any provisions of the OFHEO risk-based capital regulations it deems appropriate for the operations of the FHLBanks.

Because the new capital structure plans will not take effect until two years or more after enactment, the bill includes a transition provision that effectively preserves the current capital structure of the FHLBanks until the new capital structure is implemented. During the transition period a FHLBank may continue to admit new members and may permit existing members (including federal savings associations and federal savings banks) to withdraw. For institutions that previously had withdrawn from membership, the bill shortens the 10-year "lock-out" period to 5 years, but also would allow any former member that had withdrawn prior to December 31, 1997 to reapply for membership at any time.

It is expected that the Finance Board, to the extent possible, will manage the transition to the new capital structure in a manner that will minimize or avoid any adverse effect on the Affordable Housing Program ("AHP"). The Federal Home Loan Banks' AHP is one of the nation's most effective targeted housing programs. Over the last decade, the 12 Federal Home Loan Banks have contributed more than \$800 million of their net earnings to the AHP. Those funds have helped subsidize approximately 200,000 units of affordable housing for very-low-, low-, and moderate-income families throughout the country. The AHP's continued success depends critically upon a profitable and well-capitalized Federal Home Loan Bank System.

The bill authorizes the board of directors at each FHLBank, subject to Finance Board approval, to determine the details of the capital structure plan for the FHLBank, which may vary from one FHLBank to another. In all cases, each member must maintain a minimum investment in the stock of the FHLBank, and each

FHLBank must at all times maintain sufficient capital to remain in compliance with both the leverage and risk-based capital requirements. The bill provides the FHLBanks up to three years to fully implement their capital structure plans. As an inducement for the members to purchase Class C stock, the bill provides that the holders of the outstanding Class C stock of the FHLBank shall own the retained earnings, surplus, undivided profits, and equity reserves of the FHLBank. If a FHLBank has no permanent stock outstanding, then the members owning the other classes of stock would own the retained earnings of the FHLBank.

#### SUBTITLE H—ATM FEE REFORM

##### SECTION 171. SHORT TITLE

Section 171 designates this subtitle as the “ATM Fee Reform Act of 1999”.

##### SECTION 172. ELECTRONIC FUND TRANSFER FEE DISCLOSURES AT ANY HOST ATM

Section 172 amends the Electronic Fund Transfer Act by requiring certain disclosures regarding automatic teller machine (“ATM”) surcharge fees. The disclosures only apply to surcharges imposed by ATM operators on noncustomers—not fees from the consumer’s own bank. ATM operators assessing surcharges are required to: (1) post a sign on the ATM machine stating that a fee will be charged, and (2) post a notice on the screen that a fee will be charged and the amount of such fee after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction. The second disclosure may be made by a paper notice issued from the machine. No surcharge fee may be charged unless the required disclosures are made and the consumer elects to proceed with the transaction after receiving the notice.

##### SECTION 173. DISCLOSURE OF POSSIBLE FEES TO CONSUMERS WHEN ATM CARD IS ISSUED

Section 173 amends the Electronic Fund Transfer Act by requiring a notice to consumers when ATM cards are issued that would notify consumers that surcharges may be imposed by other parties when transactions are initiated from ATMs not operated by the card issuer.

##### SECTION 174. FEASIBILITY STUDY

Section 174 mandates a GAO study of the feasibility, costs, benefits to consumers, and competitive impact of requiring ATM operators to disclose not only the surcharge imposed by the machine in use, but also any fees imposed by the consumer’s own bank, any network used to effect the transaction, and any other party involved in the transfer. The report is due six months after the date of enactment of this Act.

## SECTION 175. NO LIABILITY IF POSTED NOTICES ARE DAMAGED

Section 175 exempts ATM operators from liability under this section if properly posted signs are subsequently removed, damaged, or altered by any person other than the operator of the ATM.

## SUBTITLE I—CUSTOMER SERVICE, EDUCATION AND PRIVACY

## SECTION 176. CUSTOMER PROTECTION AND EDUCATION REGULATIONS

Section 176 requires the federal banking agencies to issue joint regulations, within one year after the effective date of the Act, regarding bank retail sales of nondeposit products. The regulations to be issued under section 176 are to apply to retail sales, solicitations, advertising, and offers of nondeposit products by any insured depository institution or any person who is engaged in such activities at an office of the institution. The agencies also are directed to apply the regulations to subsidiaries of insured depository institutions as appropriate. The regulations are required to cover sales practices, including anti-coercion and suitability rules, disclosure and advertising requirements, consumer grievance procedures, and standards for the separation of banking and nonbanking activities. Many of the provisions of this section are based on the Interagency Statement on Retail Sales of Nondeposit Products and as such the agencies should use that Statement as a guideline, where appropriate, in implementing the regulations required by this section.

Nondeposit products are defined to include investment and insurance products that are not deposit products as well as shares of registered investment companies. Specifically excluded from the category of nondeposit products are loans, other extensions of credit, letters of credit, discount and trust services, and other instruments, insurance, or investment products specifically excluded by joint agency rulemaking.

Section 176(b) addresses the anticoercion and suitability rules. This subsection requires the federal banking agencies to promulgate regulations that address practices which could coerce or mislead consumers regarding the sale of a nondeposit product when they agree to purchase a credit product from an insured depository. The agencies are directed to adopt rules prohibiting an insured depository institution from engaging in any practices that would lead a consumer to believe that an extension of credit is conditional on the purchase of a nondeposit product from the institution (or its affiliates or subsidiaries), or an agreement by the consumer not to obtain a nondeposit product from an unaffiliated entity, in violation of the anti-tying rules contained in section 106(b) of the BHCA Amendments of 1970. The anticoercion sales practice rules required under section 176(b) are intended to be consistent with section 106(b) and the interpretations thereunder. This section is not intended to prohibit the offering of products and services permitted under section 106(b). Rather, it is intended that the agencies address sales practices that would lead a customer to believe that products are tied in violation of section 106(b). The subsection also required the federal banking agencies to adopt joint rules, modeled on appropriate sections of the Interagency Statement, providing suitability standards for retail sales of investment products by insured depository institutions and to promulgate comparable rules

governing sales of insurance and other nondeposit products to assure that such products are appropriate to a customer's needs and financial capability based on financial information provided by the customer.

The Committee believes that depository institutions should take reasonable steps to minimize the possibility of consumer confusion regarding the nondeposit products that they sell. As such, section 176(c) directs the agencies to adopt disclosure and advertising rules which require that banks provide disclosure at the time the consumer opens an account for the purchase of any nondeposit product or in connection with the initial purchase of a nondeposit product. In addition, banks are required to obtain a written acknowledgment, signed and dated by the consumer, that the consumer has received the disclosures. Moreover, given the rapid growth of technology in consumer banking, section 176(c) directs the agencies to make necessary adjustments in the disclosure and acknowledgment requirements for sales made in person, by telephone, or by electronic media in order to provide for the most appropriate and complete form of disclosure and acknowledgment.

Section 176(d) requires that the agencies adopt standards for the separation of banking and nonbanking activities. This subsection requires that the nondeposit product sales area be located in a physically segregated area, to the extent practicable, from the area where retail deposits are routinely taken. The Committee understands that it may be appropriate to use signs or other means to distinguish the nondeposit product area from the area where retail deposits are routinely accepted. The agencies are also required to adopt standards prohibiting any person from selling or offering to sell any nondeposit product in any part of any office the institution or on behalf of the institution, unless such person is appropriately qualified and licensed. In addition, the agencies must adopt regulations pertaining to the receipt by bank employees of a one-time nominal and fixed dollar fee for each customer referral. While this provision allows for referral fees, it does not affect, and is not intended to affect, any provision of the Real Estate Settlement Procedures Act.

Section 176(e) requires the federal banking agencies to jointly establish a consumer complaint mechanism for expeditiously addressing meritorious consumer complaints by developing procedures for investigating such complaints and for informing consumers of their rights.

Section 176 shall not be construed as granting, limiting, or otherwise affecting the authority of the SEC, any self-regulatory organization, the Municipal Securities Rulemaking Board, or the Secretary under any federal securities law, or, except as otherwise provided, any authority of the state insurance commissioners under state insurance law.

#### SECTION 177. DEPOSITORY INSTITUTION PRIVACY POLICIES

Section 177 adds a new subsection (h) to section 6 of the BHCA, requiring any depository institution that becomes affiliated with a financial or savings and loan holding company to make a clear and conspicuous disclosure of its privacy policy to its customers. The disclosures required by this provision must include (1) a statement



of the depository institution's policy with respect to disclosing customer information to third parties, other than agents of the institution, for marketing purposes; and (2) the disclosures mandated by section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (12 U.S.C. 1681a(d)(2)(A)(iii)) with regard to the right of the customer, at any time, to direct that information referred to in such section not be shared with affiliates of the depository institution.

For persons who become customers of a depository institution subsequent to the depository institution affiliating with a financial or savings and loan holding company, the disclosures required by this section are to be made at the time at which the business relationship between the customer and the institution commences. For persons who are already customers of a depository institution at the time that the institution becomes affiliated with a financial or savings and loan holding company, the disclosures required by this section are to be made within a reasonable time after the affiliation is consummated.

#### SECTION 178. CONFIDENTIALITY OF HEALTH AND MEDICAL INFORMATION

Section 178 adds a new subsection (i) to section 6 of the BHCA, requiring an insurance company that becomes a financial or savings and loan holding company, or an affiliate of such a company, to maintain a practice of protecting the confidentiality of individually identifiable health and medical information of its customers. Disclosure of such information is authorized in the following circumstances: with the consent, or at the direction, of the customer; for insurance underwriting and reinsuring policies, account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims or defending any action relating to such claims, administering insurance benefits (including utilization review activities), providing information to the customer's physician or other health care provider, participating in research projects, for purposes of enabling business decisions to be made about or in connection with the purchase, transfer, merger, or sale of an insurance-related business or businesses; or as otherwise required or specifically permitted by federal or state law; or in connection with the authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card or account number, or by other payment means; the transfer of receivables, accounts, or interest therein; the audit of the debit, credit, or other payment information; compliance with federal, state, or local law, or with a properly authorized civil, criminal, or regulatory investigation by federal, state, or local authorities; or fraud protection, risk control, resolving customers disputes or inquiries, communicating with the person to whom the information relates, or reporting to consumer reporting agencies.

Section 264(c)(1) of the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) gives Congress until August 21, 1999, to pass comprehensive legislation "governing the standards with respect to privacy of individually identifiable health information." If no such legislation is passed by that deadline, the

statute gives the Department of Health and Human Services six additional months within which to promulgate final regulations containing such standards. In deference to the process mandated by P.L. 104–191, section 178’s provisions shall not become effective until February 1, 2000. Should legislation that satisfies the requirements of section 264(c)(1) of the Health Insurance Portability and Accountability Act be enacted prior to February 1, 2000, section 178 will never take effect. If such legislation is enacted subsequent to February 1, 2000, section 178 will cease to be effective.

In the event that section 178 takes effect on February 1, 2000, the Board is required to consult with the Secretary of Health and Human Services in administering its provisions.

#### SECTION 179. FINANCIAL INFORMATION PRIVACY

Section 179 amends the Consumer Credit Protection Act by adding a new title to be cited as “Title X—the Financial Information Privacy Act.” The new title is comprised of eight sections:

*Section 1001. Short title; table of contents*

“Financial Information Privacy Act of 1999.”

*Section 1002. Definitions*

The term “customer” is defined as any person to whom a financial institution provides a product or service, including that of acting as a fiduciary. The term “customer information of a financial institution” is defined as any information maintained by a financial institution which is derived from the relationship between the financial institution and its customer and is identified with the customer. The term “financial institution” is defined as any institution engaged in the business of providing financial services to customers who maintain a credit, deposit, trust, or other financial account or relationship with the institution, including but not limited to depository institutions (as defined in section 19(b)(1)(A) of the Federal Reserve Act); loan or finance companies; credit card issuers; operators of credit card systems; and consumer reporting agencies. The Board is authorized to prescribe regulations further defining the types of institutions which shall be treated as “financial institutions” for purposes of this title.

*Section 1003. Privacy protection for customer information of financial institutions*

This section makes it unlawful for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person by (1) knowingly making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution with the intent to deceive the officer, employee, or agent into relying on that statement or representation for purposes of releasing the customer information; (2) knowingly making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution with the intent to deceive the customer into relying on the that statement or representation for purposes of releasing the customer information or authorizing the release of such information; or (3) providing any

document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation, if the document is provided with the intent to deceive the officer, employee, or agent into relying on that document for purposes of releasing the customer information. This section also makes it unlawful to request a person to obtain customer information of a financial institution knowing or consciously avoiding knowing that it was obtained through any of the three methods described in this section.

The prohibitions specified in this section do not apply to any action by a law enforcement agency to obtain customer information of a financial institution in the performance of its official duties. For purposes of this section, the term “law enforcement agency” is intended to include federal, state and local agencies, and specifically encompasses those agencies responsible for enforcing child-support obligations.

This section’s prohibitions do not apply to instances in which a financial institution or its officers, employees, or agents, obtain customer information of such financial institution in the course of (1) testing the security procedures or systems of such institution for maintaining the confidentiality of customer information; (2) investigating allegations of misconduct or negligence on the part of any officer, employee, or agent of the financial institution; or (3) recovering customer information of the financial institution which was obtained or received by another person in any manner described in this section. Thus, for example, when a fraud prevention unit of a financial institution succeeds in retrieving information from an information broker that has been obtained through fraud or deceit, the financial institution is not in violation of this provision. This “safe harbor” extends to agents or contractors retained by a financial institution to implement anti-fraud or self-testing programs.

This section does not apply to the obtaining of customer information of a financial institution that is otherwise available as a public record filed pursuant to the federal securities laws.

This section does not prohibit any State-licensed private investigator, or any officer, employee, or agent of such private investigator, from obtaining customer information of a financial institution, to the extent reasonably necessary to collect child support from a person adjudged to have been delinquent in his or her obligations by a federal or state court, and to the extent that such action by a State-licensed private investigator is not unlawful under any other federal or state law or regulation.

#### *Section 1004. Administrative enforcement*

This section assigns enforcement authority to the FTC and the federal banking agencies according to their respective jurisdictions. The enforcement authority exercised by the FTC under this title is coextensive with its authority under the Fair Debt Collection Practices Act. In instances where depository institutions are implicated in obtaining information through fraudulent means, or requesting that such information be obtained knowing or consciously avoiding knowing that fraudulent or deceptive methods will be used to col-

lect it, the appropriate federal banking agencies have the authority to enforce this title.

This section further provides that in addition to such other remedies as are available under state law, the states have the authority to enforce this Act, through actions to enjoin violations or recover damages of not more than \$1,000 for each violation. The FTC and the other federal agencies with enforcement authority under this section have the right to intervene in any action by a state to enforce this Act. Where the FTC or any other federal agency with enforcement authority under this section has instituted a civil action to enforce this Act, no state may, during the pendency of that action, bring its own action under this section against any defendant named in the federal complaint for any act alleged in that complaint.

#### *Section 1005. Civil liability*

This section provides that any person which is not a financial institution may be held civilly liable for violating this Act by a financial institution or a customer whose financial information was obtained unlawfully. The Act authorizes the recovery of (A) actual damages (1) in the amount sustained by the financial institution or customer as a result of the violation, or (2) in the amount of any compensation received by the defendant, including the value of any nonmonetary compensation, as a result of the violation, whichever is greater; (B) such additional damages as the court may allow; and (C) in the case of a successful action, the costs of the action, including reasonable attorneys' fees.

The purpose of this section is to permit consumers and financial institutions who have been victimized by unscrupulous information brokers and others who traffic in fraudulently obtained financial information to hold those parties accountable. Affording injured private parties a right of action increases the likelihood that the Act's prohibitions will be vigorously enforced. For example, a financial institution will, in some instances, have a stronger incentive to proceed against an information broker or his client than a law enforcement agency or prosecutor operating with limited resources and forced to juggle competing priorities, particularly in those cases where the amount of monetary damages is minimal.

This section does not give rise to a private right of action against a financial institution from which customer information has been obtained in a manner proscribed by section 1003.

#### *Section 1006. Criminal penalties*

Whoever violates this Act or attempts to violate this Act shall be fined in accordance with title 18, United States Code (up to \$250,000 in the case of an individual or \$500,000 in the case of a corporation), or imprisoned for not more than 5 years, or both. Whoever violates this Act while violating or attempting to violate other laws, as part of a pattern of illegal activity involving more than \$100,000 in a 12 month period, shall have their fines doubled or be imprisoned for not more than years, or both.

*Section 1007. Relation to State laws*

This Act does not supersede any state statutes, regulations, orders, or interpretations, except to the extent that they are inconsistent with the provisions of this Act, and then only to the extent of the inconsistency. A state statute, regulation, order, or interpretation is not inconsistent with the provisions of this Act of the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this Act.

*Section 1008. Agency guidance*

This section requires the federal banking agencies (as defined in section 3(z) of the Federal Deposit Insurance Act) to issue advisories to depository institutions under their jurisdiction to assist those institutions in deterring and detecting activities proscribed in this section.

Section 179 requires the GAO, in consultation with the FTC, federal banking agencies, and appropriate federal law enforcement agencies, to submit a report to Congress within 18 months of the date of enactment on (1) the efficacy and adequacy of this legislation in addressing attempts to obtain financial information by fraudulent means and false pretenses; and (2) any recommendations regarding additional legislation or regulations necessary to address threats to the privacy of financial information.

## SECTION 180. STUDY OF CURRENT FINANCIAL PRIVACY LAWS

Section 180 directs the federal banking agencies to study whether existing laws regulating the sharing of customer information by insured depository institutions with affiliates of such institutions adequately protect the privacy rights of customers of such institutions, and to report their findings and conclusions to Congress within six months of enactment of this Act, together with such recommendations for legislative or administrative action as the agencies may determine to be appropriate.

## SUBTITLE J—DIRECT ACTIVITIES OF BANKS

## SECTION 181. AUTHORITY OF NATIONAL BANKS TO UNDERWRITE CERTAIN MUNICIPAL BONDS

Section 181 amends 12 U.S.C. 24(7) to expand the scope of securities activities permissible for a national bank to include municipal revenue bonds, limited obligation bonds, and other obligations that satisfy the requirements of Section 142(b)(1) of the Internal Revenue Code issued by a state or political subdivision thereof.

## SUBTITLE K—DEPOSIT INSURANCE FUNDS

## SECTION 186. STUDY OF SAFETY AND SOUNDNESS OF FUNDS

Section 186 directs the FDIC to study the following aspects of the SAIF and BIF: their safety and soundness and adequacy of reserves, in light of the size of newly merged institutions and affiliations with other financial institutions; their geographic concentration levels; and their required plans for possible merger of the funds. A report of such study to Congress is required prior to the

end of the nine-month period beginning on the date of the Act's enactment.

SECTION 187. ELIMINATION OF SAIF AND DIF SPECIAL RESERVES

Section 187 eliminates the need for the establishment of a SAIF "special reserve" which the FDIC was required to establish beginning in 1999.

SUBTITLE L—MISCELLANEOUS PROVISIONS

SECTION 191. TERMINATION OF "KNOW YOUR CUSTOMERS"  
REGULATIONS

Section 191 prohibits the "Know Your Customer" regulations that were proposed by the OCC, OTS, the Board, and the FDIC from being published in final form. To the extent that any such regulation has become effective before the date of the enactment of this Act, such regulation shall cease to be effective.

SECTION 192. GAO STUDY OF CONFLICTS OF INTEREST

Section 192 requires the Comptroller General to conduct a study analyzing the conflict of interest faced by the Federal Reserve between its role as a primary regulator of the banking industry and its role as a vendor of services to the banking and financial services industry. Specifically, the GAO should address the conflict of interest between the Federal Reserve's role as a regulator of the payment system and its role as a competitor with private sector providers of payments services, and how best to resolve that conflict. The report of the study along with any recommended legislative or administrative actions is due one year from enactment of this Act.

SECTION 193. CLARIFICATION OF SOURCE OF STRENGTH DOCTRINE

Section 193 enhances the source of strength doctrine by protecting the federal banking agencies and the deposit insurance funds from claims brought by the bankruptcy trustee of a depository institution holding company or other person for the return of capital infusions. Specifically, the section amends Section 18 of the Federal Deposit Insurance Act by limiting claims against any federal banking agency or against any conservator or receiver appointed by any federal banking agency arising from or relating to the transfer of money, assets, or other property to a depository institution by a controlling stockholder or a depository institution holding company, or any affiliate or subsidiary of such holding company if at the time of the transfer the depository institution was subject to a direction by a federal banking agency to increase its capital or was undercapitalized. This section does not limit the right of a depository institution, a controlling stockholder, or a depository institution holding company to seek direct review of an order or directive of a federal banking agency under the Administrative Procedures Act in accordance with various banking statutes.

## SECTION 194. STUDY OF COST OF ALL FEDERAL BANKING REGULATIONS

Section 194 mandates a study by the Board, in consultation with the other federal banking agencies, of the total annual costs and benefits of all federal financial regulations and regulatory requirements applicable to banks. The report, along with such recommendations for legislative and administrative action as the Board may determine to be appropriate, is due before the end of the 2-year period beginning on the date of the enactment of this Act.

## SECTION 195. STUDY AND REPORT ON ADAPTING EXISTING LEGISLATIVE REQUIREMENTS TO ON-LINE BANKING AND LENDING

Section 195 mandates the federal banking agencies to conduct a study of banking regulations regarding the delivery of financial services, including those regulations that may assume that there will be person-to-person contact during the course of a financial services transactions, and report their recommendations on adapting those existing requirements to online banking and lending. This report, together with such recommendations for legislative or regulatory action as the agencies may determine to be appropriate, is due to Congress within one year of the date of the enactment of this Act.

## SUBTITLE M—EFFECTIVE DATE OF TITLE

## SECTION 196. EFFECTIVE DATE

Section 196 provides that Title I becomes effective 270 days after enactment of the Act.

## Title II—Functional Regulation

## SUBTITLE A—BROKERS AND DEALERS

## SECTION 201. DEFINITION OF BROKER

Section 201 amends the Securities and Exchange Act of 1934 (1934 Act) definition of “Broker” to narrow the blanket exemption for banks. A “broker” is defined as “any person engaged in the business of effecting transactions in securities for the account of others.” The bill exempts a bank from classification as a “broker” only to the extent that the bank engages in activities that are enumerated in this section.

## SECTION 202. DEFINITION OF DEALER

Section 202 amends the 1934 Act’s blanket exemption for banks from the definition of “dealer”. A “dealer” is defined as “any person engaged in the business of buying or selling securities for such person’s own account through a broker or otherwise”. The bill exempts a bank from classification as a “dealer” only to the extent that the bank engages in: transactions for investment purposes for accounts where the bank acts as a trustee or fiduciary; transactions in commercial paper, bank acceptances, commercial bills, qualified Canadian government obligations, and Brady bonds; the issuance or sale of asset backed securities to qualified investors; transactions in

“traditional banking products”; or buying or selling derivative instruments to qualified investors.

SECTION 203. REGISTRATION FOR SALES OF PRIVATE SECURITIES OFFERINGS

Section 203 creates a new limited qualification category of National Association of Securities Dealers, Inc. (“NASD”) registration for bank employees engaged in private securities offerings.

SECTION 204. INFORMATION SHARING

Section 204 requires federal banking agencies, in consultation with the SEC, to establish record-keeping requirements for banks relying on the bank exceptions to “broker” or “dealer” classification. These records must be made available to the SEC upon request.

SECTION 205. DEFINITION AND TREATMENT OF BANKING PRODUCTS

Section 205 defines “traditional banking product,” for the purposes of the bank broker-dealer exemptions. The definition includes: deposit accounts; deposit instruments issued by a bank; banker’s acceptances; letters of credit or loans issued by a bank; credit card debt accounts; loan participations sold to qualified investors; and certain non-security derivative instruments.

Section 205 clarifies that banks offering or entering into all types of swaps transactions (as defined in section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act), and including credit and equity swaps, would not be required to register as brokers or dealers since such swaps fall within the definition of “traditional banking products,” subject to the determination of federal banking authorities. It is the Committee’s intent, as reflected in a presumption incorporated in this section, that a bank may enter into equity swaps only with “qualified investors” unless a federal banking agency finds otherwise. This section contains a classification limitation which states that “classification of a particular product or instrument as a traditional banking product . . . shall not be construed as finding or implying that such product or instrument is or is not a security for any purpose under the securities laws, or is or is not an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.”

The SEC, in consultation with the Board, is authorized to determine by rulemaking that a specific product which is developed in the future is a security and must be “pushed-out” to a broker/dealer affiliate. In such cases, the Federal Reserve, or the aggrieved party, may initiate, within sixty days, an appeal to the United States Court of Appeals for the District of Columbia Circuit. The court’s consideration must affirm and enforce, or set aside, the regulation based upon whether the subject product or instrument is best regulated under federal banking laws or federal securities laws. The SEC is prohibiting from bringing an enforcement action forcing registration as a broker-dealer while such judicial proceedings are pending.



## SECTION 206. QUALIFIED INVESTOR DEFINED

Section 206 defines “qualified investor” to include: any registered investment company; bank; savings and loan association; broker; dealer; insurance company; business development company; licensed small business investment company; state sponsored employee benefit plan or employee benefit plan under the Employee Retirement Income Security Act of 1974 (“ERISA”) (other than an Individual Retirement Account); certain trusts; any market intermediary; any foreign bank or any foreign government; any corporation, company or individual who owns and invests at least \$10 million; any government or political subdivision who owns and invests at least \$50 million; and any multinational or supra-national entity; or any other person that the SEC determines to be a qualified investor.

## SECTION 207. GOVERNMENT SECURITIES DEFINED

Section 207 amends the Securities Exchange Act of 1934 definition of “government securities” to include qualified Canadian government obligations for the purposes of Section 15C of that Act (which governs government securities brokers) as applied to a bank.

## SECTION 208. EFFECTIVE DATE

Section 208 provides that the subtitle shall take effect 270 days after enactment.

## SECTION 209. RULE OF CONSTRUCTION

Section 209 provides that nothing in the reported bill shall supersede, affect, or otherwise limit the scope and applicability of the Commodity Exchange Act. In adopting the provisions of the reported bill, the Committee did not intend in any way to alter or affect the applicability of the Commodity Exchange Act to transactions covered by these provisions, to the extent such Act might otherwise be applicable to such transactions.

## SUBTITLE B—BANK INVESTMENT COMPANY ACTIVITIES

SECTION 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY  
AFFILIATED BANKS

Section 211(a) reorganizes Section 17(f) of the Investment Company Act of 1940 and adds a new paragraph 17(f)(6). New paragraph 17(f)(6) authorizes the SEC to adopt rules prescribing the conditions under which a bank or an affiliate of a bank, when either of them is affiliated with an investment company, may serve as custodian of that investment company.

Section 211(b) similarly amends Section 26 of the Investment Company Act to add a new subsection 26(b). New subsection 26(b) authorizes the SEC to adopt rules prescribing the conditions under which a bank or an affiliate of a bank, when either of them is affiliated with a unit investment trust, may serve as custodian of that unit investment trust.

Section 211(c) amends Section 36(a) of the Investment Company Act to add a new paragraph 36(a)(3). Section 36(a) currently au-

thorizes the SEC to bring actions for breach of fiduciary duty against the officers, directors, investment advisers, and principal underwriters of an investment company. New paragraph 36(a)(3) provides the SEC with the authority to bring an action for breach of fiduciary duty against a custodian of an investment company as well.

#### SECTION 212. LENDING TO AN AFFILIATED INVESTMENT COMPANY

Section 212 amends Section 17(a) of the Investment Company Act to add a new paragraph 17(a)(4). Section 17(a) currently makes it unlawful for any affiliated person, promoter, or principal underwriter of an investment company to sell any security or other property to the investment company (subject to certain exceptions), to purchase any security or other property from the investment company (except securities of the investment company), or to borrow money or other property from the investment company (except as permitted by Section 21(b)). New paragraph 17(a)(4) makes it unlawful for any affiliated person, promoter, or principal underwriter of an investment company to lend money or other property to the investment company in contravention of such rules as the SEC may promulgate.

#### SECTION 213. INDEPENDENT DIRECTORS

Section 213(a) amends Section 2(a)(19)(A) of the Investment Company Act. Section 2(a)(19)(A)(v) defines an “interested person” of an investment company to include any broker or dealer registered under the Securities Exchange Act and any affiliated person of such a broker or dealer. Section 213(a) replaces Section 2(a)(19)(A)(v) with new Section 2(a)(19)(A)(v) and (vi). New Section 2(a)(19)(A)(v) defines an “interested person” of an investment company as any person or affiliate of a person who during the preceding six-month period has executed any portfolio transactions for the investment company or any related investment company. New Section 2(a)(19)(A)(vi) defines an “interested person” of an investment company as any person or affiliate of a person who during the preceding six-month period has loaned money or other property to the investment company or any related investment company. Section 213(b) makes a conforming change to Section 2(a)(19)(B) of the Investment Company Act, which defines an “interested person” of an investment adviser or principal underwriter of an investment company.

Section 213(c) amends Section 10(c) of the Investment Company Act. Section 10(c) generally provides that no investment company may have a majority of its board of directors consisting of officers, directors, or employees of any one bank. Section 213(c) extends this prohibition to the officers, directors, or employees of any one bank or bank holding company, together with the bank or bank holding company’s affiliates and subsidiaries.

Section 213(d) provides that the amendments made by Section 213 shall take effect one year after the date of enactment.

## SECTION 214. ADDITIONAL SEC DISCLOSURE AUTHORITY

Section 214 amends Section 35(a) of the Investment Company Act. Section 35(a) currently makes it unlawful for any person issuing or selling any security of an investment company to represent or imply in any manner that such security or company is guaranteed, sponsored, recommended, or approved by the United States or any agency, instrumentality or officer thereof. New Section 35(a) further makes it unlawful for any person issuing or selling any security of an investment company to represent or imply in any manner that such security or company is insured by the FDIC or is guaranteed by or is an obligation of any bank.

New Section 35(a) further requires any person issuing or selling the securities of an investment company that is advised by, or sold through, a bank to disclose prominently that an investment in the company is not insured by the FDIC or any other government agency. The SEC is given authority to issue rules prescribing the manner in which this disclosure will be provided.

## SECTION 215. DEFINITION OF BROKER UNDER THE INVESTMENT COMPANY ACT OF 1940

Section 215 amends Section 2(a)(6) of the Investment Company Act. Section 2(a)(6) defines “broker” for purposes of the Investment Company Act and currently contains an exemption for banks. New Section 2(a)(6) defines “broker” as having the same meaning as in the Securities Exchange Act, except that for purposes of the Investment Company Act it does not include any person solely by reason of the fact that such person is an underwriter for one or more investment companies. The exemption for banks is deleted.

## SECTION 216. DEFINITION OF DEALER UNDER THE INVESTMENT COMPANY ACT OF 1940

Section 216 amends Section 2(a)(11) of the Investment Company Act. Section 2(a)(11) defines “dealer” for purposes of the Investment Company Act and currently contains an exemption for banks. New Section 2(a)(11) defines “dealer” as having the same meaning as in the Securities Exchange Act, except that for purposes of the Investment Company Act it does not include any insurance company or investment company. The exemption for banks is deleted.

## SECTION 217. REMOVAL OF THE EXCLUSION FROM THE DEFINITION OF INVESTMENT ADVISER FOR BANKS THAT ADVISE INVESTMENT COMPANIES

Section 217(a) amends Section 202(a)(11) of the Investment Advisers Act of 1940. Section 202(a)(11) defines “investment adviser” and currently exempts any bank or BHC that is not an investment company. New Section 202(a)(11) removes this exemption for any bank or BHC to the extent it serves or acts as an investment adviser to an investment company. If such services or actions performed through a separately identifiable department or division of a bank, the department or division and not the bank itself shall be deemed to be the investment adviser.

Section 217(b) adds a new Section 202(a)(26) to the Investment Advisers Act. New Section 202(a)(26) defines “separately identi-

able department or division” of a bank as a unit under the direct supervision of an officer or officers designated by the bank’s directors as responsible for the day-to-day conduct of the bank’s investment adviser activities for one or more investment companies, including the supervision of all bank employees engaged in the performance of such activities. All records relating to investment adviser activities must be separately maintained in or extractable from the unit’s own facilities or the facilities of the bank so as to permit examination and enforcement by the SEC.

SECTION 218. DEFINITION OF BROKER UNDER THE INVESTMENT ADVISERS ACT OF 1940

Section 218 amends Section 202(a)(3) of the Investment Advisers Act. Section 202(a)(3) defines “broker” for purposes of the Investment Advisers Act and currently contains a blanket exemption for banks. New Section 202(a)(3) defines “broker” as having the same meaning as in the Securities Exchange Act. The blanket exemption for banks is deleted.

SECTION 219. DEFINITION OF DEALER UNDER THE INVESTMENT ADVISERS ACT OF 1940

Section 219 amends Section 202(a)(7) of the Investment Advisers Act. Section 202(a)(7) defines “dealer” for purposes of the Investment Advisers Act and currently contains a blanket exemption for banks. New Section 202(a)(7) defines “dealer” as having the same meaning as in the Securities Exchange Act, except that for purposes of the Investment Advisers Act it does not include any insurance company or investment company. The blanket exemption for banks is deleted.

SECTION 220. INTERAGENCY CONSULTATION

Section 220 amends the Investment Advisers Act to add a new Section 210A. New Section 210A authorizes the SEC to receive from a federal banking agency the results of any examination, reports, records, or other information to which such agency may have access regarding the investment advisory activities of any BHC, bank, or separately identifiable department or division of a bank, that is registered as an investment adviser or that has a subsidiary or separately identifiable department or division registered as an investment adviser. New Section 210A similarly authorizes the federal banking agencies to receive from the SEC the results of any examination, reports, records, or other information regarding the investment advisory activities of any BHC, bank, or separately identifiable department or division of a bank, that is registered as an investment adviser. Section 210A does not limit the authority of any federal banking agency with respect to such bank holding company, bank, or separately identifiable department or division under any provision of law.

SECTION 221. TREATMENT OF BANK COMMON TRUST FUNDS

Section 221(a) amends Section 3(a)(2) of the Securities Act of 1933. Section 3(a)(2) currently exempts from the application of the Securities Act any interest or participation in any common trust

fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed by the bank in its capacity as trustee, executor, administrator, or guardian. As amended, Section 3(a)(2) exempts any interest or participation in any common trust fund or similar fund that is excluded from the definition of “investment company” under new Section 3(c)(3) of the Investment Company Act.

Section 221(b) similarly amends Section 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934. Section 3(a)(12)(A)(iii) currently exempts from the application of the Securities Exchange Act any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed by the bank in its capacity as trustee, executor, administrator, or guardian. As amended, Section 3(a)(12)(A)(iii) exempts any interest or participation in any common trust fund or similar fund that is excluded from the definition of “investment company” under new Section 3(c)(3) of the Investment Company Act.

Section 221(c) amends Section 3(c)(3) of the Investment Company Act. Section 3(c)(3) currently exempts from the definitions of “investment company” any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed by the bank in its capacity as trustee, executor, administrator, or guardian. As amended, Section 3(c)(3) exempts such a bank common trust fund only if (i) the fund is employed by the bank solely as an aid to the administration of trusts, estates, or other fiduciary accounts; (ii) interests in the fund are not advertised or offered for sale to the general public, except in connection with the ordinary advertising of the bank’s fiduciary services; and (iii) fees and expenses charged by the fund are in keeping with fiduciary principles established under applicable federal or state law.

SECTION 222. INVESTMENT ADVISERS PROHIBITED FROM HAVING  
CONTROLLING INTEREST IN REGISTERED INVESTMENT COMPANY

Section 222 amends Section 15 of the Investment Company Act to add a new subsection 15(g). Section 15 regulates advisory contracts between investment companies and their investment advisers. New subsection 15(g) requires that if an investment adviser, or an affiliated person of that adviser, holds a controlling interest in an investment company in a trustee or fiduciary capacity, he or she must transfer the power to vote the shares of the investment company. If the adviser or an affiliate holds the shares in a trustee or fiduciary capacity under an employee benefit plan subject to ERISA, he or she must transfer the power to vote the shares of the investment company to another plan fiduciary who is not affiliated with the adviser or an affiliate. If the adviser or an affiliate holds the shares in a trustee or fiduciary capacity under any other circumstance, he or she must either (i) transfer the power to vote the shares of the investment company to the beneficial owners, to another fiduciary who is not affiliated with the adviser or an affiliate, or to any person authorized to receive statements and information with respect to the trust who is not affiliated with the adviser or an affiliate; (ii) vote the shares of the investment company in the

same proportion as shares held by all other shareholders of the investment company; or (iii) vote the shares of the investment company as otherwise permitted by such rules as the SEC may prescribe. Acting in accordance with these provisions is deemed not to breach a fiduciary duty under state or federal law. These provisions do not apply if the investment company consists solely of assets held in a trustee or fiduciary capacity.

#### SECTION 223. CONFORMING CHANGE IN DEFINITION

Section 223 amends Section 2(a)(5) of the Investment Company Act. Section 2(a)(5) defines “bank” for purposes of the Investment Company Act to include any banking institution organized under the laws of the United States. As amended, Section 2(a)(5) defines “bank” to include any depository institution as defined in Section 3 of the Federal Deposit Insurance Act and any branch or agency of a foreign bank as defined in Section 1(b) of the International Banking Act of 1978.

#### SECTION 224. CONFORMING AMENDMENT

Section 224 amends Section 202 of the Investment Advisers Act to add a new subsection 202(c). New subsection 202(c) requires the SEC, whenever it is engaged in rulemaking or is required to consider or determine whether an action is necessary or appropriate in the public interest, under the Investment Advisers Act, to consider the promotion of efficiency, competition, and capital formation as well as the protection of investors. Similar changes were made to the Securities Act, the Securities Exchange Act, and the Investment Company Act by the National Securities Markets Improvement Act of 1996.

#### SECTION 225. EFFECTIVE DATE

Section 225 provides that this subtitle shall take effect 90 days after the date of enactment.

### SUBTITLE C—SECURITIES AND EXCHANGE COMMISSION SUPERVISION OF INVESTMENT BANK HOLDING COMPANIES

#### SECTION 231. SUPERVISION OF INVESTMENT BANK HOLDING COMPANIES BY THE SECURITIES AND EXCHANGE COMMISSION

Section 231 establishes a supervised investment bank holding company (“IBHC”), as an alternative to an FHC. An IBHC must register with, and is supervised by, the SEC. This alternative is made available to any company that controls two or more broker-dealers and is not affiliated with a WFI, an insured bank or savings association, or certain foreign banks and companies. An IBHC may affiliate with uninsured trust companies, credit card banks, Edge Act companies, CEBA institutions, and foreign branches of National banks. This section outlines registration, discontinuation, and record keeping requirements for IBHCs. This section provides the SEC with examination authority and the power to regulate the IBHC’s capital if deemed necessary. The SEC is required to defer to the appropriate regulator regarding the interpretation of banking or insurance law with respect to the banking and insurance activities of the IBHC. Finally, the SEC is granted “backup” super-

visory authority over certain WFHCs to ensure that the WFHC and its affiliates comply with federal securities law.

#### SUBTITLE D—STUDY

##### SECTION 241. STUDY OF METHODS TO INFORM INVESTORS AND CONSUMERS OF UNINSURED PRODUCTS

Section 241 mandates a GAO study of the efficacy, costs, and benefits of requiring insured depository institutions to inform consumers through the use of a logo or seal that a securities or insurance product is not FDIC-insured.

##### SECTION 242. STUDY OF LIMITATION ON FEES ASSOCIATED WITH ACQUIRING FINANCIAL PRODUCTS.

Section 242 requires the GAO to undertake a study regarding the impact of regulations limiting any commissions, fees, markups, or other costs incurred by customers in the acquisition of financial products.

### Title III—Insurance

#### SUBTITLE A—STATE REGULATION OF INSURANCE

##### SECTION 301. STATE REGULATION OF THE BUSINESS OF INSURANCE

Section 301 states that the McCarran-Ferguson Act (15 U.S.C. Sec. 1011 et seq.) remains the law of the United States.

##### SECTION 302. MANDATORY INSURANCE LICENSING REQUIREMENTS

Section 302 provides that, subject to Section 104, any person providing insurance in a state as principal or agent must be licensed as required by the appropriate insurance regulator of such state.

##### SECTION 303. FUNCTIONAL REGULATION OF INSURANCE

Section 303 provides that, subject to Section 104, the insurance sales activities of any person or entity shall be functionally regulated by the states. Section 104 establishes a safe harbor for state regulation of insurance sales, as well as a method for determining whether state regulation falling outside the safe harbor would be pre-empted.

##### SECTION 304. INSURANCE UNDERWRITING IN NATIONAL BANKS

Section 304(a) prohibits national banks and their subsidiaries from providing insurance in a state as principal. This prohibition does not apply to “authorized products.” Under Section 304(b), a product is “authorized” if, as of January 1, 1999, national banks were lawfully providing it as principal or the OCC had determined in writing that national banks may provide it as principal; no court of relevant jurisdiction had, by final judgment, overturned a determination by the OCC that national banks may provide it as principal; and the product is not title insurance or an annuity contract subject to tax treatment under Section 72 of the Internal Revenue Code.

Section 304(c) defines “insurance” for purposes of Section 304. Under Section 304(c)(1), “insurance” means any product regulated

as insurance as of January 1, 1999 in the state in which the product is provided. Under Section 304(c)(2), insurance means any product first offered after January 1, 1999 which a state insurance regulator determines shall be regulated as insurance in the state in which the product is provided because the product insures, guarantees, or indemnifies against loss of life, loss of health, or loss through damage to or destruction of property. Products which may not be a product or service of a bank that is a deposit product are (i) a loan, discount, letter of credit, or other extension of credit; (ii) a trust or other fiduciary service; (iii) a qualified financial contract as defined in Section 11(e)(8)(D)(I) of the Federal Deposit Insurance Act; or (iv) a financial guaranty; except a bank product does not include a product that has an insurance component such that if offered by a bank as principal the product would be treated as a life insurance contract under Section 7702 of the Internal Revenue Code or losses incurred with respect to the product would qualify for treatment under Section 832(b)(5) of the Internal Revenue Code if the bank were subject to tax as an insurance company under Section 832 of the Internal Revenue Code. The term "financial guaranty" in Section 304(c)(2)(B)(v) is not intended to exclude surety bonds from the definition of insurance. Under Section 304(c)(3), insurance means any annuity contract on which the income is subject to tax under Section 72 of the Internal Revenue Code.

SECTION 305. TITLE INSURANCE ACTIVITIES OF NATIONAL BANKS AND THEIR AFFILIATES

Section 305(a) prohibits national banks and their subsidiaries from engaging in any activity involving the underwriting of title insurance, other than title insurance underwriting activities in which they were lawfully engaged before the date of enactment. Section 305(b) provides that, in the case of a national bank that has an affiliate which provides insurance as principal, neither the bank or a subsidiary of the bank may engage in any activity involving the underwriting of title insurance. Section 305(c) provides that, in the case of a national bank that has a subsidiary that provides insurance as principal and no affiliate that provides insurance as principal, the bank may not engage in any activity involving the underwriting of title insurance. Section 305(d) prohibits national banks from selling title insurance unless they were selling title insurance prior to the date of enactment. Currently, under section 92 of the National Bank Act (12 U.S.C. 92), national banks may sell title insurance from places with populations of 5,000 or less. When the Committee debated this amendment, a colloquy occurred with the sponsor of the amendment indicating that section 305(d) should not be construed as limiting the authority of a national bank located and doing business in any place with a population of 5,000 or less to sell title insurance, even if the national bank was not selling title insurance from such a place before the date of enactment of the Financial Services Act. Section 305(f) states that any state law which was in effect prior to the date of the enactment of this Act prohibiting the sale of title insurance by any person or entity in a state is not preempted by this Act, including the preemption provisions contained in section 104, or by any current law, including section 92 of the National Bank Act (12 U.S.C. 92). Other state laws



with general applicability and not those that prohibit only banks from engaging in title insurance activities are protected by section 305(f).

SECTION 306. EXPEDITED AND EQUALIZED DISPUTE RESOLUTION FOR FINANCIAL REGULATORS

Section 306(a) provides that in the event of a regulatory conflict between a state insurance regulator and a federal regulator as to whether a product is insurance as defined in Section 304(c), or as to whether a state statute, regulation, order, or interpretation regarding insurance sales or solicitation activity is preempted under federal law, either regulator may seek expedited judicial review. Either regulator may file a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit or in the U.S. Court of Appeals for the circuit in which the state is located.

Under Section 306(b), the relevant U.S. Court of Appeals must complete all action on the petition, including rendering a judgment, within 60 days from the filing of the petition unless all parties agree to an extension. Under Section 306(c), any request for certiorari to the U.S. Supreme Court must be filed as soon as practicable after the judgment of the U.S. Court of Appeals is issued. Section 306(d) provides that no action challenging an order, ruling, determination, or other action of a federal or state regulator may be brought under these procedures after the later of (i) 12-months after the first public notice of the order, ruling, or determination in its final form, or (ii) 6-months period after the order, ruling, or determination takes effect.

Section 306(e) requires the court to base its decision on an action filed under this section upon its review on the merits of all questions presented under federal and state law. The court must review the nature of the product or activity and the history and purpose of its regulation under federal and state law without unequal deference.

SECTION 307. CERTAIN STATE AFFILIATION LAWS PREEMPTED FOR INSURANCE COMPANIES AND AFFILIATES

Section 307 provides that, except as provided in Section 104(a)(2), no state may prevent or significantly interfere with the ability of an insurer, or any affiliate of an insurer, to become a financial holding company or to acquire control of a depository institution. Section 307 further provides that no state may limit the amount of an insurer's assets that may be invested in the voting securities of insured depository institution or a company that controls such an institution, except the state of the insurer's domicile may limit the investment to 5 percent of the insurer's assets. Section 307 further provides that no state other than the state of the insurer's domicile may prevent, significantly interfere with, review, approve, or disapprove of an insurer's plan of reorganization from mutual form to stock form.

SUBTITLE B—NATIONAL ASSOCIATION OF REGISTERED AGENTS AND  
BROKERS

## SECTION 321. STATE FLEXIBILITY IN MULTISTATE LICENSE REFORMS

Section 321 provides that Subtitle B will take effect unless three years after the date of enactment of the Act a majority of the states have enacted uniform laws and regulations governing licensing insurance agent and agencies, or have enacted reciprocity laws and regulations governing the licensing of nonresident agents and agencies.

SECTION 322. NATIONAL ASSOCIATION OF REGISTERED AGENTS AND  
BROKERS

Section 322 establishes the National Association of Registered Agents and Brokers (“NARAB”), a nonprofit corporation that is not an agency of the United States.

## SECTION 323. PURPOSE

Section 323 states that NARAB’s purpose is to provide a mechanism through which uniform licensing, appointment, continuing education, and other qualifications and conditions can be adopted and applied on a multistate basis. NARAB must preserve the rights of states to license, supervise, and discipline insurance producers and to prescribe and enforce laws and regulations relating to insurance-related consumer protection and unfair trade practices.

## SECTION 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT

Section 324 states that NARAB will be subject to the supervision and oversight of the National Association of Insurance Commissioners (“NAIC”) and is not an agency or instrumentality of the United States Government.

## SECTION 325. MEMBERSHIP

Section 325 provides that any State-licensed insurance producer is eligible to be a member of NARAB.

## SECTION 326. BOARD OF DIRECTORS

Section 326 states that NARAB will have a board of directors composed of 7 members serving three-year terms appointed by the NAIC. At least four of the board members must have significant experience with the regulation of commercial lines of insurance in at least one of the 20 states with the greatest total dollar amount of commercial-lines insurance in the United States.

## SECTION 327 OFFICERS

Section 327 establishes the officers of NARAB: Board Chairperson (who must be a member of the NAIC), Board Vice Chairperson, President, Secretary, and Treasurer. It requires each officer of the Board and NARAB to be elected for a three-year term.

## SECTION 328. BYLAWS, RULES AND DISCIPLINARY ACTIONS

Section 328 describes the procedure for adoption and amendment of the bylaws and rules and details determinations as to whether any membership should be denied, suspended, revoked, or not renewed.

## SECTION 329. ASSESSMENTS

Section 329 authorizes NARAB to assess application and membership fees necessary to cover the costs of its operations provided that it does not discriminate against smaller insurance producers. Section 329 also authorizes the NAIC to assess the NARAB for any costs it incurs under Subtitle B.

## SECTION 330. FUNCTIONS OF THE NAIC

Section 330 authorizes the NAIC to examine and inspect NARAB and require NARAB to file reports appropriate to the public interest. It requires NARAB to annually report to the NAIC about its business, financial condition, and related matters. NAIC will transmit the report to Congress and the President. It further provides that rulemaking determinations made by NAIC pursuant to Section 328 must be made after offering a notice and comment period and an opportunity for a hearing.

SECTION 331. LIABILITY OF THE ASSOCIATION AND THE DIRECTORS,  
OFFICERS, AND EMPLOYEES OF THE ASSOCIATION

Section 331 states that NARAB is not to be deemed an insurer or insurance producer under state law. It provides that NARAB and its officers, directors, and employees are immune from liability for any action taken or omitted in good faith under or in connection with any matter in Subtitle B.

## SECTION 332. ELIMINATION OF NAIC OVERSIGHT

Section 332 contains provisions for establishing NARAB without NAIC oversight under certain circumstances.

## SECTION 333. RELATIONSHIP TO STATE LAW

Section 333 describes circumstances under which state laws and actions purporting to regulate insurance producers will be preempted.

## SECTION 334. COORDINATION WITH OTHER REGULATORS

Section 334 authorizes NARAB to issue uniform insurance producer applications and renewal applications; establish a central clearinghouse through which NARAB members may apply for new or renewal of licenses; and establish a national database of regulatory information on insurance producers.

## SECTION 335. JUDICIAL REVIEW

Section 335 sets standards of review, requires an aggrieved individual to exhaust all available administrative remedies before NARAB and the NAIC before seeking judicial review of a NARAB

decision, and identifies the courts with appropriate jurisdiction over litigation involving NARAB.

SECTION 336. DEFINITIONS

Section 336 defines “insurance,” “insurance producer,” “state law” and “home state.”

Title IV—Unitary Savings and Loan Holding Companies

SECTION 401. PROHIBITION ON NEW UNITARY SAVINGS AND LOAN HOLDING COMPANIES

Section 401(a) prohibits, after March 4, 1999, a company from acquiring control of a savings association as a unitary savings and loan holding company pursuant to section 10(c)(3) of the Home Owners’ Loan Act (“HOLA”) (12 U.S.C. 1467a(c)(3)) unless such company is engaged in activities that multiple savings and loan holding companies can engage in under current law or in activities that FHCs can engage in under new section 6(c) of the BHCA. This prohibition does not apply to unitary holding companies which had acquired or applied for a savings association on or before March 4, 1999, or acquired an existing unitary savings and loan holding company, except that such company must continue to control the savings association or its successor.

Section 401(c) expands the permitted activities that mutual holding companies can engage in under section 10(o)(5) of the HOLA (12 U.S.C. 1467a(o)(5)) by allowing them to conduct an insurance agency or escrow business and in the case of unitary mutual savings and loan holding companies to engage in the activities permitted for financial holding companies under section 6(c) of the BHCA.

SECTION 402. RETENTION OF “FEDERAL” IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION

Section 402 would permit federal savings associations that convert to national or state bank charters to keep the word “Federal” in their names. For example, if First Federal Savings Bank converts from a federal savings association to a state bank charter, it may retain its former name.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**BANKING ACT OF 1933**

\* \* \* \* \*

[SEC. 20. After one year from the date of the enactment of this Act, no member bank shall be affiliated in any manner described in section 2 (b) hereof with any corporation, association, business trust, or other similar organization engaged principally in the issue, flotation, underwriting, public sale, or distribution at whole-

sale or retail or through syndicate participation of stocks, bonds, debentures, notes, or other securities: *Provided*, That nothing in this paragraph shall apply to any such organization which shall have been placed in formal liquidation and which shall transact no business except such as may be incidental to the liquidation of its affairs.

【For every violation of this section the member bank involved shall be subject to a penalty not exceeding \$1,000 per day for each day during which such violation continues. Such penalty may be assessed by the Federal Reserve Board, in its discretion, and, when so assessed, may be collected by the Federal reserve bank by suit or otherwise.

【If any such violation shall continue for six calendar months after the member bank shall have been warned by the Federal Reserve Board to discontinue the same, (a) in the case of a national bank, all the rights, privileges, and franchises granted to it under the National Bank Act may be forfeited in the manner prescribed in section 2 of the Federal Reserve Act, as amended (U.S.C., title 12, secs. 141, 222-225, 281-286, and 502) or, (b) in the case of a State member bank, all of its rights and privileges of membership in the Federal Reserve System may be forfeited in the manner prescribed in section 9 of the Federal Reserve Act, as amended (U.S.C., title 12, secs. 321-332).】

\* \* \* \* \*

【SEC. 32. No officer, director, or employee of any corporation or unincorporated association, no partner or employee of any partnership, and no individual, primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities, shall serve the same time as an officer, director, or employee of any member bank except in limited classes of cases in which the Board of Governors of the Federal Reserve System may allow such service by general regulations when in the judgment of the said Board it would not unduly influence the investment policies of such member bank or the advice it gives its customers regarding investments.】

\* \* \* \* \*

**BANK HOLDING COMPANY ACT OF 1956**

\* \* \* \* \*

DEFINITIONS

SEC. 2. (a) \* \* \*

\* \* \* \* \*

(c) BANK DEFINED.—For purposes of this Act—

(1) IN GENERAL.—Except as provided in paragraph (2), the term “bank” means any of the following:

(A) \* \* \*

\* \* \* \* \*

(C) *A wholesale financial institution.*

(2) EXCEPTIONS.—The term “bank” does not include any of the following:

(A) \* \* \*

\* \* \* \* \*

(H) An industrial loan company, industrial bank, or other similar institution which is—

(i) \* \* \*

\* \* \* \* \*

except that this subparagraph shall cease to apply to any institution which permits any overdraft (including any intraday overdraft), or which incurs any such overdraft in such institution’s account at a Federal Reserve bank, on behalf of an affiliate if such overdraft is not the result of an inadvertent computer or accounting error that is beyond the control of both the institution and the affiliate, or that is otherwise permissible for a bank controlled by a company described in section 4(f)(1).

\* \* \* \* \*

(n) INCORPORATED DEFINITIONS.—For purposes of this Act, the terms “insured depository institution”, “appropriate Federal banking agency”, “default”, “in danger of default”, “insured bank”, and “State bank supervisor” have the same meanings as in section 3 of the Federal Deposit Insurance Act.

(o) OTHER DEFINITIONS.—For purposes of this Act, the following definitions shall apply:

(1) CAPITAL TERMS.—

(A) INSURED DEPOSITORY INSTITUTIONS.—With respect to insured depository institutions, the terms “well capitalized”, “adequately capitalized”, and “undercapitalized” have the same meanings as in section [38(b)] 38 of the Federal Deposit Insurance Act.

\* \* \* \* \*

(p) WHOLESALE FINANCIAL INSTITUTION.—The term “wholesale financial institution” means a wholesale financial institution subject to section 9B of the Federal Reserve Act.

(q) COMMISSION.—The term “Commission” means the Securities and Exchange Commission.

(r) DEPOSITORY INSTITUTION.—The term “depository institution”—

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

(2) includes a wholesale financial institution.

ACQUISITION OF BANK SHARES OR ASSETS

SEC. 3. (a) \* \* \*

\* \* \* \* \*

(c) FACTORS FOR CONSIDERATION BY BOARD.—

(1) \* \* \*

(2) BANKING AND COMMUNITY [FACTORS.—In every case] FACTORS.—

(A) IN GENERAL.—In every case, the Board shall take into consideration the financial and managerial resources and

future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

*(B) PUBLIC MEETINGS.—In each case involving 1 or more insured depository institutions each of which has total assets of \$1,000,000,000 or more, the Board shall, as necessary and on a timely basis, conduct public meetings in 1 or more areas where the Board believes there will be a substantial public impact.*

\* \* \* \* \*

(e) Every bank that is a holding company and every bank that is a subsidiary of such company shall become and remain an insured depository institution as such term is defined in section 3 of the Federal Deposit Insurance Act. *This subsection shall not apply to a wholesale financial institution.*

[(f) SAVINGS BANK SUBSIDIARIES OF BANK HOLDING COMPANIES.—

[(1) IN GENERAL.—Notwithstanding any other provision of this Act (other than paragraphs (2) and (3)), any qualified savings bank which is a subsidiary of a bank holding company may engage, directly or through a subsidiary, in any activity in which such savings bank may engage (as a State chartered savings bank) pursuant to express, incidental, or implied powers under any statute or regulation, or under any judicial interpretation of any law, of the State in which such savings bank is located.

[(2) INSURANCE ACTIVITIES.—Except as provided in paragraph (3), any insurance activities of any qualified savings bank which is a subsidiary of a bank holding company shall be limited to insurance activities allowed under section 4(c)(8).

[(3) SAVINGS BANK LIFE INSURANCE.—Any qualified savings bank permitted, as of March 5, 1987, to engage in the sale or underwriting of savings bank life insurance may sell or underwrite such insurance after such savings bank is a subsidiary of a bank holding company if—

[(A) the savings bank is located in the State of Connecticut, Massachusetts, or New York;

[(B) such activity is expressly authorized by the law of the State in which such savings bank is located;

[(C) the savings bank retains its character as a savings bank;

[(D) such activity is carried out by the savings bank directly and not by—

[(i) any subsidiary or affiliate of the savings bank;

or

[(ii) the bank holding company which controls such savings bank;

[(E) such activity is carried out by the savings bank in accordance with any residency or employment limitations set forth in the savings bank life insurance statute in effect on March 5, 1987, in the State in which such bank is located; and

[(F) such activity is otherwise carried out in the same manner as savings bank life insurance activity is carried

out in the State in which such bank is located by savings banks which are not subsidiaries of any bank holding company registered under this Act.

[(4) SUBSECTION SHALL CEASE TO APPLY UNDER CERTAIN CIRCUMSTANCES.—If any company which is not a savings bank or a savings bank holding company acquires control of a qualified savings bank, such savings bank shall cease to engage in any activity authorized under paragraph (1) or (3) before the end of the 2-year period beginning on the date such company acquires control, unless such activity is otherwise authorized pursuant to this Act.

[(5) SPECIAL ASSET AGGREGATION RULE FOR PURPOSES OF PARAGRAPH (3).—For the sole purpose of determining whether a qualified savings bank may continue to sell and underwrite savings bank life insurance in accordance with this subsection after control of such savings bank is acquired by a bank holding company, the assets of any other bank affiliated with, or under contract to affiliate with, such savings bank as of March 5, 1987, shall be treated as assets of the savings bank in determining whether such bank holding company is a savings bank holding company.]

(f) [Repealed].

(g) MUTUAL BANK HOLDING COMPANY.—

(1) \* \* \*

[(2) REGULATION.—A corporation organized as a holding company under this subsection shall be regulated on the same terms and be subject to the same limitations as any other holding company which controls a savings bank.]

(2) REGULATIONS.—*A bank holding company organized as a mutual holding company shall be regulated on terms, and shall be subject to limitations, comparable to those applicable to any other bank holding company.*

INTERESTS IN NONBANKING ORGANIZATIONS

SEC. 4. (a) \* \* \*

\* \* \* \* \*

(c) The prohibitions in this section shall not apply to (i) any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of the Internal Revenue Code of 1954, or to any labor, agricultural, or horticultural organization to which all or substantially all of the assets of such company are hereafter transferred, or (ii) a company covered in 1970 more than 85 per centum of the voting stock of which was collectively owned on June 30, 1968, and continuously thereafter, directly or indirectly, by or for members of the same family, or their spouses, who are lineal descendants of common ancestors; and such prohibitions shall not, with respect to any other bank holding company, apply to—

(1) \* \* \*

\* \* \* \* \*

[(8) shares of any company the activities of which the Board after due notice (and opportunity for hearing in the case of an acquisition of a savings association) has determined (by order



or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto, but for purposes of this subsection it is not closely related to banking or managing or controlling banks for a bank holding company to provide insurance as a principal, agent, or broker except (A) where the insurance is limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death, disability, or involuntary unemployment of the debtor; (B) in the case of a finance company which is a subsidiary of a bank holding company, where the insurance is also limited to assuring repayment of the outstanding balance on an extension of credit in the event of loss or damage to any property used as collateral on such extension of credit and, during the period beginning on the date of the enactment of this subparagraph and ending on December 31, 1982, such extension of credit is not more than \$10,000 (\$25,000 in the case of an extension of credit which is made to finance the purchase of a residential manufactured home and which is secured by such residential manufactured home) and for any given year after 1982, such extension of credit is not more than an amount equal to \$10,000 (\$25,000 in the case of an extension of credit which is made to finance the purchase of a residential manufactured home and which is secured by such residential manufactured home) increased by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published monthly by the Bureau of Labor Statistics for the period beginning on January 1, 1982, and ending on December 31 of the year preceding the year in which such extension of credit is made; (C) any insurance agency activity in a place that (i) has a population not exceeding five thousand (as shown by the last preceding decennial census), or (ii) the bank holding company, after notice and opportunity for a hearing, demonstrates has inadequate insurance agency facilities; (D) any insurance agency activity which was engaged in by the bank holding company or any of its subsidiaries on May 1, 1982, or which the Board approved for such company or any of its subsidiaries on or before May 1, 1982, including (i) sales of insurance at new locations of the same bank holding company or the same subsidiary or subsidiaries with respect to which insurance was sold on May 1, 1982, or approved to be sold on or before May 1, 1982, if such new locations are confined to the State in which the principal place of business of the bank holding company is located, any State or States immediately adjacent to such State, and any State or States in which insurance activities were conducted by the bank holding company or any of its subsidiaries on May 1, 1982, or were approved to be conducted by the bank holding company or any of its subsidiaries on or before May 1, 1982, and (ii) sales of insurance coverages which may become available after May 1, 1982, so long as those coverages insure against the same types of risks as, or are otherwise functionally equivalent to, coverages sold on May 1, 1982, or approved to be sold on or before May 1, 1982 (for purposes of this subparagraph, activities en-

gaged in or approved by the Board on May 1, 1982, shall include activities carried on subsequent to that date as the result of an application to engage in such activities pending on May 1, 1982, and approved subsequent to that date or of the acquisition by such company pursuant to a binding written contract entered into on or before May 1, 1982, of another company engaged in such activities at the time of the acquisition); (E) any insurance activity where the activity is limited solely to supervising on behalf of insurance underwriters the activities of retail insurance agents who sell (i) fidelity insurance and property and casualty insurance on the real and personal property used in the operations of the bank holding company or any of its subsidiaries, and (ii) group insurance that protects the employees of the bank holding company or any of its subsidiaries; (F) any insurance agency activity engaged in by a bank holding company, or any of its subsidiaries, which bank holding company has total assets of \$50,000,000 or less: *Provided, however,* That such a bank holding company and its subsidiaries may not engage in the sale of life insurance or annuities except as provided in subparagraph (A), (B), or (C); or (G) where the activity is performed, or shares of the company involved are owned, directly or indirectly, by a bank holding company which is registered with the Board of Governors of the Federal Reserve System and which, prior to January 1, 1971, was engaged, directly or indirectly, in insurance agency activities as a consequence of approval by the Board prior to January 1, 1971. In determining whether a particular activity is a proper incident to banking or managing or controlling banks the Board shall consider whether its performance by an affiliate of a holding company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. In orders and regulation under this subsection, the Board may differentiate between activities commenced de novo and activities commenced by the acquisition, in whole or in part, of a going concern. Notwithstanding any other provision of this Act, if the Board finds that an emergency exists which requires the Board to act immediately on any application under this subsection involving a thrift institution, and the primary Federal regulator of such institution concurs in such finding, the Board may dispense with the notice and hearing requirement of this subsection and the Board may approve or deny any such application without notice or hearing. If an application is filed under this paragraph in connection with an application to make an acquisition pursuant to section 13(f) of the Federal Deposit Insurance Act, the Board may dispense with the notice and hearing requirement of this paragraph and the Board may approve or deny the application under this paragraph without notice or hearing. If an application described in the preceding sentence is approved, the Board shall publish in the Federal Register, not later than 7 days after such approval is granted, the order approving the application

and a description of the nonbanking activities involved in the acquisition;】

*(8) shares of any company the activities of which had been determined by the Board by regulation or order under this paragraph as of the day before the date of the enactment of the Financial Services Act of 1999, to be so closely related to banking as to be a proper incident thereto (subject to such terms and conditions contained in such regulation or order, unless modified by the Board);*

\* \* \* \* \*

(f) CERTAIN COMPANIES NOT TREATED AS BANK HOLDING COMPANIES.—

(1) \* \* \*

(2) LOSS OF EXEMPTION.—Paragraph (1) shall cease to apply to any company described in such paragraph if—

(A) such company directly or indirectly—

(i) \* \* \*

(ii) acquires control of more than 5 percent of the shares or assets of an additional bank or a savings association other than—

(I) \* \* \*

\* \* \* \* \*

(IX) shares of a savings association held by any insurance company, as defined in section 2(a)(17) of the Investment Company Act of 1940, except as provided in paragraph (11); **【and】**

(X) shares issued in a qualified stock insurance under section 10(q) of the Home Owners' Loan Act; *and*

(XI) *assets that are derived from, or are incidental to, consumer lending activities in which institutions described in subparagraph (F) or (H) of section 2(c)(2) are permitted to engage,*

except that the aggregate amount of shares held under this clause (other than under subclauses (I), (II), (III), (IV), (V), and (VIII)) may not exceed 15 percent of all outstanding shares or of the voting power of a savings association; or

**【(B) any bank subsidiary of such company fails to comply with the restrictions contained in paragraph (3)(B).】**

*(B) any bank subsidiary of such company engages in any activity in which the bank was not lawfully engaged as of March 5, 1987, unless the bank is well managed and well capitalized;*

(C) any bank subsidiary of such company both—

(i) *accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties; and*

(ii) *engages in the business of making commercial loans (and, for purposes of this clause, loans made in the ordinary course of a credit card operation shall not be treated as commercial loans); or*

(D) *after the date of the enactment of the Competitive Equality Amendments of 1987, any bank subsidiary of such*

*company permits any overdraft (including any intraday overdraft), or incurs any such overdraft in such bank's account at a Federal reserve bank, on behalf of an affiliate, other than an overdraft described in paragraph (3).*

[(3) LIMITATION ON BANKS CONTROLLED BY PARAGRAPH (1) COMPANIES.—

[(A) FINDINGS.—The Congress finds that banks controlled by companies referred to in paragraph (1) may, because of relationships with affiliates, be involved in conflicts of interest, concentration of resources, or other effects adverse to bank safety and soundness, and may also be able to compete unfairly against banks controlled by bank holding companies by combining banking services with financial services not permissible for bank holding companies. The purpose of this paragraph is to minimize any such potential adverse effects or inequities by temporarily restricting the activities of banks controlled by companies referred to in paragraph (1) until such time as the Congress has enacted proposals to allow, with appropriate safeguards, all banks or bank holding companies to compete on a more equal basis with banks controlled by companies referred to in paragraph (1) or, alternatively, proposals to permanently restrict the activities of banks controlled by companies referred to in paragraph (1).

[(B) LIMITATIONS.—Until such time as the Congress has taken action pursuant to subparagraph (A), a bank controlled by a company described in paragraph (1) shall not—

[(i) engage in any activity in which such bank was not lawfully engaged as of March 5, 1987;

[(ii) offer or market products or services of an affiliate that are not permissible for bank holding companies to provide under subsection (c)(8), or permit its products or services to be offered or marketed in connection with products and services of an affiliate, unless—

[(I) the Board, by regulation, has determined such products and services are permissible for bank holding companies to provide under subsection (c)(8);

[(II) such products and services are described in section 20 of the Banking Act of 1933 and the Board, by regulation, has permitted bank holding companies to offer or market such products or services, but has prohibited bank holding companies and their affiliates from principally engaging in the offering or marketing of such products or services; or

[(III) such products or services were being so offered or marketed as of March 5, 1987, and then only in the same manner in which they were being offered or marketed as of that date; or

[(iii) after the date of the enactment of the Competitive Equality Amendments of 1987, permit any over-

draft (including an intraday overdraft), or incur any such overdraft in such bank's account at a Federal Reserve bank, on behalf of an affiliate, other than an overdraft described in subparagraph (C).

[(C) PERMISSIBLE OVERDRAFTS DESCRIBED.—For purposes of subparagraph (B)(iii), an overdraft is described in this subparagraph if—

[(i) such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the bank and the affiliate; or

[(ii) such overdraft—

[(I) is permitted or incurred on behalf of an affiliate which is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York; and

[(II) is fully secured, as required by the Board, by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book entry system.

[(4) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—If any company described in paragraph (1) loses the exemption provided under such paragraph by operation of paragraph (2), such company shall divest control of each bank it controls within 180 days after such company becomes a bank holding company due to the loss of such exemption.】

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

(A) such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the bank and the affiliate;

(B) such overdraft—

(i) is permitted or incurred on behalf of an affiliate which is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York; and

(ii) is fully secured, as required by the Board, by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book entry system; or

(C) such overdraft—

(i) is incurred on behalf of an affiliate solely in connection with an activity that is so closely related to banking, or managing or controlling banks, as to be a proper incident thereto, to the extent the bank incurring the overdraft and the affiliate on whose behalf the overdraft is incurred each document that the overdraft is incurred for such purpose; and

(ii) does not cause the bank to violate any provision of section 23A or 23B of the Federal Reserve Act, either directly, in the case of a member bank, or by virtue of section 18(j) of the Federal Deposit Insurance Act, in the case of a nonmember bank.

(4) *DIVESTITURE IN CASE OF LOSS OF EXEMPTION.*—If any company described in paragraph (1) fails to qualify for the exemption provided under such paragraph by operation of paragraph (2), such exemption shall cease to apply to such company and such company shall divest control of each bank it controls before the end of the 180-day period beginning on the date that the company receives notice from the Board that the company has failed to continue to qualify for such exemption, unless before the end of such 180-day period, the company has—

(A) corrected the condition or ceased the activity that caused the company to fail to continue to qualify for the exemption; and

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

The issuance of any notice under this paragraph that relates to the activities of a bank shall not be construed as affecting the authority of the bank to continue to engage in such activities until the expiration of such 180-day period.

\* \* \* \* \*

(j) NOTICE PROCEDURES FOR NONBANKING ACTIVITIES.—

(1) GENERAL NOTICE PROCEDURE.—

(A) NOTICE REQUIREMENT.—Except as provided in paragraph (3), no bank holding company may engage in any nonbanking activity or acquire or retain ownership or control of the shares of a company engaged in activities based on subsection (c)(8) or (a)(2) or in any complementary activity under section 6(c)(1)(A)(ii) without providing the Board with written notice of the proposed transaction or activity at least 60 days before the transaction or activity is proposed to occur or commence.

\* \* \* \* \*

(3) NO NOTICE REQUIRED FOR CERTAIN TRANSACTIONS.—No notice under paragraph (1) of this subsection or under subsection (c)(8) or (a)(2)(B) is required for a proposal by a bank holding company to engage in any activity, other than any complementary activity under section 6(c)(1)(A)(ii), or acquire the shares or assets of any company, other than an insured depository institution or a company engaged in any complementary activity under section 6(c)(1)(A)(ii), if the proposal qualifies under paragraph (4).

\* \* \* \* \*

ADMINISTRATION

SEC. 5. (a) Within one hundred and eighty days after the date of enactment of this Act, or within one hundred and eighty days after becoming a bank holding company, whichever is later, each bank holding company shall register with the Board on forms pre-

scribed by the Board, which shall include such information with respect to the financial condition and operations, management, and intercompany relationships of the bank holding company and its subsidiaries, and related matters, as the Board may deem necessary or appropriate to carry about the purposes of this Act. The Board may, in its discretion, extend the time within which a bank holding company shall register and file the requisite information. *A declaration filed in accordance with section 6(b)(1)(E) shall satisfy the requirements of this subsection with regard to the registration of a bank holding company but not any requirement to file an application to acquire a bank pursuant to section 3.*

\* \* \* \* \*

[(c) The Board from time to time may require reports under oath to keep it informed as to whether the provisions of this Act and such regulations and orders issued thereunder have been complied with; and the Board may make examinations of each bank holding company and each subsidiary thereof, the cost of which shall be assessed against, and paid by, such holding company. The Board shall, as far as possible, use the reports of examinations made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority for the purposes of this section.]

(c) *REPORTS AND EXAMINATIONS.*—

(1) *REPORTS.*—

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

*(i) its financial condition, systems for monitoring and controlling financial and operating risks, and transactions with depository institution subsidiaries of the holding company; and*

*(ii) compliance by the company or subsidiary with applicable provisions of this Act.*

(B) *USE OF EXISTING REPORTS.*—

*(i) IN GENERAL.*—*The Board shall, to the fullest extent possible, accept reports in fulfillment of the Board's reporting requirements under this paragraph that a bank holding company or any subsidiary of such company has provided or been required to provide to other Federal and State supervisors or to appropriate self-regulatory organizations.*

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

*(iii) REQUIRED USE OF PUBLICLY REPORTED INFORMATION.*—*The Board shall, to the fullest extent possible, accept in fulfillment of any reporting or recordkeeping requirements under this Act information that is otherwise required to be reported publicly and externally audited financial statements.*

*(iv) REPORTS FILED WITH OTHER AGENCIES.*—*In the event the Board requires a report from a functionally*

*regulated nondepository institution subsidiary of a bank holding company of a kind that is not required by another Federal or State regulator or appropriate self-regulatory organization, the Board shall request that the appropriate regulator or self-regulatory organization obtain such report. If the report is not made available to the Board, and the report is necessary to assess a material risk to the bank holding company or any of its subsidiary depository institutions or compliance with this Act, the Board may require such subsidiary to provide such a report to the Board.*

(C) *DEFINITION.—For purposes of this subsection, the term “functionally regulated nondepository institution” means—*

*(i) a broker or dealer registered under the Securities Exchange Act of 1934;*

*(ii) an investment adviser registered under the Investment Advisers Act of 1940, or with any State, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;*

*(iii) an insurance company subject to supervision by a State insurance commission, agency, or similar authority; and*

*(iv) an entity subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities.*

(2) *EXAMINATIONS.—*

*(A) EXAMINATION AUTHORITY.—*

*(i) IN GENERAL.—The Board may make examinations of each bank holding company and each subsidiary of a bank holding company.*

*(ii) FUNCTIONALLY REGULATED NONDEPOSITORY INSTITUTION SUBSIDIARIES.—Notwithstanding clause (i), the Board may make examinations of a functionally regulated nondepository institution subsidiary of a bank holding company only if—*

*(I) the Board has reasonable cause to believe that such subsidiary is engaged in activities that pose a material risk to an affiliated depository institution, or*

*(II) based on reports and other available information, the Board has reasonable cause to believe that a subsidiary is not in compliance with this Act or with provisions relating to transactions with an affiliated depository institution and the Board cannot make such determination through examination of the affiliated depository institution or bank holding company.*

*(B) LIMITATIONS ON EXAMINATION AUTHORITY FOR BANK HOLDING COMPANIES AND SUBSIDIARIES.—Subject to subparagraph (A)(ii), the Board may make examinations under*



subparagraph (A)(i) of each bank holding company and each subsidiary of such holding company in order to—

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

(ii) inform the Board of—

(I) the financial and operational risks within the holding company system 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,

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

(D) *DEFERENCE TO BANK EXAMINATIONS.*—The Board shall, to the fullest extent possible, use, for the purposes of this paragraph, the reports of examinations of depository institutions made by the appropriate Federal and State depository institution supervisory authority.

(E) *DEFERENCE TO OTHER EXAMINATIONS.*—The Board shall, to the fullest extent possible, address the circumstances which might otherwise permit or require an examination by the Board by forgoing an examination and instead reviewing the reports of examination made of—

(i) any registered broker or dealer by or on behalf of the Securities and Exchange Commission;

(ii) any registered investment adviser properly registered by or on behalf of either the Securities and Exchange Commission or any State;

(iii) any licensed insurance company by or on behalf of any state regulatory authority responsible for the supervision of insurance companies; and

(iv) any other subsidiary that the Board finds to be comprehensively supervised by a Federal or State authority.

(3) *CAPITAL.*—

(A) *IN GENERAL.*—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, guidelines, standards, or requirements on any subsidiary of a financial holding company that is not a depository institution and—

(i) is in compliance with applicable capital requirements of another Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority; or

(ii) is properly registered as an investment adviser under the Investment Advisers Act of 1940, or with any State.

(B) *RULE OF CONSTRUCTION.*—Subparagraph (A) shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to activities of a registered investment adviser other than investment advisory activities or activities incidental to investment advisory activities.

(C) *LIMITATIONS ON INDIRECT ACTION.*—In developing, establishing, or assessing holding company capital or capital adequacy rules, guidelines, standards, or requirements for purposes of this paragraph, the Board shall not take into account the activities, operations, or investments of an affiliated investment company registered under the Investment Company Act of 1940, if the investment company is not—

(i) a bank holding company; or

(ii) controlled by a bank holding company by reason of ownership by the bank holding company (including through all of its affiliates) of 25 percent or more of the shares of the investment company, where the shares owned by the bank holding company have a market value equal to more than \$1,000,000.

(4) *TRANSFER OF BOARD AUTHORITY TO APPROPRIATE FEDERAL BANKING AGENCY.*—

(A) *IN GENERAL.*—In the case of any bank holding company which is not significantly engaged in nonbanking activities, the Board, in consultation with the appropriate Federal banking agency, may designate the appropriate Federal banking agency of the lead insured depository institution subsidiary of such holding company 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 orders issued by an agency designated under subparagraph (A) in the same manner such sections apply to orders issued by the Board.

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

(A) the Securities and Exchange Commission with regard to all interpretations of, and the enforcement of, applicable Federal securities laws (and rules, regulations, orders, and other directives issued thereunder) relating to the activities, conduct, and operations of registered brokers, dealers, investment advisers, and investment companies;

(B) the relevant State securities authorities with regard to all interpretations of, and the enforcement of, applicable State securities laws (and rules, regulations, orders, and other directives issued thereunder) relating to the activities, conduct, and operations of registered brokers, dealers, and investment advisers; and

(C) the relevant State insurance authorities with regard to all interpretations of, and the enforcement of, applicable State insurance laws (and rules, regulations, orders, and other directives issued thereunder) relating to the activities, conduct, and operations of insurance companies and insurance agents.

\* \* \* \* \*

(e)(1) Notwithstanding any other provision of this Act, the Board may, whenever it has reasonable cause to believe that the continuation by a bank holding company of any activity or of ownership or control of any of its nonbank subsidiaries, other than a nonbank subsidiary of a bank, constitutes a serious risk to the financial safety, soundness, or stability of a bank holding company subsidiary bank and is inconsistent with sound banking principles or with the purposes of this Act or with the [Financial Institutions Supervisory Act of 1966, order] *Financial Institutions Supervisory Act of 1966, at the election of the bank holding company*—

(A) order the bank holding company or any such nonbank subsidiaries, after due notice and opportunity for hearing, and after considering the views of the bank's primary supervisor, which shall be the Comptroller of the Currency in the case of a national bank or the Federal Deposit Insurance Corporation and the appropriate State supervisory authority in the case of an insured nonmember bank, to terminate such activities or to terminate (within one hundred and twenty days or such longer period as the Board may direct in unusual circumstances) its ownership or control of any such subsidiary either by sale or by distribution of the shares of the subsidiary to the [share-

holders of the bank holding company. Such distribution] shareholders of the bank holding company; or

(B) order the bank holding company, after due notice and opportunity for hearing, and after consultation with the primary supervisor for the bank, which shall be the Comptroller of the Currency in the case of a national bank, and the Federal Deposit Insurance Corporation and the appropriate State supervisor in the case of an insured nonmember bank, to terminate (within 120 days or such longer period as the Board may direct) the ownership or control of any such bank by such company.

The distribution referred to in subparagraph (A) shall be pro rata with respect to all of the shareholders of the distributing bank holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.

\* \* \* \* \*

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

(1) *IN GENERAL.*—Notwithstanding any other provision of law, any regulation, order, or other action of the Board which requires a bank holding company to provide funds or other assets to a subsidiary insured depository institution shall not be effective nor enforceable if—

(A) such funds or assets are to be provided by—

(i) a bank holding company that is an insurance company or is a broker or dealer registered under the Securities Exchange Act of 1934; or

(ii) an affiliate of the depository institution which is an insurance company or a broker or dealer registered under such Act; and

(B) the State insurance authority for the insurance company or the Securities and Exchange Commission for the registered broker or dealer, as the case may be, determines in writing sent to the holding company and the Board that the holding company shall not provide such funds or assets because such action would have a material adverse effect on the financial condition of the insurance company or the broker or dealer, as the case may be.

(2) *NOTICE TO STATE INSURANCE AUTHORITY OR SEC REQUIRED.*—If the Board requires a bank holding company, or an affiliate of a bank holding company, which is an insurance company or a broker or dealer described in paragraph (1)(A) to provide funds or assets to an insured depository institution subsidiary of the holding company pursuant to any regulation, order, or other action of the Board referred to in paragraph (1), the Board shall promptly notify the State insurance authority for the insurance company or the Securities and Exchange Commission, as the case may be, of such requirement.

(3) *DIVESTITURE IN LIEU OF OTHER ACTION.*—If the Board receives a notice described in paragraph (1)(B) from a State insurance authority or the Securities and Exchange Commission with regard to a bank holding company or affiliate referred to in that paragraph, the Board may order the bank holding company to divest the insured depository institution not later than 180 days after receiving the notice, or such longer period as the

*Board determines consistent with the safe and sound operation of the insured depository institution.*

*(4) CONDITIONS BEFORE DIVESTITURE.—During the period beginning on the date an order to divest is issued by the Board under paragraph (3) to a bank holding company and ending on the date the divestiture is completed, the Board may impose any conditions or restrictions on the holding company's ownership or operation of the insured depository institution, including restricting or prohibiting transactions between the insured depository institution and any affiliate of the institution, as are appropriate under the circumstances.*

**SEC. 6. FINANCIAL HOLDING COMPANIES.**

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

*(b) ELIGIBILITY REQUIREMENTS FOR FINANCIAL HOLDING COMPANIES.—*

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

*(A) All of the subsidiary depository institutions of the bank holding company are well capitalized.*

*(B) All of the subsidiary depository institutions of the bank holding company are well managed.*

*(C) All of the subsidiary depository institutions of the bank holding company have achieved a rating of “satisfactory record of meeting community credit needs”, or better, at the most recent examination of each such institution;*

*(D) In the case of any bank holding company which underwrites or sells, or any affiliate of which underwrites or sells, annuities contracts or contracts insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death—*

*(i) the company or affiliate has not been adjudicated in any Federal court, and has not entered into a consent decree filed in a Federal court or into a settlement agreement, premised upon a violation of the Fair Housing Act for the activities described in this subparagraph;*

*(ii) if such company or affiliate has entered into any such consent decree or settlement agreement, the company or the affiliate is not in violation of the decree or settlement agreement as determined by a court of competent jurisdiction or the agency with which the decree or agreement was entered into; or*

*(iii) the company has been exempted from the requirements of clauses (i) and (ii) by the Board under paragraph (4).*

*(E) The company has filed with the Board a declaration that the company elects to be a financial holding company and certifying that the company meets the requirements of subparagraphs (A), (B), (C), and (D).*

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

(3) *LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSITORY INSTITUTIONS.*—Any depository institution acquired by a bank holding company during the 12-month period preceding the submission of a notice under paragraph (1)(E) and any depository institution acquired after the submission of such notice may be excluded for purposes of paragraph (1)(C) during the 12-month period beginning on the date of such acquisition if—

(A) the bank holding company has submitted an affirmative plan to the appropriate Federal banking agency to take such action as may be necessary in order for such institution to achieve a rating of “satisfactory record of meeting community credit needs”, or better, at the next examination of the institution; and

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

(4) *VIOLATIONS OF THE FAIR HOUSING ACT.*—The Board may, on a case-by-case basis, exempt a bank holding company from meeting the requirements of clauses (i) and (ii) of paragraph (1)(D).

(c) *ENGAGING IN ACTIVITIES THAT ARE FINANCIAL IN NATURE.*—

(1) *FINANCIAL ACTIVITIES.*—

(A) *IN GENERAL.*—Notwithstanding section 4(a), a financial holding company and a wholesale financial holding company may engage in any activity, and acquire and retain the shares of any company engaged in any activity, that the Board has determined (by regulation or order and in accordance with subparagraph (B)) to be—

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

(ii) complementary to activities authorized under this subsection to the extent that the amount of such complementary activities remains small.

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

(i) *PROPOSALS RAISED BEFORE THE BOARD.*—

(I) *CONSULTATION.*—The Board shall notify the Secretary of the Treasury of, and consult with the Secretary of the Treasury concerning, any request, proposal, or application under this subsection, including a regulation or order proposed under paragraph (4), for a determination of whether an activity is financial in nature or incidental to such a financial activity.

(II) *TREASURY VIEW.*—The Board shall not determine that any activity is financial in nature or incidental to a financial activity under this sub-

section if the Secretary of the Treasury notifies the Board in writing, not later than 30 days after the date of receipt of the notice described in subclause (I) (or such longer period as the Board determines to be appropriate in light of the circumstances) that the Secretary of the Treasury believes that the activity is not financial in nature or incidental to a financial activity.

(ii) PROPOSALS RAISED BY THE TREASURY.—

(I) TREASURY RECOMMENDATION.—The Secretary of the Treasury may, at any time, recommend in writing that the Board find an activity to be financial in nature or incidental to a financial activity.

(II) TIME PERIOD FOR BOARD ACTION.—Not later than 30 days after the date of receipt of a written recommendation from the Secretary of the Treasury under subclause (I) (or such longer period as the Secretary of the Treasury and the Board determine to be appropriate in light of the circumstances), the Board shall determine whether to initiate a public rulemaking proposing that the subject recommended activity be found to be financial in nature or incidental to a financial activity under this subsection, and shall notify the Secretary of the Treasury in writing of the determination of the Board and, in the event that the Board determines not to seek public comment on the proposal, the reasons for that determination.

(2) FACTORS TO BE CONSIDERED.—In determining whether an activity is financial in nature or incidental to financial activities, the Board shall take into account—

(A) the purposes of this Act and the Financial Services Act of 1999;

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

(C) changes or reasonably expected changes in the technology for delivering financial services; and

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

(i) compete effectively with any company seeking to provide financial services in the United States;

(ii) use any available or emerging technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions, in providing financial services; and

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

(3) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—The following activities shall be considered to be financial in nature:

(A) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.

(B) *Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing.*

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

(D) *Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.*

(E) *Underwriting, dealing in, or making a market in securities.*

(F) *Engaging in any activity that the Board has determined, by order or regulation that is in effect on the date of enactment of the Financial Services Act of 1999, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in such order or regulation, unless modified by the Board).*

(G) *Engaging, in the United States, in any activity that—*

*(i) a bank holding company may engage in outside the United States; and*

*(ii) the Board has determined, under regulations issued pursuant to section 4(c)(13) of this Act (as in effect on the day before the date of enactment of the Financial Services Act of 1999) to be usual in connection with the transaction of banking or other financial operations abroad.*

(H) *Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—*

*(i) the shares, assets, or ownership interests are not acquired or held by a depository institution;*

*(ii) such shares, assets, or ownership interests are acquired and held by an affiliate of the bank holding company that is a registered broker or dealer that is engaged in securities underwriting activities, or an affiliate of such broker or dealer, as part of a bona fide underwriting or merchant banking activity, including investment activities engaged in for the purpose of appreciation and ultimate resale or disposition of the investment;*

*(iii) such shares, assets, or ownership interests are held only for such a period of time as will permit the sale or disposition thereof on a reasonable basis consistent with the nature of the activities described in clause (ii); and*



(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not actively participate in the day to day management or operation of such company or entity, except insofar as necessary to achieve the objectives of clause (ii).

(I) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

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

(ii) such shares, assets, or ownership interests are acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance) or providing and issuing annuities;

(iii) such shares, assets, or ownership interests represent an investment made in the ordinary course of business of such insurance company in accordance with relevant State law governing such investments; and

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

(4) **AUTHORIZATION OF NEW FINANCIAL ACTIVITIES.**—The Board shall, by regulation or order and in accordance with paragraph (1)(B), define, consistent with the purposes of this Act, the following activities as, and the extent to which such activities are, financial in nature or incidental to activities which are financial in nature:

(A) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.

(B) Providing any device or other instrumentality for transferring money or other financial assets.

(C) Arranging, effecting, or facilitating financial transactions for the account of third parties.

(5) **POST-CONSUMMATION NOTIFICATION.**—

(A) **IN GENERAL.**—A financial holding company and a wholesale financial holding company that acquires any company, or commences any activity, pursuant to this subsection shall provide written notice to the Board describing

*the activity commenced or conducted by the company acquired no later than 30 calendar days after commencing the activity or consummating the acquisition.*

**(B) APPROVAL NOT REQUIRED FOR CERTAIN FINANCIAL ACTIVITIES.**—*Except as provided in section 4(j) with regard to the acquisition of a savings association or in paragraph (6) of this subsection, a financial holding company and a wholesale financial holding company may commence any activity, or acquire any company, pursuant to paragraph (3) or any regulation prescribed or order issued under paragraph (4), without prior approval of the Board.*

**(6) NOTICE REQUIRED FOR LARGE COMBINATIONS.**—

**(A) IN GENERAL.**—*No financial holding company or wholesale financial holding company shall directly or indirectly acquire, and no company that becomes a financial holding company or a wholesale financial holding company shall directly or indirectly acquire control of, any company in the United States, including through merger, consolidation, or other type of business combination, that—*

*(i) is engaged in activities permitted under this subsection or subsection (g); and*

*(ii) has consolidated total assets in excess of \$40,000,000,000,*

*unless such holding company has provided notice to the Board, not later than 60 days prior to such proposed acquisition or prior to becoming a financial holding company or wholesale financial holding company, and during that time period, or such longer time period not exceeding an additional 60 days, as established by the Board, the Board has not issued a notice disapproving the proposed acquisition or retention.*

**(B) FACTORS FOR CONSIDERATION.**—*In reviewing any prior notice filed under this paragraph, the Board shall take into consideration—*

*(i) whether the company is in compliance with all applicable criteria set forth in subsection (b) and the provisions of subsection (d);*

*(ii) whether the proposed combination represents an undue aggregation of resources;*

*(iii) whether the proposed combination poses a risk to the deposit insurance system;*

*(iv) whether the proposed combination poses a risk to State insurance guaranty funds;*

*(v) whether the proposed combination can reasonably be expected to be in the best interests of depositors or policyholders of the respective entities; and*

*(vi) whether the proposed transaction can reasonably be expected to further the purposes of this Act and produce benefits to the public.*

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

**(D) SOLICITATION OF VIEWS OF OTHER SUPERVISORY AGENCIES.—**

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

*(I) the appropriate Federal banking agency of any bank involved;*

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

*(III) the Secretary of the Treasury, the Department of Justice, and the Federal Trade Commission.*

*(ii) TIMING.—The views and recommendations of any agency provided notice under this paragraph shall be submitted to the Board not later than 30 calendar days after the date on which notice to the agency was given, unless the Board determines that another shorter time period is appropriate.*

**(d) PROVISIONS APPLICABLE TO FINANCIAL HOLDING COMPANIES THAT FAIL TO MEET REQUIREMENTS.—**

*(1) IN GENERAL.—If a financial holding company is not in compliance with the requirements of subparagraph (A), (B), or (C) of subsection (b)(1), the appropriate Federal banking agency of the subsidiary depository institution shall notify the Board which shall give notice of such finding to the company.*

*(2) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—Not later than 45 days after receipt by a financial holding company of a notice given under paragraph (1) (or such additional period as the Board may permit), the company and any relevant depository institution shall execute an agreement acceptable to the Board and the appropriate Federal banking agency to comply with the requirements applicable to a financial holding company.*

*(3) AUTHORITY TO IMPOSE LIMITATIONS.—Until the conditions described in a notice to a financial holding company under paragraph (1) are corrected—*

*(A) the Board may impose such limitations on the conduct or activities of the company or any affiliate of the company (other than a depository institution or a subsidiary of a depository institution) as the Board determines to be appropriate under the circumstances; and*

*(B) the appropriate Federal banking agency may impose such limitations on the conduct or activities of an affiliated depository institution or subsidiary of a depository institution as the appropriate Federal banking agency determines to be appropriate under the circumstances.*

*(4) FAILURE TO CORRECT.—If, after receiving a notice under paragraph (1), a financial holding company or a depository institution affiliate of such company does not—*

*(A) execute and implement an agreement in accordance with paragraph (2);*

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

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

(D) in the case of a notice of failure to comply with subparagraph (B) or (C) of subsection (b)(1), restore compliance with any such subparagraph on or before the date on which the next examination of the depository institution subsidiary is completed or by the end of such other period as the Board determines to be appropriate,

the Board may require such company, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the Board's discretion, to divest control of any depository institution subsidiary or, at the election of the financial holding company, instead to cease to engage in any activity conducted by such company or its subsidiaries pursuant to this section.

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

(e) SAFEGUARDS FOR BANK SUBSIDIARIES.—A financial holding company shall assure that—

(1) the procedures of the holding company for identifying and managing financial and operational risks within the company, and the subsidiaries of such company, adequately protect the subsidiaries of such company which are insured depository institutions from such risks;

(2) the holding company has reasonable policies and procedures to preserve the separate corporate identity and limited liability of such company and the subsidiaries of such company, for the protection of the company's subsidiary insured depository institutions; and

(3) the holding company complies with this section.

(f) AUTHORITY TO RETAIN LIMITED NONFINANCIAL ACTIVITIES AND AFFILIATIONS.—

(1) IN GENERAL.—Notwithstanding section 4(a), a company that is not a bank holding company or a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978) and becomes a financial holding company after the date of the enactment of the Financial Services Act of 1999 may continue to engage in any activity and retain direct or indirect ownership or control of shares of a company engaged in any activity if—

(A) the holding company lawfully was engaged in the activity or held the shares of such company on September 30, 1997;

(B) the holding company is predominantly engaged in financial activities as defined in paragraph (2); and

(C) the company engaged in such activity continues to engage only in the 3e activities that such company conducted

on September 30, 1997, and other activities permissible under this Act.

(2) *PREDOMINANTLY FINANCIAL.*—For purposes of this subsection, a company is predominantly engaged in financial activities if the annual gross revenues derived by the holding company and all subsidiaries of the holding company (excluding revenues derived from subsidiary depository institutions), on a consolidated basis, from engaging in activities that are financial in nature or are incidental to activities that are financial in nature under subsection (c) represent at least 85 percent of the consolidated annual gross revenues of the company.

(3) *NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.*—A financial holding company that engages in activities or holds shares pursuant to this subsection, or a subsidiary of such financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company which is engaged in any activity which the Board has not determined to be financial in nature or incidental to activities that are financial in nature under subsection (c).

(4) *CONTINUING REVENUE LIMITATION ON GRANDFATHERED COMMERCIAL ACTIVITIES.*—Notwithstanding any other provision of this subsection, a financial holding company may continue to engage in activities or hold shares in companies pursuant to this subsection only to the extent that the aggregate annual gross revenues derived from all such activities and all such companies does not exceed 15 percent of the consolidated annual gross revenues of the financial holding company (excluding revenues derived from subsidiary depository institutions).

(5) *CROSS MARKETING RESTRICTIONS APPLICABLE TO COMMERCIAL ACTIVITIES.*—A depository institution controlled by a financial holding company shall not—

(A) offer or market, directly or through any arrangement, any product or service of a company whose activities are conducted or whose shares are owned or controlled by the financial holding company pursuant to this subsection or subparagraph (H) or (I) of subsection (c)(3); or

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

(6) *TRANSACTIONS WITH NONFINANCIAL AFFILIATES.*—An insured depository institution controlled by a financial holding company or wholesale financial holding company may not engage in a covered transaction (as defined by section 23A(b)(7) of the Federal Reserve Act) with any affiliate controlled by the company pursuant to section 10(c), this subsection, or subparagraph (H) or (I) of subsection (c)(3).

(7) *SUNSET OF GRANDFATHER.*—A financial holding company engaged in any activity, or retaining direct or indirect ownership or control of shares of a company, pursuant to this subsection, shall terminate such activity and divest ownership or control of the shares of such company before the end of the 10-year period beginning on the date of the enactment of the Financial Services Act of 1999. The Board may, upon application

by a financial holding company, extend such 10-year period by a period not to exceed an additional 5 years if such extension would not be detrimental to the public interest.

(g) **DEVELOPING ACTIVITIES.**—A financial holding company and a wholesale financial holding company may engage directly or indirectly, or acquire shares of any company engaged, in any activity that the Board has not determined to be financial in nature or incidental to financial activities under subsection (c) if—

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

(2) the gross revenues from all activities conducted under this subsection represent less than 5 percent of the consolidated gross revenues of the holding company;

(3) the aggregate total assets of all companies the shares of which are held under this subsection do not exceed 5 percent of the holding company's consolidated total assets;

(4) the total capital invested in activities conducted under this subsection represents less than 5 percent of the consolidated total capital of the holding company;

(5) neither the Board nor the Secretary of the Treasury has determined that the activity is not financial in nature or incidental to financial activities under subsection (c);

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

(7) the holding company provides written notification to the Board describing the activity commenced or conducted by the company acquired no later than 10 business days after commencing the activity or consummating the acquisition.

(h) **DEPOSITORY INSTITUTION PRIVACY POLICIES.**—

(1) **DISCLOSURE REQUIRED.**—In the case of any insured depository institution which becomes affiliated under this section with a financial holding company, the privacy policy of such depository institution shall be clearly and conspicuously disclosed—

(A) with respect to any person who becomes a customer of the depository institution any time after the depository institution becomes affiliated with such company, to such person at the time at which the business relationship between the customer and the institution is initiated; and

(B) with respect to any person who already is a customer of the depository institution at the time the depository institution becomes affiliated with such company, to such person within a reasonable time after the affiliation is consummated.

(2) **INFORMATION TO BE INCLUDED.**—The privacy policy of an insured depository institution which is disclosed pursuant to paragraph (1) shall include—

(A) the policy of the institution with respect to disclosing customer information to third parties, other than agents of the depository institution, for marketing purposes; and

(B) the disclosures required under section 603(d)(2)(D)(iii) of the Fair Credit Reporting Act with regard to the right of the customer, at any time, to direct that

information referred to in such section not be shared with affiliates of the depository institution.

(3) *APPLICABILITY.*—For purposes of section 10 of the Home Owners' Loan Act, this subsection and subsection (i) shall apply with regard to a savings and loan holding company and any affiliate or insured depository institution subsidiary of such holding company to the same extent and in the same manner this subsection and subsection (i) apply with respect to a financial holding company, affiliate of a financial holding company, or insured depository institution subsidiary of a financial holding company.

(i) *CONFIDENTIALITY OF HEALTH AND MEDICAL INFORMATION.*—

(1) *IN GENERAL.*—If a company which underwrites or sells annuities contracts or contracts insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death (other than credit-related insurance) is or becomes a financial holding company or an affiliate of a financial holding company, such company shall maintain a practice of protecting the confidentiality of individually identifiable customer health and medical information and may disclose such information only—

(A) with the consent, or at the direction, of the customer;

(B) for insurance underwriting and reinsuring policies, account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims or defending any action relating to such claims, administering insurance benefits (including utilization review activities), providing information to the customer's physician or other health care provider, participating in research projects, enabling the purchase, transfer, merger, or sale of any insurance-related business, or as otherwise required or specifically permitted by Federal or State law; or

(C) in connection with—

(i) the authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card or account number, or by other payment means;

(ii) the transfer of receivables, accounts, or interest therein;

(iii) the audit of the debit, credit, or other payment information;

(iv) compliance with Federal, State, or local law;

(v) compliance with a properly authorized civil, criminal, or regulatory investigation by Federal, State, or local authorities as governed by the requirements of this section; or

(vi) fraud protection, risk control, resolving customer disputes or inquiries, communicating with the person to whom the information relates, or reporting to consumer reporting agencies.

(2) *EFFECTIVE DATE; SUNSET.*—

(A) *EFFECTIVE DATE.*—*Except as provided in subparagraph (B), paragraph (1) shall take effect on February 1, 2000.*

(B) *SUNSET.*—*Paragraph (1) shall not take effect if, or shall cease to be effective on and after the date on which, legislation is enacted that satisfies the requirements in section 264(c)(1) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 2033).*

(3) *CONSULTATION.*—*While paragraph (1) is in effect, the Board shall consult with the Secretary of Health and Human Services in connection with the administration of such paragraph.*

\* \* \* \* \*

**[AMENDMENTS TO INTERNAL REVENUE CODE OF 1954**

—**[SEC. 10.** (a) subchapter O of chapter 1 of the internal revenue code of 1954 is amended by adding at the end thereof the following new part:

**["PART VIII—DISTRIBUTIONS PURSUANT TO BANK HOLDING COMPANY ACT OF 1956**

**[“Sec. 1101.** Distributions pursuant to Bank Holding Company Act of 1956.

**[“Sec. 1102.** Special rules.

**[“Sec. 1103.** Definitions.

**[“SEC. 1101. DISTRIBUTIONS PURSUANT TO BANK HOLDING COMPANY ACT OF 1956.**

**[“(a) DISTRIBUTIONS OF CERTAIN NON-BANKING PROPERTY.—**

**[“(1) DISTRIBUTIONS OF PROHIBITED PROPERTY.—If—**

**[“(A) a qualified bank holding corporation distributes prohibited property (other than stock received in an exchange to which subsection (c)(2) applies)—**

**[“(i) to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or**

**[“(ii) to a shareholder, in exchange for its preferred stock; or**

**[“(iii) to a security holder, in exchange for its securities; and**

**[“(B) the Board has, before the distribution, certified that the distribution of such prohibited property is necessary or appropriate to effectuate section 4 of the Bank Holding Company Act of 1956,**

**then no gain to the shareholder or security holder from the receipt of such property shall be recognized.**

**[“(2) DISTRIBUTIONS OF STOCK AND SECURITIES RECEIVED IN AN EXCHANGE TO WHICH SUBSECTION (C)(2) APPLIES.—If—**

**[“(A) a qualified bank holding corporation distributes—**

**[“(i) common stock received in an exchange to which subsection (c)(2) applies to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or**



["(ii) common stock received in an exchange to which subsection (c)(2) applies to a shareholder, in exchange for its common stock; or

["(iii) preferred stock or common stock received in an exchange to which subsection (c)(2) applies to a shareholder, in exchange for its preferred stock; or

["(iv) securities or preferred or common stock received in an exchange to which subsection (c)(2) applies to a security holder, in exchange for its securities; and

["(B) any preferred stock received has substantially the same terms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged,

then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

["(3) NON PRO RATA DISTRIBUTIONS.—Paragraphs (1) and (2) shall apply to a distribution whether or not the distribution is pro rata with respect to all of the shareholders of the distributing qualified bank holding corporation.

["(4) EXCEPTION.—This subsection shall not apply to any distribution by a corporation which has made any distribution pursuant to subsection (b).

["(5) DISTRIBUTIONS INVOLVING GIFTS OR COMPENSATION.—

["In the case of a distribution to which paragraph (1) or (2) applies, but which—

["(A) results in a gift, see section 2501, and following, or

["(B) has the effect of the payment of compensation, see section 61(a)(1).

["(b) CORPORATION CEASING TO BE A BANK HOLDING COMPANY.—

["(1) DISTRIBUTIONS OF PROPERTY WHICH CAUSE A CORPORATION TO BE A BANK HOLDING COMPANY.—If—

["(A) a qualified bank holding corporation distributes property (other than stock received in an exchange to which subsection (c)(3) applies)—

["(i) to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or

["(ii) to a shareholder, in exchange for its preferred stock; or

["(iii) to a security holder, in change for its securities; and

["(B) the Board has, before the distribution, certified that—

["(i) such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2(a) of the Bank Holding Company Act of 1956) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank or a bank holding company before any property of the same kind was

distributed under this subsection or exchanged under subsection (c)(3) ; and

    ["(ii) the distribution is necessary or appropriate to effectuate the policies of such Act,

then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

["(2) DISTRIBUTIONS OF STOCK AND SECURITIES RECEIVED IN AN EXCHANGE TO WHICH SUBSECTION (c)(3) APPLIES.—If—

    ["(A) a qualified bank holding corporation distributes—

        ["(i) common stock received in an exchange to which subsection (c)(3) applies to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation; or

        ["(ii) common stock received in an exchange to which subsection (c)(3) applies to a shareholder, in exchange for its common stock; or

        ["(iii) preferred stock or common stock received in an exchange to which subsection (c)(3) applies to a shareholder, in exchange for its preferred stock; or

        ["(iv) securities or preferred or common stock received in an exchange to which subsection (c)(3) applies to a security holder, in exchange for its securities; and

    ["(B) any preferred stock received has substantially the same terms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged,

then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

["(3) NON PRO RATA DISTRIBUTIONS.—Paragraphs (1) and (2) shall apply to a distribution whether or not the distribution is pro rata with respect to all of the shareholders of the distributing qualified bank holding corporation.

["(4) EXCEPTION.—This subsection shall not apply to any distribution by a corporation which has made any distribution pursuant to subsection (a).

["(5) DISTRIBUTIONS INVOLVING GIFT OR COMPENSATION.—

    ["In the case of a distribution to which paragraph (1) or (2) applies, but which—

        ["(A) results in a gift, see section 2501, and following, or

        ["(B) has the effect of the payment of compensation, see section 61(a)(1).

["(c) PROPERTY ACQUIRED AFTER MAY 15, 1955.—

    ["(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), subsection (a) or (b) shall not apply to—

        ["(A) any property acquired by the distributing corporation after May 15, 1955, unless (i) gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b), or (ii) such property was received by it in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) such property was acquired by the distributing corporation

in a transaction in which gain was not recognized under section 305(a) or section 332, or under section 354 with respect to a reorganization described in section 368(a)(1) (E) or (F), or

【“(B) any property which was acquired by the distributing corporation in a distribution with respect to stock acquired by such corporation after May 15, 1955, unless such stock was acquired by such corporation (i) in a distribution (with respect to stock held by it on May 15, 1955, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b), or (ii) in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) in a transaction in which gain was not recognized under section 305(a) or section 332, or under section 354 with respect to a reorganization described in section 368(a)(1) (E) or (F), or

【“(C) any property acquired by the distributing corporation in a transaction in which gain was not recognized under section 332, unless such property was acquired from a corporation which, if it had been a qualified bank holding corporation, could have distributed such property under subsection (a)(1) or (b)(1).

【“(2) EXCHANGES INVOLVING PROHIBITED PROPERTY.—If—

【“(A) Any qualified bank holding corporation exchanges (i) property, which, under subsection (a)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except property described in subsection (b)(1)(B)(i)), for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such property;

【“(B) immediately after the exchange, the qualified bank holding corporation distributes all of such stock in a manner prescribed in subsection (a)(2)(A); and

【“(C) before such exchange, the Board has certified (with respect to the property exchanged which consists of property which, under subsection (a)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that the exchange and distribution are necessary or appropriate to effectuate section 4 of the Bank Holding Company Act of 1956,

then paragraph (1) shall not apply with respect to such distribution.

【“(3) EXCHANGES INVOLVING INTERESTS IN BANKS.—If—

【“(A) any qualified bank holding corporation exchanges (i) property which, under subsection (b)(1), such corporation could distribute directly to its shareholders or securities holders without the recognition of gain to such shareholders or security holders, and other property (except prohibited property), for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such property;

【“(B) immediately after the exchange, the qualified bank holding corporation distributes all of such stock in a manner prescribed in subsection (b)(2)(A); and

【“(C) before such exchange, the Board has certified (with respect to the property exchanged which consists of property which, under subsection (b)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that—

【“(i) such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2(a) of the Bank Holding Company Act of 1956) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank or a bank holding company before any property of the same kind was distributed under subsection (b)(1) or exchanged under this paragraph: and

【“(ii) the exchange and distribution are necessary or appropriate to effectuate the policies of such Act, then paragraph (1) shall not apply with respect to such distribution.

【“(d) DISTRIBUTIONS TO AVOID FEDERAL INCOME TAX.—

【“(1) PROHIBITED PROPERTY.—Subsection (a) shall not apply to a distribution if, connection with such distribution, the distributing corporation retains, or transfers after May 15, 1955, to any corporation, property (other than prohibited property) as part of a plan one of the principal purposes of which is the distribution of the earnings and profits of any corporation.

【“(2) BANKING PROPERTY.—Subsection (b) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after May 15, 1955, to any corporation, property (other than property described in subsection (b)(1)(B)(i)) as part of a plan one of the principal purposes of which is the distribution of the earnings and profits of any corporation.

【“(3) CERTAIN CONTRIBUTIONS TO CAPITAL.—In the case of a distribution a portion of which is attributable to a transfer which is a contribution to the capital of a corporation, made after May 15, 1955, and prior to the date of the enactment of this part, if subsection (a) or (b) would apply to such distribution but for the fact that, under paragraph (1) or (2) (as the case may be) of this subsection, such contribution to capital is part of a plan one of the principal purposes of which is to distribute the earnings and profits of any corporation, then, notwithstanding paragraph (1) or (2), subsection (a) or (b) (as the case may be) shall apply to that portion of such distribution not attributable to such contribution to capital, and shall not apply to that portion of such distribution attributable to such contribution to capital.

【“(e) FINAL CERTIFICATION.—

【“(1) FOR SUBSECTION (a).—Subsection (a) shall not apply with respect to any distribution by a corporation unless the Board certifies that, before the expiration of the period permitted under section 4(a) of the Bank Holding Company Act of

1956 (including any extensions thereof granted to such corporation under section 4(a)), the corporation has disposed of all the property the disposition of which is necessary or appropriate to effectuate section 4 of such Act (or would have been so necessary or appropriate if the corporation had continued to be a bank holding company).

【“(2) FOR SUBSECTION (b).—

【“(A) Subsection (b) shall not apply with respect to any distribution by any corporation unless the Board certifies that, before the expiration of the period specified in subparagraph (B), the corporation has ceased to be a bank holding company.

【“(B) The period referred to in subparagraph (A) is the period which expires 2 years after the date of the enactment of this part or 2 years after the date on which the corporation becomes a bank holding company, whichever date is later. The Board is authorized, on application by any corporation, to extend such period from time to time with respect to such corporation for not more than one year at a time if, in its judgment, such an extension would not be detrimental to the public interest; except that such period may not in any case be extended beyond the date 5 years after the date of the enactment of this part or 5 years after the date on which the corporation becomes a bank holding company, whichever date is later.

【“(f) CERTAIN EXCHANGES OF SECURITIES.—In the case of an exchange described in subsection (a)(2)(A)(iv) or subsection (b)(2)(A)(iv), subsection (a) or subsection (b) (as the case may be) shall apply only to the extent that the principal amount of the securities received does not exceed the principal amount of the securities exchanged.

【“SEC. 1102. SPECIAL RULES.

【“(a) BASIS OF PROPERTY ACQUIRED IN DISTRIBUTIONS.—If, by reason of section 1101, gain is not recognized with respect to the receipt of any property, then, under regulations prescribed by the Secretary or his delegate—

【“(1) if the property is received by a shareholder with respect to stock, without the surrender by such shareholder of stock, the basis of the property received and of the stock with respect to which it is distributed shall, in the distributee’s hands, be determined by allocating between such property and such stock the adjusted basis of such stock; or

【“(2) if the property is received by a shareholder in exchange for stock or by a security holder in exchange for securities, the basis of the property received shall, in the distributee’s hands, be the same as the adjusted basis of the stock or securities exchanged, increased by—

【“(A) the amount of the property received which was treated as a dividend, and

【“(B) the amount of gain to the taxpayer recognized on the property received (not including any portion of such gain which was treated as a dividend).

【“(b) PERIODS OF LIMITATION.—The periods of limitation provided in section 6501 (relating to limitations on assessment and collec-

tion) shall not expire, with respect to any deficiency (including interest and additions to the tax) resulting solely from the receipt of property by shareholders in a distribution which is certified by the Board under subsection (a), (b), or (c) of section 1101, until five years after the distributing corporation notifies the Secretary or his delegate (in such manner and with such accompanying information as the Secretary or his delegate may be regulations prescribe) that the period (including extensions thereof) prescribed in section 4(a) of the Bank Holding Company Act of 1956, or section 1101(e)(2)(B), whichever is applicable, has expired; and such assessment may be made notwithstanding any provision of law or rule of law which would otherwise prevent such assessment.

【“(c) ALLOCATION OF EARNINGS AND PROFITS.—

【“(1) DISTRIBUTION OF STOCK IN A CONTROLLED CORPORATION.—In the case of a distribution by a qualified bank holding corporation under section 1101(a)(1) or (b)(1) of stock in a controlled corporation, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation shall be made under regulations prescribed by the Secretary or his delegate.

【“(2) EXCHANGES DESCRIBED IN SECTION 1101(C) (2) OR (3).—In the case of any exchange described in section 1101(c) (2) or (3), proper allocation with respect to the earnings and profits of the corporation transferring the property and the corporation receiving such property shall be made under regulations prescribed by the Secretary or his delegate.

【“(3) DEFINITION OF CONTROLLED CORPORATION.—For purposes of paragraph (1), the term ‘controlled corporation’ means a corporation with respect to which at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock is owned by the distributing qualified bank holding corporation.

【“(d) ITEMIZATION OF PROPERTY.—In any certification under this part, the Board shall make such specification and itemization of property as may be necessary to carry out the provisions of this part.

【“SEC. 1103. DEFINITIONS.

【“(a) BANK HOLDING COMPANY.—For purposes of this part, the term ‘bank holding company’ has the meaning assigned to such term by section 2 of the Bank Holding Company Act of 1956.

【“(b) QUALIFIED BANK HOLDING CORPORATION.—

【“(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of this part the term ‘qualified bank holding corporation’ means any corporation (as defined in section 7701(a)(3)) which is a bank holding company and which holds prohibited property acquired by it—

【“(A) on or before May 15, 1955,

【“(B) in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, or

【“(C) in exchange for all of its stock in an exchange described in section 1101 (c)(2) or (c)(3).

【“(2) LIMITATIONS.—

【“(A) A bank holding company shall not be a qualified bank holding corporation, unless it would have been a bank holding company on May 15, 1955, if the Bank Holding Company Act of 1956 had been in effect on such date, or unless it is a bank holding company determined solely by reference to—

【“(i) property acquired by it on or before May 15, 1955,

【“(ii) property acquired by it in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, and

【“(iii) property acquired by it in exchange for all of its stock in an exchange described in section 1101(c) (2) or (3).

【“(B) A bank holding company shall not be a qualified bank holding corporation by reason of property described in subparagraph (B) of paragraph (1) or clause (ii) of subparagraph (A) of this paragraph, unless such property was acquired in a distribution with respect to stock, which stock was acquired by such bank holding company—

【“(i) on or before May 15, 1955,

【“(ii) in a distribution (with respect to stock held by it on May 15, 1955, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b) of section 1101, or

【“(iii) in exchange for all of its stock in an exchange described in section 1101(c) (2) or (3).

【“(C) A corporation shall be treated as a qualified bank holding corporation only if the Board certifies that it satisfies the foregoing requirements of this subsection.

【“(c) PROHIBITED PROPERTY.—For purposes of this part, the term ‘prohibited property’ means, in the case of any bank holding company, property (other than nonexempt property) the disposition of which would be necessary or appropriate to effectuate section 4 of the Bank Holding Company Act of 1956 if such company continued to be a bank holding company beyond the period (including any extensions thereof) specified in subsection (a) of such section or in section 1101(e)(2)(B) of this part, as the case may be. The term ‘prohibited property’ does not include shares of any company held by a bank holding company to the extent that the prohibitions of section 4 of the Bank Holding Company Act of 1956 do not apply to the ownership by such bank holding company of such property by reason of subsection (c)(5) of such section.

【“(d) NONEXEMPT PROPERTY.—For purposes of this part, the term ‘nonexempt property’ means—

【“(1) obligations (including notes, drafts, bills of exchange, and bankers’ acceptances) having a maturity at the time of issuance of not exceeding 24 months, exclusive of days of grace;

【“(2) securities issued by or guaranteed as to principal or interest by a government or subdivision thereof or by any instrumentality of a government or subdivision; or

【“(3) money, and the right to receive money not evidenced by a security or obligation (other than a security or obligation described in paragraph (1) or (2)).

【“(e) BOARD.—For purposes of this part, the term ‘Board’ means the Board of Governors of the Federal Reserve System.”

(b) The table of parts of subchapter O of chapter 1 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following:

【“Part VIII. Distributions pursuant to Bank Holding Company Act of 1956.”

【(c) The amendments made by this section shall apply with respect to taxable years ending after the date of the enactment of this Act.】

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

(a) *COMPANIES THAT CONTROL WHOLESALE FINANCIAL INSTITUTIONS.—*

(1) *WHOLESALE FINANCIAL HOLDING COMPANY DEFINED.—The term ‘wholesale financial holding company’ means any company that—*

(A) *is registered as a bank holding company;*

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

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

(D) *does not control—*

(i) *a bank other than a wholesale financial institution;*

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

(iii) *a savings association; and*

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

(2) *SAVINGS ASSOCIATION TRANSITION PERIOD.—Notwithstanding paragraph (1)(D)(iii), the Board may permit a company that controls a savings association and that otherwise meets the requirements of paragraph (1) to become supervised under paragraph (1), if the company divests control of any such savings association within such period, not to exceed 5 years after becoming supervised under paragraph (1), as permitted by the Board.*

(b) *SUPERVISION BY THE BOARD.—*

(1) *IN GENERAL.—The provisions of this section shall govern the reporting, examination, and capital requirements of wholesale financial holding companies.*

(2) *REPORTS.—*

(A) *IN GENERAL.—The Board from time to time may require any wholesale financial holding company and any subsidiary of such company to submit reports under oath to keep the Board informed as to—*

(i) *the company’s or subsidiary’s activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions*



with depository institution subsidiaries of the holding company; and

(i) the extent to which the company or subsidiary has complied with the provisions of this Act and regulations prescribed and orders issued under this Act.

(B) *USE OF EXISTING REPORTS.*—

(i) *IN GENERAL.*—The Board shall, to the fullest extent possible, accept reports in fulfillment of the Board's reporting requirements under this paragraph that the wholesale financial holding company or any subsidiary of such company has provided or been required to provide to other Federal and State supervisors or to appropriate self-regulatory organizations.

(ii) *AVAILABILITY.*—A wholesale financial holding company or a subsidiary of such company shall provide to the Board, at the request of the Board, a report referred to in clause (i).

(C) *EXEMPTIONS FROM REPORTING REQUIREMENTS.*—

(i) *IN GENERAL.*—The Board may, by regulation or order, exempt any company or class of companies, under such terms and conditions and for such periods as the Board shall provide in such regulation or order, from the provisions of this paragraph and any regulation prescribed under this paragraph.

(ii) *CRITERIA FOR CONSIDERATION.*—In making any determination under clause (i) with regard to any exemption under such clause, the Board shall consider, among such other factors as the Board may determine to be appropriate, the following factors:

(I) Whether information of the type required under this paragraph is available from a supervisory agency (as defined in section 1101(7) of the Right to Financial Privacy Act of 1978) or a foreign regulatory authority of a similar type.

(II) The primary business of the company.

(III) The nature and extent of the domestic and foreign regulation of the activities of the company.

(3) *EXAMINATIONS.*—

(A) *LIMITED USE OF EXAMINATION AUTHORITY.*—The Board may make examinations of each wholesale financial holding company and each subsidiary of such company in order to—

(i) inform the Board regarding the nature of the operations and financial condition of the wholesale financial holding company and its subsidiaries;

(ii) inform the Board regarding—

(I) the financial and operational risks within the wholesale financial holding company system that may affect any depository institution owned by such holding company; and

(II) the systems of the holding company and its subsidiaries for monitoring and controlling those risks; and

(iii) monitor compliance with the provisions of this Act and those governing transactions and relationships between any depository institution controlled by the wholesale financial holding company and any of the company's other subsidiaries.

(B) *RESTRICTED FOCUS OF EXAMINATIONS.*—The Board shall, to the fullest extent possible, limit the focus and scope of any examination of a wholesale financial holding company under this paragraph to—

- (i) the holding company; and
- (ii) any subsidiary (other than an insured depository institution subsidiary) of the holding company that, because of the size, condition, or activities of the subsidiary, the nature or size of transactions between such subsidiary and any affiliated depository institution, or the centralization of functions within the holding company system, could have a materially adverse effect on the safety and soundness of any depository institution affiliate of the holding company.

(C) *DEFERENCE TO BANK EXAMINATIONS.*—The Board shall, to the fullest extent possible, use the reports of examination of depository institutions made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision or the appropriate State depository institution supervisory authority for the purposes of this section.

(D) *DEFERENCE TO OTHER EXAMINATIONS.*—The Board shall, to the fullest extent possible, address the circumstances which might otherwise permit or require an examination by the Board by forgoing an examination and by instead reviewing the reports of examination made of—

- (i) any registered broker or dealer or any registered investment adviser by or on behalf of the Commission; and
- (ii) any licensed insurance company by or on behalf of any State government insurance agency responsible for the supervision of the insurance company.

(E) *CONFIDENTIALITY OF REPORTED INFORMATION.*—

(i) *IN GENERAL.*—Notwithstanding any other provision of law, the Board shall not be compelled to disclose any nonpublic information required to be reported under this paragraph, or any information supplied to the Board by any domestic or foreign regulatory agency, that relates to the financial or operational condition of any wholesale financial holding company or any subsidiary of such company.

(ii) *COMPLIANCE WITH REQUESTS FOR INFORMATION.*—No provision of this subparagraph shall be construed as authorizing the Board to withhold information from the Congress, or preventing the Board from complying with a request for information from any other Federal department or agency for purposes within the scope of such department's or agency's jurisdiction, or from complying with any order of a court of

competent jurisdiction in an action brought by the United States or the Board.

(iii) *COORDINATION WITH OTHER LAW.*—For purposes of section 552 of title 5, United States Code, this subparagraph shall be considered to be a statute described in subsection (b)(3)(B) of such section.

(iv) *DESIGNATION OF CONFIDENTIAL INFORMATION.*—In prescribing regulations to carry out the requirements of this subsection, the Board shall designate information described in or obtained pursuant to this paragraph as confidential information.

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

(4) *CAPITAL ADEQUACY GUIDELINES.*—

(A) *CAPITAL ADEQUACY PROVISIONS.*—Subject to the requirements of, and solely in accordance with, the terms of this paragraph, the Board may adopt capital adequacy rules or guidelines for wholesale financial holding companies.

(B) *METHOD OF CALCULATION.*—In developing rules or guidelines under this paragraph, the following provisions shall apply:

(i) *FOCUS ON DOUBLE LEVERAGE.*—The Board shall focus on the use by wholesale financial holding companies of debt and other liabilities to fund capital investments in subsidiaries.

(ii) *NO UNWEIGHTED CAPITAL RATIO.*—The Board shall not, by regulation, guideline, order, or otherwise, impose under this section a capital ratio that is not based on appropriate risk-weighting considerations.

(iii) *NO CAPITAL REQUIREMENT ON REGULATED ENTITIES.*—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, standards, guidelines, or requirements upon any subsidiary that—

(I) is not a depository institution; and

(II) is in compliance with applicable capital requirements of another Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority.

(iv) *CERTAIN SUBSIDIARIES.*—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, standards, guidelines, or requirements upon any subsidiary that is not a depository institution and that is registered as an investment adviser under the Investment Advisers Act of 1940, except that this clause shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to activities of a registered investment adviser other than investment advisory activities or activities incidental to investment advisory activities.

(v) *LIMITATIONS ON INDIRECT ACTION.*—In developing, establishing, or assessing holding company capital or capital adequacy rules, guidelines, standards, or requirements for purposes of this paragraph, the Board shall not take into account the activities, operations, or investments of an affiliated investment company registered under the Investment Company Act of 1940, if the investment company is not—

(I) a bank holding company; or

(II) controlled by a bank holding company by reason of ownership by the bank holding company (including through all of its affiliates) of 25 percent or more of the shares of the investment company, where the shares owned by the bank holding company have a market value equal to more than \$1,000,000.

(vi) *APPROPRIATE EXCLUSIONS.*—The Board shall take full account of—

(I) the capital requirements made applicable to any subsidiary that is not a depository institution by another Federal regulatory authority or State insurance authority; and

(II) industry norms for capitalization of a company's unregulated subsidiaries and activities.

(vii) *INTERNAL RISK MANAGEMENT MODELS.*—The Board may incorporate internal risk management models of wholesale financial holding companies into its capital adequacy guidelines or rules and may take account of the extent to which resources of a subsidiary depository institution may be used to service the debt or other liabilities of the wholesale financial holding company.

(c) *NONFINANCIAL ACTIVITIES AND INVESTMENTS.*—

(1) *GRANDFATHERED ACTIVITIES.*—

(A) *IN GENERAL.*—Notwithstanding section 4(a), a company that becomes a wholesale financial holding company may continue to engage, directly or indirectly, in any activity and may retain ownership and control of shares of a company engaged in any activity if—

(i) on the date of the enactment of the Financial Services Act of 1999, such wholesale financial holding company was lawfully engaged in that nonfinancial activity, held the shares of such company, or had entered into a contract to acquire shares of any company engaged in such activity; and

(ii) the company engaged in such activity continues to engage only in the same activities that such company conducted on the date of the enactment of the Financial Services Act of 1999, and other activities permissible under this Act.

(B) *NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.*—A wholesale financial holding company that engages in activities or holds shares pursuant to this paragraph, or a subsidiary of

such wholesale financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company which is engaged in any activity which the Board has not determined to be financial in nature or incidental to activities that are financial in nature under section 6(c).

(C) *LIMITATION TO SINGLE EXEMPTION.*—No company that engages in any activity or controls any shares under subsection (f) of section 6 may engage in any activity or own any shares pursuant to this paragraph.

(2) *COMMODITIES.*—

(A) *IN GENERAL.*—Notwithstanding section 4(a), a wholesale financial holding company which was predominately engaged as of January 1, 1997, in financial activities in the United States (or any successor to any such company) may engage in, or directly or indirectly own or control shares of a company engaged in, activities related to the trading, sale, or investment in commodities and underlying physical properties that were not permissible for bank holding companies to conduct in the United States as of January 1, 1997, if such wholesale financial holding company, or any subsidiary of such holding company, was engaged directly, indirectly, or through any such company in any of such activities as of January 1, 1997, in the United States.

(B) *LIMITATION.*—The attributed aggregate consolidated assets of a wholesale financial holding company held under the authority granted under this paragraph and not otherwise permitted to be held by all wholesale financial holding companies under this section may not exceed 5 percent of the total consolidated assets of the wholesale financial holding company, except that the Board may increase such percentage of total consolidated assets by such amounts and under such circumstances as the Board considers appropriate, consistent with the purposes of this Act.

(3) *CROSS MARKETING RESTRICTIONS.*—A wholesale financial holding company shall not permit—

(A) any company whose shares it owns or controls pursuant to paragraph (1) or (2) to offer or market any product or service of an affiliated wholesale financial institution; or

(B) any affiliated wholesale financial institution to offer or market any product or service of any company whose shares are owned or controlled by such wholesale financial holding company pursuant to such paragraphs.

(d) *QUALIFICATION OF FOREIGN BANK AS WHOLESALE FINANCIAL HOLDING COMPANY.*—

(1) *IN GENERAL.*—Any foreign bank, or any company that owns or controls a foreign bank, that operates a branch, agency, or commercial lending company in the United States, including a foreign bank or company that owns or controls a wholesale financial institution, may request a determination from the Board that such bank or company be treated as a wholesale financial holding company (other than for purposes of subsection (c)), subject to such conditions as the Board deems appropriate, giving due regard to the principle of national treatment and

*equality of competitive opportunity and the requirements imposed on domestic banks and companies.*

(2) *CONDITIONS FOR TREATMENT AS A WHOLESALE FINANCIAL HOLDING COMPANY.—A foreign bank and a company that owns or controls a foreign bank may not be treated as a wholesale financial holding company unless the bank and company meet and continue to meet the following criteria:*

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

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

(C) *TRANSACTION WITH AFFILIATES.—Transactions between a branch, agency, or commercial lending company subsidiary of the foreign bank in the United States, and any securities affiliate or company in which the foreign bank (or any company that owns or controls such foreign bank), has invested and which engages in any activity authorized only as a result of the application of subsection (c) or (g) of section 6, comply with the provisions of sections 23A and 23B of the Federal Reserve Act in the same manner and to the same extent as such transactions would be required to comply with such sections if the foreign bank were a member bank.*

(3) *TREATMENT AS A WHOLESALE FINANCIAL INSTITUTION.—Any foreign bank which is, or is affiliated with a company which is, treated as a wholesale financial holding company under this subsection shall be treated as a wholesale financial institution for purposes of paragraphs (1)(C) and (3) of section 9B(c) of the Federal Reserve Act, and any such foreign bank or company shall be subject to paragraphs (3), (4), and (5) of section 9B(d) of the Federal Reserve Act, except that the Board may adopt such modifications, conditions, or exemptions as the Board deems appropriate, giving due regard to the principle of national treatment and equality of competitive opportunity.*

(4) *SUPERVISION OF FOREIGN BANK WHICH MAINTAINS NO BANKING PRESENCE OTHER THAN CONTROL OF A WHOLESALE FINANCIAL INSTITUTION.—A foreign bank that owns or controls a wholesale financial institution but does not operate a branch, agency, or commercial lending company in the United States (and any company that owns or controls such foreign bank) may request a determination from the Board that such bank or company be treated as a wholesale financial holding company, except that such bank or company shall be subject to the restrictions of paragraphs (2)(A) and (3) of this subsection.*

(5) *NO EFFECT ON OTHER PROVISIONS.—This section shall not be construed as limiting the authority of the Board under the International Banking Act of 1978 with respect to the regula-*

*tion, supervision, or examination of foreign banks and their offices and affiliates in the United States.*

**SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SUPERVISORY, AND ENFORCEMENT AUTHORITY OF THE BOARD.**

*(a) LIMITATION ON DIRECT ACTION.—*

*(1) IN GENERAL.—The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this Act or section 8 of the Federal Deposit Insurance Act against or with respect to a regulated subsidiary of a bank holding company unless the action is necessary to prevent or redress an unsafe or unsound practice or breach of fiduciary duty by such subsidiary that poses a material risk to—*

*(A) the financial safety, soundness, or stability of an affiliated depository institution; or*

*(B) the domestic or international payment system.*

*(2) CRITERIA FOR BOARD ACTION.—The Board shall not take action otherwise permitted under paragraph (1) unless the Board finds that it is not reasonably possible to effectively protect against the material risk at issue through action directed at or against the affiliated depository institution or against depository institutions generally.*

*(b) LIMITATION ON INDIRECT ACTION.—The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this Act or section 8 of the Federal Deposit Insurance Act against or with respect to a financial holding company or a wholesale financial holding company where the purpose or effect of doing so would be to take action indirectly against or with respect to a regulated subsidiary that may not be taken directly against or with respect to such subsidiary in accordance with subsection (a).*

*(c) ACTIONS SPECIFICALLY AUTHORIZED.—Notwithstanding subsection (a), the Board may take action under this Act or section 8 of the Federal Deposit Insurance Act to enforce compliance by a regulated subsidiary with Federal law that the Board has specific jurisdiction to enforce against such subsidiary.*

*(d) REGULATED SUBSIDIARY DEFINED.—For purposes of this section, the term “regulated subsidiary” means any company that is not a bank holding company and is—*

*(1) a broker or dealer registered under the Securities Exchange Act of 1934;*

*(2) a registered investment adviser, properly registered by or on behalf of either the Securities and Exchange Commission or any State, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;*

*(3) an investment company registered under the Investment Company Act of 1940;*

*(4) an insurance company or an insurance agency subject to supervision by a State insurance commission, agency, or similar authority; or*

(5) *an entity subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities.*

SAVING PROVISION

SEC. 11. (a) \* \* \*

(b) ANTITRUST REVIEW.—

(1) IN GENERAL.—The Board shall immediately notify the Attorney General of any approval by it pursuant to section 3 of a proposed acquisition, merger, or consolidation transaction *and, if the transaction also involves an acquisition under section 4 or section 6, the Board shall also notify the Federal Trade Commission of such approval.* If the Board has found that it must act immediately in order to prevent the probable failure of a bank or bank holding company involved in any such transaction, the transaction may be consummated immediately upon approval by the Board. If the Board has advised the Comptroller of the Currency or the State supervisory authority, as the case may be, of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the Board. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the Board or, if the Board has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the Board with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval. Any action brought under the antitrust laws arising out of an acquisition, merger, or consolidation transaction approved under section 3 shall be commenced prior to the earliest time under this subsection at which the transaction approval under section 3 might be consummated. The commencement of such an action shall stay the effectiveness of the Board's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented. In any judicial proceeding attacking any acquisition, merger, or consolidation transaction approved pursuant to section 3 on the ground that such transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), the standards applied by the court shall be identical with those that the Board is directed to apply under section 3 of this Act. Upon the consummation of an acquisition, merger, or consolidation transaction approved under section 3 in compliance with this Act and after the termination of any antitrust litigation commenced within the period prescribed in this section, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than



section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), but nothing in this Act shall exempt any bank holding company involved in such a transaction from complying with the antitrust laws after the consummation of such transaction.

\* \* \* \* \*

**BANK HOLDING COMPANY ACT AMENDMENTS OF 1970**

\* \* \* \* \*

**TITLE I—BANK HOLDING COMPANIES**

\* \* \* \* \*

SEC. 105. With respect to any proceeding before the Federal Reserve Board wherein an applicant seeks authority to acquire a subsidiary which is a bank under section 3 of the Bank Holding Company Act of 1956, to engage directly or indirectly in a nonbanking activity pursuant to section 4 of such Act, or to engage in an activity otherwise prohibited under section 106 of this Act, a party who would become a competitor of the applicant or subsidiary thereof by virtue of the applicant's or its subsidiary's acquisition, entry into the business involved, or activity, shall have the right to be a party in interest in the proceeding and, in the event of an adverse order of the Board, shall have the right as an aggrieved party to obtain judicial review thereof as provided in section 9 of such Act of 1956 or as otherwise provided by law.

SEC. 106. (a) As used in this section, the terms "bank", "bank holding company", "subsidiary", and "Board" have the meaning ascribed to such terms in section 2 of the Bank Holding Company Act of 1956. For purposes of this section only, the term "company", as used in section 2 of the Bank Holding Company Act of 1956, means any person, estate, trust, partnership, corporation, association, or similar organization, but does not include any corporation the majority of the shares of which are owned by the United States or by any State. The term "trust service" means any service customarily performed by a bank trust department. *For purposes of this section, a subsidiary of a national bank which engages in activities pursuant to subsection (a)(2) or (b)(4) of section 5136A of the Revised Statutes of the United States shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank.*

\* \* \* \* \*

**SECTION 4 OF THE BANK SERVICE COMPANY ACT**

\* \* \* \* \*

**PERMISSIBLE BANK SERVICE COMPANY ACTIVITIES FOR OTHER PERSONS**

SEC. 4. (a) \* \* \*

\* \* \* \* \*

(f) Notwithstanding the other provisions of this section or any other provision of law, other than the provisions of Federal and State branching law regulating the geographic location of banks to the extent that those laws are applicable to an activity authorized by this subsection, a bank service company may perform at any geographic location any service, other than deposit taking, that the Board has determined, by regulation, to be permissible for a bank holding company under section 4(c)(8) of the Bank Holding Company Act~~].~~ *as of the day before the date of enactment of the Financial Services Act of 1999.*

**FEDERAL DEPOSIT INSURANCE ACT**

\* \* \* \* \*  
 SEC. 3. As used in this Act—  
 (a) \* \* \*

\* \* \* \* \*  
 (q) APPROPRIATE FEDERAL BANKING AGENCY.—The term “appropriate Federal banking agency” means—

(1) the Comptroller of the Currency, in the case of any national banking association, any District bank, *national wholesale financial institution authorized by the Comptroller of the Currency pursuant to section 5136B of the Revised Statutes of the United States*, or any Federal branch or agency of a foreign bank;

(2) the Board of Governors of the Federal Reserve System, in the case of—

~~[(A) any State member insured bank (except a District bank),]~~

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

\* \* \* \* \*  
 SEC. 8. (a) TERMINATION OF INSURANCE.—

~~[(1) VOLUNTARY TERMINATION.—Any insured depository institution which is not—~~

~~[(A) a national member bank;~~

~~[(B) a State member bank;~~

~~[(C) a Federal branch;~~

~~[(D) a Federal savings association; or~~

~~[(E) an insured branch which is required to be insured under subsection (a) or (b) of section 6 of the International Banking Act of 1978,~~

~~may terminate such depository institution’s status as an insured depository institution if such insured institution provides written notice to the Corporation of the institution’s intent to terminate such status not less than 90 days before the effective date of such termination.]~~

~~[(2)] (1) INVOLUNTARY TERMINATION.—~~

\* \* \* \* \*

[(3)] (2) HEARING; TERMINATION.—If, on the basis of the evidence presented at a hearing before the Board of Directors (or any person designated by the Board for such purpose), in which all issues shall be determined on the record pursuant to section 554 of title 5, United States Code, and the written findings of the Board of Directors (or such person) with respect to such evidence (which shall be conclusive), the Board of Directors finds that any unsafe or unsound practice or condition or any violation specified in the notice to an insured depository institution under paragraph (2)(B) or subsection (w) has been established, the Board of Directors may issue an order terminating the insured status of such depository institution effective as of a date subsequent to such finding.

[(4)] (3) APPEARANCE; CONSENT TO TERMINATION.—Unless the depository institution shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its status as an insured depository institution and termination of such status thereupon may be ordered.

[(5)] (4) JUDICIAL REVIEW.—Any insured depository institution whose insured status has been terminated by order of the Board of Directors under this subsection shall have the right of judicial review of such order only to the same extent as provided for the review of orders under subsection (h) of this section.

[(6)] (5) PUBLICATION OF NOTICE OF TERMINATION.—The Corporation may publish notice of such termination and the depository institution shall give notice of such termination to each of its depositors at his last address of record on the books of the depository institution, in such manner and at such time as the Board of Directors may find to be necessary and may order for the protection of depositors.

[(7)] (6) TEMPORARY INSURANCE OF DEPOSITS INSURED AS OF TERMINATION.—After the termination of the insured status of any depository institution under the provisions of this subsection, the insured deposits of each depositor in the depository institution on the date of such termination, less all subsequent withdrawals from any deposits of such depositor, shall continue for a period of at least 6 months or up to 2 years, within the discretion of the Board of Directors, to be insured, and the depository institution shall continue to pay to the Corporation assessments as in the case of an insured depository institution during such period. No additions to any such deposits and no new deposits in such depository institution made after the date of such termination shall be insured by the Corporation, and the depository institution shall not advertise or hold itself out as having insured deposits unless in the same connection it shall also state with equal prominence that such additions to deposits and new deposits made after such date are not so insured. Such depository institution shall, in all other respects, be subject to the duties and obligations of an insured depository institution for the period referred to in the 1st sentence from the date of such termination, and in the event that such depository institution shall be closed on account of inability to

meet the demands of its depositors within such period, the Corporation shall have the same powers and rights with respect to such depository institution as in case of an insured depository institution.

~~[(8)]~~ (7) TEMPORARY SUSPENSION OF INSURANCE.—

\* \* \* \* \*

~~[(9)]~~ (8) FINAL DECISIONS TO TERMINATE INSURANCE.—Any decision by the Board of Directors to—

(A) \* \* \*

\* \* \* \* \*

~~[(10)]~~ (9) LOW- TO MODERATE-INCOME HOUSING LENDER.—In making any determination regarding the termination of insurance of a solvent savings association, the Corporation may consider the extent of the association's low- to moderate-income housing loans.

\* \* \* \* \*

**SEC. 8A. VOLUNTARY TERMINATION OF STATUS AS INSURED DEPOSITORY INSTITUTION.**

(a) *IN GENERAL.*—*Except as provided in subsection (b), an insured State bank or a national bank may voluntarily terminate such bank's status as an insured depository institution in accordance with regulations of the Corporation if—*

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

(A) *to the Corporation and the Board of Governors of the Federal Reserve System, in the case of an insured State bank, or to the Corporation and the Comptroller of the Currency, in the case of an insured national bank authorized to operate as a wholesale financial institution, not less than 6 months before the effective date of such termination; and*

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

(2) *either—*

(A) *the deposit insurance fund of which such bank is a member equals or exceeds the fund's designated reserve ratio as of the date the bank provides a written notice under paragraph (1) and the Corporation determines that the fund will equal or exceed the applicable designated reserve ratio for the 2 semiannual assessment periods immediately following such date; or*

(B) *the Corporation and the Board of Governors of the Federal Reserve System, in the case of an insured State bank, or the Corporation and the Comptroller of the Currency, in the case of an insured national bank authorized to operate as a wholesale financial institution, has approved the termination of the bank's insured status and the bank pays an exit fee in accordance with subsection (e).*

(b) *EXCEPTION.*—*Subsection (a) shall not apply with respect to—*

(1) *an insured savings association; or*

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

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

(d) *INSTITUTION MUST BECOME WHOLESALE FINANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING ACTIVITIES.*—Any depository institution which voluntarily terminates such institution's status as an insured depository institution under this section may not, upon termination of insurance, accept any deposits unless the institution is a wholesale financial institution subject to section 9B of the Federal Reserve Act.

(e) *EXIT FEES.*—

(1) *IN GENERAL.*—Any bank that voluntarily terminates such bank's status as an insured depository institution under this section shall pay an exit fee in an amount that the Corporation determines is sufficient to account for the institution's pro rata share of the amount (if any) which would be required to restore the relevant deposit insurance fund to the fund's designated reserve ratio as of the date the bank provides a written notice under subsection (a)(1).

(2) *PROCEDURES.*—The Corporation shall prescribe, by regulation, procedures for assessing any exit fee under this subsection.

(f) *TEMPORARY INSURANCE OF DEPOSITS INSURED AS OF TERMINATION.*—

(1) *TRANSITION PERIOD.*—The insured deposits of each depositor in a State bank or a national bank on the effective date of the voluntary termination of the bank's insured status, less all subsequent withdrawals from any deposits of such depositor, shall continue to be insured for a period of not less than 6 months and not more than 2 years, as determined by the Corporation. During such period, no additions to any such deposits, and no new deposits in the depository institution made after the effective date of such termination shall be insured by the Corporation.

(2) *TEMPORARY ASSESSMENTS; OBLIGATIONS AND DUTIES.*—During the period specified in paragraph (1) with respect to any bank, the bank shall continue to pay assessments under section 7 as if the bank were an insured depository institution. The bank shall, in all other respects, be subject to the authority of the Corporation and the duties and obligations of an insured depository institution under this Act during such period, and in the event that the bank is closed due to an inability to meet the demands of the bank's depositors during such period, the Corporation shall have the same powers and rights with respect to such bank as in the case of an insured depository institution.

(g) *ADVERTISEMENTS.*—

(1) *IN GENERAL.*—A bank that voluntarily terminates the bank's insured status under this section shall not advertise or hold itself out as having insured deposits, except that the bank

may advertise the temporary insurance of deposits under subsection (f) if, in connection with any such advertisement, the advertisement also states with equal prominence that additions to deposits and new deposits made after the effective date of the termination are not insured.

(2) *CERTIFICATES OF DEPOSIT, OBLIGATIONS, AND SECURITIES.*—Any certificate of deposit or other obligation or security issued by a State bank or a national bank after the effective date of the voluntary termination of the bank’s insured status under this section shall be accompanied by a conspicuous, prominently displayed notice that such certificate of deposit or other obligation or security is not insured under this Act.

(h) *NOTICE REQUIREMENTS.*—

(1) *NOTICE TO THE CORPORATION.*—The notice required under subsection (a)(1)(A) shall be in such form as the Corporation may require.

(2) *NOTICE TO DEPOSITORS.*—The notice required under subsection (a)(1)(B) shall be—

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

(B) in such manner and form as the Corporation finds to be necessary and appropriate for the protection of depositors.

(i) *VOLUNTARY TERMINATION OF DEPOSIT INSURANCE.*—The provisions on voluntary termination of insurance in this section shall apply to an insured branch of a foreign bank (including a Federal branch) in the same manner and to the same extent as they apply to an insured State bank or a national bank.

\* \* \* \* \*

SEC. 11. (a) DEPOSIT INSURANCE.—

(1) \* \* \*

\* \* \* \* \*

(4) GENERAL PROVISIONS RELATING TO FUNDS.—

(A) \* \* \*

(B) *LIMITATION ON USE.*—Notwithstanding any provision of law other than section 13(c)(4)(G), the Bank Insurance Fund and the Savings Association Insurance Fund shall not be used in any manner **to benefit any shareholder of** to benefit any shareholder, affiliate (other than an insured depository institution that receives assistance in accordance with the provisions of this Act), or subsidiary of—

(i) \* \* \*

\* \* \* \* \*

(6) SAVINGS ASSOCIATION INSURANCE FUND.—

(A) \* \* \*

\* \* \* \* \*

**(L) ESTABLISHMENT OF SAIF SPECIAL RESERVE.**—

**(i) ESTABLISHMENT.**—If, on January 1, 1999, the reserve ratio of the Savings Association Insurance Fund exceeds the designated reserve ratio, there is established a Special Reserve of the Savings Association Insurance

Fund, which shall be administered by the Corporation and shall be invested in accordance with section 13(a).

[(ii) AMOUNTS IN SPECIAL RESERVE.—If, on January 1, 1999, the reserve ratio of the Savings Association Insurance Fund exceeds the designated reserve ratio, the amount by which the reserve ratio exceeds the designated reserve ratio shall be placed in the Special Reserve of the Savings Association Insurance Fund established by clause (i).

[(iii) LIMITATION.—The Corporation shall not provide any assessment credit, refund, or other payment from any amount in the Special Reserve of the Savings Association Insurance Fund.

[(iv) EMERGENCY USE OF SPECIAL RESERVE.—Notwithstanding clause (iii), the Corporation may, in its sole discretion, transfer amounts from the Special Reserve of the Savings Association Insurance Fund to the Savings Association Insurance Fund for the purposes set forth in paragraph (4), only if—

[(I) the reserve ratio of the Savings Association Insurance Fund is less than 50 percent of the designated reserve ratio; and

[(II) the Corporation expects the reserve ratio of the Savings Association Insurance Fund to remain at less than 50 percent of the designated reserve ratio for each of the next 4 calendar quarters.

[(v) EXCLUSION OF SPECIAL RESERVE IN CALCULATING RESERVE RATIO.—Notwithstanding any other provision of law, any amounts in the Special Reserve of the Savings Association Insurance Fund shall be excluded in calculating the reserve ratio of the Savings Association Insurance Fund.]

\* \* \* \* \*  
 SEC. 18. (a) \* \* \* \* \*  
 \* \* \* \* \*  
 (c)(1) \* \* \* \* \*  
 \* \* \* \* \*

(12) *PUBLIC MEETINGS.*—*In each merger transaction involving 1 or more insured depository institutions each of which has total assets of \$1,000,000,000 or more, the responsible agency shall, as necessary and on a timely basis, conduct public meetings in 1 or more areas where the agency believes there will be a substantial public impact.*

\* \* \* \* \*  
 (t) *LIMITATION ON CLAIMS.*—  
 “(1) *IN GENERAL.*—*Notwithstanding any other provision of law, no person shall have any claim against any Federal banking agency, in any capacity, or against any conservator or receiver appointed by any Federal banking agency (including the Corporation as conservator or receiver), arising from or relating to the transfer of money, assets, or other property to a depository institution by a controlling stockholder or a depository institution holding company, or any affiliate or subsidiary of such*

depository institution holding company, if, at the time of the transfer, the depository institution—

(A) is subject to a direction by a Federal banking agency to increase its capital; or

(B) is undercapitalized, significantly undercapitalized, or critically undercapitalized as defined in section 38.

(2) *EXCEPTION.*—No provision of this subsection shall be construed as limiting the right of a depository institution, a controlling stockholder, or a depository institution holding company to seek direct review of an order or directive issued by a Federal banking agency in accordance with the procedures provided by this Act, the National Bank Receivership Act, the Bank Conservation Act, or the Home Owner’s Loan Act.

(u) *RECORDKEEPING REQUIREMENTS.*—

(1) *REQUIREMENTS.*—Each appropriate Federal banking agency, after consultation with and consideration of the views of the Commission, shall establish recordkeeping requirements for banks relying on exceptions contained in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934. Such recordkeeping requirements shall be sufficient to demonstrate compliance with the terms of such exceptions and be designed to facilitate compliance with such exceptions. Each appropriate Federal banking agency shall make any such information available to the Commission upon request.

(2) *DEFINITIONS.*—As used in this subsection the term “Commission” means the Securities and Exchange Commission.

\* \* \* \* \*

**SEC. 42. NOTICE OF BRANCH CLOSURE.**

(a) \* \* \*

\* \* \* \* \*

(d) **BRANCH CLOSURES IN INTERSTATE BANKING OR BRANCHING OPERATIONS.**—

(1) \* \* \*

\* \* \* \* \*

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

(A) *INTERSTATE BANK DEFINED.*—The term “interstate bank” means a bank which maintains branches in more than 1 State and any bank controlled by an out-of-State bank holding company (as defined in section 2(o)(7) of the Bank Holding Company Act of 1956).

\* \* \* \* \*

**SEC. 45. SAFETY AND SOUNDNESS FIREWALLS APPLICABLE TO SUBSIDIARIES OF BANKS.**

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

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

(A) the appropriate Federal banking agency shall deduct from the assets and tangible equity of the bank the aggre-



gate amount of the outstanding equity investments of the bank in financial subsidiaries of the bank; and

(B) the assets and liabilities of such financial subsidiaries shall not be consolidated with those of the bank.

(2) *INVESTMENT LIMITATION.*—An insured bank shall not, without the prior approval of the appropriate Federal banking agency, make any equity investment in a financial subsidiary of the bank if that investment would, when made, exceed the amount that the bank could pay as a dividend without obtaining prior regulatory approval.

(3) *TREATMENT OF RETAINED EARNINGS.*—The amount of any net earnings retained by a financial subsidiary of an insured depository institution shall be treated as an outstanding equity investment of the bank in the subsidiary for purposes of paragraph (1).

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

(c) *MAINTENANCE OF SEPARATE CORPORATE IDENTITY AND SEPARATE LEGAL STATUS.*—

(1) *IN GENERAL.*—Each insured bank shall ensure that the bank maintains and complies with reasonable policies and procedures to preserve the separate corporate identity and legal status of the bank and any financial subsidiary or affiliate of the bank.

(2) *EXAMINATIONS.*—The appropriate Federal banking agency, as part of each examination, shall review whether an insured bank is observing the separate corporate identity and separate legal status of any subsidiaries and affiliates of the bank.

(d) *FINANCIAL SUBSIDIARY DEFINED.*—For purposes of this section, the term “financial subsidiary” has the meaning given to such term in section 5136A(a)(7)(B) of the Revised Statutes of the United States.

(e) *REGULATIONS.*—The appropriate Federal banking agencies shall jointly prescribe regulations implementing this section.

**SEC. 46. FUNCTIONAL REGULATION OF SECURITIES SUBSIDIARIES AND INSURANCE AGENCY SUBSIDIARIES OF INSURED DEPOSITORY INSTITUTIONS.**

(a) *BROKER OR DEALER SUBSIDIARY.*—A broker or dealer that is a subsidiary of an insured depository institution shall be subject to regulation under the Securities Exchange Act of 1934 in the same manner and to the same extent as a broker or dealer that—

(1) is controlled by the same bank holding company as controls the insured depository institution; and

(2) is not an insured depository institution or a subsidiary of an insured depository institution.

(b) *INSURANCE AGENCY SUBSIDIARY.*—An insurance agency or brokerage that is a subsidiary of an insured depository institution shall be subject to regulation by a State insurance authority in the same manner and to the same extent as an insurance agency or brokerage that—

(1) is controlled by the same bank holding company as controls the insured depository institution; and

(2) is not an insured depository institution or a subsidiary of an insured depository institution.

(c) *DEFINITIONS.*—For purposes of this section, the terms “broker” and “dealer” have the same meanings as in section 3 of the Securities Exchange Act of 1934.

**SEC. 47. CUSTOMER SERVICE AND EDUCATION REGULATIONS.**

(a) *REGULATIONS REQUIRED.*—

(1) *IN GENERAL.*—The Federal banking agencies shall prescribe and publish in final form, before the end of the 1-year period beginning on the date of enactment of the Financial Services Act of 1999, customer protection regulations (which the agencies jointly determine to be appropriate) that—

(A) apply to retail sales practices, solicitations, advertising, or offers of any nondeposit product by any insured depository institution or any person who is engaged in such activities at an office of the institution or on behalf of the institution; and

(B) are consistent with the requirements of this Act and provide such additional protections for customers to whom such sales, solicitations, advertising, or offers are directed as the agency determines to be appropriate.

(2) *APPLICABILITY TO SUBSIDIARIES.*—The regulations prescribed pursuant to paragraph (1) shall extend such protections to any subsidiary of an insured depository institution, as deemed appropriate by the regulators referred to in paragraph (3), where such extension is determined to be necessary to ensure the customer protections provided by this section.

(3) *CONSULTATION AND JOINT REGULATIONS.*—The Federal banking agencies shall consult with each other and prescribe joint regulations pursuant to paragraph (1), after consultation with the Securities and Exchange Commission and the State insurance regulators, as appropriate.

(4) *NONDEPOSIT PRODUCT DEFINED.*—For purposes of this section, the term “nondeposit product”—

(A) means any investment and insurance product which is not a deposit;

(B) includes shares issued by a registered investment company; and

(C) does not include—

(i) any loan or any other extension of credit by an insured depository institution;

(ii) any letter of credit;

(iii) any trust services;

(iv) any discount; or

(v) any other instrument or insurance or investment product specifically excluded from the definition of such term by regulations prescribed jointly by the Federal banking agencies, to the extent necessary to carry out the purposes of this Act.

(5) *INSURANCE PRODUCT DEFINED.*—For purposes of this section, the term “insurance product” includes an annuity contract the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.

(b) *SALES PRACTICES.*—

(1) *ANTICOERCION RULES.*—The regulations prescribed pursuant to subsection (a) shall include anticoercion rules applicable to the sale of nondeposit products which prohibit an insured depository institution from engaging in any practice that would lead a customer to believe an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970, is conditional upon—

(A) the purchase of a nondeposit product from the institution or any of its affiliates; or

(B) an agreement by the customer not to obtain, or a prohibition on the customer from obtaining, a nondeposit product from an unaffiliated entity.

(2) *SUITABILITY OF PRODUCT.*—

(A) *IN GENERAL.*—The regulations prescribed pursuant to subsection (a) with respect to the sale of nondeposit products shall include standards to ensure that an investment product sold to a customer is suitable and any other nondeposit product is appropriate for the customer based on financial information disclosed by the customer.

(B) *RULES OF FAIR PRACTICE.*—In prescribing the standards under subparagraph (A) with respect to the sale of investments, the Federal banking agencies shall take into account the Rules of Fair Practice of the National Association of Securities Dealers.

(c) *DISCLOSURES AND ADVERTISING.*—The regulations prescribed pursuant to subsection (a) shall include the following provisions relating to disclosures and advertising in connection with the initial purchase of a nondeposit product:

(1) *DISCLOSURES.*—

(A) *IN GENERAL.*—Requirements that the following disclosures be made orally and in writing before the completion of the initial sale and, in the case of clause (iv), at the time of application for an extension of credit:

(i) *UNINSURED STATUS.*—As appropriate, the product is not insured by the Federal Deposit Insurance Corporation, the United States Government, or the insured depository institution.

(ii) *INSURANCE PRODUCT.*—In the case of an insurance policy which is sold by the depository institution, or any affiliate of the institution, as agent, the product is not an obligation of or guaranteed by the depository institution.

(iii) *INVESTMENT RISK.*—In the case of an investment product, variable annuity, or other product which involves an investment risk, that there is an investment risk associated with the product, including possible loss of value.

(iv) *COERCION.*—The approval of an extension of credit may not be conditioned on—

(I) the purchase of a nondeposit product from the institution in which the application for credit is pending or any of affiliate of the institution; or

(II) an agreement by the customer not to obtain, or a prohibition on the customer from obtaining, a nondeposit product from an unaffiliated entity.

(B) **MAKING DISCLOSURE READILY UNDERSTANDABLE.**—Regulations prescribed under subparagraph (A) shall encourage the use of disclosure that is conspicuous, simple, direct, and readily understandable, such as the following:

(i) “NOT FDIC-INSURED”.

(ii) “NOT GUARANTEED BY THE BANK”.

(iii) “MAY GO DOWN IN VALUE”.

(iv) “NOT INSURED BY ANY GOVERNMENT AGENCY”.

(C) **ADJUSTMENTS FOR ALTERNATIVE METHODS OF PURCHASE.**—In prescribing the requirements under subparagraphs (A) and (D), necessary adjustments shall be made for purchase in person, by telephone, or by electronic media to provide for the most appropriate and complete form of disclosure and acknowledgments.

(D) **CUSTOMER ACKNOWLEDGMENT.**—A requirement that an insured depository institution shall require any person selling a nondeposit product at any office of, or on behalf of, the institution to obtain, at the time a customer receives the disclosures required under this paragraph or at the time of the initial purchase by the customer of such product, an acknowledgment by such customer of the receipt of the disclosure required under this paragraph with respect to such product.

(2) **PROHIBITION ON MISREPRESENTATIONS.**—A prohibition on any practice, or any advertising, at any office of, or on behalf of, the insured depository institution, or any subsidiary as appropriate, which could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to—

(A) the uninsured nature of any nondeposit product sold, or offered for sale, by the institution or any subsidiary of the institution;

(B) in the case of a nondeposit product that involves an investment risk, the investment risk associated with any such product; or

(C) in the case of a nondeposit product, the approval of an extension of credit is not conditioned on the purchase of such nondeposit product and the customer is not prohibited from purchasing such nondeposit product from another institution.

(d) **SEPARATION OF BANKING AND NONBANKING ACTIVITIES.**—

(1) **REGULATIONS REQUIRED.**—The regulations prescribed pursuant to subsection (a) shall include such provisions as the Federal banking agencies consider appropriate to ensure that the routine acceptance of deposits is kept, to the extent practicable, physically segregated from nondeposit product activity.

(2) **REQUIREMENTS.**—Regulations prescribed pursuant to paragraph (1) shall include the following requirements:

(A) **SEPARATE SETTING.**—A clear delineation of the setting in which, and the circumstances under which, transactions

involving nondeposit products should be conducted in a location physically segregated from an area where retail deposits are routinely accepted.

(B) *REFERRALS.*—Standards which permit any person accepting deposits from the public in an area where such transactions are routinely conducted in an insured depository institution to refer a customer who seeks to purchase any nondeposit 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 nondeposit 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) *CUSTOMER GRIEVANCE PROCESS.*—The Federal banking agencies shall jointly establish a customer complaint mechanism, for receiving and expeditiously addressing customer complaints alleging a violation of regulations issued under this section, which mechanism shall—

- (1) establish a group within each regulatory agency to receive such complaints;
- (2) develop procedures for investigating such complaints;
- (3) develop procedures for informing customers of rights they may have in connection with such complaints; and
- (4) develop procedures for addressing concerns raised by such complaints, as appropriate, including procedures for the recovery of losses to the extent appropriate.

(f) *EFFECT ON OTHER AUTHORITY.*—

(1) *IN GENERAL.*—No provision of this section shall be construed as granting, limiting, or otherwise affecting—

(A) any authority of the Securities and Exchange Commission, any self-regulatory organization, the Municipal Securities Rulemaking Board, or the Secretary of the Treasury under any Federal securities law; or

(B) except as provided in paragraph (2), any authority of any State insurance commissioner or other State authority under any State law.

(2) *COORDINATION WITH STATE LAW.*—

(A) *IN GENERAL.*—Except as provided in subparagraph (B), regulations prescribed by a Federal banking agency under this section shall not apply to retail sales, solicitations, advertising, or offers of any nondeposit product by any insured depository institution or to any person who is engaged in such activities at an office of such institution or on behalf of the institution, in a State where the State has in effect statutes, regulations, orders, or interpretations, that are inconsistent with or contrary to the regulations prescribed by the Federal banking agencies.

(B) *PREEMPTION.*—If, with respect to any provision of the regulations prescribed under this section, the Board of Gov-

*ernors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, and the Board of Directors of the Federal Deposit Insurance Corporation determine jointly that the protection afforded by such provision for consumers is greater than the protection provided by a comparable provision of the statutes, regulations, orders, or interpretations referred to in subparagraph (A) of any State, such provision of the regulations prescribed under this section shall supersede the comparable provision of such State statute, regulation, order, or interpretation.*

**SECTION 6 OF THE NATIONAL BANK CONSOLIDATION AND MERGER ACT**

**SEC. 6. PUBLIC MEETINGS FOR LARGE BANK CONSOLIDATIONS AND MERGERS.**

*In each case of a consolidation or merger under this Act involving 1 or more banks each of which has total assets of \$1,000,000,000 or more, the Comptroller shall, as necessary and on a timely basis, conduct public meetings in 1 or more areas where the Comptroller believes there will be a substantial public impact.*

**HOME OWNERS' LOAN ACT**

\* \* \* \* \*

**SEC. 5. FEDERAL SAVINGS ASSOCIATIONS.**

(a) \* \* \*

\* \* \* \* \*

**[(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—**Each Federal savings association, upon receiving its charter, shall become automatically a member of the Federal home loan bank of the district in which it is located, or if convenience requires and the Director approves, shall become a member of a Federal home loan bank of an adjoining district. Such associations shall qualify for such membership in the manner provided in the Federal Home Loan Bank Act with respect to other members.]

*(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—On and after January 1, 1999, a Federal savings association may become a member of the Federal Home Loan Bank System, and shall qualify for such membership in the manner provided by the Federal Home Loan Bank Act.*

\* \* \* \* \*

**SEC. 10. REGULATION OF HOLDING COMPANIES.**

(a) \* \* \*

\* \* \* \* \*

(c) **HOLDING COMPANY ACTIVITIES.—**

(1) \* \* \*

\* \* \* \* \*

(3) **CERTAIN LIMITATIONS ON ACTIVITIES NOT APPLICABLE TO CERTAIN HOLDING COMPANIES.—**[Notwithstanding] *Except as*

*provided in paragraph (9) and notwithstanding paragraphs (4) and (6) of this subsection, the limitations contained in subparagraphs (B) and (C) of paragraph (1) shall not apply to any savings and loan holding company (or any subsidiary of such company) which controls—*

(A) \* \* \*

\* \* \* \* \*

**(9) TERMINATION OF EXPANDED POWERS FOR NEW UNITARY HOLDING COMPANY.—**

*(A) IN GENERAL.—Subject to subparagraph (B) and notwithstanding paragraph (3), no company may directly or indirectly, including through any merger, consolidation, or other type of business combination, acquire control of a savings association after March 4, 1999, unless the company is engaged, directly or indirectly (including through a subsidiary other than a savings association), only in activities that are permitted—*

- (i) under paragraph (1)(C) or (2); or*
- (ii) for financial holding companies under section 6(c) of the Bank Holding Company Act of 1956.*

*(B) EXISTING UNITARY HOLDING COMPANIES AND THE SUCCESSORS TO SUCH COMPANIES.—Subparagraph (A) shall not apply, and paragraph (3) shall continue to apply, to a company (or any subsidiary of such company) that—*

- (i) either—*
  - (I) acquired 1 or more savings associations described in paragraph (3) pursuant to applications at least 1 of which was filed on or before March 4, 1999; or*
  - (II) became a savings and loan holding company by acquiring control of the company described in subclause (I); and*
- (ii) continues to control the savings association referred to in clause (i)(II) or the successor to any such savings association.*

\* \* \* \* \*

**(e) ACQUISITIONS.—**

(1) \* \* \*

\* \* \* \* \*

**(7) PUBLIC MEETINGS FOR LARGE DEPOSITORY INSTITUTION ACQUISITIONS AND MERGERS.—***In each case involving 1 or more insured depository institutions each of which has total assets of \$1,000,000,000 or more, the Director shall, as necessary and on a timely basis, conduct public meetings in 1 or more areas where the Director believes there will be a substantial public impact.*

\* \* \* \* \*

**(o) MUTUAL HOLDING COMPANIES.—**

(1) \* \* \*

\* \* \* \* \*

(5) PERMITTED ACTIVITIES.—A mutual holding company may engage only in the following activities:

(A) \* \* \*

\* \* \* \* \*

(E) Engaging in the activities described in subsection (c)(2) [ , except subparagraph (B) ].

(F) *In the case of a mutual holding company which is a savings and loan holding company described in subsection (c)(3), engaging in the activities permitted for financial holding companies under section 6(c) of the Bank Holding Company Act of 1956.*

\* \* \* \* \*

**SECTION 109 OF THE RIEGLE-NEAL INTERSTATE BANKING AND BRANCHING EFFICIENCY ACT OF 1994**

**SEC. 109. PROHIBITION AGAINST DEPOSIT PRODUCTION OFFICES.**

(a) \* \* \*

\* \* \* \* \*

(d) APPLICATION.—This section shall apply with respect to any interstate branch established or acquired in a host State pursuant to this title, *the Financial Services Act of 1999*, or any amendment made by this title *or such Act* to any other provision of law.

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

(1) \* \* \*

\* \* \* \* \*

(4) INTERSTATE BRANCH.—The term “interstate branch” means a branch established pursuant to this title or any amendment made by this title to any other provision of law *and any branch of a bank controlled by an out-of-State bank holding company (as defined in section 2(o)(7) of the Bank Holding Company Act of 1956).*

\* \* \* \* \*

**TITLE LXII OF THE REVISED STATUTES**

TITLE LXII.—NATIONAL BANKS.—CH. 1.

**T I T L E L X I I .**

**NATIONAL BANKS.**

**C H A P T E R O N E .**

**ORGANIZATION AND POWERS.**



Sec.  
5133. Formation of national banking associations.  
\* \* \* \* \*

5136A. *Subsidiaries of national banks.*  
5136B. *National wholesale financial institutions.*  
[5136A.] 5136C. Participation in lotteries prohibited.  
\* \* \* \* \*

SEC. 5136. Upon duly making and filing articles of association and an organization certificate, the association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—  
First. To adopt and use a corporate seal.

\* \* \* \* \*  
Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this title. The business of dealing in securities and stock by the association shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock: *Provided*, That the association may purchase for its own account investment securities under such limitations and restrictions as the Comptroller of the Currency may by regulation prescribe. In no event shall the total amount of the investment securities of any one obligor or maker, held by the association for its own account, exceed at any time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund, except that this limitation shall not require any association to dispose of any securities lawfully held by it on the date of enactment of the Banking Act of 1935. As used in this section the term “investment securities” shall mean marketable obligations evidencing indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes and/or debentures commonly known as investment securities under such further definition of the term “investment securities” as may by regulation be prescribed by the Comptroller of the Currency. Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation. The limitations and restrictions herein contained as to dealing in, underwriting and purchasing for its own account, investment securities shall not apply to obligations of the United States, or general obligations of any State or of any political subdivision thereof, or obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969, or obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the thirteen banks for cooperatives or any

of them or the Federal Home Loan Banks, or obligations which are insured by the Secretary of Housing and Urban Development under title XI of the National Housing Act, or obligations which are insured by the Secretary of Housing and Urban Development (hereafter in this sentence referred to as the "Secretary" pursuant to section 207 of the National Housing Act, if the debentures to be issued in payment of such insured obligations are guaranteed as to principal and interest by the United States, or obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association, or mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act or obligations of the Federal Financing Bank or obligations of the Environmental Financing Authority or obligations or other instruments or securities of the Student Loan Marketing Association, or such obligations of any local public agency (as defined in section 110(h) of the Housing Act of 1949) as are secured by an agreement between the local public agency and the Secretary in which the local public agency agrees to borrow from said Secretary and said Secretary agrees to lend to said local public agency, monies in an aggregate amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay, when due, the interest on and all installments (including the final installment) of the principal of such obligations, which monies under the terms of said agreement are required to be used for such payments, or such obligations of a public housing agency (as defined in the United States Housing Act of 1937, as amended) as are secured (1) by an agreement between the public housing agency and the Secretary in which the public housing agency agrees to borrow from the Secretary and the Secretary agrees to lend to the public housing agency, prior to the maturity of such obligations, monies in an amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of such obligations with interest to maturity thereon, which monies under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity, (2) by a pledge of annual contributions under an annual contributions contract between such public housing agency and the Secretary if such contract shall contain the covenant by the Secretary which is authorized by subsection (b) of section 22 of the United States Housing Act of 1937, as amended, and if the maximum sum and the maximum period specified in such contract pursuant to said subsection 22(b) shall not be less than the annual amount and the period for payment which are requisite to provide for the payment when due of all installments of principal and interest on such obligations, or (3) by a pledge or both annual contributions under an annual contributions contract containing the covenant by the Secretary which is authorized by section 6(g) of the United States Housing Act of 1937, and a loan under an agreement between the local public housing agency and the Secretary in which the public housing

agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the public housing agency, prior to the maturity of the obligations involved, moneys in an amount which (together with any other moneys irrevocably committed under the annual contributions contract to the payment of principal and interest on such obligations) will suffice to provide for the payment when due of all installments of principal and interest on such obligations, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal and interest on such obligations at their maturity: *Provided*, That in carrying on the business commonly known as the safe-deposit business the association shall not invest in the capital stock of a corporation organized under the law of any State to conduct a safe-deposit business in an amount in excess of 15 per centum of the capital stock of the association actually paid in and unimpaired and 15 per centum of its unimpaired surplus. The limitations and restrictions herein contained as to dealing in and underwriting investment securities shall not apply to obligations issued by the International Bank for Reconstruction and Development, the European Bank for Reconstruction and Development, the Inter-American Development Bank, Bank for Economic Cooperation and Development in the Middle East and North Africa, the Asian Development Bank the African Development Bank, the Inter-American Investment Corporation, or the International Finance Corporation, or obligations issued by any State or political subdivision or any agency of a State or political subdivision for housing, university, or dormitory purposes, which are at the time eligible for purchase by a national bank for its own account, nor to bonds, notes and other obligations issued by the Tennessee Valley Authority or by the United States Postal Service: *Provided*, That no association shall hold obligations issued by any of said organizations as a result of underwriting, dealing, or purchasing for its own account (and for this purpose obligations as to which it is under commitment shall be deemed to be held by it) in a total amount exceeding at any one time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation authorized to be created pursuant to title IX of the Housing and Urban Development Act of 1968, and may make investments in a partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of that Act. Notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock issued by any State housing corporation incorporated in the State in which the association is located and may make investments in loans and commitments for loans to any such corporation: *Provided*, That in no event shall the total amount of such stock held for its own account and such investments in loans and commitments made by the association exceed at any time 5 per centum of its capital stock actually paid in and unimpaired plus 5 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation organized solely for the purpose of making loans to farmers and ranchers for

agricultural purposes, including the breeding, raising, fattening, or marketing of livestock. However, unless the association owns at least 80 per centum of the stock of such agricultural credit corporation the amount invested by the association at any one time in the stock of such corporation shall not exceed 20 per centum of the unimpaired capital and surplus of the association: *Provided further*, That notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock of a bank insured by the Federal Deposit Insurance Corporation or a holding company which owns or controls such an insured bank if the stock of such bank or company is owned exclusively (except to the extent directors' qualifying shares are required by law) by depository institutions or depository institution holding companies (as defined in section 3 of the Federal Deposit Insurance Act) and such bank or company and all subsidiaries thereof are engaged exclusively in providing services to or for other depository institutions, their holding companies, and the officers, directors, and employees of such institutions and companies, and in providing correspondent banking services at the request of other depository institutions or their holding companies (also referred to as a "banker's bank"), but in no event shall the total amount of such stock held by the association in any bank or holding company exceed at any time 10 per centum of the associations capital stock and paid in and unimpaired surplus and in no event shall the purchase of such stock result in an association's acquiring more than 5 per centum of any class of voting securities of such bank or company. The limitations and restrictions contained in this paragraph as to an association purchasing for its own account investment securities shall not apply to securities that (A) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); (B) are small business related securities (as defined in section 3(a)(53) of the Securities Exchange Act of 1934); or (C) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)). The exception provided for the securities described in subparagraphs (A), (B), and (C) shall be subject to such regulations as the Comptroller of the Currency may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both. A national banking association may deal in, underwrite, and purchase for such association's own account qualified Canadian government obligations to the same extent that such association may deal in, underwrite, and purchase for such association's own account obligations of the United States or general obligations of any State or of any political subdivision thereof. For purposes of this paragraph—

(1) the term "qualified Canadian government obligations" means any debt obligation which is backed by Canada, any Province of Canada, or any political subdivision of any such Province to a degree which is comparable to the liability of the United States, any State, or any political subdivision thereof for any obligation which is backed by the full faith and credit of the United States, such State, or such political subdivision, and such term includes any debt obligation of any agent of

Canada or any such Province or any political subdivision of such Province if—

(A) the obligation of the agent is assumed in such agent's capacity as agent for Canada or such Province or such political subdivision; and

(B) Canada, such Province, or such political subdivision on whose behalf such agent is acting with respect to such obligation is ultimately and unconditionally liable for such obligation; and

(2) the term "Province of Canada" means a Province of Canada and includes the Yukon Territory and the Northwest Territories and their successors.

*In addition to the provisions in this paragraph for dealing in, underwriting or purchasing securities, the limitations and restrictions contained in this paragraph as to dealing in, underwriting, and purchasing investment securities for the national bank's own account shall not apply to obligations (including limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of section 142(b)(1) of the Internal Revenue Code of 1986) issued by or on behalf of any state or political subdivision of a state, including any municipal corporate instrumentality of 1 or more states, or any public agency or authority of any state or political subdivision of a state, if the national banking association is well capitalized (as defined in section 38 of the Federal Deposit Insurance Act).*

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

(a) **SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED TO ENGAGE IN FINANCIAL ACTIVITIES.**—

(1) **EXCLUSIVE AUTHORITY.**—No provision of section 5136 or any other provision of this title LXII of the Revised Statutes of the United States shall be construed as authorizing a subsidiary of a national bank to engage in, or own any share of or any other interest in any company engaged in, any activity that—

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

(B) is conducted under terms or conditions other than those that would govern the conduct of such activity by a national bank,

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

(2) **SPECIFIC AUTHORIZATION TO CONDUCT ACTIVITIES WHICH ARE FINANCIAL IN NATURE.**—Subject to paragraphs (3) and (4), a national bank may control a financial subsidiary, or hold an interest in a financial subsidiary, that is controlled by insured depository institutions or subsidiaries thereof.

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

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

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

(C) the national bank and all depository institution affiliates of such national bank have achieved a rating of 'satisfactory record of meeting community credit needs', or better, at the most recent examination of each such bank or institution; and

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

(4) **ACTIVITY LIMITATIONS.**—In addition to any other limitation imposed on the activity of subsidiaries of national banks, a subsidiary of a national bank may not, pursuant to paragraph (2)—

(A) engage as principal in insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death (other than in connection with credit-related insurance) or in providing or issuing annuities;

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

(C) engage in any activity permissible for a financial holding company under paragraph (3)(I) of section 6(c) of the Bank Holding Company Act of 1956 (relating to insurance company investments).

(5) **SIZE FACTOR WITH REGARD TO FREE-STANDING NATIONAL BANKS.**—Notwithstanding paragraph (2), a national bank which has total assets of \$10,000,000,000 or more may not control a subsidiary engaged in financial activities pursuant to such paragraph unless such national bank is a subsidiary of a bank holding company.

(6) **LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY AFFILIATED DEPOSITORY INSTITUTIONS.**—Any depository institution which becomes an affiliate of a national bank during the 12-month period preceding the date of an approval by the Comptroller of the Currency under paragraph (3)(D) for such bank, and any depository institution which becomes an affiliate of the national bank after such date, may be excluded for purposes of paragraph (3)(C) during the 12-month period beginning on the date of such affiliation if—

(A) the national bank or such depository institution has submitted an affirmative plan to the appropriate Federal banking agency to take such action as may be necessary in order for such institution to achieve a rating of "satisfactory record of meeting community credit needs", or better, at the next examination of the institution; and

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

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

(A) **COMPANY; CONTROL; AFFILIATE; SUBSIDIARY.**—The terms "company", "control", "affiliate", and "subsidiary" have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

(B) **FINANCIAL SUBSIDIARY.**—The term "financial subsidiary" means a company which is a subsidiary of an insured bank and is engaged in financial activities that have

been determined to be financial in nature or incidental to such financial activities in accordance with subsection (b) or permitted in accordance with subsection (b)(4), other than activities that are permissible for a national bank to engage in directly or that are authorized under the Bank Service Company Act, section 25 or 25A of the Federal Reserve Act, or any other Federal statute (other than this section) that specifically authorizes the conduct of such activities by its express terms and not by implication or interpretation.

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

(D) *WELL MANAGED.*—The term “well managed” means—

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

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

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

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

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

(b) *ACTIVITIES THAT ARE FINANCIAL IN NATURE.*—

(1) *FINANCIAL ACTIVITIES.*—

(A) *IN GENERAL.*—For purposes of subsection (a)(7)(B), an activity shall be considered to have been determined to be financial in nature or incidental to such financial activities only if—

(i) such activity is permitted for a financial holding company pursuant to section 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 financial in nature or incidental to such a financial activity.*

(II) *BOARD VIEW.*—*The Secretary of the Treasury shall not determine that any activity is financial in nature or incidental to a financial activity under this subsection if the Board notifies the Secretary in writing, not later than 30 days after the date of receipt of the notice described in subclause (I) (or such longer period as the Secretary determines to be appropriate in light of the circumstances) that the Board believes that the activity is not financial in nature or incidental to a financial activity.*

(ii) *PROPOSALS RAISED BY THE BOARD.*—

(I) *BOARD RECOMMENDATION.*—*The Board may, at any time, recommend in writing that the Secretary of the Treasury find an activity to be financial in nature or incidental to a financial activity (other than an activity which the Board has sole authority to regulate under subparagraph (C)).*

(II) *TIME PERIOD FOR SECRETARIAL ACTION.*—*Not later than 30 days after the date of receipt of a written recommendation from the Board under subclause (I) (or such longer period as the Secretary of the Treasury and the Board determine to be appropriate in light of the circumstances), the Secretary shall determine whether to initiate a public rulemaking proposing that the subject recommended activity be found to be financial in nature or incidental to a financial activity under this subsection, and shall notify the Board in writing of the determination of the Secretary and, in the event that the Secretary determines not to seek public comment on the proposal, the reasons for that determination.*

(C) *AUTHORITY OVER MERCHANT BANKING.*—*The Board shall have sole authority to prescribe regulations and issue interpretations to implement this paragraph with respect to activities described in section 6(c)(3)(H) of the Bank Holding Company Act of 1956.*

(2) *FACTORS TO BE CONSIDERED.*—*In determining whether an activity is financial in nature or incidental to financial activities, the Secretary shall take into account—*

(A) *the purposes of this Act and the Financial Services Act of 1999;*

(B) *changes or reasonably expected changes in the marketplace in which banks compete;*



(C) changes or reasonably expected changes in the technology for delivering financial services; and

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

(i) compete effectively with any company seeking to provide financial services in the United States;

(ii) use any available or emerging technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions, in providing financial services; and

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

(3) AUTHORIZATION OF NEW FINANCIAL ACTIVITIES.—The Secretary of the Treasury shall, by regulation or order and in accordance with paragraph (1)(B), define, consistent with the purposes of this Act, the following activities as, and the extent to which such activities are, financial in nature or incidental to activities which are financial in nature:

(A) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.

(B) Providing any device or other instrumentality for transferring money or other financial assets.

(C) Arranging, effecting, or facilitating financial transactions for the account of third parties.

(4) DEVELOPING ACTIVITIES.—Subject to subsection (a)(2), a financial subsidiary of a national bank may engage directly or indirectly, or acquire shares of any company engaged, in any activity that the Secretary has not determined to be financial in nature or incidental to financial activities under this subsection if—

(A) the subsidiary reasonably concludes that the activity is financial in nature or incidental to financial activities;

(B) the gross revenues from all activities conducted under this paragraph represent less than 5 percent of the consolidated gross revenues of the national bank;

(C) the aggregate total assets of all companies the shares of which are held under this paragraph do not exceed 5 percent of the national bank's consolidated total assets;

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

(E) neither the Secretary of the Treasury nor the Board has determined that the activity is not financial in nature or incidental to financial activities under this subsection; and

(F) the national bank provides written notice to the Secretary of the Treasury describing the activity commenced by the subsidiary or conducted by the company acquired no later than 10 business days after commencing the activity or consummating the acquisition.

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

(1) *IN GENERAL.*—If a national bank or depository institution affiliate is not in compliance with the requirements of subparagraph (A), (B), or (C) of subsection (a)(3), the appropriate Federal banking agency shall notify the Comptroller of the Currency, who shall give notice of such finding to the national bank.

(2) *AGREEMENT TO CORRECT CONDITIONS REQUIRED.*—Not later than 45 days after receipt by a national bank of a notice given under paragraph (1) (or such additional period as the Comptroller of the Currency may permit), the national bank and any relevant affiliated depository institution shall execute an agreement acceptable to the Comptroller of the Currency and the other appropriate Federal banking agencies, if any, to comply with the requirements applicable under subsection (a)(3).

(3) *COMPTROLLER OF THE CURRENCY MAY IMPOSE LIMITATIONS.*—Until the conditions described in a notice to a national bank under paragraph (1) are corrected—

(A) the Comptroller of the Currency may impose such limitations on the conduct or activities of the national bank or any subsidiary of the bank as the Comptroller of the Currency determines to be appropriate under the circumstances; and

(B) the appropriate Federal banking agency may impose such limitations on the conduct or activities of an affiliated depository institution or any subsidiary of the depository institution as such agency determines to be appropriate under the circumstances.

(4) *FAILURE TO CORRECT.*—If, after receiving a notice under paragraph (1), a national does not—

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

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

(C) in the case of a notice of failure to comply with subsection (a)(3)(A), restore the national bank or any depository institution affiliate of the bank to well capitalized status before the end of the 180-day period beginning on the date such notice is received by the national bank (or such other period permitted by the Comptroller of the Currency);

or

(D) in the case of a notice of failure to comply with subparagraph (B) or (C) of subsection (a)(3), restore compliance with any such subparagraph on or before the date on which the next examination of the depository institution subsidiary is completed or by the end of such other period as the Comptroller of the Currency determines to be appropriate, the Comptroller of the Currency may require such national bank, under such terms and conditions as may be imposed by the Comptroller of the Currency and subject to such extension of time as may be granted in the Comptroller of the Currency's discretion, to divest control of any subsidiary engaged in activities pursuant to subsection (a)(2) or, at the election of the national bank, instead to cease to engage in any activity con-

ducted by a subsidiary of the national bank pursuant to subsection (a)(2).

(5) *CONSULTATION.*—In taking any action under this subsection, the Comptroller of the Currency shall consult with all relevant Federal and State regulatory agencies.

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

(a) *AUTHORIZATION OF THE COMPTROLLER REQUIRED.*—

(1) *IN GENERAL.*—A national bank may apply to the Comptroller on such forms and in accordance with such regulations as the Comptroller may prescribe, for permission to operate as a wholesale financial institution.

(2) *NATIONAL WHOLESALE FINANCIAL INSTITUTION.*—Any national bank that is approved by the Comptroller of the Currency to operate as a wholesale financial institution under paragraph (1) shall be known as a national wholesale financial institution.

(b) *REGULATION.*—A national wholesale financial institution may exercise, in accordance with such institution’s articles of incorporation and regulations issued by the Comptroller, all the powers and privileges of a national bank formed in accordance with section 5133 of the Revised Statutes of the United States, subject to section 9B of the Federal Reserve Act and the limitations and restrictions contained therein.

(c) *COMMUNITY REINVESTMENT ACT OF 1977.*—A national wholesale financial institution shall be subject to the Community Reinvestment Act of 1977.

(d) *LIMIT ON NUMBER.*—Not more than 5 national wholesale financial institutions may be chartered by the Comptroller of the Currency.

SEC. [5136A.] 5136C. (a) A national bank may not—

(1) \* \* \*

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**CHAPTER FOUR.**

**DISSOLUTION AND RECEIVERSHIP.**

\* \* \* \* \*

SEC. 5239. (a) \* \* \*

\* \* \* \* \*

[(d)] (e) *AUTHORITY.*—The Comptroller of the Currency may act in the Comptroller’s own name and through the Comptroller’s own attorneys in enforcing any provision of this title, regulations thereunder, or any other law or regulation, or in any action, suit, or proceeding to which the Comptroller of the Currency is a party.

(f) *ENFORCEMENT AUTHORITY OVER UNINSURED NATIONAL BANKS.*—Section 3(u) of the Federal Deposit Insurance Act, subsections (j) and (k) of section 7 of such Act, and subsections (b) through (n), (s), (u), and (v) of section 8 of such Act shall apply to an uninsured national bank in the same manner and to the same extent such provisions apply to an insured national bank and any reference in any such provision to “insured depository institution”

shall be deemed to be a reference to “uninsured national bank” for purposes of this subsection.

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### FEDERAL RESERVE ACT

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SEC. 9. Any bank incorporated by special law of any State, or organized under the general laws of any State or of the United States, including Morris Plan banks and other incorporated banking institutions engaged in similar business, desiring to become a member of the Federal Reserve System, may make application to the Board of Governors of the Federal Reserve System, under such rules and regulations as it may prescribe, for the right to subscribe to the stock of the Federal reserve bank organized within the district in which the applying bank is located. Such application shall be for the same amount of stock that the applying bank would be required to subscribe to as a national bank. For the purposes of membership of any such bank the terms “capital” and “capital stock” shall include the amount of outstanding capital notes and debentures legally issued by the applying bank and purchased by the Reconstruction Finance Corporation. The Board of Governors of the Federal Reserve System, subject to the provisions of this Act and to such conditions as it may prescribe pursuant thereto may permit the applying bank to become a stockholder of such Federal reserve bank.

\* \* \* \* \*

If at any time it shall appear to the Board of Governors of the Federal Reserve System that a member bank has failed to comply with the provisions of this section or the regulations of the Board of Governors of the Federal Reserve System made pursuant thereto, or has ceased to exercise banking functions without a receiver or liquidating agent having been appointed therefor, it shall be within the power of the board after hearing to require such bank to surrender its stock in the Federal reserve bank and to forfeit all rights and privileges of membership. The Board of Governors of the Federal Reserve System may restore membership upon due proof of compliance with the conditions imposed by this section. *The Board of Governors of the Federal Reserve System, at its discretion, may furnish reports of examination or other confidential supervisory information concerning State member banks or any other entities examined under any other authority of the Board to any Federal or State authorities with supervisory or regulatory authority over the examined entity, to officers, directors, or receivers of the examined entity, and to any other person that the Board determines to be proper.*

\* \* \* \* \*

(24) ENFORCEMENT AUTHORITY OVER UNINSURED STATE MEMBER BANKS.—Section 3(u) of the Federal Deposit Insurance Act, subsections (j) and (k) of section 7 of such Act, and subsections (b) through (n), (s), (u), and (v) of section 8 of such Act shall apply to an uninsured member bank in the same manner and

*to the same extent such provisions apply to an insured member bank and any reference in any such provision to "insured depository institution" shall be deemed to be a reference to "uninsured member bank" for purposes of this paragraph.*

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

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

*(1) APPLICATION REQUIRED.—*

*(A) IN GENERAL.—Any bank may apply to the Board of Governors of the Federal Reserve System to become a State wholesale financial institution, or to the Comptroller of the Currency under section 5136B of the Revised Statutes of the United States to be a national wholesale financial institution, and, as a wholesale financial institution, to subscribe to the stock of the Federal reserve bank organized within the district where the applying bank is located.*

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

*(C) LIMIT ON NUMBER.—Not more than 5 wholesale financial institutions may be approved by the Board under this subsection.*

*(2) INSURANCE TERMINATION.—No bank the deposits of which are insured under the Federal Deposit Insurance Act may become a wholesale financial institution unless it has met all requirements under that Act for voluntary termination of deposit insurance.*

*(b) GENERAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—*

*(1) FEDERAL RESERVE ACT.—Except as otherwise provided in this section, wholesale financial institutions shall be member banks and shall be subject to the provisions of this Act that apply to member banks to the same extent and in the same manner as State member insured banks or national banks, except that a wholesale financial institution may terminate membership under this Act only with the prior written approval of the Board and on terms and conditions that the Board determines are appropriate to carry out the purposes of this Act.*

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

*(A) the relevant capital levels and capital measures for each capital category shall be the levels specified by the Board for wholesale financial institutions;*

*(B) subject to subparagraph (A), all references to the appropriate Federal banking agency or to the Corporation in that section shall be deemed to be references to the Comptroller of the Currency, in the case of a national wholesale financial institution authorized under section 5136B(a)(1) of the Revised Statutes of the United States, and to the*

Board, in the case of other wholesale financial institutions; and

(C) in the case of wholesale financial institutions, the purpose of prompt corrective action shall be to protect taxpayers and the financial system from risks associated with the operation and activities of wholesale financial institutions.

(3) *ENFORCEMENT AUTHORITY.*—Section 3(u), subsections (j) and (k) of section 7, subsections (b) through (n), (s), (u), and (v) of section 8, and section 19 of the Federal Deposit Insurance Act shall apply to a wholesale financial institution in the same manner and to the same extent as such provisions apply to State member insured banks or national banks, as the case may be, and any reference in such sections to an insured depository institution shall be deemed to include a reference to a wholesale financial institution.

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

(5) *BANK MERGER ACT.*—A wholesale financial institution shall be subject to sections 18(c) and 44 of the Federal Deposit Insurance Act in the same manner and to the same extent the wholesale financial institution would be subject to such sections if the institution were a State member insured bank or a national bank.

(6) *BRANCHING.*—Notwithstanding any other provision of law, a wholesale financial institution may establish and operate a branch at any location—

(A) on such terms and conditions as established, in the case of a State-chartered wholesale financial institution, by the Board or, in the case of a national wholesale financial institution, by the Comptroller of the Currency; and

(B) in the case of a State-chartered wholesale financial institution, with the approval of the Board, and, in the case of a national bank wholesale financial institution, with the approval of the Comptroller of the Currency.

(7) *ACTIVITIES OF OUT-OF-STATE BRANCHES OF WHOLESALE FINANCIAL INSTITUTIONS.*—

(A) *GENERAL.*—A State-chartered wholesale financial institution shall be deemed to be a State bank and an insured State bank for purposes of paragraphs (1), (2), and (3) of section 24(j) of the Federal Deposit Insurance Act, and a national wholesale financial institution shall be deemed to be a national bank for purposes of section 5155(f) of the Revised Statutes of the United States.

(B) *DEFINITIONS.*—The following definitions shall apply solely for purposes of applying paragraph (1):

(i) *HOME STATE.*—The term “home State” means—

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

(II) with respect to a State-chartered wholesale financial institution, the State by which the institution is chartered.

(ii) *HOST STATE*.—The term “host State” means a State, other than the home State of the wholesale financial institution, in which the institution maintains, or seeks to establish and maintain, a branch.

(iii) *OUT-OF-STATE BANK*.—The term “out-of-State bank” means, with respect to any State, a wholesale financial institution whose home State is another State.

(8) *DISCRIMINATION REGARDING INTEREST RATES*.—Section 27 of the Federal Deposit Insurance Act shall apply to State-chartered wholesale financial institutions in the same manner and to the same extent as such provisions apply to State member insured banks and any reference in such section to a State-chartered insured depository institution shall be deemed to include a reference to a State-chartered wholesale financial institution.

(9) *PREEMPTION OF STATE LAWS REQUIRING DEPOSIT INSURANCE FOR WHOLESALE FINANCIAL INSTITUTIONS*.—The appropriate State banking authority may grant a charter to a wholesale financial institution notwithstanding any State constitution or statute requiring that the institution obtain insurance of its deposits and any such State constitution or statute is hereby preempted solely for purposes of this paragraph.

(10) *PARITY FOR WHOLESALE FINANCIAL INSTITUTIONS*.—A State bank that is a wholesale financial institution under this section shall have all of the rights, powers, privileges, and immunities (including those derived from status as a federally chartered institution) of and as if it were a national bank, subject to such terms and conditions as established by the Board.

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

(c) *SPECIFIC REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS*.—

(1) *LIMITATIONS ON DEPOSITS*.—

(A) *MINIMUM AMOUNT*.—

(i) *IN GENERAL*.—No wholesale financial institution may receive initial deposits of \$100,000 or less, other than on an incidental and occasional basis.

(ii) *LIMITATION ON DEPOSITS OF LESS THAN \$100,000*.—No wholesale financial institution may receive initial deposits of \$100,000 or less if such deposits constitute more than 5 percent of the institution’s total deposits.

(B) *NO DEPOSIT INSURANCE*.—Except as otherwise provided in section 8A(f) of the Federal Deposit Insurance Act, no deposits held by a wholesale financial institution shall be insured deposits under the Federal Deposit Insurance Act.

(C) *ADVERTISING AND DISCLOSURE*.—The Board and the Comptroller of the Currency shall prescribe jointly regulations pertaining to advertising and disclosure by wholesale financial institutions to ensure that each depositor is noti-

*fied that deposits at the wholesale financial institution are not federally insured or otherwise guaranteed by the United States Government.*

(2) *MINIMUM CAPITAL LEVELS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—The Board shall, by regulation, adopt capital requirements for wholesale financial institutions—*

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

*(B) to provide for the safe and sound operation of the wholesale financial institution without undue risk to creditors or other persons, including Federal reserve banks, engaged in transactions with the bank.*

(3) *ADDITIONAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—In addition to any requirement otherwise applicable to State member insured banks or applicable, under this section, to wholesale financial institutions, the Board may impose, by regulation or order, upon wholesale financial institutions—*

*(A) limitations on transactions, direct or indirect, with affiliates to prevent—*

*(i) the transfer of risk to the deposit insurance funds; or]*

*(ii) an affiliate from gaining access to, or the benefits of, credit from a Federal reserve bank, including overdrafts at a Federal reserve bank;*

*(B) special clearing balance requirements; and*

*(C) any additional requirements that the Board determines to be appropriate or necessary to—*

*(i) promote the safety and soundness of the wholesale financial institution or any insured depository institution affiliate of the wholesale financial institution;*

*(ii) prevent the transfer of risk to the deposit insurance funds; or*

*(iii) protect creditors and other persons, including Federal reserve banks, engaged in transactions with the wholesale financial institution.*

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

*(A) the promotion of the safety and soundness of the wholesale financial institution or any insured depository institution affiliate of the wholesale financial institution;*

*(B) the protection of the deposit insurance funds; and*

*(C) the protection of creditors and other persons, including Federal reserve banks, engaged in transactions with the wholesale financial institution.*

(5) *LIMITATION ON TRANSACTIONS BETWEEN A WHOLESALE FINANCIAL INSTITUTION AND AN INSURED BANK.—For purposes of section 23A(d)(1) of the Federal Reserve Act, a wholesale financial institution that is affiliated with an insured bank shall not be a bank.*



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

(d) *CAPITAL AND MANAGERIAL REQUIREMENTS.*—

(1) *IN GENERAL.*—*A wholesale financial institution shall be well capitalized and well managed.*

(2) *NOTICE TO COMPANY.*—*The Board, in the case of a State-chartered wholesale financial institution, or the Comptroller of the Currency, in the case of a national wholesale financial institution, shall promptly provide notice to a company that controls a wholesale financial institution whenever such wholesale financial institution is not well capitalized or well managed.*

(3) *AGREEMENT TO RESTORE INSTITUTION.*—*Not later than 45 days after the date of receipt of a notice under paragraph (2) (or such additional period not to exceed 90 days as the Board or the Comptroller of the Currency, as the case may be, may permit), the company shall execute an agreement acceptable to the Board or the Comptroller of the Currency, as the case may be, to restore the wholesale financial institution to compliance with all of the requirements of paragraph (1).*

(4) *LIMITATIONS UNTIL INSTITUTION RESTORED.*—*Until the wholesale financial institution is restored to compliance with all of the requirements of paragraph (1), the Board or the Comptroller of the Currency, as the case may be, may impose such limitations on the conduct or activities of the company or any affiliate of the company as the Board or the Comptroller of the Currency determines to be appropriate under the circumstances.*

(5) *FAILURE TO RESTORE.*—*If the company does not execute and implement an agreement in accordance with paragraph (3), comply with any limitation imposed under paragraph (4), restore the wholesale financial institution to well capitalized status not later than 180 days after the date of receipt by the company of the notice described in paragraph (2), or restore the wholesale financial institution to well managed status within such period as the Board may permit, the company shall, under such terms and conditions as may be imposed by the Board or the Comptroller of the Currency, as the case may be and subject to such extension of time as may be granted in the discretion of the Board or the Comptroller of the Currency, divest control of its subsidiary depository institutions.*

(6) *WELL MANAGED DEFINED.*—*For purposes of this subsection, the term "well managed" has the same meaning as in section 2 of the Bank Holding Company Act of 1956.*

(e) *RESOLUTION OF WHOLESALE FINANCIAL INSTITUTIONS.*—

(1) *CONSERVATORSHIP OR RECEIVERSHIP.*—

(A) *APPOINTMENT.*—*The Board may appoint a conservator or receiver for a State-chartered wholesale financial institution to the same extent and in the same manner as the*

*Comptroller of the Currency may appoint a conservator or receiver for a national bank.*

*(B) POWERS.—The conservator or receiver for a wholesale financial institution shall exercise the same powers, functions, and duties, subject to the same limitations, as a conservator or receiver for a national bank.*

*(2) BOARD AUTHORITY.—The Board shall have the same authority with respect to any conservator or receiver appointed for a State-chartered wholesale financial institution under paragraph (1), and the wholesale financial institution for which it has been appointed, as the Comptroller of the Currency has with respect to a conservator or receiver for a national bank and the national bank for which the conservator or receiver has been appointed.*

*(3) BANKRUPTCY PROCEEDINGS.—The Comptroller of the Currency (in the case of a national wholesale financial institution approved by the Comptroller of the Currency under section 5136B(a)(1) of the Revised Statutes of the United States) or the Board (in the case of other wholesale financial institutions) may direct the conservator or receiver of a wholesale financial institution to file a petition pursuant to title 11, United States Code, in which case, title 11, United States Code, shall apply to the wholesale financial institution in lieu of otherwise applicable Federal or State insolvency law.*

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

\* \* \* \* \*

SEC. 11. The Board of Governors of the Federal Reserve System shall be authorized and empowered:

(a) \* \* \*

\* \* \* \* \*

[(m) Upon the affirmative vote of not less than six of its members the Board of Governors of the Federal Reserve System shall have power to fix from time to time for each Federal reserve district the percentage of individual bank capital and surplus which may be represented by loans secured by stock or bond collateral made by member banks within such district, but no such loan shall be made by any such bank to any person in an amount in excess of 15 percent of the unimpaired capital and surplus of such bank: *Provided*, That with respect to loans represented by obligations secured by not less than a like amount of bonds or notes of the United States issued since April 24, 1917, certificates of indebtedness of the United States, Treasury bills of the United States, or obligations fully guaranteed both as to principal and interest by the United States, such limitation of 15 percent on loans to any person shall not apply, but State member banks shall be subject to the same limitations and conditions as are applicable in the case of national banks under section 5200(c)(4) of the Revised Statutes. Any percentage so fixed by the Board of Governors of the Federal Reserve System shall be subject to change from time to time upon ten days' notice, and it shall be the duty of the Board to establish such percentages with a view to preventing the undue use of bank loans

for the speculative carrying of securities. The Board of Governors of the Federal Reserve System shall have power to direct any member bank to refrain from further increase of its loans secured by stock or bond collateral for any period up to one year under penalty of suspension of all rediscount privileges at Federal reserve banks.】

(m) [Repealed]

\* \* \* \* \*

SEC. 19. (a) \* \* \*

(b) RESERVE REQUIREMENTS.—

(1) DEFINITIONS.—The following definitions and rules apply to this subsection, subsection (c), section 11A, the first paragraph of section 13, and the second, thirteenth, and fourteenth paragraphs of section 16:

(A) The term “depository institution” means—

(i) any insured bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act, or any wholesale financial institution subject to section 9B of this Act;

\* \* \* \* \*

(G) LIMITATION ON WHOLESALE FINANCIAL INSTITUTIONS.—Not more than 10 wholesale financial institutions subject to section 9B of the Federal Reserve Act may be treated by the Board as depository institutions, as defined in subparagraph (A), for purposes of this paragraph.

\* \* \* \* \*

INTERBANK LIABILITIES

SEC. 23. (a) \* \* \*

\* \* \* \* \*

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

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

(2) APPLICATION TO TRANSACTIONS BETWEEN A FINANCIAL SUBSIDIARY OF A BANK AND THE BANK.—For purposes of applying this section and section 23B to a transaction between a financial subsidiary of a bank and the bank (or between such financial subsidiary and any other subsidiary of the bank which is not a financial subsidiary) and notwithstanding subsection (b)(2) and section 23B(d)(1), the financial subsidiary of the bank—

(A) shall be an affiliate of the bank and any other subsidiary of the bank which is not a financial subsidiary; and  
(B) shall not be treated as a subsidiary of the bank.

(3) APPLICATION TO TRANSACTIONS BETWEEN FINANCIAL SUBSIDIARY AND NONBANK AFFILIATES.—

(A) IN GENERAL.—A transaction between a financial subsidiary and an affiliate of the financial subsidiary shall not

*be deemed to be a transaction between a subsidiary of a national bank and an affiliate of the bank for purposes of section 23A or section 23B of the Federal Reserve Act.*

*(B) CERTAIN AFFILIATES EXCLUDED.—For purposes of subparagraph (A) and notwithstanding paragraph (4), the term “affiliate” shall not include a bank, or a subsidiary of a bank, which is engaged exclusively in activities permissible for a national bank to engage in directly or which are authorized by any Federal law other than section 5136A of the Revised Statutes of the United States.*

*(4) EQUITY INVESTMENTS EXCLUDED SUBJECT TO THE APPROVAL OF THE BANKING AGENCY.—Subsection (a)(1) shall not apply so as to limit the equity investment of a bank in a financial subsidiary of such bank, except that any investment that exceeds the amount of a dividend that the bank could pay at the time of the investment without obtaining prior approval of the appropriate Federal banking agency and is in excess of the limitation which would apply under subsection (a)(1), but for this paragraph, may be made only with the approval of the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act) with respect to such bank.*

**[(e)] (f) RULEMAKING AUTHORITY; ENFORCEMENT.—**The Board may issue such regulations and orders, including definitions consistent with this section, as may be necessary to administer and carry out the purpose of this section. The appropriate Federal banking agency shall enforce compliance with those regulations under section 8 of the Federal Deposit Insurance Act. (12 U.S.C. 371b–2)

\* \* \* \* \*

#### BANKING CORPORATIONS AUTHORIZED TO DO FOREIGN BANKING BUSINESS

SEC. 25A. Corporations to be organized for the purpose of engaging in international or foreign banking or other international or foreign financial operations, or in banking or other financial operations in a dependency or insular possession of the United States, either directly or through the agency, ownership, or control of local institutions in foreign countries, or in such dependencies or insular possessions as provided by this section, and to act when required by the Secretary of the Treasury as fiscal agents of the United States, may be formed by any number of natural persons, not less in any case than five: *Provided*, That nothing in this section shall be construed to deny the right of the Secretary of the Treasury to use any corporation organized under this section as depositaries in Panama and the Panama Canal Zone, or in the Philippine Islands and other insular possessions and dependencies of the United States. (12 U.S.C. 611)

\* \* \* \* \*

**[(Whenever the Board of Governors of the Federal Reserve System shall become satisfied of the insolvency of any such corporation, it may appoint a receiver who shall take possession of all of the property and assets of the corporation and exercise the same rights, privileges, powers, and authority with respect thereto as are**

now exercised by receivers of national banks appointed by the Comptroller of the Currency of the United States: *Provided, however,* That the assets of the corporation subject to the laws of other countries or jurisdictions shall be dealt with in accordance with the terms of such laws.】

(16) APPOINTMENT OF RECEIVER OR CONSERVATOR.—

(A) *IN GENERAL.*—The Board may appoint a conservator or receiver for a corporation organized under the provisions of this section to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator or receiver for a national bank, and the conservator or receiver for such corporation shall exercise the same powers, functions, and duties, subject to the same limitations, as a conservator or receiver for a national bank.

(B) *EQUIVALENT AUTHORITY.*—The Board shall have the same authority with respect to any conservator or receiver appointed for a corporation organized under the provisions of this section under this paragraph and any such corporation as the Comptroller of the Currency has with respect to a conservator or receiver of a national bank and the national bank for which a conservator or receiver has been appointed.

(C) *TITLE 11 PETITIONS.*—The Board may direct the conservator or receiver of a corporation organized under the provisions of this section to file a petition pursuant to title 11, United States Code, in which case, title 11, United States Code, shall apply to the corporation in lieu of otherwise applicable Federal or State insolvency law.

\* \* \* \* \*

**CHAPTER 47 OF TITLE 18, UNITED STATES CODE**

**CHAPTER 47—FRAUD AND FALSE STATEMENTS**

Sec.

1001. Statements or entries generally.

\* \* \* \* \*

1008. *Misrepresentations regarding financial institution liability for obligations of affiliates.*

\* \* \* \* \*

**§ 1008. Misrepresentations regarding financial institution liability for obligations of affiliates**

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

(b) *CRIMINAL PENALTY.*—Whoever violates subsection (a) shall be fined under this title, imprisoned for not more than 1 year, or both.

(c) *INSTITUTION-AFFILIATED PARTY DEFINED.*—For purposes of this section, the term “institution-affiliated party” has the same meaning as in section 3 of the Federal Deposit Insurance Act and

any reference in that section shall also be deemed to refer to a subsidiary or affiliate of an insured depository institution.

(d) OTHER DEFINITIONS.—For purposes of this section, the terms “affiliate”, “insured depository institution”, and “subsidiary” have same meanings as in section 3 of the Federal Deposit Insurance Act.

\* \* \* \* \*

**RIGHT TO FINANCIAL PRIVACY ACT OF 1978**

\* \* \* \* \*

DEFINITIONS

SEC. 1101. For the purpose of this title, the term—

(1) \* \* \*

\* \* \* \* \*

(7) “supervisory agency” means with respect to any particular financial institution, holding company, or any subsidiary of a financial institution or holding company, any of the following which has statutory authority to examine the financial condition, business operations, or records or transactions of that institution, holding company, or subsidiary—

(A) \* \* \*

\* \* \* \* \*

(G) the Commodity Futures Trading Commission; or

[(G)] (H) the Secretary of the Treasury, with respect to the Bank Secrecy Act and the Currency and Foreign Transactions Reporting Act (Public Law 91–508, title I and II); or

[(H)] (I) any State banking or securities department or agency: and

\* \* \* \* \*

USE OF INFORMATION

SEC. 1112. (a) \* \* \*

\* \* \* \* \*

(e) Notwithstanding section 1101(6) or any other provision of [this title] law, the exchange of financial records, examination reports or other information with respect to a financial institution, holding company, or a subsidiary of a depository institution or holding company, among and between the five member supervisory agencies of the Federal Financial Institutions Examination Council [and the Securities and Exchange Commission], the Securities and Exchange Commission, and the Commodity Futures Trading Commission is permitted.

\* \* \* \* \*

**TITLE 11, UNITED STATES CODE**

\* \* \* \* \*

## CHAPTER 1—GENERAL PROVISIONS

\* \* \* \* \*

### § 101. Definitions

In this title—

(1) \* \* \*

\* \* \* \* \*

[(22) “financial institution” means a person that is a commercial or savings bank, industrial savings bank, savings and loan association, or trust company and, when any such person is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741 of this title, such customer;]

(22) “*financial institution*” means a person that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act, or corporation organized under section 25A of the Federal Reserve Act and, when any such person is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741 of this title, such customer,

\* \* \* \* \*

### § 103. Applicability of chapters

(a) \* \* \*

\* \* \* \* \*

(e) Subchapter V of chapter 7 of this title applies only in a case under such chapter concerning the liquidation of a wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act, or a corporation organized under section 25A of the Federal Reserve Act.

[(e)] (f) Except as provided in section 901 of this title, only chapters 1 and 9 of this title apply in a case under such chapter 9.

[(f)] (g) Except as provided in section 901 of this title, subchapters I, II, and III of chapter 11 of this title apply only in a case under such chapter.

[(g)] (h) Subchapter IV of chapter 11 of this title applies only in a case under such chapter concerning a railroad.

[(h)] (i) Chapter 13 of this title applies only in a case under such chapter.

[(i)] (j) Chapter 12 of this title applies only in a case under such chapter.

\* \* \* \* \*

### § 109. Who may be a debtor

(a) Notwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title.

(b) A person may be a debtor under chapter 7 of this title only if such person is not—

(1) a railroad;

(2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, a small business investment company licensed by the Small Business Administration under subsection (c) or (d) of section 301 of the Small Business Investment Act of 1958, credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act~~]; or~~, *except that*—

*(A) a wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of 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*

\* \* \* \* \*

**[(d) Only a person that may be a debtor under chapter 7 of this title, except a stockbroker or a commodity broker, and a railroad may be a debtor under chapter 11 of this title.]**

*(d) Only a railroad and a person that may be a debtor 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.*

\* \* \* \* \*

**CHAPTER 7—LIQUIDATION**

SUBCHAPTER I—OFFICERS AND ADMINISTRATION

Sec.  
701. Interim trustee.

\* \* \* \* \*

SUBCHAPTER V—WHOLESALE BANK LIQUIDATION

781. *Definitions for subchapter.*  
782. *Selection of trustee.*  
783. *Additional powers of trustee.*  
784. *Right to be heard.*  
785. *Expedited transfers.*

\* \* \* \* \*



## SUBCHAPTER V—WHOLESALE BANK LIQUIDATION

**§ 781. Definitions for subchapter**

*In this subchapter—*

(1) *the term “Board” means the Board of Governors of the Federal Reserve System;*

(2) *the term “depository institution” has the same meaning as in section 3 of the Federal Deposit Insurance Act, and includes any wholesale bank;*

(3) *the term “national wholesale financial institution” means a wholesale financial institution established under section 5136B of the Revised Statutes of the United States; and*

(4) *the term “wholesale bank” means a national wholesale financial institution, a wholesale financial institution established under section 9B of the Federal Reserve Act, or a corporation organized under section 25A of the Federal Reserve Act.*

**§ 782. Selection of trustee**

*Notwithstanding any other provision of this title, the conservator or receiver who files the petition shall be the trustee under this chapter, unless the Comptroller of the Currency (in the case of a national wholesale financial institution for which it appointed the conservator or receiver) or the Board (in the case of any wholesale bank for which it appointed the conservator or receiver) designates an alternative trustee. The Comptroller of the Currency or the Board (as applicable) may designate a successor trustee, if required.*

**§ 783. Additional powers of trustee**

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

(1) *to sell the wholesale bank to a depository institution or consortium of depository institutions (which consortium may agree on the allocation of the wholesale bank among the consortium);*

(2) *to merge the wholesale bank with a depository institution;*

(3) *to transfer contracts to the same extent as could a receiver for a depository institution under paragraphs (9) and (10) of section 11(e) of the Federal Deposit Insurance Act;*

(4) *to transfer assets or liabilities to a depository institution;*

(5) *to distribute property not of the estate, including distributions to customers that are mandated by subchapters III and IV of this chapter; or*

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

*(A) the bridge bank shall be treated as a wholesale bank for the purpose of this subsection; and*

*(B) any references in any such provision of law to the Federal Deposit Insurance Corporation shall be construed to be references to the appointing agency and that references to deposit insurance shall be omitted.*

(b) Any reference in this section to transfers of liabilities includes a ratable transfer of liabilities within a priority class.

**§ 784. Right to be heard**

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

**§ 785. Expedited transfers**

*The trustee may make a transfer pursuant to section 783 without prior judicial approval, if the Comptroller of the Currency (in the case of a national wholesale financial institution for which it appointed the conservator or receiver) or the Board (in the case of any wholesale bank for which it appointed the conservator or receiver) determines that the transfer would be necessary to avert serious adverse effects on economic conditions or financial stability.*

**SECTION 7A OF THE CLAYTON ACT**

SEC. 7A. (a) \* \* \*

\* \* \* \* \*

(c) The following classes of transactions are exempt from the requirements of this section—

(1) \* \* \*

\* \* \* \* \*

(7) transactions which require agency approval under section 10(e) of the Home Owners’ Loan Act, section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), or section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), *except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) requires notice under section 6 of the Bank Holding Company Act of 1956; and (B) does not require approval under section 3 or 4 of the Bank Holding Company Act of 1956;*

**INTERNATIONAL BANKING ACT OF 1978**

SHORT TITLE; DEFINITIONS AND RULES OF CONSTRUCTION

SECTION 1. (a) \* \* \*

(b) For the purposes of this Act—

(1) \* \* \*

\* \* \* \* \*

(15) the term “representative office” means any office of a foreign bank which is located in any State and is not a Federal branch, Federal agency, State branch, [State agency, or subsidiary of a foreign bank] *or State agency;*

\* \* \* \* \*

NONBANKING ACTIVITIES

SEC. 8. (a) \* \* \*

\* \* \* \* \*

(c)(1) \* \* \*

\* \* \* \* \*

(3) *TERMINATION OF GRANDFATHERED RIGHTS.—*

*(A) IN GENERAL.—If any foreign bank or foreign company files a declaration under section 6(b)(1)(E) of the Bank Holding Company Act of 1956, or receives a determination under section 10(d)(1) of the Bank Holding Company Act of 1956, any authority conferred by this subsection on any foreign bank or company to engage in any activity which the Board has determined to be permissible for financial holding companies under section 6 of such Act shall terminate immediately.*

*(B) RESTRICTIONS AND REQUIREMENTS AUTHORIZED.—If a foreign bank or company that engages, directly or through an affiliate pursuant to paragraph (1), in an activity which the Board has determined to be permissible for financial holding companies under section 6 of the Bank Holding Company Act of 1956 has not filed a declaration with the Board of its status as a financial holding company under such section or received a determination under section 10(d)(1) by the end of the 2-year period beginning on the date of enactment of the Financial Services Act of 1999, the Board, giving due regard to the principle of national treatment and equality of competitive opportunity, may impose such restrictions and requirements on the conduct of such activities by such foreign bank or company as are comparable to those imposed on a financial holding company organized under the laws of the United States, including a requirement to conduct such activities in compliance with any prudential safeguards established under section 114 of the Financial Services Act of 1999.*

\* \* \* \* \*

**SEC. 10. REPRESENTATIVE OFFICES.**

(a) \* \* \*

\* \* \* \* \*

(c) **EXAMINATIONS.**—The Board may make examinations of each representative office of a foreign bank, the cost of which shall be assessed against and paid by such foreign bank. *The Board may also make examinations of any affiliate of a foreign bank conducting business in any State if the Board deems it necessary to determine and enforce compliance with this Act, the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or other applicable Federal banking law.*

\* \* \* \* \*



**FEDERAL HOME LOAN BANK ACT**

\* \* \* \* \*

DEFINITIONS

SEC. 2. As used in this Act—

(1) BOARD.—The [term “Board” means] *terms “Finance Board” and “Board” mean the Federal Housing Finance Board established under section 2A.*

[(3) The term “State” includes the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States.]

(3) STATE.—*The term “State”, in addition to the States of the United States, includes the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.*

\* \* \* \* \*

(13) COMMUNITY FINANCIAL INSTITUTION.—

(A) IN GENERAL.—*The term “community financial institution” means a member—*

*(i) the deposits of which are insured under the Federal Deposit Insurance Act; and*

*(ii) that has, as of the date of the transaction at issue, less than \$500,000,000 in average total assets, based on an average of total assets over the 3 years preceding that date.*

(B) ADJUSTMENTS.—*The \$500,000,000 limit referred to in subparagraph (A)(ii) shall be adjusted annually by the Finance Board, based on the annual percentage increase, if any, in the Consumer Price Index for all urban consumers, as published by the Department of Labor.*

\* \* \* \* \*

**SEC. 2B. POWERS AND DUTIES.**

(a) GENERAL POWERS.—The Board shall have the following powers:

(1) \* \* \*

\* \* \* \* \*

(5) *To issue and serve a notice of charges upon a Federal home loan bank or upon any executive officer or director of a Federal home loan bank if, in the determination of the Finance Board, the bank, executive officer, or director is engaging or has engaged in, or the Finance Board has reasonable cause to believe that the bank, executive officer, or director is about to engage in, any conduct that violates any provision of this Act or any law, order, rule, or regulation or any condition imposed in writing by the Finance Board in connection with the granting of any application or other request by the bank, or any written agreement entered into by the bank with the agency, in accordance with the procedures provided in section 1371(c) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992. Such authority includes the same authority to take affirmative action to correct conditions resulting from violations or practices or to limit activities of a bank or any executive offi-*

*cer or director of a bank as appropriate Federal banking agencies have to take with respect to insured depository institutions under paragraphs (6) and (7) of section 8(b) of the Federal Deposit Insurance Act, and to have all other powers, rights, and duties to enforce this Act with respect to the Federal home loan banks and their executive officers and directors as the Office of Federal Housing Enterprise Oversight has to enforce the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the Federal National Mortgage Association Charter Act, or the Federal Home Loan Mortgage Corporation Act with respect to the Federal housing enterprises under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.*

*(6) To address any insufficiencies in capital levels resulting from the application of section 5(f) of the Home Owners' Loan Act.*

*(7) To sue and be sued, by and through its own attorneys.*

\* \* \* \* \*

SEC. 4. (a) CRITERIA FOR ELIGIBILITY.—

(1) \* \* \*

(2) QUALIFIED THRIFT LENDER.—An insured depository institution that is not a member on January 1, 1989, may become a member of a Federal Home Loan Bank only if—

(A) the insured depository institution (*other than a community financial institution*) has at least 10 percent of its total assets in residential mortgage loans;

\* \* \* \* \*

(3) LIMITED EXEMPTION FOR COMMUNITY FINANCIAL INSTITUTIONS.—A community financial institution that otherwise meets the requirements of paragraph (2) may become a member without regard to the percentage of its total assets that is represented by residential mortgage loans, as described in subparagraph (A) of paragraph (2).

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【CAPITAL OF FEDERAL HOME LOAN BANKS AND SUBSCRIPTIONS THERETO

【SEC. 6. (a) The capital stock of each Federal Home Loan Bank shall be divided into shares of a par value of \$100 each. The minimum capital stock shall be issued at par. Stock issued thereafter shall be issued at such price not less than par as may be fixed by the Board.

【(b)(1) The original stock subscription of each institution eligible to become a member under section 4 shall be an amount equal to 1 per centum of the subscriber's aggregate unpaid loan principal, but not less than \$500. The bank shall annually, as of the close of the calendar year, adjust, at such time and in such manner and upon such terms and conditions as the Board may by regulations or otherwise prescribe, the amount of stock held by each member so that such member shall have invested in the stock of the Federal Home Loan Bank at least an amount calculated in the manner provided in the next preceding sentence (but not less than \$500).

If the bank finds that the investment of any member in stock is greater than that required under this subsection it may, unless prohibited by said Board or by the provisions of paragraph (2) of this subsection, in its discretion and upon application of such member retire the stock of such member in excess of the amount so required. Said Board, in its discretion, may, by regulations or otherwise, provide for adjustments in amounts of stock to be issued or retired in order that stock may be issued or retired only in entire shares.

[(2) Notwithstanding any other provision of this subsection, no action shall be taken by any bank with respect to any member pursuant to any of the foregoing provisions of this subsection if the effect of such action would be to cause the aggregate outstanding advances, within the meaning of the last sentence of subsection (c) of section 10 of this Act or within the meaning of regulations of the Board defining such term for the purposes of this sentence, made by such bank to such member to exceed twenty times the amounts paid in by such member for outstanding capital stock held by such member.

[(3) Except as provided in subsection (i), upon retirement of stock of any member the bank shall pay such member for the stock retired an amount equal to the par value of such stock, or, at the election of the bank, the whole or any part of the payment which would otherwise be so made shall be credited upon the indebtedness of the member to the bank. In either such event, stock equal in par value to the amount of the payment or credit, or both, as the case may be, shall be canceled.

[(4) For the purposes of this subsection, the term "aggregate unpaid loan principal" means the aggregate unpaid principal of a subscriber's or member's home mortgage loans, home-purchase contracts, and similar obligations.

[(5) The Board, by regulations or otherwise, may require each member to submit such reports and information as said Board, in its discretion, may determine to be necessary or appropriate for the purposes of this subsection.

[(c) Stock subscriptions other than by the United States shall be paid for in cash, and shall be paid for at the time of application therefor, or, at the election of the subscriber, in installments, but not less than one-fourth of the total amount payable shall be paid at the time of filing application, and a further sum of not less than one-fourth of such total shall have been paid at the end of each succeeding period of four months.

[(d) Stock subscribed for otherwise than by the United States, and the right to the proceeds thereof, shall not be transferred or hypothecated except as hereinafter provided and the certificates therefor shall so state.

[(e) Any member other than a Federal savings and loan association may withdraw from membership in a Federal Home Loan Bank six months after filing with the Board written notice of intention so to do, and the Board may, after hearing, remove any member from membership, if, in the opinion of the Board, such member (i) has failed to comply with any provision of this Act or regulation of the Board made pursuant thereto; (ii) is insolvent: *Provided*, That any member of a bank which is a building and loan associa-

tion, savings and loan association, cooperative bank, or homestead association shall be deemed insolvent if the assets of such member are less than its obligations to its creditors and others, including the holders of its withdrawable accounts; or (iii) has a management or home-financing policy of a character inconsistent with sound and economical home financing or with the purposes of this Act. If any member's membership in a Federal Home Loan Bank is terminated, the indebtedness of such member to the Federal Home Loan Bank shall be liquidated in an orderly manner (as determined by the Federal Home Loan Bank), and upon completion of such liquidation, the capital stock in the Federal Home Loan Bank owned by such member shall be surrendered and canceled. Any such liquidation shall be deemed a prepayment of any such indebtedness, and shall be subject to any penalties or other fees applicable to such prepayment. Upon the liquidation of such indebtedness such member shall be entitled to the return of its collateral, and, upon surrender and cancellation of such capital stock, the member shall receive a sum equal to its cash paid subscriptions for the capital stock surrendered, except that if at any time the Board finds that the paid-in capital of a Federal Home Loan Bank is or is likely to be impaired as a result of losses in or depreciation of the assets held, the Federal Home Loan Bank shall on the order of the Board withhold from the amount to be paid in retirement of the stock a pro rata share of the amount of such impairment as determined by the Board.

[(f) A Federal Home Loan Bank may, with the approval of the Board, permit the disposal of stock to another member, or to an institution eligible to become a member, but only to enable such an institution to become a member.]

[(g) All stock of any Federal Home Loan Bank shall share in dividend distributions without preference.]

[(h) Notwithstanding any other provision of this Act, an institution which withdraws from membership may acquire membership in any Federal Home Loan Bank only after the expiration of a period of 10 years thereafter, except where such withdrawal is a consequence of a transfer of membership on a non-interrupted basis between banks or in connection with obtaining a charter as a Federal savings association (as defined in section 3 of the Federal Deposit Insurance Act).]

**SEC. 6. CAPITAL STRUCTURE OF FEDERAL HOME LOAN BANKS.**

(a) *REGULATIONS.*—

(1) *CAPITAL STANDARDS.*—*Not later than 1 year after the date of enactment of the Financial Services Act of 1999, the Finance Board shall issue regulations prescribing uniform capital standards applicable to each Federal home loan bank, which shall require each such bank to meet—*

(A) *the leverage requirement specified in paragraph (2);*

*and*

(B) *the risk-based capital requirements, in accordance with paragraph (3).*

(2) *LEVERAGE REQUIREMENT.*—*The leverage requirement shall require each Federal home loan bank to maintain a minimum amount of total capital based on the aggregate on-balance sheet assets of the bank and shall be 5 percent.*

(3) *RISK-BASED CAPITAL STANDARDS.*—

(A) *IN GENERAL.*—Each Federal home loan bank shall maintain permanent capital in an amount that is sufficient, as determined in accordance with the regulations of the Finance Board, to meet—

(i) the credit risk to which the Federal home loan bank is subject; and

(ii) the market risk, including interest rate risk, to which the Federal home loan bank is subject, based on a stress test established by the Finance Board that rigorously tests for changes in market variables, including changes in interest rates, rate volatility, and changes in the shape of the yield curve.

(B) *CONSIDERATION OF OTHER RISK-BASED STANDARDS.*—In establishing the risk-based standard under subparagraph (A)(ii), the Finance Board shall take due consideration of any risk-based capital test established pursuant to section 1361 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4611) for the enterprises (as defined in that Act), with such modifications as the Finance Board determines to be appropriate to reflect differences in operations between the Federal home loan banks and those enterprises.

(4) *OTHER REGULATORY REQUIREMENTS.*—The regulations issued by the Finance Board under paragraph (1) shall—

(A) permit each Federal home loan bank to issue, with such rights, terms, and preferences, not inconsistent with this Act and the regulations issued hereunder, as the board of directors of that bank may approve, any 1 or more of—

(i) Class A stock, which shall be redeemable in cash and at par 6 months following submission by a member of a written notice of its intent to redeem such shares;

(ii) Class B stock, which shall be redeemable in cash and at par 5 years following submission by a member of a written notice of its intent to redeem such shares; and

(iii) Class C stock, which shall be nonredeemable;

(B) provide that the stock of a Federal home loan bank may be issued to and held by only members of the bank, and that a bank may not issue any stock other than as provided in this section;

(C) prescribe the manner in which stock of a Federal home loan bank may be sold, transferred, redeemed, or repurchased; and

(D) provide the manner of disposition of outstanding stock held by, and the liquidation of any claims of the Federal home loan bank against, an institution that ceases to be a member of the bank, through merger or otherwise, or that provides notice of intention to withdraw from membership in the bank.

(5) *DEFINITIONS OF CAPITAL.*—For purposes of determining compliance with the capital standards established under this subsection—



(A) permanent capital of a Federal home loan bank shall include (as determined in accordance with generally accepted accounting principles)—

(i) the amounts paid for the Class C stock and any other nonredeemable stock approved by the Finance Board;

(ii) the amounts paid for the Class B stock, in an amount not to exceed 1 percent of the total assets of the bank; and

(iii) the retained earnings of the bank; and

(B) total capital of a Federal home loan bank shall include—

(i) permanent capital;

(ii) the amounts paid for the Class A stock, Class B stock (excluding any amount treated as permanent capital under subparagraph (5)(A)(ii)), or any other class of redeemable stock approved by the Finance Board;

(iii) consistent with generally accepted accounting principles, and subject to the regulation of the Finance Board, a general allowance for losses, which may not include any reserves or allowances made or held against specific assets; and

(iv) any other amounts from sources available to absorb losses incurred by the bank that the Finance Board determines by regulation to be appropriate to include in determining total capital.

(6) *TRANSITION PERIOD.*—Notwithstanding any other provisions of this Act, the requirements relating to purchase and retention of capital stock of a Federal home loan bank by any member thereof in effect on the day before the date of enactment of the Federal Home Loan Bank System Modernization Act of 1999, shall continue in effect with respect to each Federal home loan bank until the regulations required by this subsection have taken effect and the capital structure plan required by subsection (b) has been approved by the Finance Board and implemented by such bank.

(b) *CAPITAL STRUCTURE PLAN.*—

(1) *APPROVAL OF PLANS.*—Not later than 270 days after the date of publication by the Finance Board of final regulations in accordance with subsection (a), the board of directors of each Federal home loan bank shall submit for Finance Board approval a plan establishing and implementing a capital structure for such bank that—

(A) the board of directors determines is best suited for the condition and operation of the bank and the interests of the members of the bank;

(B) meets the requirements of subsection (c); and

(C) meets the minimum capital standards and requirements established under subsection (a) and other regulations prescribed by the Finance Board.

(2) *APPROVAL OF MODIFICATIONS.*—The board of directors of a Federal home loan bank shall submit to the Finance Board for approval any modifications that the bank proposes to make to an approved capital structure plan.

(c) *CONTENTS OF PLAN.*—The capital structure plan of each Federal home loan bank shall contain provisions addressing each of the following:

(1) *MINIMUM INVESTMENT.*—

(A) *IN GENERAL.*—Each capital structure plan of a Federal home loan bank shall require each member of the bank to maintain a minimum investment in the stock of the bank, the amount of which shall be determined in a manner to be prescribed by the board of directors of each bank and to be included as part of the plan.

(B) *INVESTMENT ALTERNATIVES.*—

(i) *IN GENERAL.*—In establishing the minimum investment required for each member under subparagraph (A), a Federal home loan bank may, in its discretion, include any 1 or more of the requirements referred to in clause (ii), or any other provisions approved by the Finance Board.

(ii) *AUTHORIZED REQUIREMENTS.*—A requirement is referred to in this clause if it is a requirement for—

(I) a stock purchase based on a percentage of the total assets of a member; or

(II) a stock purchase based on a percentage of the outstanding advances from the bank to the member.

(C) *MINIMUM AMOUNT.*—Each capital structure plan of a Federal home loan bank shall require that the minimum stock investment established for members shall be set at a level that is sufficient for the bank to meet the minimum capital requirements established by the Finance Board under subsection (a).

(D) *ADJUSTMENTS TO MINIMUM REQUIRED INVESTMENT.*—

The capital structure plan of each Federal home loan bank shall impose a continuing obligation on the board of directors of the bank to review and adjust the minimum investment required of each member of that bank, as necessary to ensure that the bank remains in compliance with applicable minimum capital levels established by the Finance Board, and shall require each member to comply promptly with any adjustments to the required minimum investment.

(2) *TRANSITION RULE.*—

(A) *IN GENERAL.*—The capital structure plan of each Federal home loan bank shall specify the date on which it shall take effect, and may provide for a transition period of not longer than 3 years to allow the bank to come into compliance with the capital requirements prescribed under subsection (a), and to allow any institution that was a member of the bank on the date of enactment of the Financial Services Act of 1999, to come into compliance with the minimum investment required pursuant to the plan.

(B) *INTERIM PURCHASE REQUIREMENTS.*—The capital structure plan of a Federal home loan bank may allow any member referred to in subparagraph (A) that would be required by the terms of the capital structure plan to increase

*its investment in the stock of the bank to do so in periodic installments during the transition period.*

(3) *DISPOSITION OF SHARES.*—The capital structure plan of a Federal home loan bank shall provide for the manner of disposition of any stock held by a member of that bank that terminates its membership or that provides notice of its intention to withdraw from membership in that bank.

(4) *CLASSES OF STOCK.*—

(A) *IN GENERAL.*—The capital structure plan of a Federal home loan bank shall afford each member of that bank the option of maintaining its required investment in the bank through the purchase of any combination of classes of stock authorized by the board of directors of the bank and approved by the Finance Board in accordance with its regulations.

(B) *RIGHTS REQUIREMENT.*—A Federal home loan bank shall include in its capital structure plan provisions establishing terms, rights, and preferences, including minimum investment, dividends, voting, and liquidation preferences of each class of stock issued by the bank, consistent with Finance Board regulations and market requirements.

(C) *REDUCED MINIMUM INVESTMENT.*—The capital structure plan of a Federal home loan bank may provide for a reduced minimum stock investment for any member of that bank that elects to purchase Class B, Class C, or any other class of nonredeemable stock, in a manner that is consistent with meeting the minimum capital requirements of the bank, as established by the Finance Board.

(D) *LIQUIDATION OF CLAIMS.*—The capital structure plan of a Federal home loan bank shall provide for the liquidation in an orderly manner, as determined by the bank, of any claim of that bank against a member, including claims for any applicable prepayment fees or penalties resulting from prepayment of advances prior to stated maturity.

(5) *LIMITED TRANSFERABILITY OF STOCK.*—The capital structure plan of a Federal home loan bank shall—

(A) provide that—

(i) any stock issued by that bank shall be available only to, held only by, and tradable only among members of that bank and between that bank and its members; and

(ii) a bank has no obligation to repurchase its outstanding Class C stock but may do so, provided it is consistent with Finance Board regulations and is at a price that is mutually agreeable to the bank and the member; and

(B) establish standards, criteria, and requirements for the issuance, purchase, transfer, retirement, and redemption of stock issued by that bank.

(6) *BANK REVIEW OF PLAN.*—Before filing a capital structure plan with the Finance Board, each Federal home loan bank shall conduct a review of the plan by—

(A) an independent certified public accountant, to ensure, to the extent possible, that implementation of the plan

would not result in any write-down of the redeemable bank stock investment of its members; and

(B) at least 1 major credit rating agency, to determine, to the extent possible, whether implementation of the plan would have any material effect on the credit ratings of the bank.

(d) **TERMINATION OF MEMBERSHIP.**—

(1) **VOLUNTARY WITHDRAWAL.**—Any member may withdraw from a Federal home loan bank by providing written notice to the bank of its intent to do so. The applicable stock redemption notice periods shall commence upon receipt of the notice by the bank. Upon the expiration of the applicable notice period for each class of redeemable stock, the member may surrender such stock to the bank, and shall be entitled to receive in cash the par value of the stock. During the applicable notice periods, the member shall be entitled to dividends and other membership rights commensurate with continuing stock ownership.

(2) **INVOLUNTARY WITHDRAWAL.**—

(A) **IN GENERAL.**—The board of directors of a Federal home loan bank may terminate the membership of any institution if, subject to Finance Board regulations, it determines that—

(i) the member has failed to comply with a provision of this Act or any regulation prescribed under this Act; or

(ii) the member has been determined to be insolvent, or otherwise subject to the appointment of a conservator, receiver, or other legal custodian, by a State or Federal authority with regulatory and supervisory responsibility for the member.

(B) **STOCK DISPOSITION.**—An institution, the membership of which is terminated in accordance with subparagraph (A)—

(i) shall surrender redeemable stock to the Federal home loan bank, and shall receive in cash the par value of the stock, upon the expiration of the applicable notice period under subsection (a)(4)(A);

(ii) shall receive any dividends declared on its redeemable stock, during the applicable notice period under subsection (a)(4)(A); and

(iii) shall not be entitled to any other rights or privileges accorded to members after the date of the termination.

(C) **COMMENCEMENT OF NOTICE PERIOD.**—With respect to an institution, the membership of which is terminated in accordance with subparagraph (A), the applicable notice period under subsection (a)(4) for each class of redeemable stock shall commence on the earlier of—

(i) the date of such termination; or

(ii) the date on which the member has provided notice of its intent to redeem such stock.

(3) **LIQUIDATION OF INDEBTEDNESS.**—Upon the termination of the membership of an institution for any reason, the outstanding indebtedness of the member to the bank shall be liq-

uidated in an orderly manner, as determined by the bank and, upon the extinguishment of all such indebtedness, the bank shall return to the member all collateral pledged to secure the indebtedness.

(e) **REDEMPTION OF EXCESS STOCK.**—

(1) **IN GENERAL.**—A Federal home loan bank, in its sole discretion, may redeem or repurchase, as appropriate, any shares of Class A or Class B stock issued by the bank and held by a member that are in excess of the minimum stock investment required of that member.

(2) **EXCESS STOCK.**—Shares of stock held by a member shall not be deemed to be “excess stock” for purposes of this subsection by virtue of a member’s submission of a notice of intent to withdraw from membership or termination of its membership in any other manner.

(3) **PRIORITY.**—A Federal home loan bank may not redeem any excess Class B stock prior to the end of the 5-year notice period, unless the member has no Class A stock outstanding that could be redeemed as excess.

(f) **IMPAIRMENT OF CAPITAL.**—If the Finance Board or the board of directors of a Federal home loan bank determines that the bank has incurred or is likely to incur losses that result in or are expected to result in charges against the capital of the bank, the bank shall not redeem or repurchase any stock of the bank without the prior approval of the Finance Board while such charges are continuing or are expected to continue. In no case may a bank redeem or repurchase any applicable capital stock if, following the redemption, the bank would fail to satisfy any minimum capital requirement.

(g) **REJOINING AFTER DIVESTITURE OF ALL SHARES.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), and notwithstanding any other provision of this Act, an institution that divests all shares of stock in a Federal home loan bank may not, after such divestiture, acquire shares of any Federal home loan bank before the end of the 5-year period beginning on the date of the completion of such divestiture, unless the divestiture is a consequence of a transfer of membership on an uninterrupted basis between banks.

(2) **EXCEPTION FOR WITHDRAWALS FROM MEMBERSHIP BEFORE 1998.**—Any institution that withdrew from membership in any Federal home loan bank before December 31, 1997, may acquire shares of a Federal home loan bank at any time after that date, subject to the approval of the Finance Board and the requirements of this Act.

(h) **TREATMENT OF RETAINED EARNINGS.**—

(1) **IN GENERAL.**—The holders of the Class C stock of a Federal home loan bank, and any other classes of nonredeemable stock approved by the Finance Board (to the extent provided in the terms thereof), shall own the retained earnings, surplus, undivided profits, and equity reserves, if any, of the bank.

(2) **NO NONREDEEMABLE CLASSES OF STOCK.**—If a Federal home loan bank has no outstanding Class C or other such nonredeemable stock, then the holders of any other classes of stock of the bank then outstanding shall have ownership in, and a

*private property right in, the retained earnings, surplus, undivided profits, and equity reserves, if any, of the bank.*

(3) *EXCEPTION.—Except as specifically provided in this section or through the declaration of a dividend or a capital distribution by a Federal home loan bank, or in the event of liquidation of the bank, a member shall have no right to withdraw or otherwise receive distribution of any portion of the retained earnings of the bank.*

(4) *LIMITATION.—A Federal home loan bank may not make any distribution of its retained earnings unless, following such distribution, the bank would continue to meet all applicable capital requirements.*

MANAGEMENT OF BANKS

SEC. 7. (a) \* \* \*

\* \* \* \* \*

[(d) The term] (d) *TERMS OF OFFICE.—The term of each elective directorship [shall be two years] and the term of each appointive directorship shall be four years. If any person, before or after, or partly before and partly after, the date of the enactment of this sentence, has been elected to each of three consecutive full terms as an elective director of a Federal home loan bank in any elective directorship or elective directorships and has served for all or part of each of said terms, such person shall not be eligible for election to an elective directorship of such bank for a term which begins earlier than two years after the expiration of the last expiring of said three terms. The Board is hereby authorized to prescribe such rules and regulations as it may deem necessary or appropriate for the nomination and election of directors of Federal home loan banks, including, without limitation on the generality of the foregoing, rules and regulations with respect to the breaking of ties and with respect to the inclusion of more than one directorship on a single ballot and the methods of voting and of determining the results of voting in such cases.*

\* \* \* \* \*

(i) Each bank may pay its directors reasonable compensation for the time required of them, and their necessary expenses, in the performance of their duties, in accordance with the resolutions adopted by the such directors[, subject to the approval of the board].

\* \* \* \* \*

SEC. 9. Any member of a Federal Home Loan Bank shall be entitled to apply in writing for advances. Such application shall be in such form as shall be required by the Federal Home Loan Bank [with the approval of the Board]. Such Federal Home Loan Bank may at its discretion deny any such application, or[, subject to the approval of the Board,] may grant it on such conditions as the Federal Home Loan Bank may prescribe.

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## [ADVANCES TO MEMBERS

[SEC. 10. (a) Each]

**SEC. 10. ADVANCES TO MEMBERS.**(a) *IN GENERAL.*—

(1) *ALL ADVANCES.*—Each Federal Home Loan Bank is authorized to make secured advances to its members upon collateral sufficient, in the judgment of the Bank, to fully secure advances obtained from the Bank under this section or section 11(g) of this Act. [All long-term advances shall only be made for the purpose of providing funds for residential housing finance. A Bank]

(2) *PURPOSES OF ADVANCES.*—A long-term advance may only be made for the purposes of—

(A) providing funds to any member for residential housing finance; and

(B) providing funds to any community financial institution for small businesses, agricultural, rural development, or low-income community development lending.

(3) *COLLATERAL.*—A Bank, at the time of origination or renewal of a loan or advance, shall obtain and maintain a security interest in collateral eligible pursuant to one or more of the following categories:

[(1)] (A) Fully disbursed, whole first mortgages on improved residential property (not more than 90 days delinquent), or securities representing a whole interest in such mortgages.

[(2)] (B) Securities issued, insured, or guaranteed by the United States Government or any agency thereof (including without limitation, mortgage-backed securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Corporation, and the Government National Mortgage Association).

[(3)] (C) [Deposits] Cash or deposits of a Federal Home Loan Bank.

[(4)] (D) Other real estate related collateral acceptable to the Bank if such collateral has a readily ascertainable value and the Bank can perfect its interest in the collateral. [The aggregate amount of outstanding advances secured by such other real estate related collateral shall not exceed 30 percent of such member's capital.]

(E) Secured loans for small business, agriculture, rural development, or low-income community development, or securities representing a whole interest in such secured loans, in the case of any community financial institution.

[(5) Paragraphs (1) through (4)] (4) *ADDITIONAL BANK AUTHORITY.*—Subparagraphs (A) through (E) of paragraph (3) shall not affect the ability of any Federal Home Loan Bank to take such steps as it deems necessary to protect its security position with respect to outstanding advances, including requiring deposits of additional collateral security, whether or not such additional security would be eligible to originate an advance. If an advance existing on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act

of 1989 matures and the member does not have sufficient eligible collateral to fully secure a renewal of such advance, a Bank may renew such advance secured by such collateral as the Bank [and the Board] determines is appropriate. A member that has an advance secured by such insufficient eligible collateral must reduce its level of outstanding advances promptly and prudently in accordance with a schedule determined by the [Board] *Federal home loan bank*.

(5) *REVIEW OF CERTAIN COLLATERAL STANDARDS.*—*The Board may review the collateral standards applicable to each Federal home loan bank for the classes of collateral described in subparagraphs (D) and (E) of paragraph (3), and may, if necessary for safety and soundness purposes, require an increase in the collateral standards for any or all of those classes of collateral.*

(6) *DEFINITIONS.*—*For purposes of this subsection, the terms “small business”, “agriculture”, “rural development”, and “low-income community development” shall have the meanings given those terms by rule or regulation of the Finance Board.*

\* \* \* \* \*

(c) Such advances shall be made upon the note or obligation of the member secured as provided in this section, bearing such rate of interest as the [Board] *Federal home loan bank* may approve or determine, and the Federal Home Loan Bank shall have a lien upon and shall hold the stock of such member as further collateral security for all indebtedness of the member to the Federal Home Loan Bank. [At no time shall the aggregate outstanding advances made by any Federal Home Loan Bank to any member exceed twenty times the amounts paid in by such member for outstanding capital stock held by it exceed twenty times the value of the security required to be deposited under section 6(e)].

(d) The institution applying for an advance shall enter into a primary and unconditional obligation to pay off all advances, together with interest and any unpaid costs and expenses in connection therewith according to the terms under which they were made, in such form as shall meet the requirements of the bank [and the approval of the Board]. The bank shall reserve the right to require at any time, when deemed necessary for its protection, deposits of additional collateral security or substitutions of security by the borrowing institution, and each borrowing institution shall assign additional or substituted security when and as so required. [Subject to the approval of the Board, any] *Any* Federal Home Loan Bank shall have power to sell to any other Federal Home Loan Bank, with or without recourse, any advance made under the provisions of this Act, or to allow to such bank a participation therein, and any other Federal Home Loan Bank shall have power to purchase such advance or to accept a participation therein, together with an appropriate assignment of security therefor.

(e) *QUALIFIED THRIFT LENDER STATUS.*—

(1) *IN GENERAL.*—A member that is not a qualified thrift lender may only receive an advance if it holds stock in its Federal Home Loan Bank at the time it receives that advance in an amount equal to at least—

- (A) 5 percent of that member’s total advances, divided by
- (B) such member’s actual thrift investment percentage.



Such members that are not qualified thrift lenders may only apply for advances under this section for the purpose of obtaining funds for housing finance or, in the case of any community financial institution, for the purposes described in subsection (a)(2).

\* \* \* \* \*

(5) DEFINITIONS.—As used in this subsection—

(A) \* \* \*

\* \* \* \* \*

(C) ACTUAL THRIFT INVESTMENT PERCENTAGE.—The term “actual thrift investment percentage” has the same meaning as in section 10(m) of the Home Owners’ Loan Act except that, in determining the actual thrift investment percentage of any community financial institution for purposes of this subsection, the total investment of such member in loans for small business, agriculture, or rural development, or securities representing a whole interest in such loans, shall be treated as a qualified thrift investment (as defined in such section 10(m)).

\* \* \* \* \*

(j) AFFORDABLE HOUSING PROGRAM.—

(1) IN GENERAL.—【Pursuant】

(A) ESTABLISHMENT.—Pursuant to regulations promulgated by the Board, each Bank shall establish an Affordable Housing Program 【to subsidize the interest rate on advances】 to provide subsidies, including subsidized interest rates on advances to members engaged in lending for long term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates.

(B) NONDELEGATION OF APPROVAL AUTHORITY.—Subject to such regulations as the Finance Board may prescribe, the board of directors of each Federal home loan bank may approve or disapprove requests from members for Affordable Housing Program subsidies, and may not delegate such authority.

\* \* \* \* \*

INCORPORATION OF BANKS, AND CORPORATE POWERS

SEC. 12. (a) The directors of each Federal Home Loan Bank shall, in accordance with such rules and regulations as the Board may prescribe, make and file with the Board at the earliest practicable date after the establishment of such bank, an organization certificate which shall contain such information as the Board may require. Upon the making and filing of such organization certificate with the Board, such bank shall become, as of the date of the execution of its organization certificate, a body corporate, and as such and in its name as designated by the Board it shall have power to adopt, alter, and use a corporate seal; to make contracts; to purchase or lease and hold or dispose of such real estate as may be necessary or convenient for the transaction of its business【, but, except with the prior approval of the Board, no bank building shall be bought or erected to house any such bank, or leased by such

bank under any lease for such purpose which has a term of more than ten years]; to sue and be sued, to complain, and to defend, in any court of competent jurisdiction, State or Federal; to select, employ, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary for the transaction of its business [subject to the approval of the Board]; to define their duties, require bonds of them and fix the penalties thereof, and to dismiss at pleasure such officers, employees, attorneys, and agents; [and, by its Board of directors, to prescribe, amend, and repeal by-laws, rules, and regulations governing the manner in which its affairs may be administered; and the powers granted to it by law may be exercised and enjoyed subject to the approval of the Board. The president of a Federal Home Loan Bank may also be a member of the Board of directors thereof, but no other officer, employee, attorney, or agent of such bank,] *and, by the board of directors of the bank, to prescribe, amend, and repeal by-laws governing the manner in which its affairs may be administered, consistent with applicable laws and regulations, as administered by the Finance Board. No officer, employee, attorney, or agent of a Federal home loan bank who receives compensation, may be a member of the [Board] board of directors.* Each such bank shall have all such incidental powers, not inconsistent with the provisions of this Act, as are customary and usual in corporations generally.

(b) Subject to such regulations as may be prescribed by the Board, one or more Federal home [loans banks] *loan banks* may acquire, hold, or dispose of, in whole or in part, or facilitate such acquisition, holding, or disposition by members of any such bank of, housing project loans, or interests therein, having the benefit of any guaranty under section 221 of the Foreign Assistance Act of 1961, as now or hereafter in effect, or loans, or interests therein, having the benefit of any guaranty under section 224 of such Act, or any commitment or agreement with respect to such loans, or interests therein, made pursuant to either of such sections. This authority extends to the acquisition, holding, and disposition of loans, or interests therein, having the benefit of any guaranty under section 221 or 222 of the Foreign Assistance Act of 1961, as amended by section 105 of the Foreign Assistance Act of 1969 or as hereafter amended or extended, or of any commitment or agreement for any such guaranty.

\* \* \* \* \*

#### RESERVES AND DIVIDENDS

SEC. 16. (a) Each Federal Home Loan Bank may carry to a reserve account from time-to-time such portion of its net earnings as may be determined by its board of directors. Each Federal Home Loan Bank shall establish such additional reserves and/or make such charge-offs on account of depreciation or impairment of its assets as the Board shall require from time to time. No dividends shall be paid except out of [net earnings] *previously retained earnings or current net earnings* remaining after reductions for all reserves, chargeoffs, purchases of capital certificates of the Financing Corporation, and payments relating to the Funding Corporation required under this Act have been provided for, other than chargeoffs

or expenses incurred by a Bank in connection with the purchase of capital stock of the Financing Corporation under section 21 or payments relating to the Funding Corporation Principal Fund under section 21B(e), and then only with the approval of the Federal Housing Finance Board. [Beginning on January 1, 1992, the preceding sentence shall be applied by substituting “previously retained earnings or current net earnings” for “net earnings”.] The reserves of each Federal Home Loan Bank shall be invested, subject to such regulations, restrictions, and limitations as may be prescribed by the Board, in direct obligations of the United States, in obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association, in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act, and in such securities as fiduciary and trust funds may be invested in under the laws of the State in which the Federal Home Loan Bank is located.

\* \* \* \* \*

ADMINISTRATIVE EXPENSES

SEC. 18. (a) \* \* \*

(b) ASSESSMENTS FOR ADMINISTRATIVE EXPENSES.—

(1) \* \* \*

\* \* \* \* \*

[(4) TRANSITION PROVISION.—On or after the effective date of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Board may levy a one-time special assessment on the Banks pursuant to this subsection for the Board’s estimated expenses for the transitional period following enactment of such Act, if such assessment is made before the Board’s first semiannual assessment under paragraph (1).]

\* \* \* \* \*

SEC. 21B. [12 U.S.C. 1441b] RESOLUTION FUNDING CORPORATION ESTABLISHED.

(a) \* \* \*

\* \* \* \* \*

(f) OBLIGATIONS OF FUNDING CORPORATION.—

(1) \* \* \*

(2) INTEREST PAYMENTS.—The Funding Corporation shall pay the interest due on such obligations from funds obtained for such interest payments from the following sources:

(A) \* \* \*

\* \* \* \* \*

[(C) PAYMENTS BY FEDERAL HOME LOAN BANKS.—To the extent the amounts available pursuant to subparagraphs (A) and (B) are insufficient to cover the amount of interest payments, the Federal Home Loan Banks shall pay to the Funding Corporation each calendar year the aggregate amount of \$300,000,000 minus the amounts required in

such year for Financing Corporation principal payments (pursuant to section 21) and the amounts required in such year by the Funding Corporation pursuant to subsection (e). Each Bank's individual share of any amounts required to be paid by the Banks under this subparagraph shall be determined as follows:

[(i) AMOUNTS UP TO 20 PERCENT OF NET EARNINGS.— Each Federal Home Loan Bank shall pay an equal percentage of its net earnings for the year for which such amount is required to be paid, up to a maximum of 20 percent of net earnings.]

[(ii) AMOUNTS IN EXCESS OF 20 PERCENT OF NET EARNINGS.—If the aggregate amount required to be paid by the Federal Home Loan Banks under this subparagraph for any year exceeds 20 percent of the aggregate net earnings of the Banks for such year, each Bank shall pay 20 percent of its net earnings for such year as provided in clause (i), and each Bank's individual share of the excess of the required amount over 20 percent of the aggregate net earnings of the Banks for such year shall be determined by dividing—

[(I) the average month-end level in the prior year of advances outstanding by such Bank to Savings Associations Insurance Fund members; by

[(II) the average month-end level in the prior year of advances outstanding by all such Banks to Savings Associations Insurance Fund members.]

(C) PAYMENTS BY FEDERAL HOME LOAN BANKS.—

(i) *IN GENERAL.*—*To the extent that the amounts available pursuant to subparagraphs (A) and (B) are insufficient to cover the amount of interest payments, each Federal home loan bank shall pay to the Funding Corporation in each calendar year, 20.75 percent of the net earnings of that bank (after deducting expenses relating to section 10(j) and operating expenses).*

(ii) *ANNUAL DETERMINATION.*—*The Board annually shall determine the extent to which the value of the aggregate amounts paid by the Federal home loan banks exceeds or falls short of the value of an annuity of \$300,000,000 per year that commences on the issuance date and ends on the final scheduled maturity date of the obligations, and shall select appropriate present value factors for making such determinations.*

(iii) *PAYMENT TERM ALTERATIONS.*—*The Board shall extend or shorten the term of the payment obligations of a Federal home loan bank under this subparagraph as necessary to ensure that the value of all payments made by the banks is equivalent to the value of an annuity referred to in clause (ii).*

(iv) *TERM BEYOND MATURITY.*—*If the Board extends the term of payments beyond the final scheduled maturity date for the obligations, each Federal home loan bank shall continue to pay 20.75 percent of its net earnings (after deducting expenses relating to section*

*10(j) and operating expenses) to the Treasury of the United States until the value of all such payments by the Federal home loan banks is equivalent to the value of an annuity referred to in clause (i). In the final year in which the Federal home loan banks are required to make any payment to the Treasury under this subparagraph, if the dollar amount represented by 20.75 percent of the net earnings of the Federal home loan banks exceeds the remaining obligation of the banks to the Treasury, the Finance Board shall reduce the percentage pro rata to a level sufficient to pay the remaining obligation.*

\* \* \* \* \*

**[SEC. 22A. INFORMAL REVIEW OF CERTAIN SUPERVISORY DECISIONS.**

**[(a) REVIEW OF CERTAIN SUPERVISORY DECISIONS.—**The Board shall establish an informal review procedure under which any association, insured institution, or member may obtain a review, by the principal supervisory agent for the Federal home loan bank district in which such association, institution, or member is located, of any decision by any examiner or supervisory agent of the Federal home loan bank for such district with respect to—

**[(1) the appraisal value of—**

**[(A) any loan held by the association, insured institution, or member; or**

**[(B) any property serving as collateral to secure the repayment of any loan (held by the association, institution, or member);**

**[(2) the classification of any loan held by the association, institution, or member; or**

**[(3) any requirement imposed on the association, institution, or member to establish or to add to a reserve or allowance for a possible loss on any loan held by such institution.**

**[(b) STANDARDS FOR REVIEW.—**The review procedure established pursuant to subsection (a) shall provide that the principal supervisory agent for the appropriate Federal home loan bank district, after taking into account the report described in subsection (c)(2) by the arbiter (or panel of arbiters), shall approve, modify, or set aside any decision for which a review has been requested on the basis of the supervisory agent's review of all the facts and the regulations applicable to such decision and shall take such action as such agent may determine to be necessary or appropriate in light of such review.

**[(c) APPOINTMENT OF INDEPENDENT ARBITER.—**The review procedure established pursuant to subsection (a) shall provide for the appointment (by the principal supervisory agent for the appropriate Federal home loan bank district, upon the filing of a request for a review under this section by an association, insured institution, or member) of an independent arbiter (or, upon the request of such association, institution, or member, a panel of independent arbiters) who shall—

**[(1) review the decision which is the subject of the review in light of all the facts of the case and the regulations applicable to such determination; and**

[(2) report the conclusions and recommendations of the independent arbiter (or the panel) with respect to the decision under review to the principal supervisory agent for the appropriate Federal home loan bank district and the association, insured institution, or member.

[(d) CONSOLIDATION OF REVIEWS OF RELATED DECISIONS.—The principal supervisory agent may consolidate requests for review under this section of related decisions and conduct a single review of all such related decisions.

[(e) 25-DAY ARBITER REVIEW PERIOD; 20-DAY PSA REVIEW PERIOD.—

[(1) ARBITER REVIEW.—The review procedure established pursuant to subsection (a) shall provide that any review described in subsection (c) by an arbiter (or panel of arbiters) shall be completed before the end of the 25-day period beginning on the date the request for the review was filed with the principal supervisory agent.

[(2) REVIEW BY PSA.—The review procedure established pursuant to subsection (a) shall provide that any review by the principal supervisory agent of an arbiter's report described in subsection (c)(2) (or the report of a panel of arbiters) shall be completed before the end of the 20-day period beginning on the date the agent receives such report.

[(3) ONLY BUSINESS DAYS INCLUDED.—Saturdays, Sundays, and holidays shall not be taken into account in determining the periods described in paragraphs (1) and (2).

[(f) CLARIFICATION OF RELATIONSHIP BETWEEN INFORMAL REVIEW AND OTHER AVAILABLE REVIEW.—

[(1) INFORMAL REVIEW NOT EXCLUSIVE.—The informal review procedure established pursuant to subsection (a) for reviewing any decision referred to in such subsection shall be in addition to, and not in lieu of, any other procedure established by law, or any regulation of the Board, which provides for formal administrative or judicial review of such decision.

[(2) ONLY THE ORIGINAL DECISION IS WITHIN SCOPE OF ADMINISTRATIVE AND JUDICIAL REVIEW.—If any association, insured institution, or member seeks administrative or judicial review of any examiner or supervisory agent decision for which such association, insured institution, or member obtained an informal review under the procedure established pursuant to subsection (a), such administrative or judicial review shall be carried out—

[(A) without regard to the fact that such informal review was made; and

[(B) without admitting into evidence, or otherwise taking into account, the findings, recommendations, or conclusions of the principal supervisory agent and the independent arbiter (or the panel of independent arbiters) which conducted the informal review.

[(3) INFORMAL REVIEW NOT SUBJECT TO FORMAL REVIEW.—The findings, recommendations, or conclusions of any principal supervisory agent who conducted a review under the procedure established pursuant to subsection (a) are not decisions which

may be subject to review by the Board or any court under any regulation of the Board or any law.

[(g) EXPENSES OF REVIEW BORNE BY ASSOCIATION, INSTITUTION, OR MEMBER.—All reasonable expenses incurred as a direct or indirect result of any review under the procedure established pursuant to subsection (a) shall be paid by the association, insured institution, or member which requested the review.]

\* \* \* \* \*

**[SEC. 27. [12 U.S.C. 1447] HOUSING OPPORTUNITY HOTLINE PROGRAM.**

[(a) ESTABLISHMENT.—The Federal Home Loan Banks shall, individually or (at the discretion of the Federal Housing Finance Board) on a consolidated basis, establish and provide a service substantially similar (in the determination of the Board) to the “Housing Opportunity Hotline” program established in October 1992, by the Federal Home Loan Bank of Dallas.

[(b) PURPOSE.—The service or services established under this section shall provide information regarding the availability for purchase of single family properties that are owned or held by Federal agencies and are located in the Federal Home Loan Bank district for such Bank. Such agencies shall provide to the Federal Home Loan Banks the information necessary to provide such service or services.

[(c) REQUIRED INFORMATION.—The service or services established under this section shall use the information obtained from Federal agencies to provide information regarding the size, location, price, and other characteristics of such single family properties, the eligibility requirements for purchasers of such properties, the terms for such sales, and the terms of any available seller financing, and shall identify properties that are affordable to low- and moderate-income families.

[(d) TOLL-FREE TELEPHONE NUMBER.—The service or services established under this section shall establish and maintain a toll-free telephone line for providing the information made available under the service or services.

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

[(1) FEDERAL AGENCIES.—The term “Federal agencies” means—

[(A) the Farmers Home Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the General Services Administration, the Department of Housing and Urban Development, and the Department of Veterans Affairs;

[(B) the Resolution Trust Corporation, subject to the discretion of such Corporation; and

[(C) the Federal Deposit Insurance Corporation, subject to the discretion of such Corporation.

[(2) SINGLE FAMILY PROPERTY.—The term “single family property” means a 1- to 4-family residence, including a manufactured home.]

\* \* \* \* \*

**ACT OF OCTOBER 28, 1974**

AN ACT To increase deposit insurance from \$20,000 to \$40,000, to provide full insurance for public unit deposits of \$100,000 per account, to establish a National Commission on Electronic Fund Transfers, and for other purposes.

**TITLE I—AMENDMENTS TO AND EXTENSIONS OF PROVISIONS OF LAW RELATING TO FEDERAL REGULATION OF DEPOSITORY INSTITUTIONS**

\* \* \* \* \*

**INDEPENDENCE OF FINANCIAL REGULATORY AGENCIES**

SEC. 111. No officer or agency of the United States shall have any authority to require the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the [Federal Home Loan Bank Board,] *Director of the Office of Thrift Supervision, the Federal Housing Finance Board, or the National Credit Union Administration* to submit legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress if such recommendations, testimony, or comments to the Congress include a statement indicating that the views expressed therein are those of the agency submitting them and do not necessarily represent the views of the President.

\* \* \* \* \*

**ELECTRONIC FUND TRANSFER ACT**

\* \* \* \* \*

**§ 904. Regulations**

(a) \* \* \*

\* \* \* \* \*

(d) **APPLICABILITY TO SERVICE PROVIDERS OTHER THAN CERTAIN FINANCIAL INSTITUTIONS.—**

(1) \* \* \*

\* \* \* \* \*

(3) **FEE DISCLOSURES AT AUTOMATED TELLER MACHINES.—**

(A) **IN GENERAL.—***The regulations prescribed under paragraph (1) shall require any automated teller machine operator who imposes a fee on any consumer for providing host transfer services to such consumer to provide notice in accordance with subparagraph (B) to the consumer (at the time the service is provided) of—*

*(i) the fact that a fee is imposed by such operator for providing the service; and*

*(ii) the amount of any such fee.*

(B) **NOTICE REQUIREMENTS.—**

*(i) ON THE MACHINE.—The notice required under clause (i) of subparagraph (A) with respect to any fee*



described in such subparagraph shall be posted in a prominent and conspicuous location on or at the automated teller machine at which the electronic fund transfer is initiated by the consumer; and

(ii) *ON THE SCREEN.*—The notice required under clauses (i) and (ii) of subparagraph (A) with respect to any fee described in such subparagraph shall appear on the screen of the automated teller machine, or on a paper notice issued from such machine, after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(C) *PROHIBITION ON FEES NOT PROPERLY DISCLOSED AND EXPLICITLY ASSUMED BY CONSUMER.*—No fee may be imposed by any automated teller machine operator in connection with any electronic fund transfer initiated by a consumer for which a notice is required under subparagraph (A), unless—

(i) the consumer receives such notice in accordance with subparagraph (B); and

(ii) the consumer elects to continue in the manner necessary to effect the transaction after receiving such notice.

(D) *DEFINITIONS.*—For purposes of this paragraph, the following definitions shall apply:

(i) *ELECTRONIC FUND TRANSFER.*—The term “electronic fund transfer” includes a transaction which involves a balance inquiry initiated by a consumer in the same manner as an electronic fund transfer, whether or not the consumer initiates a transfer of funds in the course of the transaction.

(ii) *AUTOMATED TELLER MACHINE OPERATOR.*—The term “automated teller machine operator” means any person who—

(I) operates an automated teller machine at which consumers initiate electronic fund transfers; and

(II) is not the financial institution which holds the account of such consumer from which the transfer is made.

(iii) *HOST TRANSFER SERVICES.*—The term “host transfer services” means any electronic fund transfer made by an automated teller machine operator in connection with a transaction initiated by a consumer at an automated teller machine operated by such operator.

\* \* \* \* \*

#### **§ 905. Terms and conditions of transfers**

(a) The terms and conditions of electronic fund transfers involving a consumer’s account shall be disclosed at the time the consumer contracts for an electronic fund transfer service, in accordance with regulations of the Board. Such disclosures shall be in

readily understandable language and shall include, to the extent applicable—

(1) \* \* \*

\* \* \* \* \*

(8) the financial institution’s liability to the consumer under section 910; **[and]**

(9) under what circumstances the financial institution will in the ordinary course of business disclose information concerning the consumer’s account to third persons**[.]; and**

(10) a notice to the consumer that a fee may be imposed by—

(A) an automated teller machine operator (as defined in section 904(d)(3)(D)(ii)) if the consumer initiates a transfer from an automated teller machine which is not operated by the person issuing the card or other means of access; and

(B) any national, regional, or local network utilized to effect the transaction.

\* \* \* \* \*

**§ 910. Liability of financial institutions**

(a) \* \* \*

\* \* \* \* \*

*(d) EXCEPTION FOR DAMAGED NOTICES.—If the notice required to be posted pursuant to section 904(d)(3)(B)(i) by an automated teller machine operator has been posted by such operator in compliance with such section and the notice is subsequently removed, damaged, or altered by any person other than the operator of the automated teller machine, the operator shall have no liability under this section for failure to comply with section 904(d)(3)(B)(i).*

\* \* \* \* \*

**TITLE X OF THE CONSUMER CREDIT PROTECTION ACT**

**TITLE X—FINANCIAL INFORMATION  
PRIVACY PROTECTION**

**SEC. 1001. SHORT TITLE; TABLE OF CONTENTS.**

(a) *SHORT TITLE.—This title may be cited as the “Financial Information Privacy Act of 1999”.*

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

**TITLE X—FINANCIAL INFORMATION PRIVACY PROTECTION**

- Sec. 1001. Short title; table of contents.
- Sec. 1002. Definitions.
- Sec. 1003. Privacy protection for customer information of financial institutions.
- Sec. 1004. Administrative enforcement.
- Sec. 1005. Civil liability.
- Sec. 1006. Criminal penalty.
- Sec. 1007. Relation to State laws.
- Sec. 1008. Agency guidance.

**SEC. 1002. DEFINITIONS.**

For purposes of this title, the following definitions shall apply:

(1) *CUSTOMER.*—The term “customer” means, with respect to a financial institution, any individual (or authorized representative of a person) to whom the financial institution provides a product or service, including that of acting as a fiduciary.

(2) *CUSTOMER INFORMATION OF A FINANCIAL INSTITUTION.*—The term “customer information of a financial institution” means any information maintained by a financial institution which is derived from the relationship between the financial institution and a customer of the financial institution and is identified with the customer.

(3) *DOCUMENT.*—The term “document” means any information in any form.

(4) *FINANCIAL INSTITUTION.*—

(A) *IN GENERAL.*—The term “financial institution” means any institution engaged in the business of providing financial services to customers who maintain a credit, deposit, trust, or other financial account or relationship with the institution.

(B) *CERTAIN FINANCIAL INSTITUTIONS SPECIFICALLY INCLUDED.*—The term “financial institution” includes any depository institution (as defined in section 19(b)(1)(A) of the Federal Reserve Act), any loan or finance company, any credit card issuer or operator of a credit card system, and any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (as defined in section 603(p)).

(C) *FURTHER DEFINITION BY REGULATION.*—The Board of Governors of the Federal Reserve System may prescribe regulations further defining the term “financial institution”, in accordance with subparagraph (A), for purposes of this title.

**SEC. 1003. PRIVACY PROTECTION FOR CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS.**

(a) *PROHIBITION ON OBTAINING CUSTOMER INFORMATION BY FALSE PRETENSES.*—It shall be a violation of this title for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person—

(1) by knowingly making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution with the intent to deceive the officer, employee, or agent into relying on that statement or representation for purposes of releasing the customer information;

(2) by knowingly making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution with the intent to deceive the customer into relying on that statement or representation for purposes of releasing the customer information or authorizing the release of such information; or

(3) by knowingly providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently ob-

tained, or contains a false, fictitious, or fraudulent statement or representation, if the document is provided with the intent to deceive the officer, employee, or agent into relying on that document for purposes of releasing the customer information.

(b) **PROHIBITION ON SOLICITATION OF A PERSON TO OBTAIN CUSTOMER INFORMATION FROM A FINANCIAL INSTITUTION UNDER FALSE PRETENSES.**—It shall be a violation of this title to request a person to obtain customer information of a financial institution, knowing or consciously avoiding knowing that the person will obtain, or attempt to obtain, the information from the institution in any manner described in subsection (a).

(c) **NON APPLICABILITY TO LAW ENFORCEMENT AGENCIES.**—No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain customer information of a financial institution in connection with the performance of the official duties of the agency.

(d) **NON APPLICABILITY TO FINANCIAL INSTITUTIONS IN CERTAIN CASES.**—No provision of this section shall be construed to prevent any financial institution, or any officer, employee, or agent of a financial institution, from obtaining customer information of such financial institution in the course of—

(1) testing the security procedures or systems of such institution for maintaining the confidentiality of customer information;

(2) investigating allegations of misconduct or negligence on the part of any officer, employee, or agent of the financial institution; or

(3) recovering customer information of the financial institution which was obtained or received by another person in any manner described in subsection (a) or (b).

(e) **NON APPLICABILITY TO CERTAIN TYPES OF CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS.**—No provision of this section shall be construed to prevent any person from obtaining customer information of a financial institution that otherwise is available as a public record filed pursuant to the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934).

(f) **NON APPLICABILITY TO COLLECTION OF CHILD SUPPORT JUDGMENTS.**—No provision of this section shall be construed to prevent any State-licensed private investigator, or any officer, employee, or agent of such private investigator, from obtaining customer information of a financial institution, to the extent reasonably necessary to collect child support from a person adjudged to have been delinquent in his or her obligations by a Federal or State court, and to the extent that such action by a State-licensed private investigator is not unlawful under any other Federal or State law or regulation.

**SEC. 1004. ADMINISTRATIVE ENFORCEMENT.**

(a) **ENFORCEMENT BY FEDERAL TRADE COMMISSION.**—Except as provided in subsection (b), compliance with this title shall be enforced by the Federal Trade Commission in the same manner and with the same power and authority as the Commission has under the Fair Debt Collection Practices Act to enforce compliance with that title.

(b) **ENFORCEMENT BY OTHER AGENCIES IN CERTAIN CASES.**—

(1) *IN GENERAL.*—Compliance with this title shall be enforced under—

(A) section 8 of the Federal Deposit Insurance Act, in the case of—

(i) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(ii) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act, by the Board;

(iii) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System and national nonmember banks) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

(iv) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Director of the Office of Thrift Supervision; and

(B) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

(2) *VIOLATIONS OF THIS TITLE TREATED AS VIOLATIONS OF OTHER LAWS.*—For the purpose of the exercise by any agency referred to in paragraph (1) of its powers under any Act referred to in that paragraph, a violation of this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (1), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with this title, any other authority conferred on such agency by law.

(c) *STATE ACTION FOR VIOLATIONS.*—

(1) *AUTHORITY OF STATES.*—In addition to such other remedies as are provided under State law, if the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this title, the State—

(A) may bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction;

(B) may bring an action on behalf of the residents of the State to recover damages of not more than \$1,000 for each violation; and

(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

(2) *RIGHTS OF FEDERAL REGULATORS.*—

(A) *PRIOR NOTICE.*—The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission and, in the case of an action which involves a financial institution described in section 1004(b)(1), the agency referred to in such section with respect to such institution and provide the Federal Trade Commission and any such agency with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action.

(B) *RIGHT TO INTERVENE.*—The Federal Trade Commission or an agency described in subsection (b) shall have the right—

- (i) to intervene in an action under paragraph (1);
- (ii) upon so intervening, to be heard on all matters arising therein;
- (iii) to remove the action to the appropriate United States district court; and
- (iv) to file petitions for appeal.

(3) *INVESTIGATORY POWERS.*—For purposes of bringing any action under this subsection, no provision of this subsection shall be construed as preventing the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(4) *LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.*—If the Federal Trade Commission or any agency described in subsection (b) has instituted a civil action for a violation of this title, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Federal Trade Commission or such agency for any violation of this title that is alleged in that complaint.

#### **SEC. 1005. CIVIL LIABILITY.**

Any person, other than a financial institution, who fails to comply with any provision of this title with respect to any financial institution or any customer information of a financial institution shall be liable to such financial institution or the customer to whom such information relates in an amount equal to the sum of the amounts determined under each of the following paragraphs:

(1) *ACTUAL DAMAGES.*—The greater of—

(A) the amount of any actual damage sustained by the financial institution or customer as a result of such failure;

or

(B) any amount received by the person who failed to comply with this title, including an amount equal to the value of any non monetary consideration, as a result of the action which constitutes such failure.

(2) *ADDITIONAL DAMAGES.*—Such additional amount as the court may allow.

(3) *ATTORNEYS' FEES.*—In the case of any successful action to enforce any liability under paragraph (1) or (2), the costs of the action, together with reasonable attorneys' fees.

**SEC. 1006. CRIMINAL PENALTY.**

(a) *IN GENERAL.*—Whoever violates, or attempts to violate, section 1003 shall be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.

(b) *ENHANCED PENALTY FOR AGGRAVATED CASES.*—Whoever violates, or attempts to violate, section 1003 while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both.

**SEC. 1007. RELATION TO STATE LAWS.**

(a) *IN GENERAL.*—This title shall not be construed as superseding, altering, or affecting the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that such statutes, regulations, orders, or interpretations are inconsistent with the provisions of this title, and then only to the extent of the inconsistency.

(b) *GREATER PROTECTION UNDER STATE LAW.*—For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this title if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this title.

**SEC. 1008. AGENCY GUIDANCE.**

In furtherance of the objectives of this title, each Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act) shall issue advisories to depository institutions under the jurisdiction of the agency, in order to assist such depository institutions in deterring and detecting activities proscribed under section 1003.

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**DEPOSIT INSURANCE FUNDS ACT OF 1996**

\* \* \* \* \*

**SEC. 2704. MERGER OF BIF AND SAIF.**

(a) \* \* \*

\* \* \* \* \*

**[(b) SPECIAL RESERVE OF THE DEPOSIT INSURANCE FUND.—**

**[(1) IN GENERAL.**—Immediately before the merger of the Bank Insurance Fund and the Savings Association Insurance Fund, if the reserve ratio of the Savings Association Insurance Fund exceeds the designated reserve ratio, the amount by which that reserve ratio exceeds the designated reserve ratio shall be placed in the Special Reserve of the Deposit Insurance Fund, established under section 11(a)(5) of the Federal Deposit Insurance Act, as amended by this section.

**[(2) DEFINITION.**—For purposes of this subsection, the term “reserve ratio” means the ratio of the net worth of the Savings Association Insurance Fund to the aggregate estimated amount

of deposits insured by the Savings Association Insurance Fund.]

\* \* \* \* \*

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) \* \* \*

\* \* \* \* \*

[(4) SPECIAL RESERVE OF DEPOSITS.—Section 11(a)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(5)) is amended to read as follows:

[(5) SPECIAL RESERVE OF DEPOSIT INSURANCE FUND.—

[(A) ESTABLISHMENT.—

[(i) IN GENERAL.—There is established a Special Reserve of the Deposit Insurance Fund, which shall be administered by the Corporation and shall be invested in accordance with section 13(a).

[(ii) LIMITATION.—The Corporation shall not provide any assessment credit, refund, or other payment from any amount in the Special Reserve.

[(B) EMERGENCY USE OF SPECIAL RESERVE.—Notwithstanding subparagraph (A)(ii), the Corporation may, in its sole discretion, transfer amounts from the Special Reserve to the Deposit Insurance Fund, for the purposes set forth in paragraph (4), only if—

[(i) the reserve ratio of the Deposit Insurance Fund is less than 50 percent of the designated reserve ratio; and

[(ii) the Corporation expects the reserve ratio of the Deposit Insurance Fund to remain at less than 50 percent of the designated reserve ratio for each of the next 4 calendar quarters.

[(C) EXCLUSION OF SPECIAL RESERVE IN CALCULATING RESERVE RATIO.—Notwithstanding any other provision of law, any amounts in the Special Reserve shall be excluded in calculating the reserve ratio of the Deposit Insurance Fund under section 7.”.]

\* \* \* \* \*

(6) REPEALS.—

(A) \* \* \*

\* \* \* \* \*

(C) SECTION 11.—Section 11(a) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)) is amended—

(i) by striking paragraphs [(6) and (7)] (5), (6), and (7); and

[(ii) by redesignating paragraph (8) as paragraph (6).]

(ii) by redesignating paragraph (8) as paragraph (5).

\* \* \* \* \*

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**SECURITIES EXCHANGE ACT OF 1934**

\* \* \* \* \*



## DEFINITIONS AND APPLICATION OF TITLE

SEC. 3. (a) When used in this title, unless the context otherwise requires—

(1) \* \* \*

\* \* \* \* \*

【(4) The term “broker” means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank.】

(4) *BROKER.*—

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

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

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

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

(II) *the broker or dealer performs brokerage services in an area that is clearly marked and, to the extent practicable, physically separate from the routine deposit-taking activities of the bank;*

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

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

(V) *bank employees (other than associated persons of a broker or dealer who are qualified pursuant to the rules of a self-regulatory organization) perform only clerical or ministerial functions in connection with brokerage transactions including scheduling appointments with the associated persons of a broker or dealer, except that bank employees may forward customer funds or securities and may describe in general terms the range of investment vehicles available from the bank and the broker or dealer under the contractual or other arrangement;*

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

*broker or dealer and are qualified pursuant to the rules of a self-regulatory 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 in a customary custodian or trustee capacity; 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 are not insured by the Federal Deposit Insurance Corporation.*

*(ii) TRUST ACTIVITIES.—The bank effects transactions in a trustee capacity, or effects transactions in a fiduciary capacity in its trust department or other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards, and (in either case)—*

*(I) is primarily compensated for such transactions on the basis of an administration or annual fee (payable on a monthly, quarterly, or other basis), a percentage of assets under management, or a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers, or any combination of such fees, consistent with fiduciary principles and standards; and*

*(II) does not publicly solicit brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities.*

*(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in—*

*(I) commercial paper, bankers acceptances, or commercial bills;*

*(II) exempted securities;*

*(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or*

*(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to*

*the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.*

(iv) **CERTAIN STOCK PURCHASE PLANS.—**

(I) **EMPLOYEE BENEFIT PLANS.—***The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of any pension, retirement, profit-sharing, bonus, thrift, savings, incentive, or other similar benefit plan for the employees of that issuer or its subsidiaries, if—*

(aa) *the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan; and*

(bb) *the bank's compensation for such plan or program consists primarily of administration fees, or flat or capped per order processing fees, or both.*

(II) **DIVIDEND REINVESTMENT PLANS.—***The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of that issuer's dividend reinvestment plan, if—*

(aa) *the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan;*

(bb) *the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission; and*

(cc) *the bank's compensation for such plan or program consists primarily of administration fees, or flat or capped per order processing fees, or both.*

(III) **ISSUER PLANS.—***The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of a plan or program for the purchase or sale of that issuer's shares, if—*

(aa) *the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan or program;*

(bb) *the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission; and*

(cc) *the bank's compensation for such plan or program consists primarily of administration fees, or flat or capped per order processing fees, or both.*

(IV) **PERMISSIBLE DELIVERY OF MATERIALS.—***The exception to being considered a broker for a bank engaged in activities described in subclauses (I),*

(II), and (III) will not be affected by a bank's delivery of written or electronic plan materials to employees of the issuer, shareholders of the issuer, or members of affinity groups of the issuer, so long as such materials are—

(aa) comparable in scope or nature to that permitted by the Commission as of the date of the enactment of the Financial Services Act of 1999; or

(bb) otherwise permitted by the Commission.

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

(vi) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate of the bank (as defined in section 2 of the Bank Holding Company Act of 1956) other than—

(I) a registered broker or dealer; or

(II) an affiliate that is engaged in merchant banking, as described in section 6(c)(3)(H) of the Bank Holding Company Act of 1956.

(vii) PRIVATE SECURITIES OFFERINGS.—The bank—

(I) effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 or the rules and regulations issued thereunder;

(II) at any time after the date that is 1 year after the date of enactment of the Financial Services Act of 1999, is not affiliated with a broker or dealer that has been registered for more than 1 year in accordance with this Act, and engages in dealing, market making, or underwriting activities, other than with respect to exempted securities; and

(III) effects transactions exclusively with qualified investors.

(viii) SAFEKEEPING AND CUSTODY ACTIVITIES.—

(I) IN GENERAL.—The bank, as part of customary banking activities—

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

(bb) facilitates the transfer of funds or securities, as a custodian or a clearing agency, in connection with the clearance and settlement of its customers' transactions in securities;

(cc) effects securities lending or borrowing transactions with or on behalf of customers as part of services provided to customers pursuant to division (aa) or (bb) or invests cash col-

lateral pledged in connection with such transactions; or

(dd) holds securities pledged by a customer to another person or securities subject to purchase or resale agreements involving a customer, or facilitates the pledging or transfer of such securities by book entry or as otherwise provided under applicable law.

(II) **EXCEPTION FOR CARRYING BROKER ACTIVITIES.**—The exception to being considered a broker for a bank engaged in activities described in subclause (I) shall not apply if the bank, in connection with such activities, acts in the United States as a carrying broker (as such term, and different formulations thereof, are used in section 15(c)(3) and the rules and regulations thereunder) for any broker or dealer, unless such carrying broker activities are engaged in with respect to government securities (as defined in paragraph (42) of this subsection).

(ix) **BANKING PRODUCTS.**—The bank effects transactions in traditional banking products, as defined in section 205(a) of the Financial Services Act of 1999.

(x) **DE MINIMIS EXCEPTION.**—The bank effects, other than in transactions referred to in clauses (i) through (ix), not more than 500 transactions in securities in any calendar year, and such transactions are not effected by an employee of the bank who is also an employee of a broker or dealer.

(C) **BROKER DEALER EXECUTION.**—The exception to being considered a broker for a bank engaged in activities described in clauses (ii), (iv), and (viii) of subparagraph (B) shall not apply if the activities described in such provisions result in the trade in the United States of any security that is a publicly traded security in the United States, unless—

(i) the bank directs such trade to a registered broker or dealer for execution;

(ii) the trade is a cross trade or other substantially similar trade of a security that—

(I) is made by the bank or between the bank and an affiliated fiduciary; and

(II) is not in contravention of fiduciary principles established under applicable Federal or State law; or

(iii) the trade is conducted in some other manner permitted under rules, regulations, or orders as the Commission may prescribe or issue.

(D) **NO EFFECT OF BANK EXEMPTIONS ON OTHER COMMISSION AUTHORITY.**—The exception to being considered a broker for a bank engaged in activities described in subparagraphs (B) and (C) shall not affect the authority of the Commission under any other provision of this Act or any other securities law.

(E) *FIDUCIARY CAPACITY.*—For purposes of subparagraph (B)(ii), the term “fiduciary capacity” means—

(i) in the capacity as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gift to minor act, or as an investment adviser if the bank receives a fee for its investment advice;

(ii) in any capacity in which the bank possesses investment discretion on behalf of another; or

(iii) in any other similar capacity.

(F) *EXCEPTION FOR ENTITIES SUBJECT TO SECTION 15(e).*—The term “broker” does not include a bank that—

(i) was, immediately prior to the enactment of the Financial Services Act of 1999, subject to section 15(e); and

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

[(5) The term “dealer” means any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.]

(5) *DEALER.*—

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

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

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

(i) *PERMISSIBLE SECURITIES TRANSACTIONS.*—The bank buys or sells—

(I) commercial paper, bankers acceptances, or commercial bills;

(II) exempted securities;

(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes of the United States, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

(ii) *INVESTMENT, TRUSTEE, AND FIDUCIARY TRANSACTIONS.*—The bank buys or sells securities for investment purposes—

(I) for the bank; or

(II) for accounts for which the bank acts as a trustee or fiduciary.

(iii) *ASSET-BACKED TRANSACTIONS.*—The bank engages in the issuance or sale to qualified investors, through a grantor trust or otherwise, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations predominantly originated by the bank, or a syndicate of banks of which the bank is a member, or an affiliate of any such bank other than a broker or dealer.

(iv) *BANKING PRODUCTS.*—The bank buys or sells traditional banking products, as defined in section 205(a) of the Financial Services Act of 1999.

(12)(A) The term “exempted security” or “exempted securities” includes—

(i) \* \* \*

\* \* \* \* \*

[(iii) any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian;]

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

\* \* \* \* \*

(34) The term “appropriate regulatory agency” means—

(A) \* \* \*

\* \* \* \* \*

(H) When used with respect to an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956—

(i) the Comptroller of the Currency, in the case of a national bank or a bank in the District of Columbia examined by the Comptroller of the Currency;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System or any corporation chartered under section 25A of the Federal Reserve Act;

(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act; or

(iv) the Commission in the case of all other such institutions.

\* \* \* \* \*  
 (42) The term “government securities” means—  
 (A) \* \* \*

\* \* \* \* \*  
 (C) securities issued or guaranteed as to principal or interest by any corporation the securities of which are designated, by statute specifically naming such corporation, to constitute exempt securities within the meaning of the laws administered by the Commission; **[or]**

(D) for purposes of sections 15C and 17A, any put, call, straddle, option, or privilege on a security described in subparagraph (A), (B), or (C) other than a put, call, straddle, option, or privilege—

(i) that is traded on one or more national securities exchanges; or

(ii) for which quotations are disseminated through an automated quotation system operated by a registered securities association~~[\.]~~; or

(E) for purposes of section 15C as applied to a bank, a qualified Canadian government obligation as defined in section 5136 of the Revised Statutes.

\* \* \* \* \*  
 (54) QUALIFIED INVESTOR.—

(A) DEFINITION.—For purposes of this title, the term “qualified investor” means—

(i) any investment company registered with the Commission under section 8 of the Investment Company Act of 1940;

(ii) any issuer eligible for an exclusion from the definition of investment company pursuant to section 3(c)(7) of the Investment Company Act of 1940;

(iii) any bank (as defined in paragraph (6) of this subsection), savings association (as defined in section 3(b) of the Federal Deposit Insurance Act), broker, dealer, insurance company (as defined in section 2(a)(13) of the Securities Act of 1933), or business development company (as defined in section 2(a)(48) of the Investment Company Act of 1940);

(iv) any small business investment company licensed by the United States Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958;

(v) any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, other than an individual retirement account, if the investment decisions are made by a plan fiduciary, as defined in section 3(21) of that Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser;



(vi) any trust whose purchases of securities are directed by a person described in clauses (i) through (v) of this subparagraph;

(vii) any market intermediary exempt under section 3(c)(2) of the Investment Company Act of 1940;

(viii) any associated person of a broker or dealer other than a natural person;

(ix) any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978);

(x) the government of any foreign country;

(xi) any corporation, company, or partnership that owns and invests on a discretionary basis, not less than \$10,000,000 in investments;

(xii) any natural person who owns and invests on a discretionary basis, not less than \$10,000,000 in investments;

(xiii) any government or political subdivision, agency, or instrumentality of a government who owns and invests on a discretionary basis not less than \$50,000,000 in investments; or

(xiv) any multinational or supranational entity or any agency or instrumentality thereof.

(B) ADDITIONAL AUTHORITY.—The Commission may, by rule or order, define a “qualified investor” as any other person, taking into consideration such factors as the financial sophistication of the person, net worth, and knowledge and experience in financial matters.

\* \* \* \* \*

REGISTRATION AND REGULATION OF BROKERS AND DEALERS

SEC. 15. (a) \* \* \*

\* \* \* \* \*

(i) TRANSACTIONS INVOLVING HYBRID PRODUCTS.—

(1) COMMISSION AUTHORITY.—

(A) IN GENERAL.—The Commission may, after consultation with the Board, determine, by regulation published in the Federal Register, that a bank that effects transactions in, or buys or sells, a new product should be subject to the registration requirements of this section.

(B) LIMITATION.—The Commission may not impose the registration requirements of this section on any bank that effects transactions in, or buys or sells, a product under this subsection unless the Commission determines in the regulations described in subparagraph (A) that—

(i) the subject product is a new product;

(ii) the subject product is a security; and

(iii) imposing the registration requirements of this section is necessary or appropriate in the public interest and for the protection of investors.

(2) OBJECTION TO COMMISSION REGULATION.—

(A) FILING OF PETITION FOR REVIEW.—The Board, or any aggrieved party, may obtain review of any final regulation described in paragraph (1) in the United States Court of

*Appeals for the District of Columbia Circuit by filing in such court, not later than 60 days after the date of publication of the final regulation, a written petition requesting that the regulation be set aside.*

(B) *TRANSMITTAL OF PETITION AND RECORD.*—A copy of a petition described in subparagraph (A) shall be transmitted as soon as possible by the Clerk of the Court to an officer or employee of the Commission designated for that purpose. Upon receipt of the petition, the Commission shall file with the court the regulation under review and any documents referred to therein, and any other relevant materials prescribed by the court.

(C) *EXCLUSIVE JURISDICTION.*—On the date of the filing of the petition under subparagraph (A), the court has jurisdiction, which becomes exclusive on the filing of the materials set forth in subparagraph (B), to affirm and enforce or to set aside the regulation at issue.

(D) *STANDARD OF REVIEW.*—

(i) *IN GENERAL.*—The court shall determine to affirm and enforce or set aside a regulation of the Commission under this subsection, based on the determination of the court as to whether the subject product—

(I) is a new product, as defined in this subsection;

(II) is a security; and

(III) would be more appropriately regulated under the Federal securities laws or the Federal banking laws, giving equal deference to the views of the Commission and the Board.

(ii) *CONSIDERATIONS.*—In making a determination under clause (i)(III), the court shall consider—

(I) the nature of the subject new product;

(II) the history, purpose, extent, and appropriateness of the regulation of the new product under the Federal securities laws; and

(III) the history, purpose, extent, and appropriateness of the regulation of the new product under the Federal banking laws.

(E) *JUDICIAL STAY.*—The filing of a petition by the Board or an aggrieved party pursuant to subparagraph (A) shall operate as a judicial stay, until the date on which the court makes a final determination under this paragraph, of—

(i) any Commission requirement that a bank register as a broker or dealer under this section, because the bank engages in any transaction in, or buys or sells, the new product that is the subject of the petition; and

(ii) any Commission action against a bank for a failure to comply with a requirement described in clause (i).

(3) *DEFINITIONS.*—For purposes of this subsection—

(A) the term “Board” means the Board of Governors of the Federal Reserve System; and

(B) the term “new product” means a product or instrument offered or provided by a bank that—

(i) was not subject to regulation by the Commission as a security under this Act before the date of enactment of this subsection; and

(ii) is not a traditional banking product, as defined in paragraphs (1) through (6) of section 205(a) of the Financial Services Act of 1999.

\* \* \* \* \*

REGISTERED SECURITIES ASSOCIATIONS

SEC. 15A. (a) \* \* \*

\* \* \* \* \*

(j) *REGISTRATION FOR SALES OF PRIVATE SECURITIES OFFERINGS.*—A registered securities association shall create a limited qualification category for any associated person of a member who effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder, and shall deem qualified in such limited qualification category, without testing, any bank employee who, in the six month period preceding the date of enactment of this Act, engaged in effecting such sales.

\* \* \* \* \*

ACCOUNTS AND RECORDS, EXAMINATIONS OF EXCHANGES, MEMBERS, AND OTHERS

SEC. 17. (a) \* \* \*

\* \* \* \* \*

(i) *INVESTMENT BANK HOLDING COMPANIES.*—

(1) *ELECTIVE SUPERVISION OF AN INVESTMENT BANK HOLDING COMPANY NOT HAVING A BANK OR SAVINGS ASSOCIATION AFFILIATE.*—

(A) *IN GENERAL.*—An investment bank holding company that is not—

(i) an affiliate of an insured bank (other than an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956) or a savings association;

(ii) a foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978; or

(iii) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act,

may elect to become supervised by filing with the Commission a notice of intention to become supervised, pursuant to subparagraph (B) of this paragraph. Any investment bank holding company filing such a notice shall be supervised in accordance with this section and comply with the rules promulgated by the Commission applicable to supervised investment bank holding companies.

(B) *NOTIFICATION OF STATUS AS A SUPERVISED INVESTMENT BANK HOLDING COMPANY.*—An investment bank holding company that elects under subparagraph (A) to become supervised by the Commission shall file with the Commission a written notice of intention to become supervised by the Commission in such form and containing such information and documents concerning such investment bank holding company as the Commission, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of this section. Unless the Commission finds that such supervision is not necessary or appropriate in furtherance of the purposes of this section, such supervision shall become effective 45 days after the date of receipt of such written notice by the Commission, or within such shorter time period as the Commission, by rule or order, may determine.

(2) *ELECTION NOT TO BE SUPERVISED BY THE COMMISSION AS AN INVESTMENT BANK HOLDING COMPANY.*—

(A) *VOLUNTARY WITHDRAWAL.*—A supervised investment bank holding company that is supervised pursuant to paragraph (1) may, upon such terms and conditions as the Commission deems necessary or appropriate, elect not to be supervised by the Commission by filing a written notice of withdrawal from Commission supervision. Such notice shall not become effective until one year after receipt by the Commission, or such shorter or longer period as the Commission deems necessary or appropriate to ensure effective supervision of the material risks to the supervised investment bank holding company and to the affiliated broker or dealer, or to prevent evasion of the purposes of this section.

(B) *DISCONTINUATION OF COMMISSION SUPERVISION.*—If the Commission finds that any supervised investment bank holding company that is supervised pursuant to paragraph (1) is no longer in existence or has ceased to be an investment bank holding company, or if the Commission finds that continued supervision of such a supervised investment bank holding company is not consistent with the purposes of this section, the Commission may discontinue the supervision pursuant to a rule or order, if any, promulgated by the Commission under this section.

(3) *SUPERVISION OF INVESTMENT BANK HOLDING COMPANIES.*—

(A) *RECORDKEEPING AND REPORTING.*—

(i) *IN GENERAL.*—Every supervised investment bank holding company and each affiliate thereof shall make and keep for prescribed periods such records, furnish copies thereof, and make such reports, as the Commission may require by rule, in order to keep the Commission informed as to—

(I) the company's or affiliate's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions and relationships between any broker or dealer affiliate of the supervised investment bank holding company; and

(II) *the extent to which the company or affiliate has complied with the provisions of this Act and regulations prescribed and orders issued under this Act.*

(ii) **FORM AND CONTENTS.**—*Such records and reports shall be prepared in such form and according to such specifications (including certification by an independent public accountant), as the Commission may require and shall be provided promptly at any time upon request by the Commission. Such records and reports may include—*

(I) *a balance sheet and income statement;*

(II) *an assessment of the consolidated capital of the supervised investment bank holding company;*

(III) *an independent auditor's report attesting to the supervised investment bank holding company's compliance with its internal risk management and internal control objectives; and*

(IV) *reports concerning the extent to which the company or affiliate has complied with the provisions of this title and any regulations prescribed and orders issued under this title.*

(B) **USE OF EXISTING REPORTS.**—

(i) **IN GENERAL.**—*The Commission shall, to the fullest extent possible, accept reports in fulfillment of the requirements under this paragraph that the supervised investment bank holding company or its affiliates have been required to provide to another appropriate regulatory agency or self-regulatory organization.*

(ii) **AVAILABILITY.**—*A supervised investment bank holding company or an affiliate of such company shall provide to the Commission, at the request of the Commission, any report referred to in clause (i).*

(C) **EXAMINATION AUTHORITY.**—

(i) **FOCUS OF EXAMINATION AUTHORITY.**—*The Commission may make examinations of any supervised investment bank holding company and any affiliate of such company in order to—*

(I) *inform the Commission regarding—*

(aa) *the nature of the operations and financial condition of the supervised investment bank holding company and its affiliates;*

(bb) *the financial and operational risks within the supervised investment bank holding company that may affect any broker or dealer controlled by such supervised investment bank holding company; and*

(cc) *the systems of the supervised investment bank holding company and its affiliates for monitoring and controlling those risks; and*

(II) *monitor compliance with the provisions of this subsection, provisions governing transactions and relationships between any broker or dealer affiliated with the supervised investment bank hold-*

ing company and any of the company's other affiliates, and applicable provisions of subchapter II of chapter 53, title 31, United States Code (commonly referred to as the "Bank Secrecy Act") and regulations thereunder.

(ii) *RESTRICTED FOCUS OF EXAMINATIONS.*—The Commission shall limit the focus and scope of any examination of a supervised investment bank holding company to—

(I) the company; and

(II) any affiliate of the company that, because of its size, condition, or activities, the nature or size of the transactions between such affiliate and any affiliated broker or dealer, or the centralization of functions within the holding company system, could, in the discretion of the Commission, have a materially adverse effect on the operational or financial condition of the broker or dealer.

(iii) *DEFERENCE TO OTHER EXAMINATIONS.*—For purposes of this subparagraph, the Commission shall, to the fullest extent possible, use the reports of examination of an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956 made by the appropriate regulatory agency, or of a licensed insurance company made by the appropriate State insurance regulator.

(4) *HOLDING COMPANY CAPITAL.*—

(A) *AUTHORITY.*—If the Commission finds that it is necessary to adequately supervise investment bank holding companies and their broker or dealer affiliates consistent with the purposes of this subsection, the Commission may adopt capital adequacy rules for supervised investment bank holding companies.

(B) *METHOD OF CALCULATION.*—In developing rules under this paragraph:

(i) *DOUBLE LEVERAGE.*—The Commission shall consider the use by the supervised investment bank holding company of debt and other liabilities to fund capital investments in affiliates.

(ii) *NO UNWEIGHTED CAPITAL RATIO.*—The Commission shall not impose under this section a capital ratio that is not based on appropriate risk-weighting considerations.

(iii) *NO CAPITAL REQUIREMENT ON REGULATED ENTITIES.*—The Commission shall not, by rule, regulation, guideline, order or otherwise, impose any capital adequacy 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 require-

ments of another Federal regulatory authority or State insurance regulator.

(C) *INTERNAL RISK MANAGEMENT MODELS.*—The Commission may incorporate internal risk management models into its capital adequacy rules for supervised investment bank holding companies.

(5) *FUNCTIONAL REGULATION OF BANKING AND INSURANCE ACTIVITIES OF SUPERVISED INVESTMENT BANK HOLDING COMPANIES.*—The Commission shall defer to—

(A) the appropriate regulatory agency with regard to all interpretations of, and the enforcement of, applicable banking laws relating to the activities, conduct, ownership, and operations of banks, and institutions described in subparagraph (D), (F), and (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956; and

(B) the appropriate State insurance regulators with regard to all interpretations of, and the enforcement of, applicable State insurance laws relating to the activities, conduct, and operations of insurance companies and insurance agents.

(6) *DEFINITIONS.*—For purposes of this subsection and subsection (j)—

(A) the term “investment bank holding company” means—

(i) any person other than a natural person that owns or controls one or more brokers or dealers; and

(ii) the associated persons of the investment bank holding company;

(B) the term “supervised investment bank holding company” means any investment bank holding company that is supervised by the Commission pursuant to this subsection;

(C) the terms “affiliate”, “bank”, “bank holding company”, “company”, “control”, and “savings association” have the same meanings as in section 2 of the Bank Holding Company Act of 1956;

(D) the term “insured bank” has the same meaning as in section 3 of the Federal Deposit Insurance Act;

(E) the term “foreign bank” has the same meaning as in section 1(b)(7) of the International Banking Act of 1978; and

(F) the terms “person associated with an investment bank holding company” and “associated person of an investment bank holding company” mean any person directly or indirectly controlling, controlled by, or under common control with, an investment bank holding company.

(j) *AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.*—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under subsection (h) or (i) or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a broker or dealer, investment bank holding company, or any affiliate of an investment bank holding company. Nothing in this subsection shall authorize the Commission to withhold information from Con-

gress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraphs (A), (B), and (C) of subsection (i)(5) as confidential information for purposes of section 24(b)(2) of this title.

**[(i)] (k) COORDINATION OF EXAMINING AUTHORITIES.—**

(1) \* \* \*

\* \* \* \* \*

**INVESTMENT COMPANY ACT OF 1940**

**TITLE I—INVESTMENT COMPANIES**

\* \* \* \* \*

**GENERAL DEFINITIONS**

SEC. 2. (a) When used in this title, unless the context otherwise requires—

(1) \* \* \*

\* \* \* \* \*

(5) “Bank” means **[(A) a banking institution organized under the laws of the United States]** (A) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or a branch or agency of a foreign bank (as such terms are defined in section 1(b) of the International Banking Act of 1978), (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clause (A), (B), or (C) of this paragraph.

**[(6) “Broker” means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank or any person solely by reason of the fact that such person is an underwriter for one or more investment companies.]**

(6) The term “broker” has the same meaning as in section 3 of the Securities Exchange Act of 1934, except that such term does not include any person solely by reason of the fact that



*such person is an underwriter for one or more investment companies.*

\* \* \* \* \*

[(11) “Dealer” means any person regularly engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, insurance company, or investment company, or any person insofar as he is engaged in investing, reinvesting, or trading in securities, or in owning or holding securities, for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.]

*(11) The term “dealer” has the same meaning as in section 3 of the Securities Exchange Act of 1934, but does not include an insurance company or investment company.*

\* \* \* \* \*

- (19) “Interested person” of another person means—  
 (A) when used with respect to an investment company—  
 (i) \* \* \*

\* \* \* \* \*

[(v) any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such a broker or dealer, and]

*(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—*

*(I) the investment company;*

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

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

*(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—*

*(I) the investment company;*

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

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

[(vi)] (vii) any natural person whom the Commission by order shall have determined to be an interested person by reason of having had, at any time since the beginning of the last two completed fiscal years of such company, a material business or professional relationship with such company or with the principal executive officer of such company or with any other investment company having the same investment adviser or principal underwriter or with the principal executive officer of such other investment company:

*Provided*, That no person shall be deemed to be an interested person of an investment company solely by reason of (aa) his being a member of its board of directors or advisory board or an owner of its securities, or (bb) his membership in the immediate family of any person specified in clause (aa) of this proviso; and

(B) when used with respect to an investment adviser of or principal underwriter for any investment company—

(i) \* \* \*

\* \* \* \* \*

[(v) any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such a broker or dealer, and]

(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

(I) any investment company for which the investment adviser or principal underwriter serves as such;

(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

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

(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

(I) any investment company for which the investment adviser or principal underwriter serves as such;

(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

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

[(vi)] (vii) any natural person whom the Commission by order shall have determined to be an interested person by reason of having had at any time since the beginning of the last two completed fiscal years of such investment company a material business or professional relationship with such investment adviser or principal underwriter or with the principal executive officer or any controlling person of such investment adviser or principal underwriter.

\* \* \* \* \*

DEFINITION OF INVESTMENT COMPANY

SEC. 3. (a) \* \* \*

\* \* \* \* \*

(c) Notwithstanding subsection (a), none of the following persons is an investment company within the meaning of this title:

(1) \* \* \*

\* \* \* \* \*

(3) Any bank or insurance company; any savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, or any receiver, conservator, liquidator, liquidating agent, or similar official or person thereof or therefor; or any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian, if—

(A) such fund is employed by the bank solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose;

(B) except in connection with the ordinary advertising of the bank's fiduciary services, interests in such fund are not—

(i) advertised; or

(ii) offered for sale to the general public; and

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

\* \* \* \* \*

AFFILIATIONS OF DIRECTORS

SEC. 10. (a) \* \* \*

\* \* \* \* \*

(c) No registered investment company shall have a majority of its board of directors consisting of persons who are officers, directors, or employees of any one [bank, except] bank (together with its affiliates and subsidiaries) or any one bank holding company (together with its affiliates and subsidiaries) (as such terms are defined in section 2 of the Bank Holding Company Act of 1956), except that, if on March 15, 1940, any registered investment company had a majority of its directors consisting of persons who are directors, officers, or employees of any one bank, such company may continue to have the same percentage of its board of directors consisting of persons who are directors, officers, or employees of such bank.

\* \* \* \* \*

INVESTMENT ADVISORY AND UNDERWRITING CONTRACTS

SEC. 15. (a) \* \* \*

\* \* \* \* \*

(g) CONTROLLING INTEREST IN INVESTMENT COMPANY PROHIBITED.—

(1) IN GENERAL.—If an investment adviser to a registered investment company, or an affiliated person of that investment adviser, holds a controlling interest in that registered investment company in a trustee or fiduciary capacity, such person shall—

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

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

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

(I) the beneficial owners of the shares;

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

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

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

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

(2) EXEMPTION.—Paragraph (1) shall not apply to any investment adviser to a registered investment company, or any affli-

*ated person of that investment adviser, that holds shares of the investment company in a trustee or fiduciary capacity if that registered investment company consists solely of assets held in such capacities.*

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

\* \* \* \* \*

#### TRANSACTIONS OF CERTAIN AFFILIATED PERSONS AND UNDERWRITERS

SEC. 17. (a) It shall be unlawful for any affiliated person or promoter of or principal underwriter for a registered investment company (other than a company of the character described in section 12(d)(3) (A) and (B)), or any affiliated person of such a person, promoter, or principal underwriter, acting as principal—

(1) \* \* \*

(2) knowingly to purchase from such registered company, or from any company controlled by such registered company, any security or other property (except securities of which the seller is the issuer); **[or]**

(3) to borrow money or other property from such registered company or from any company controlled by such registered company (unless the borrower is controlled by the lender) except as permitted in section 21(b)**[.];** or

(4) *to loan money or other property to such registered company, or to any company controlled by such registered company, in contravention of such rules, regulations, or orders as the Commission may prescribe or issue consistent with the protection of investors.*

\* \* \* \* \*

**[(f) Every registered]** (f) *CUSTODY OF SECURITIES.—*

(1) *Every registered* management company shall place and maintain its securities and similar investments in the custody of **[(1)]** (A) a bank or banks having the qualifications prescribed in paragraph (1) of section 26(a) of this title for the trustees of unit investment trusts; or **[(2)]** (B) a company which is a member of a national securities exchange as defined in the Securities Exchange Act of 1934, subject to such rules and regulations as the Commission may from time to time prescribe for the protection of investors; or **[(3)]** (C) such registered company, but only in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors.

(2) Subject to such rules, regulations, and orders as the Commission may adopt as necessary or appropriate for the protection of investors, a registered management company or any such custodian, with the consent of the registered management company for which it acts as custodian, may deposit all or any part of the securities owned by such registered management company in a system for the central handling of securities es-

tablished by a national securities exchange or national securities association registered with the Commission under the Securities Exchange Act of 1934, or such other person as may be permitted by the Commission, pursuant to which system all securities of any particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of such securities.

(3) Rules, regulations, and orders of the Commission under this subsection, among other things, may make appropriate provision with respect to such matters as the earmarking, segregation, and hypothecation of such securities and investments, and may provide for or require periodic or other inspections by any or all of the following: Independent public accountants, employees and agents of the Commission, and such other persons as the Commission may designate.

(4) No such member which trades in securities for its own account may act as custodian except in accordance with rules and regulations prescribed by the Commission for the protection of investors.

(5) If a registered company maintains its securities and similar investments in the custody of a qualified bank or banks, the cash proceeds from the sale of such securities and similar investments and other cash assets of the company shall likewise be kept in the custody of such a bank or banks, or in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors, except that such a registered company may maintain a checking account in a bank or banks having the qualifications prescribed in paragraph (1) of section 26(a) of this title for the trustees of unit investment trusts with the balance of such account or the aggregate balances of such accounts at no time in excess of the amount of the fidelity bond, maintained pursuant to section 17(g) of this title, covering the officers or employees authorized to draw on such account or accounts.

(6) *SERVICES AS TRUSTEE OR CUSTODIAN.—The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person, promoter, organizer, or sponsor of, or principal underwriter for, a registered management company may serve as custodian of that registered management company.*

\* \* \* \* \*

#### UNIT INVESTMENT TRUSTS

SEC. 26. (a) \* \* \*

(b) *The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person of a principal underwriter for, or depositor of, a registered unit investment trust, may serve as trustee or custodian under subsection (a)(1).*

[(b)] (c) It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

[(c)] (d) In the event that a trust indenture, agreement of custodianship, or other instrument pursuant to which securities of a registered unit investment trust are issued does not comply with the requirements of subsection (a) of this section, such instrument will be deemed to meet such requirements if a written contract or agreement binding on the parties and embodying such requirements has been executed by the depositor on the one part and the trustee or custodian on the other part, and three copies of such contract or agreement have been filed with the Commission.

[(d)] (e) Whenever the Commission has reason to believe that a unit investment trust is inactive and that its liquidation is in the interest of the security holders of such trust, the Commission may file a complaint seeking the liquidation of such trust in the district court of the United States in any district wherein any trustee of such trust resides or has its principal place of business. A copy of such complaint shall be served on every trustee of such trust, and notice of the proceeding shall be given such other interested persons in such manner and at such times as the court may direct. If the court determines that such liquidation is in the interest of the security holders of such trust, the court shall order such liquidation and, after payment of necessary expenses, the distribution of the proceeds to the security holders of the trust in such manner and on such terms as may to the court appear equitable.

[(e)] (f) EXEMPTION.—

(1) \* \* \*

\* \* \* \* \*

UNLAWFUL REPRESENTATIONS AND NAMES

SEC. 35. [(a) It shall be unlawful for any person, in issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company has been guaranteed, sponsored, recommended, or approved by the United States or any agency or officer thereof.]

(a) MISREPRESENTATION OF GUARANTEES.—

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

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

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

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

(2) *DISCLOSURES.*—Any person issuing or selling the securities of a registered investment company that is advised by, or sold through, a bank shall prominently disclose that an investment in the company is not insured by the Federal Deposit Insurance Corporation or any other government agency. The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the manner in which the disclosure under this paragraph shall be provided.

(3) *DEFINITIONS.*—The terms “insured depository institution” and “appropriate Federal banking agency” have the same meanings as in section 3 of the Federal Deposit Insurance Act.

\* \* \* \* \*

BREACH OF FIDUCIARY DUTY

SEC. 36. (a) The Commission is authorized to bring an action in the proper district court of the United States, or in the United States court of any territory or other place subject to the jurisdiction of the United States, alleging that a person serving or acting in one or more of the following capacities has engaged within five years of the commencement of the action or is about to engage in any act or practice constituting a breach of fiduciary duty involving personal misconduct in respect of any registered investment company for which such person so serves or acts—

- (1) as officer, director, member of any advisory board, investment adviser, or depositor; **[or]**
- (2) as principal underwriter, if such registered company is an open-end company, unit investment trust, or face-amount certificate company**].**; or
- (3) as custodian.

If such allegations are established, the court may enjoin such persons from acting in any or all such capacities either permanently or temporarily and award such injunctive or other relief against such person as may be reasonable and appropriate in the circumstances, having due regard to the protection of investors and to the effectuation of the policies declared in section 1(b) of this title.

\* \* \* \* \*

**INVESTMENT ADVISERS ACT OF 1940**

**TITLE II—INVESTMENT ADVISERS**

\* \* \* \* \*

DEFINITIONS

SEC. 202. (a) When used in this title, unless the context otherwise requires, the following definitions shall apply:

- (1) \* \* \*

\* \* \* \* \*

**[(3) “Broker” means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank.]**



(3) *The term “broker” has the same meaning as in section 3 of the Securities Exchange Act of 1934.*

\* \* \* \* \*

[(7) “Dealer” means any person regularly engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, insurance company, or investment company, or any person insofar as he is engaged in investing, reinvesting or trading in securities, or in owning or holding securities, for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.]

(7) *The term “dealer” has the same meaning as in section 3 of the Securities Exchange Act of 1934, but does not include an insurance company or investment company.*

\* \* \* \* \*

(11) “Investment adviser” means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities; but does not include (A) a bank, or any bank holding company as defined in the Bank Holding Company Act of 1956, which is not an [investment company] investment company, except that the term “investment adviser” includes any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company, but if, in the case of a bank, such services or actions are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser; (B) any lawyer, accountant, engineer, or teacher whose performance of such services is solely incidental to the practice of his profession; (C) any broker or dealer whose performance of such services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor; (D) the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation; (E) any person whose advice, analyses, or reports relate to no securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall have been designated by the Secretary of the Treasury, pursuant to section 3(a)(12) of the Securities Exchange Act of 1934, as exempted securities for the purposes of that Act; or (F) such other persons not within the intent of this paragraph, as the Commission may designate by rules and regulations or order.

\* \* \* \* \*

(26) *The term “separately identifiable department or division” of a bank means a unit—*

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

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

\* \* \* \* \*

(c) **CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.**—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

\* \* \* \* \*

**SEC. 210A. CONSULTATION.**

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

(1) The appropriate Federal banking agency shall provide the Commission upon request the results of any examination, reports, records, or other information to which such agency may have access with respect to the investment advisory activities—

(A) of any—

(i) bank holding company;

(ii) bank; or

(iii) separately identifiable department or division of a bank, that is registered under section 203 of this title; and

(B) in the case of a bank holding company or bank that has a subsidiary or a separately identifiable department or division registered under that section, of such bank or bank holding company.

(2) The Commission shall provide to the appropriate Federal banking agency upon request the results of any examination, reports, records, or other information with respect to the investment advisory activities of any bank holding company, bank, or separately identifiable department or division of a bank, any of which is registered under section 203 of this title.

(b) **EFFECT ON OTHER AUTHORITY.**—Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to such bank holding company, bank, or department or division under any provision of law.

(c) *DEFINITION.*—For purposes of this section, the term “appropriate Federal banking agency” has the same meaning as in section 3 of the Federal Deposit Insurance Act.

\* \* \* \* \*

### SECTION 3 OF THE SECURITIES ACT OF 1933

#### EXEMPTED SECURITIES

SEC. 3. (a) Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities:

(1) Reserved.

(2) Any security issued or guaranteed by the United States or any Territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or Territory, or by any public instrumentality of one or more States or Territories, or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing; or any security issued or guaranteed by any bank; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve bank; [or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian] or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term “investment company” under section 3(c)(3) of the *Investment Company Act of 1940*; or any security which is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103(c) of such Code (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security; or any interest or participation in a single trust fund, or in a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (B) an annuity plan which meets the requirements for the deduction of the employer’s contributions under section 404(a)(2) of such Code, or (C) a governmental plan as defined in section 414(d) of such Code which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all

liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, other than any plan described in clause (A), (B), or (C) of this paragraph (i) the contributions under which are held in a single trust fund or in a separate account maintained by an insurance company for a single employer and under which an amount in excess of the employer's contribution is allocated to the purchase of securities (other than interests or participations in the trust or separate account itself) issued by the employer or any company directly or indirectly controlling, controlled by, or under common control with the employer, (ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of such Code, or (iii) which is a plan funded by an annuity contract described in section 403(b) of such Code. The Commission, by rules and regulations or order, shall exempt from the provisions of section 5 of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of the Internal Revenue Code of 1954, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title. For purposes of this paragraph, a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; and the term "bank" means any national bank, or any banking institution organized under the laws of any State, territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official; except that in the case of a common trust fund or similar fund, or a collective trust fund, the term "bank" has the same meaning as in the Investment Company Act of 1940;

### ACT OF MAY 1, 1886

**CHAP. 73.**—AN ACT TO ENABLE NATIONAL BANKING ASSOCIATIONS TO INCREASE THEIR CAPITAL STOCK AND TO CHANGE THEIR NAMES OR LOCATIONS.

\* \* \* \* \*

SEC. 2. (a) \* \* \*

\* \* \* \* \*

(d) *RETENTION OF "FEDERAL" IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.*—

(1) *IN GENERAL.*—Notwithstanding subsection (a) or any other provision of law, any depository institution the charter of which is converted from that of a Federal savings association to a national bank or a State bank after the date of the enactment of the Financial Services Act of 1999 may retain the term "Federal" in the name of such institution if such depository institution remains an insured depository institution.

(2) *DEFINITIONS.*—For purposes of this subsection, the terms “depository institution”, “insured depository institution”, “national bank”, and “State bank” have the same meanings as in section 3 of the Federal Deposit Insurance Act.



## SUPPLEMENTAL VIEWS

The Financial Services Act of 1999 attempts to modernize our financial services sector in a progressive manner, enhance the safety and soundness of individual institutions, and the financial system as a whole, and afford appropriate protections to the consumer to ensure that they are the ultimate beneficiary of the changes we are seeking. We strongly support these goals and voted with the majority to report this legislation to the full House.

While the focus of the long public debate over this legislation has been the opening of the financial services marketplace to new competition, the reduction of barriers between financial services providers, and the impact on the various sectors of the financial services industry, of equal importance to us is the impact of this legislation on our constituents and the communities in which they live. Consumers and communities are an important part of the financial landscape. Arguably, the benefits of one-stop shopping and comprehensive competitive services are there—according to the Treasury Department, financial services modernization could mean as much as \$15 billion in savings to consumers. Access to these cost-savings and services is key to our continued support of the bill. Additionally, the bill recognizes the importance of smaller financial institutions to the U.S. financial services marketplace. Such institutions play a critical role in many medium-sized and small communities and thus need to play a role in this legislation.

The Chairman's mark brought to the Committee for consideration was produced on a bipartisan basis and was an important stepping stone to the strong 51–8 bipartisan vote of the Committee. The mark built upon the solid work of our Committee and others in the previous Congress.

The purposes of the bill reflect the importance of modernizing our financial services laws and the significance of enhancing the availability of financial services to citizens of all economic circumstances and in all geographic areas. The purposes of the bill also require depository institutions to comply with the Community Reinvestment Act of 1977 and to meet the capital and credit needs of all citizens and communities, including under served communities and populations. The bill as reported by the Committee takes crucial steps to make these goals a reality.

The requirement that all of the holding company's subsidiary depository institutions have at least a "satisfactory" Community Reinvestment Act (CRA) rating in order to affiliate as a Financial Holding Company and in order to maintain that affiliation appropriately recognizes that the benefits of this legislation require a solid commitment to meeting local credit needs. Maintaining the relevance of the CRA and enhancing it as we enhance the powers of financial institutions is critical.

Further, the extension of the CRA to the new Wholesale Financial Institutions (WFIs) is appropriate. While deposits to a WFI will not be insured, these new institutions will be members of the Federal Reserve System with the same rights and privileges as a State member insured bank. This extension of rights and privileges must be accompanied by the same responsibilities including meeting community credit needs.

Provisions in the bill would require that financial institutions meet existing credit needs by assuring that banks acquired under this legislation would not drain deposits out of a State. The bill requires that an out-of-state controlled bank continue to make loans in the host state with strong sanctions available to the regulator for enforcement. In cases of branch closings in low and moderate-income neighborhoods, the provisions require federal regulators to work with local communities to obtain adequate alternative services for the affected community.

Additionally, because of concerns regarding concentration, the bill requires the appropriate banking regulators to maintain market-related data and to produce an annual report on concentration of financial resources that will provide Congress with the needed information to ensure that community credit needs are being met. The bill maintains relevant state antitrust laws as well.

As Congress moves forward with this broad financial services modernization legislation, safeguards must be in place to insure that consumers are not confused about new products, the risk they carry, whether or not they are insured, and their status regarding deposit insurance coverage or the lack thereof. Products marketed to consumers must also be suitable to their needs and economic circumstances, and consumers must be protected against coercion, misrepresentations or conflicts of interests. The bill requires the regulators to issue regulations governing bank sales of non-deposit products. The regulations would include disclosure of risk and disclosure that non-deposit products are not insured by the Federal Deposit Insurance Corporation (FDIC), along with anti-tying and anti-coercion requirements, and the creation of a consumer grievance process within the regulatory agencies.

These provisions, included in the bipartisan mark, are important safeguards. However, the Committee properly added additional consumer and community protections through the amendment process. These new provisions are a key component of any financial modernization legislation, including the key disclosures, consumer protections and credit availability provisions. Specifically,

We support the amendments to add the words "not insured by any government agency" to disclosure requirements on sales of non-insured products by banks, to clarify that the extension of credit to consumers is not contingent on the purchase of other non-insured products, and to require a suitability test to be applied to the sales of derivatives in financial institutions.

We support the amendment to allow financial regulators to deny a financial holding company the ability to engage in new powers if federal anti-redlining laws through the Fair Housing Act are violated by an affiliated insurance company. This amendment reinforces federal laws designed to combat insurance redlining. An overall benefit of this bill is increased competition and the ex-



panded availability of products and services. This amendment will help ensure that neighborhoods are not denied the availability of insurance products. It requires a bank holding company or financial holding company affiliate that engages in insurance sales and underwriting to be in compliance with the terms of a Fair Housing Act court order or settlement.

We support the amendment that requires public meetings in the case of mega-mergers between banks each of which have more than \$1 billion in assets. This amendment appropriately requires hearings in one or more places where there may be substantial public impact because of the larger merger, giving appropriate discretion to the regulator (be they the Federal Reserve Board, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision) regarding the meetings and their location.

With regard to financial privacy, we support the amendment to eliminate the overly-broad proposed Know Your Customer regulations. In addition, we support the amendment to require that depository institutions of financial holding companies clearly and conspicuously disclose to their customers their privacy policy, specifying what their policies are with regard to a customer's information. In this way, customers would learn what a financial institution's policies are on disclosing customers information to third parties for marketing purposes and could also be clearly informed of their rights under the Fair Credit Reporting Act to choose not to have their information shared among affiliates. As a result, consumers will be able to choose whether they want to do business with institutions that have privacy policies with which they disagree. This provision builds on self-regulatory mechanisms now being pushed for the Internet which require Web sites to have privacy policies for which the site sponsors will be held accountable.

The amendment also provides protection for medical information which is important to this bill because of the ability for banks and insurance companies to affiliate. This provision will require insurance companies which affiliate with a bank to keep confidential customers' health and medical information, except under very limited circumstances. The provision closely follows the Medical Privacy Act passed by the 105th Congress.

Finally, the privacy amendment incorporates provisions from the Financial Information Privacy Act of 1999, which prohibits the obtaining of financial information from financial institutions by false means and incorporates an amendment that requires a study of how well current privacy laws protect the privacy rights of customers of insured depository institutions.

We support the amendment that built upon the strengths of the mark to further improve the Federal Home Loan Bank System by updating the antiquated capital structure to provide a permanent source of capital for the system and incentives for acquiring permanent capital. The amendment, for the first time, establishes a risk-based capital requirement for each of the banks. This addition will increase the safety and soundness of the system because it will require each bank to maintain a level of tangible capital that could not be withdrawn by the members in times of stress.

These changes, along with the four key provisions to modernize and improve the system which were in the mark—(1) expanding

support for agricultural, small business, and community development lending by financial institutions of less than \$500 million, (2) providing voluntary membership under equal terms and conditions for both banks and thrifts, (3) changing the REFCorp obligation formula to a flat percentage of each Bank's annual earnings, and (4) eliminating the micro-management by devolving governance functions from the Federal Housing Finance Board as suggested by GAP—are important reforms.

Together we believe that these five reforms will allow the system to better compete in the future, lower the cost of home mortgages to millions of Americans, improve economic development opportunities in urban and rural communities alike, and increase the availability of affordable housing.

We support the amendment that provides better disclosure requirements in law for Automatic Teller Machines (ATMs). With this amendment, ATM operators would be required to post a sign on the cash machine showing that an ATM surcharge will be imposed. The dollar amount of the surcharge imposed by the machine in use would have to be specified as part of the machine's on-screen display. Additionally, when issuing ATM cards, banks would have to issue a warning that surcharges may be imposed by other parties. The amendment also requires the General Accounting office (GAO) to study the feasibility and cost of requiring ATM operators to disclose not only the surcharge imposed by the machine in use but by the consumer's own bank as well.

H.R. 10 was approved on a strong bi-partisan basis with 21 Democratic votes cast in support of the bill. Successful enactment of this bill into law will require that the bi-partisan spirit of cooperation remain. We are committed to achieving comprehensive financial modernization. H.R. 10 strikes a critical, unprecedented balance by providing a new financial services infrastructure aimed at keeping the United States competitive in the global marketplace, while ensuring consumers the quality services and protections they deserve. As this legislation moves our financial industries forward into the 21st Century, Congress cannot push the interests of consumers and local communities back into the 19th Century. It is our strong view that consumer and community lending protections

must remain an integral component of any modernization legislation considered by the full House.

JOHN J. LaFALCE.  
BRUCE F. VENTO.  
PAUL E. KANJORSKI.  
LUIS V. GUTIERREZ.  
CAROLYN B. MALONEY.  
GARY L. ACKERMAN.  
MELVIN L. WATT.  
KEN BENTSEN.  
CHARLES A. GONZALEZ.  
DENNIS MOORE.  
MAX SANDLIN.  
FRANK MASCARA.  
BOB WEYGAND.  
JIM MALONEY.  
NYDIA VELAQUEZ.  
DARLENE HOOLEY.  
BRAD SHERMAN.  
STEPHANIE TUBBS JONES.

## SUPPLEMENTAL VIEWS ON THE FEDERAL HOME LOAN BANK PROVISIONS

A critical component of the Financial Services Act of 1999 concerns the modernization of the Federal Home Loan Banks (FHLBanks). As the Chairman and the Ranking Member of the Subcommittee on Capital Markets, Securities, and Government Sponsored Enterprises—which has primary jurisdiction over the FHLBanks—we believe it important to express our thoughts and views about these reforms. Moreover, we have been the original bipartisan sponsors for many years of legislation to broaden and modernize the FHLBanks and have each developed a substantive understanding of the Federal Home Loan Bank System (System). Subtitle G of this bill only makes a number of significant and much needed changes to that System, but is also includes many of the reforms called for in our legislation.

The System began in 1932 primarily for the purpose of providing a source of intermediate- and long-term credit for state savings institutions to finance long-term residential mortgages, and to provide a source of liquidity for such institutions. Neither was sufficiently available at the time. In 1989, Congress expanded on these basic elements to allow the System's membership to include commercial banks and credit unions. Over the years, many depository institutions have incorporated their residential mortgage lending into a product mix of community banking that typically provides a range of mortgage, consumer, and commercial loans. Furthermore, smaller community banks still tend to have a more difficult time accessing intermediate- and long-term funding. They, like savings associations in the 1930's typically draw most of their funding from local deposits.

During the past several years, there has been a succession of legislative proposals to update the System. There have also been a number of studies by the Department of Housing and Urban Development, the General Accounting Office (GAO), and the Department of the Treasury on various operational and policy aspects of the System. Furthermore, we have learned much about the credit needs of rural, inner-city, and underserved markets throughout our country as a result of hearings in our Subcommittee. In many locations, a community bank is the chief repository of the community's wealth and the chief source of its credit. We have additionally learned that community banks frequently can no longer fund their operations from local deposits, and experience difficulties in accessing capital markets to fund intermediate- and long-term assets. This liquidity problem can be particularly acute for community banks located in rural areas where non-farm businesses tend to rely heavily on such financial institutions as their primary lender.

It is our view that if smaller community banks are granted enhanced access to longer-term funding with a broader base of collat-

eral for advances, they will then be able to increase the level of financial competition in underserved markets. Additionally, if the System is used prudently it can be a valuable resource to assist properly regulated, well-capitalized banks (especially smaller community banks located in rural areas, inner cities, and underserved neighborhoods), to provide a more stable funding source for customers who require intermediate- and longer-term funding. Moreover, if the FHLBanks and their member institutions can better manage their interest rate risks, they will then be able to avoid the types of problems that led to the crisis in the thrift industry in the 1980s.

Earlier this year, we introduced the Federal Home Loan Bank Modernization Act of 1999 (H.R. 822). Four key parts of our bipartisan legislation were included in Subtitle G of the mark-up text for the Financial Services Act of 1999. These reforms will be very helpful to community banking and the System. Importantly, these four elements are widely supported and substantially the same as provisions adopted without opposition by the House and Senate Banking Committees and by the full House in the last Congress.

Specifically, Subtitle G creates a System where all members will belong on a voluntary basis, and all will be treated equally. The capital required to support membership will be equalized for large and small members. Subtitle G also transfers certain powers from the Federal Housing Finance Board to the Boards of the FHLBanks themselves. The FHLBanks will be empowered, for example, to make a number of management decisions that were formerly within the discretion of the Federal Housing Finance Board. Subtitle G will additionally expand support for agricultural, small business and community development lending by small community financial institutions with less than \$500 million in assets.

Subtitle G further changes the Resolution Funding Corporation (REFCorp) Obligation Formula to a flat percentage of each FHLBank's annual earnings. Our intent was to equalize the proportion of each FHLBank's net income that is assessed to meet the REFCorp obligation. Since 1987, the FHLBanks have paid more than \$5 billion to help reduce the cost of the thrift crisis to taxpayers. Over the next 21 years, they will pay an additional \$6.3 billion to reduce the cost of the bailout to taxpayers. We also sought to ensure that this fixed, predictable percentage would continue to comply with the requirements of the Congressional Budget Act of 1974, as amended.

Although the Committee Print used to mark up the Financial Services Act of 1999 contained four important reforms for the System, it lacked in one key provision. That is, it did nothing to address the need of the FHLBanks to retain permanent capital. Presently, the System operates under an antiquated capital structure established at a time when all thrifts were required to be members of the System. Thrifts were thus prohibited from pulling their capital out of the system. By eliminating mandatory membership for federal savings associations, however, the bill would have transformed the \$8.6 billion in non-redeemable stock currently held by mandatory members into redeemable stock, effectively removing all permanent capital from the System.

In order to preserve the safety and soundness of the System and to create incentives for selling and purchasing permanent capital, we offered two amendments affecting the FHLBanks' capital structure during the Committee's consideration of the bill. Our first amendment, adopted by the Committee on a bipartisan voice vote after Chairman Leach asked for some modifications, establishes, for the first time, a risk-based permanent capital structure for the System. As a result, the FHLBanks must maintain minimum amounts of permanent capital based on the risks inherent in their assets and off-balance sheet obligations. Under our amendment, each FHLBank will maintain permanent capital—which would consist of non-redeemable stock, retained earnings, and limited amounts of five-year redeemable stock—in an amount sufficient to offset the risks to which it is exposed. If the risks to which each FHLBank is exposed increase, so too would the amount of permanent capital that the FHLBank would be required to hold. These risks include credit risk, market risk, interest rate risk, and off-balance sheet exposure risks.

As a result of this amendment, the FHLBanks will now be able to maintain a stable base of total capital structure that is at least as strong as—and most likely stronger than—the capital requirements for Fannie Mae and Freddie Mac, two other housing government-sponsored enterprises. On a risk-adjusted basis, the FHLBanks will continue to have a higher capital standard than any other government-sponsored enterprise or insured depository institution. Furthermore, the capital plan adopted in this first amendment moves the FHLBanks to the kind of long-term capital the GAO contends the System needs. The GAO has repeatedly said that the FHLBanks should have a risk-based capital system with some more permanent capital.

Our second amendment, also adopted by the Committee on a strong bipartisan voice vote, creates incentives for FHLBanks to build their permanent capital. We accomplish this goal via a weighting provision, under which the capital items with the most permanence count more toward the leverage requirement than do capital items with less permanence. Accordingly, Class C stock, which is never redeemable, and retained earnings are weighted at twice the paid-in face value. Class B stock, redeemable in 5 years, is weighted at one and one-half times the paid-in face value, and Class A stock, redeemable in 6 months, is counted at its paid-in face value. This weighting system will encourage FHLBank to build permanent capital. These incentives to acquire permanent capital complement the provisions authorizing each FHLBank to establish preferences for holders of permanent and near-permanent stock. Members acquiring Class B and C stocks may, for instance, receive dividend premiums over those paid for Class A stock. They may also have preferential voting rights.

In sum, we are pleased with the FHLBank provisions contained in the Financial Services Act of 1999. Together we believe that these five reforms will increase competition, lower the cost of home mortgages to millions of Americans, improve economic development opportunities in underserved communities, and better the availability of affordable housing. We further believe that the reformed System will serve as an integral tool to assist well-capitalized com-

munity banks, especially community banks in rural areas, inner cities, and underserved neighborhoods, to obtain a more stable funding source for intermediate- and long-term assets. As new affiliations develop among financial service firms and between commercial affiliates as a consequence of this legislation, the support provided by the System will greatly benefit small banks and their communities. Moreover, by including language to update the System in the Financial Services Act of 1999, we believe that we have helped to ensure that the rewards of financial modernization will flow to small and large financial institutions alike.

RICHARD A. BAKER.  
PAUL E. KANJORSKI.

## SUPPLEMENTAL VIEWS OF HON. BRUCE VENTO

The House Banking Committee has taken important first steps in addressing the issue of consumer privacy through the inclusion of the Leach Vento amendment in H.R. 10. Ultimately, privacy and the concerns about the sharing of confidential customer information will be of greater importance to our constituents than all other components of this legislation.

As we enter the modern world of the financial services marketplace, multiple services and instant access are important advantages brought by technological change. However, the age of computers and instant communication is a two-edged sword. Consumers want and expect the efficiency and services available as a result of technology. Consumers want to be able to access their accounts through any ATM at any time. They want to get frequent flyer miles or other perks every time that they use their credit card and they want the convenience of doing their banking from their home computer. However, at the same time, consumers also expect their personal data, which may be widely disseminated, to remain private. The two-day debate over privacy in the Committee highlighted the dilemma. Draft an amendment too broadly to prohibit information sharing and consumers might not get that credit for those frequent flyer miles, they might not be able to bank at home and they might not even be able to get their checks printed.

Recognizing that this financial services modernization legislation will not be the last work on privacy, the Committee did reach a compromise agreement. This Committee has always operated under the policy of providing consumers with adequate information to make informed decisions. Under the adopted amendment, consumers will be provided with a clear statement and full disclosure of the bank's privacy policies. That policy will include at a minimum, the customer's existing rights under FCRA—including an opt out at any point—and the institution's policies on providing consumer information to third parties for the purposes of marketing. Frankly, I would prefer a consumer voice in sharing information with third parties, but am willing to defer on that matter until a full exploration of the ramifications and workability of such a proviso is clear. Today, the level and sophistication of privacy policies vary from institution to institution. I am convinced that this amendment guarantees that competition between banks alone will in fact accelerate the development of comprehensive balanced privacy rights for consumers.

There is one issue upon which most Members can agree. Credit making decisions should not be based upon health history or insurance information. Under this legislation, insurance companies and banks will be able to affiliate. The bipartisan compromise will block the sharing for health-related information except for the clearly delineated purposes articulated in the amendment. This provision



draws upon the Federal Reserve format and decision regarding the Citicorp/Travelers merger.

The Health Insurance Portability and Accountability Act requires Congress to approve comprehensive medical privacy legislation by August 21 of this year. That is a daunting task and one that is fraught with pitfalls. Because this legislation will facilitate the affiliation of the insurance and banking industries, the medical privacy provisions are an important component of the Committee privacy package. While these provisions may require further refinement as the legislation moves forward, one cannot lose sight of the basic premise—credit making decisions should not improperly be based upon health history or insurance information.

This amendment is an important first step on behalf of customer privacy. These privacy protections must remain as a minimum standard. However, I believe that more can be done. The problems of privacy extend beyond financial services holding companies and similar privacy protections should be extended to other segments of our marketplace. I have introduced legislation to provide privacy for users of the Internet. In addition, I will be introducing legislation that expands upon the protections contained in H.R. 10 and will increase the universe of those who have to comply with these consumer privacy provisions. Hopefully, these changes will be considered in the context of H.R. 10.

BRUCE F. VENTO.

## SUPPLEMENTAL VIEW ON H.R. 10 AND THE COMMUNITY REINVESTMENT ACT

With respect to communities' credit, investment and consumer needs, the Financial Services Act of 1999, as reported by the Committee, is flawed. Rather than maintaining and enhancing the relevance of the Community Reinvestment Act (CRA), H.R. 10 weakens this important 1977 law that imposes an affirmative obligation of banks and thrifts institutions to help meet the credit needs of all parts of the local communities they serve.

While H.R. 10 requires all of the holding company's subsidiary depository institutions to achieve and maintain a "satisfactory" CRA rating in order to affiliate as a Financial Holding Company, the bill does not require that all of a Financial Holding Company's banking and lending products and services be covered by the CRA. H.R. 10 creates, therefore, a two-tiered banking and lending industry, with one part being covered by CRA and the other part not. Further, this two-tiered structure creates a large loophole through which financial institutions can avoid community obligations created by the CRA. Specifically, H.R. 10 does not require securities companies, insurance companies, real estate companies and commercial and industrial affiliates engaging in lending or offering banking products to meet the credit, investment and consumer needs of the local communities they serve.

The exclusion of nonbank affiliates' banking and lending products and services from the CRA is significant because increasingly, businesses such as car makers and credit card companies, securities firms and insurers are behaving like banks by offering products such as: FDIC-insured depository services, consumer loans, debit and credit cards, mortgages, home equity loans and commercial loans. Additionally, private investment capital is decreasingly covered by CRA requirements, rendering it more difficult for underserved rural and urban communities to access badly-needed capital for housing, economic development and infrastructure.

Currently, more than two-thirds of long-term savings and investments now reside in nonbank intermediaries, compared to less than one-third in the mid-1970s. The functional effect of this market shift is that merely one-third of capital investment in the United States is conducted according to principles embodied by the CRA. Unless financial modernization applies the CRA to nonbank affiliates' banking and lending activities, this trend will increase, thereby fundamentally weakening the CRA.

Weakening the CRA should be avoided because this relatively modest regulation has made a major contribution to the well-being of residents of many underserved urban and rural communities. For example, since passage of the CRA in 1977, banks and community organizations have entered into agreements worth more than \$1.04 trillion in reinvestment dollars for traditionally underserved

populations. Lenders committed 87 percent of this total in the last two years. Largely because of the CRA, homeownership in disinvested areas has increased. Data on home loans indicates that from 1993 to 1997 the number of home mortgage loans to African Americans and Hispanics increased 72 and 45 percent respectively. During the same time period the number of conventional mortgage loans to low- and moderate-income households increased from 407,059 to 571,125, representing a 40 percent increase.

This progress should be maintained and enhanced. To reach this goal requires fully-protecting the CRA by applying its provisions to the banking and lending activities of nonbank financial institutions.

In summary, H.R. 10 will modernize our nation's banking laws. It will likely enhance the safety and soundness of individual institutions. It will protect consumers in many ways. H.R. 10 does not adequately protect the CRA and encourage reinvestment in neglected urban and rural neighborhoods, however. Depository services and lending products in banks *and* nonbank affiliates should be covered by the CRA. Otherwise, different parts of financial holding companies will be regulated differently with respect to community capital, investment and consumer needs. In turn, this uneven regulation will make it increasingly harder for communities suffering from disinvestment to acquire capital for housing, economic development and infrastructure.

LUIS V. GUTIERREZ.

## ADDITIONAL VIEWS

Today, we have the strongest financial market system in the world with the strongest consumer market and these consumers ought to be protected. Therefore, I voted for H.R. 10 because I believe it will promote more competition, create more products at lower prices, and better protect American consumers. It allows federal law to catch-up to the fast paced structural changes occurring in the financial marketplace. While H.R. 10 does not necessarily produce the “ideal” financial holding company model or charter, it does repeal portions of existing regulatory constraints dating back to the Great Depression commensurate with a market that has matured greatly through disintermediation brought on by increased consumer wealth, sophistication, and access to information. This proposal should not be viewed as a repudiation of past regulatory regimes, but rather a maturing of such regimes.

While this bill is not perfect, it strikes a balance in this new marketplace. First, H.R. 10 includes multiple structures for banking entities through either a holding company-affiliate model or operating subsidiary, which I have long supported and believe is adequately safe and sound. Second, the bill addresses in a prudent way the issue of commerce and banking through a new “complimentary to banking” approach that I hope will meet my previous concerns that an outright ban on commerce would limit future abilities to meet market demands and product development. Third, it provides for substantial consumer protections including suitability requirements for “in-bank” securities sales, which I have advocated. Finally, it continues the efforts of the Community Reinvestment Act so that all sectors of our society can benefit equally from capital formation and economic development. It is important that these areas of H.R. 10 are not changed or watered down.

I want to highlight two amendments that I offered, both of which were adopted by this Committee. The first amendment to Section 202 clarifies the rule that equity swaps can be sold within banks to qualified investors, as defined by the Securities and Exchange Commission (SEC). Qualified investors are those investors with sufficient capital and expertise that they understand the risks associated with investing in these products. This amendment ensures that these hybrid products can be sold in banks as permitted by federal bank regulators. The Bentsen Amendment, however, ensures that equity swaps are not sold to the retail public. I am concerned that equity swaps are a hybrid product between a derivative and a securities product, and that we should proceed prudently and judiciously about sales of these products. Moreover, I want to clarify that this amendment does not permit the SEC to review or enforce actions against banks that sell these products. My amendment simply adopts the qualified investor definition provided for under the Securities and Exchange Act so that these products are

sold to investors who understand the risks associated with these products.

The second amendment I offered that the Committee approved is related to unitary thrift holding companies and ensures that they be treated fairly. The Committee mark would have limited transferability of existing unitary thrift holding companies, which is not equitable and would adversely impact the values of these charters. I believe that my amendment corrects this inequity and ensures that all unitary thrift holding companies that existed as of March 4, 1999, and those thrifts that have applied to become unitary thrift holding companies as of March 4, 1999, will be permitted to sell their thrift to an open market as has been accorded since the unitary thrift charter was first established by Congress more than thirty years ago. While the Committee has endorsed a ban on outright mixing of banking and commerce, with my support, this amendment strikes a balance where such mixing is only permitted in the limited form authorized under the thrift charter, with limited commercial lending capacity as previously allowed by Congress. Further, it prohibits the creation of new commercially owned thrift charters without taking from existing Congressionally approved charters. By adopting this amendment, I believe we have dealt as fairly as possible with an extremely difficult issue.

In conclusion, this bill is imperfect. But, it advances banking regulations to meet the challenges of a 21st Century marketplace without shortchanging consumers. Therefore, and for the reasons outlined above, I strongly support its adoption.

KEN E. BENTSEN.

## DISSENTING VIEWS

I oppose H.R. 10, the Financial Services Act of 1999, as reported by the Committee. H.R. 10, at potential risk to taxpayers, consumers, small businesses and their communities, would let banks, insurance companies and securities firms merge with each other. Proponents argue that these industries will use the financial rewards from these mergers to provide consumers more services at lower cost. I argued that we should mandate consumer benefits in the legislation, just as we mandated the benefits to the affected industries. Unfortunately, in too many instances we failed to protect consumers. Consequently, I voted against the bill.

Specifically, I, along with other members of the Committee, wrote to the Chairman asking that several important consumer and community protections be placed in the bill. That request included provision of affordable basic bank accounts, a ban on ATM surcharge fees and expansion of the Community Reinvestment Act to include insurance companies and securities firms.

Affordable basic bank accounts are important because bank accounts give regular consumers basic access to the American financial mainstream. For instance, consumers can't get loans without a bank account. However, bank accounts must be affordable priced if every consumer will have genuine access to them. H.R. 10 would give banks the financial wherewithal to provide basic bank accounts at cheaper cost. Consequently, we should have mandated that banks provide affordable basic banking.

This bill should have banned ATM surcharge fees. Again, financial modernization would provide banks the financial wherewithal to provide this service more affordably. Moreover, it's something consumer's demand. A 1998 survey of voters from my state, Illinois, showed that 77% of voters supported a ban on ATM fees. ATMs are supposed to provide depositors convenient access to their money and obstacles, like hidden surcharge fees, should not be placed in their way.

Finally, we should have "modernized" the Community Reinvestment Act along with the other banking laws. The Community Reinvestment Act has produced over \$1 trillion of investments to underserved neighborhoods in the form of mortgage and small business loans that are profitable to banks. That \$1 trillion resulted without any tax dollars and, because it enables our neighborhoods to build their own wealth without accessing the government safety net, it saved even more tax dollars. Unfortunately, H.R. 10 threatens CRA.

H.R. 10 lets banks merge with insurance companies and securities firms. Banks that do more business as insurance companies and securities firms will do less business as banks and, because CRA only covers banks, make fewer loans to people. Expanding CRA to cover insurance companies and securities firms would en-

sure that banks maintain the necessary focus on serving the needs of consumers and communities.

Absent these consumer and community protections, H.R. 10 poses more threat than promise and thus I opposed the bill.

JAN SCHAKOWSKI.

## DISSENTING VIEWS

Financial modernization is an important issue, and reform is long overdue. Arbitrary and artificial government interventions in the market distort the national economy. This distortion limits consumer choice and raises costs on businesses. “Modernization” legislation should first “do no harm” and then seek to undo the previous governmental interventions. This bill fails that test: not only is it not a deregulation bill, it is in fact a reregulation bill.

In order to allow for the market to function properly—and to internalize properly the risk that businesses choose to take—governmental regulations should be relaxed not increased. Federal banking regulations and other restrictions stifle the dynamic growth of new financial products and services that are fundamental to enhance the success of the U.S. financial services sector.

Genuine financial modernization would allow and encourage the introduction and development of new financial service products and structures, not restrict financial providers’ current activities and eliminate present structures. As new hybrid financial service products are developed in response to market demand, government should not thwart the consumer’s ability to enjoy these new products.

Instead of relying more on private market regulation and deferring to state regulation of insurance, this bill would enhance the power of Federal regulators over the market. By mixing banking and commerce and increasing the scope of Federal banking regulators, including the Federal Reserve, commercial enterprises will come under greater governmental supervision. The result will serve to stifle the innovation that is the intended purpose of this bill.

By substituting the original Paul-Campbell amendment number eight (which would have removed any requirement that banks monitor the legality of transactions of their customers) for the Baker-Barr amendment, the bill does not take a strong, free market stand in favor of respect for financial privacy. As the current uproar over the proposed formal “Know Your Customer” rule has demonstrated, the American people expect the government to respect their—not use unwilling intermediaries to spy on them. Over a quarter of a million Americans told the regulators in no uncertain terms that the government should have access to this information only through a search warrant. They do not want an informal requirement such as the existing Bank Secrecy Act’s compliance manual from the Federal Reserve.

The Law Enforcement Alliance of America supported the original Paul-Campbell amendment:

[Removing existing requirements] would in no way impinge efforts of law enforcement to investigate criminal activity \* \* \* The pursuit of private information outside the traditional, time-tested, and court-approved law enforce-



ment practices such as those proposed [KYC] will in fact have a deleterious effect on law enforcement's ability to effectively prosecute its mission. Such intrusive measures will also infringe the privacy rights of law-abiding citizens while detracting from meaningful debate and discussion of measures that would improve law enforcement's crime-fighting ability.

Frances B. Smith, executive director, Consumer Alert, (*Journal of Commerce*, March 12, 1999), argues that we need to go back and revisit current laws, "Many large banks already have [Know Your Customer] programs that follow the nixed proposals. Consumers' financial transactions will still be under surveillance until the laws on the books are challenged." And others concur. "The American Bankers Association on Monday urged regulators not only to withdraw their proposed know-your-customer rule proposal but to dismantle existing requirements" (*American Banker*, March 9, 1999).

The California Bankers Association web site explains clearly, "There is no precedent whatsoever to match what is being proposed—for a private nongovernment entity to be required to continually monitor ordinary citizens to actively ensure the legality of their unregulated activities [banking transactions] \* \* \* It is not unlike requiring telephone companies to identify customers and monitor their customers' calling patterns to ensure no commission of crimes through the wires."

The American Bankers Association June 1998 report *Financial Privacy in America: A Review of Consumer Financial Services Issues* reads, "In sum, the citizens of the United States are not only well-protected, but increasingly well-informed and aggressive in addressing perceived risks to their personal privacy, in making choices about data privacy, and in insisting that these choices are respected," the ABA report reads. "Technology enables businesses to make sense of vast stores of information by providing consumers with new and better products and services, particularly, the ones that consumers are likely to find attractive. Businesses collect consumer information in an effort to deliver new services and products that consumers want. This is the law of supply and demand. For businesses to succeed, they must satisfy consumer needs and demands as efficiently and accurately as possible. This is a 'market' check on privacy."

Many other groups agree. Norman Willox Jr., president and chief executive, National Fraud Center, ("Know your cyber-customer," *Journal of Commerce*, February 4, 1999), writes "We also encourage the administration to continue to recognize the importance of self-regulation in this complex area, and we commend it for its efforts to allow industry the opportunity to develop and implement such self-regulatory programs needed if we are to see a thriving e-commerce."

The Privacy Act of 1974 made clear that there should be no problems adopting this amendment, "It shall be unlawful for any Federal, State or local government agency to deny any individual any right, benefit or privilege provided by law because of such individual's refusal to disclose his Social Security number" Yet government requires bank tellers to circumvent rational expectations of consumer privacy.

While the bill does allow for greater flexibility of some structures and activities, it does so in an arbitrary fashion. The reforms that this bill makes do not sufficiently address the safety and soundness of deposit insurance and the payments system and, ultimately, taxpayer liability.

RON PAUL.

