

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4956

To create an open and competitive marketplace for financial services which ensures the safety and soundness of the Nation's financial system as well as the availability of innovative financial products and services for consumers, business, and government at the lowest possible cost, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 12, 1994

Mr. NEAL of North Carolina (for himself, Mr. MCCOLLUM, Mr. LAFALCE, Mr. FRANK of Massachusetts, Mr. LAROCO, Mr. ORTON, Mr. DOOLEY, Mr. RIDGE, Mr. BAKER of Louisiana, and Mr. KING) introduced the following bill; which was referred jointly to the Committees on Banking, Finance and Urban Affairs and Energy and Commerce

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## A BILL

To create an open and competitive marketplace for financial services which ensures the safety and soundness of the Nation's financial system as well as the availability of innovative financial products and services for consumers, business, and government at the lowest possible cost, and for other purposes.

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

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

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Financial Services Competitiveness Act”.

4 (b) TABLE OF CONTENTS.—

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.
- Sec. 4. Establishment of a diversified financial services holding company.
- Sec. 5. Compliance with change in control requirements.
- Sec. 6. Adequate capitalization.
- Sec. 7. Additional provisions relating to regulation of insured depository institu-  
tion subsidiaries.
- Sec. 8. Insider lending and tying provisions.
- Sec. 9. Enforcement and examination; payment system services; oversight.
- Sec. 10. Criminal and civil penalties.
- Sec. 11. Technical and conforming amendments.

5 **SEC. 2. FINDINGS AND PURPOSES.**

6 (a) FINDINGS.—The Congress hereby finds that—

7 (1) outdated laws and regulations inhibit inno-  
8 vation, efficiency, and competition in the financial  
9 services industry to the detriment of consumers and  
10 providers;

11 (2) a new legal framework for financial services  
12 must be created which will accord all financial serv-  
13 ice companies equal opportunity to serve the full  
14 range of credit and financial needs in the market-  
15 place;

16 (3) expanded product and service opportunities  
17 for all components of the financial services industry  
18 would strengthen individual intermediaries as well as  
19 the overall financial system;

1           (4) the rapid globalization of the financial serv-  
2           ice marketplace and the emerging interdependence of  
3           major financial markets further underscore the ne-  
4           cessity for modernizing domestic laws to maintain  
5           the competitiveness of United States financial mar-  
6           kets; and

7           (5) the regulation of separate segments, sub-  
8           sidiaries, and affiliates along functional lines without  
9           regard to ownership or control would serve national  
10          priorities better than the present system.

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

13           (1) To promote the safety and soundness of the  
14           Nation’s financial system.

15           (2) To promote the availability of financial  
16           products and services to consumers, businesses,  
17           charitable institutions and government in an effi-  
18           cient and cost-effective manner.

19           (3) To promote a legal structure governing pro-  
20           viders of financial services that permits open and  
21           fair competition and affords all financial services  
22           companies equal opportunity to serve the full range  
23           of credit and financial needs in the marketplace.

1           (4) To ensure that domestic financial institu-  
2           tions and companies are able to compete effectively  
3           in international financial markets.

4           (5) To encourage regulation of financial activi-  
5           ties and companies along functional lines without re-  
6           gard to ownership, control, or affiliation.

7 **SEC. 3. DEFINITIONS.**

8           For purposes of this Act, the following definitions  
9 shall apply:

10           (1) AFFILIATE.—Except as provided in section  
11           105(e), the term “affiliate” means any company  
12           which controls, is controlled by, or is under common  
13           control with another company.

14           (2) ADEQUATELY CAPITALIZED.—With respect  
15           to an insured depository institution, the term “ade-  
16           quately capitalized” has the same meaning as in sec-  
17           tion 38(b) of the Federal Deposit Insurance Act.

18           (3) APPROPRIATE FEDERAL BANKING AGEN-  
19           CY.—The term “appropriate Federal banking agen-  
20           cy” has the same meaning as in section 3(q) of the  
21           Federal Deposit Insurance Act.

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

1           (5) BOARD.—The term “Board” means the  
2 Board of Governors of the Federal Reserve System.

3           (6) COMPANY.—The term “company” has the  
4 same meaning as in section 2(b) of the Bank Hold-  
5 ing Company Act of 1956.

6           (7) CONTROL.—

7           (A) IN GENERAL.—Except as provided in  
8 subparagraph (B) and section 7(e), the term  
9 “control” has the same meaning as in para-  
10 graphs (2) and (3) of section 2(a) of the Bank  
11 Holding Company Act of 1956.

12           (B) EXCEPTIONS.—

13           (i) ACQUISITIONS INCIDENTAL TO  
14 OTHER BUSINESS.—No company shall be  
15 deemed to control or to have acquired con-  
16 trol of any other company for purposes of  
17 this title by virtue of the company’s owner-  
18 ship of the voting securities of such other  
19 company if the voting securities were—

20           (I) acquired or held in an agency,  
21 trust, or other fiduciary capacity  
22 (whether with or without the sole dis-  
23 cretion to vote such securities);

24           (II) acquired or held in connec-  
25 tion with, or incidental to, the under-

1 writing of securities if such securities  
2 are held only for such period of time  
3 as will permit the sale of the securi-  
4 ties on a reasonable basis;

5 (III) acquired or held in connec-  
6 tion with, or incidental to, market  
7 making, dealing, trading, brokerage or  
8 other securities-related activities and  
9 not with a view to acquiring, exercis-  
10 ing, or transferring any control over  
11 the management of policies of such  
12 company; or

13 (IV) acquired in securing or col-  
14 lecting a debt previously contracted in  
15 good faith, until 2 years after the date  
16 of acquisition or for such additional  
17 period of time as the appropriate Fed-  
18 eral banking agency may permit.

19 (ii) PROXY SOLICITATION.—No com-  
20 pany formed for the sole purpose of par-  
21 ticipating in a proxy solicitation shall be  
22 deemed to control another company by vir-  
23 tue of the company's acquisition of voting  
24 rights with respect to shares of such other

1           company which are acquired in the course  
2           of such solicitation.

3           (8) DEPOSITORY INSTITUTION HOLDING COM-  
4           PANY.—The term “depository institution holding  
5           company” has the same meaning as in section  
6           3(w)(1) of the Federal Deposit Insurance Act.

7           (9) DIVERSIFIED FINANCIAL SERVICES HOLD-  
8           ING COMPANY.—The term “diversified financial serv-  
9           ices holding company” means a company—

10           (A) that has filed a notice with the Board  
11           of such company’s intent to become a diversi-  
12           fied financial services holding company and  
13           comply with the requirements of this Act and  
14           has not withdrawn such notice; and

15           (B) which is described in at least 1 of the  
16           following clauses:

17           (i) The company controls an insured  
18           depository institution.

19           (ii) The company has, within the pre-  
20           ceding 12 months, filed a notice under sec-  
21           tion 4 to acquire control of an insured de-  
22           pository institution or a depository institu-  
23           tion holding company and such notice has  
24           not been disapproved.

1 (iii) The company controls a company  
2 which has, within the preceding 12  
3 months, filed an application for deposit in-  
4 surance under section 4 or 5 of the Fed-  
5 eral Deposit Insurance Act which has not  
6 been disapproved.

7 (10) FINANCIAL INSTITUTION.—The term “fi-  
8 nancial institution” means—

9 (A) any bank (as defined in section 3(a)(1)  
10 of the Federal Deposit Insurance Act), savings  
11 association (as defined in section 3(b)(1) of  
12 such Act), insurance company, finance com-  
13 pany, real estate company, investment company  
14 (as defined in section 3 of the Investment Com-  
15 pany Act of 1940), or investment adviser (as  
16 defined in section 202 of the Investment Advis-  
17 ers Act of 1940);

18 (B) any broker, dealer, government securi-  
19 ties broker, government securities dealer, mu-  
20 nicipal securities broker, or municipal securities  
21 dealer (as such terms are defined in the Securi-  
22 ties Exchange Act of 1934); or

23 (C) any other financial services company  
24 that is regulated, supervised, or examined under  
25 the laws of any State.

1           (11) INSURED DEPOSITORY INSTITUTION.—The  
2 term “insured depository institution” has the same  
3 meaning as in section 3(c)(2) of the Federal Deposit  
4 Insurance Act.

5           (12) REPRESENTATIVE.—The term “represent-  
6 ative” includes any agent, principal, solicitor, broker,  
7 director, officer, employee, institution-affiliated party  
8 (as defined in section 3 of the Federal Deposit In-  
9 surance Act), or other representative of any com-  
10 pany or insured depository institution or any affili-  
11 ate of any such company or institution.

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

16           (14) SAVINGS ASSOCIATION.—The term “sav-  
17 ings association” has the same meaning as in section  
18 3(b) of the Federal Deposit Insurance Act.

19           (15) STATE.—The term “State” has the same  
20 meaning as in section 3(a) of the Federal Deposit  
21 Insurance Act.

22 **SEC. 4. ESTABLISHMENT OF A DIVERSIFIED FINANCIAL**  
23 **SERVICES HOLDING COMPANY.**

24           (a) IN GENERAL.—No person may take any action  
25 which causes any company to become a diversified finan-

1 cial services holding company without submitting prior no-  
2 tice to the Board in accordance with this section of such  
3 person's intention to establish a diversified financial serv-  
4 ices holding company.

5 (b) NOTICE REQUIREMENTS AND PROCEDURES.—  
6 The Board shall establish requirements and procedures for  
7 the submission of the notice required under this section  
8 with respect to the establishment of a diversified financial  
9 services holding company.

10 (c) COMPLIANCE.—Any diversified financial services  
11 holding company that fails to comply with this Act and  
12 regulations prescribed under this Act shall cease to be a  
13 diversified financial services holding company as of the  
14 date of such failure to comply.

15 (d) REGULATIONS.—The Board shall prescribe such  
16 regulations as the Board determines to be appropriate to  
17 administer and carry out the purposes of this Act.

18 (e) TERMINATION OF BANK HOLDING COMPANY  
19 STATUS UPON FILING AS DIVERSIFIED FINANCIAL SERV-  
20 ICES HOLDING COMPANY.—Section 2 of the Bank Hold-  
21 ing Company Act of 1956 (12 U.S.C. 1841) is amended  
22 by adding at the end the following new subsection:

23 “(n) TREATMENT AS BANK HOLDING COMPANY.—  
24 If—

1           “(1) a bank holding company files a notice with  
2           the Board of such company’s intent to become a di-  
3           versified financial services holding company and to  
4           comply with the requirements of the Financial Serv-  
5           ices Competitiveness Act; and

6           “(2) all the banks which are controlled directly  
7           or indirectly by a bank holding company are insured  
8           banks (as defined in section 3(h) of the Federal De-  
9           posit Insurance Act) as of the time of the filing of  
10          such notice,

11          such company shall not be treated as a bank holding com-  
12          pany for purposes of this Act after such filing so long as  
13          such notice remains in effect.”.

14          (f) TERMINATION OF S&L HOLDING COMPANY STA-  
15          TUS UPON FILING AS DIVERSIFIED FINANCIAL SERVICES  
16          HOLDING COMPANY.—Section 10 of the Home Owners’  
17          Loan Act (12 U.S.C. 1467a) is amended by adding at the  
18          end the following new subsection:

19          “(t) TREATMENT AS S&L HOLDING COMPANY.—If—

20                 “(1) a savings and loan holding company files  
21                 a notice with the Board of Governors of the Federal  
22                 Reserve System of such company’s intent to become  
23                 a diversified financial services holding company and  
24                 to comply with the requirements of the Financial  
25                 Services Competitiveness Act; and

1           “(2) all the savings associations which are con-  
2           trolled directly or indirectly by a savings and loan  
3           holding company are insured depository institutions  
4           (as defined in section 3(c) of the Federal Deposit In-  
5           surance Act) as of the time of the filing of such no-  
6           tice,

7           such company shall not be treated as a savings and loan  
8           holding company for purposes of this Act after such filing  
9           so long as such notice remains in effect.”.

10           (g) INAPPLICABILITY OF GLASS-STEAGALL TO DI-  
11           VERSIFIED FINANCIAL SERVICE HOLDING COMPANIES.—

12           (1) Section 20 of the Banking Act of 1933 (12  
13           U.S.C. 377) is amended by inserting after the 1st  
14           undesignated paragraph the following new para-  
15           graph:

16           “The provisions of this section shall not apply with  
17           respect to the affiliation of—

18           “(A) any bank that is an affiliate of a diversi-  
19           fied financial services holding company (as defined  
20           in section 3 of the Financial Services Competitive-  
21           ness Act), with

22           “(B) such company or any other affiliate of the  
23           company.”.

1           (2) Section 32 of the Banking Act of 1933 (12  
2           U.S.C. 78) is amended by inserting after the 1st un-  
3           designated paragraph the following new paragraph:

4           ““The provisions of this section shall not apply with  
5           respect to relationships involving—

6                   “(A) an affiliate of a diversified financial serv-  
7           ices holding company (as defined in the Financial  
8           Services Competitiveness Act); and

9                   “(B) such company or any other affiliate of  
10           such company.”.

11   **SEC. 5. COMPLIANCE WITH CHANGE IN CONTROL REQUIRE-**  
12                   **MENTS.**

13           (a) IN GENERAL.—No diversified financial services  
14           holding company, acting directly or indirectly, or through  
15           or in concert with 1 or more other persons, may acquire  
16           control of an insured depository institution, a depository  
17           institution holding company, or another diversified finan-  
18           cial services holding company through a purchase, assign-  
19           ment, transfer, pledge or other disposition of voting stock  
20           of any such institution or company unless the diversified  
21           financial services holding company has complied with the  
22           requirements of section 7(j) of the Federal Deposit Insur-  
23           ance Act.

24           (b) APPLICABILITY OF SECTION 7(j) OF THE FED-  
25           ERAL DEPOSIT INSURANCE ACT.—

1           (1) IN GENERAL.—Section 7(j) of the Federal  
2           Deposit Insurance Act shall apply with respect to a  
3           diversified financial services holding company for  
4           purposes of subsection (a) in the same manner and  
5           to the same extent such section applies to any ac-  
6           quiring party described in such section.

7           (2) TREATMENT OF ACQUIRED COMPANY.—In  
8           applying section 7(j) of the Federal Deposit Insur-  
9           ance Act for purposes of this section—

10           (A) the acquisition of a depository institu-  
11           tion holding company or a diversified financial  
12           services holding company shall be treated as the  
13           acquisition of an insured depository institution;  
14           and

15           (B) the appropriate Federal banking agen-  
16           cy shall be—

17           (i) in the case of a depository institu-  
18           tion holding company, the appropriate  
19           Federal banking agency designated under  
20           section 3(q) of such Act with respect to the  
21           company; and

22           (ii) in the case of a diversified finan-  
23           cial services company, the Board.

1 **SEC. 6. ADEQUATE CAPITALIZATION.**

2 (a) NOTIFICATION.—If an appropriate Federal bank-  
3 ing agency finds that an insured depository institution  
4 subsidiary of a diversified financial services holding com-  
5 pany is not adequately capitalized (as defined by such  
6 agency pursuant to section 38 of the Federal Deposit In-  
7 surance Act), the agency shall immediately provide a writ-  
8 ten notice of such fact to the diversified financial services  
9 holding company.

10 (b) BOND, GUARANTEE, DEPOSIT, OR SURPLUS CAP-  
11 ITAL.—

12 (1) IN GENERAL.—In addition to any require-  
13 ment of section 38 of the Federal Deposit Insurance  
14 Act applicable to an undercapitalized insured depository  
15 institution (as defined pursuant to such section), an appropriate Federal banking agency may  
16 require a diversified financial services holding com-  
17 pany to which written notice has been provided  
18 under subsection (a), with respect to an insured de-  
19 pository institution subsidiary, to—

21 (A) provide a bond, guarantee or similar  
22 undertaking, in a form prescribed by the appro-  
23 priate Federal banking agency;

24 (B) place and maintain on deposit cash or  
25 investment securities (calculated on the basis of  
26 principal face amount or the fair market value,

1           whichever is lower) in a segregated, earmarked  
2           account at the insured depository institution;

3           (C) contribute to the surplus capital of the  
4           insured depository institution an amount nec-  
5           essary to adequately capitalize the insured de-  
6           pository institution; or

7           (D) reduce the amount of total assets of  
8           the institution,

9           until the insured depository institution is adequately  
10          capitalized pursuant to an agreement described in  
11          subsection (c) or otherwise or the diversified finan-  
12          cial services holding company divests control of the  
13          insured depository institution pursuant to subsection  
14          (d).

15          (2) TREATMENT OF CONTRIBUTION.—To the  
16          extent that a contribution to surplus is made pursu-  
17          ant to paragraph (1), the contribution shall be seg-  
18          regated from, and not treated as, capital for any  
19          purpose unless and until the contribution is applied  
20          as a capital contribution pursuant to this section.

21          (3) INVESTMENT SECURITIES.—For purposes of  
22          this subsection, the term “investment securities”  
23          means—

24                  (A) any security which may be held by a  
25                  national bank for the bank’s own account pur-

1           suant to section 5136 of the Revised Statutes  
2           of the United States; and

3                   (B) may include such other liquid assets as  
4           the appropriate Federal banking agency permits  
5           under this paragraph.

6           (4) DIVIDENDS.—Upon receipt of a notice by a  
7           diversified financial services holding company pursu-  
8           ant to subsection (a) relating to an insured depository  
9           institution controlled by such company—

10                   (A) the insured depository institution may  
11           not declare or pay a dividend to any share-  
12           holder; and

13                   (B) the diversified financial services hold-  
14           ing company shall immediately return to the in-  
15           stitution any dividend received from the institu-  
16           tion during the 270-day period ending on the  
17           date the written notice is received by the com-  
18           pany.

19           (c) APPOINTMENT OF CONSERVATOR.—

20                   (1) IN GENERAL.—If—

21                           (A) a diversified financial services holding  
22           company fails to comply with any of the re-  
23           quirements of subsection (b); or

24                           (B) before the end of the 45-day period be-  
25           ginning on the date a diversified financial serv-

1           ices holding company receives a notice pursuant  
2           to subsection (a) with respect to an insured de-  
3           pository institution controlled by such company,  
4           the company has not—

5                   (i) caused the institution to become  
6                   adequately capitalized; or

7                   (ii) entered into an agreement accept-  
8                   able to the appropriate Federal banking  
9                   agency to cause the institution to become  
10                  adequately capitalized within a reasonable  
11                  time,

12          the appropriate Federal banking agency shall ap-  
13          point a conservator for the insured depository insti-  
14          tution in accordance with the provisions of section  
15          11 of the Federal Deposit Insurance Act.

16          (2) SUSPENSION OF APPOINTMENT.—An appro-  
17          priate Federal banking agency may, in the agency’s  
18          discretion, suspend the appointment of a conservator  
19          under paragraph (1) if—

20                   (A) the diversified financial services hold-  
21                   ing company divests, or agrees to divest, control  
22                   of the insured depository institution in an or-  
23                   derly manner; and

1           (B) the appropriate Federal banking agen-  
2           cy determines that such divestiture will meet  
3           the requirements of subsection (d).

4           (3) EXTENSION OF 45-DAY PERIOD.—The ap-  
5           propriate Federal banking agency may, in the agen-  
6           cy’s discretion and for good cause shown, extend the  
7           45-day period described in paragraph (1) if the  
8           agency determines that the condition of the insured  
9           depository institution is not likely to weaken materi-  
10          ally during any such extension.

11          (d) DIVESTITURE.—

12           (1) IN GENERAL.—If, before the end of the 90-  
13          day period beginning on the date a diversified finan-  
14          cial services holding company receives a notice pur-  
15          suant to subsection (a) with respect to an insured  
16          depository institution subsidiary, the holding com-  
17          pany has not—

18                   (A) caused the insured depository institu-  
19                   tion to become adequately capitalized; or

20                   (B) entered into an agreement acceptable  
21                   to the appropriate Federal banking agency to  
22                   adequately capitalize the insured depository in-  
23                   stitution within a reasonable time,

1 the appropriate Federal banking agency shall order  
2 the diversified financial services holding company to  
3 divest control of the institution.

4 (2) EXTENSION OF 90-DAY PERIOD.—The ap-  
5 propriate Federal banking agency may, in the agen-  
6 cy’s discretion and for good cause shown, extend the  
7 90-day period described in paragraph (1) if the  
8 agency determines that the condition of the insured  
9 depository institution is not likely to weaken materi-  
10 ally during any such extension.

11 (3) ADDITIONAL CAPITAL.—In connection with  
12 any divestiture of an insured depository institution  
13 pursuant to this subsection or subsection (c)(2) by  
14 any diversified financial services holding company  
15 and subject to subsection (e), the appropriate Fed-  
16 eral banking agency shall order such company to  
17 contribute additional capital to such institution or  
18 take any other action described in subsection (b)  
19 with respect to such institution to the extent nec-  
20 essary for the institution to be adequately capitalized  
21 immediately following the consummation of the di-  
22 vestiture.

23 (4) APPOINTMENT OF CONSERVATOR.—The ap-  
24 propriate Federal banking agency may appoint a  
25 conservator for an insured depository institution in

1       accordance with section 11 of the Federal Deposit  
2       Insurance Act at any time during the 90-day period  
3       described in paragraph (1) or any extension of such  
4       period.

5       (e) TERMINATION OF CONSERVATORSHIP; RESCIS-  
6       SION OF DIVESTITURE ORDER.—If, at any time after the  
7       appointment of a conservator under subsection (c) or the  
8       issuance of an order under subsection (d) by an appro-  
9       priate Federal banking agency, the insured depository in-  
10      stitution—

11             (1) for which the conservator has been ap-  
12      pointed; or

13             (2) which is the subject of such order,  
14      becomes adequately capitalized, the appropriate Federal  
15      banking agency shall terminate such conservatorship or  
16      rescind such order, as the case may be.

17       (f) AGGREGATE LIMIT ON REQUIRED CAPITAL INFU-  
18       SIONS; RELATION TO OTHER LAWS.—The maximum  
19       amount of liability for a diversified financial services hold-  
20       ing company for any capital assistance pursuant to an  
21       order issued under this section by an appropriate Federal  
22       banking agency with respect to any particular insured de-  
23       pository institution subsidiary shall not exceed the  
24       amounts necessary for the institution to become ade-  
25       quately capitalized.

1 (g) JUDICIAL REVIEW.—

2 (1) IN GENERAL.—Before the end of the 10-day  
3 period beginning on the date of the appointment of  
4 a conservator by the appropriate Federal banking  
5 agency under this section or the receipt of an order  
6 issued by any such agency under subsection (d) with  
7 respect to an insured depository institution subsidi-  
8 ary of a diversified financial services holding com-  
9 pany, the company may apply to the United States  
10 district court for the judicial district in which the  
11 principal office of the diversified financial services  
12 holding company is located, or the United States  
13 District Court for the District of Columbia, for an  
14 order requiring the removal of the conservator or for  
15 an injunction setting aside, limiting, or suspending  
16 the enforcement, operation, or effectiveness of any  
17 such order issued.

18 (2) COURT ACTION.—The court may, upon the  
19 merits in any action brought under paragraph (1),  
20 dismiss any such action, direct the removal of the  
21 conservator, or provide any appropriate relief.

22 (h) CAPITAL OF DIVERSIFIED FINANCIAL SERVICES  
23 HOLDING COMPANY.—No appropriate Federal banking  
24 agency may impose by regulation, order, agreement, or

1 any other means any requirement pertaining to the capital  
2 of a diversified financial services holding company.

3 (i) TERMINATION OF AGREEMENTS.—Any agreement  
4 entered into pursuant to this section between a diversified  
5 financial services holding company and an appropriate  
6 Federal banking agency with respect to the capital of an  
7 undercapitalized insured depository institution subsidiary  
8 of such company shall terminate when the institution be-  
9 comes adequately capitalized.

10 **SEC. 7. ADDITIONAL PROVISIONS RELATING TO REGULA-**  
11 **TION OF INSURED DEPOSITORY INSTITUTION**  
12 **SUBSIDIARIES.**

13 (a) DIFFERENTIAL TREATMENT PROHIBITION.—  
14 Notwithstanding any other Federal law or the law of any  
15 State, no Federal regulatory agency and no State may  
16 take any action pursuant to any law, regulation, order,  
17 or other authority other than this subtitle if the effect of  
18 such action would be—

19 (1) to differentiate between—

20 (A) insured depository institutions which  
21 are controlled by diversified financial services  
22 holding companies; and

23 (B) other insured depository institutions,

1 in a manner which discriminates against insured de-  
2 pository institutions described in subparagraph (A);  
3 or

4 (2) to differentiate between—

5 (A) diversified financial services holding  
6 companies or affiliates of such companies; and

7 (B) bank holding companies, savings and  
8 loan holding companies, or affiliates of any such  
9 company

10 in a manner which discriminates against diversified  
11 financial services holding companies and affiliates of  
12 any such company.

13 (b) RELATION TO STATE LAW.—

14 (1) IN GENERAL.—No provision of the law or  
15 the constitution of any State, including any State  
16 law relating to State banks, savings association, real  
17 estate, securities, insurance, finance company, retail  
18 or the provision of financial or other services, shall  
19 prevent or impede or shall be interpreted or applied  
20 by any administrative, executive or judicial authority  
21 with the purpose or effect of preventing or imped-  
22 ing—

23 (A) any insured depository institution, any  
24 affiliate of any such institution, or any rep-  
25 resentative of any such institution or affiliate

1 from being acquired, owned, or controlled by, or  
2 from being affiliated in any manner with, any  
3 company which is or becomes a diversified fi-  
4 nancial services holding company, or any affili-  
5 ate of such company, because of—

6 (i) the types of activities engaged in,  
7 directly or indirectly, by such insured de-  
8 pository institution, any affiliate of such  
9 institution, or any representative of any  
10 such institution or affiliate; or

11 (ii) the types of activities engaged in,  
12 directly or indirectly, by such diversified fi-  
13 nancial services holding company, any affil-  
14 iate of such company, or any representa-  
15 tive of any such company or affiliate;

16 (B) any company which is or becomes a di-  
17 versified financial services holding company,  
18 any affiliate of any such company, or any rep-  
19 resentative of any such company or affiliate  
20 from acquiring, owning, or controlling, or being  
21 affiliated in any way with, any insured deposi-  
22 tory institution or any affiliate of any such in-  
23 stitution because of—

24 (i) the types of activities engaged in,  
25 directly or indirectly, by any such company

1 or affiliate, or any representative of any  
2 such company or affiliate; or

3 (ii) the types of activities engaged in,  
4 directly or indirectly, by any such insured  
5 depository institution, any affiliate of any  
6 such institution, or any representative of  
7 such institution or affiliate; or

8 (C) any insured depository institution, any  
9 affiliate of any such institution, or any rep-  
10 resentative of any such institution or affiliate  
11 from—

12 (i) offering or marketing products or  
13 services of any affiliated diversified finan-  
14 cial services holding company or any affili-  
15 ate of such company; or

16 (ii) from having the products or serv-  
17 ices of such insured depository institution,  
18 any affiliate of any such institution, or any  
19 representative of any such institution or  
20 affiliate offered or marketed by such diver-  
21 sified financial services holding company,  
22 an affiliate of such company, or by any  
23 representative of such company or affiliate.

24 (2) RULE OF CONSTRUCTION.—No provision of  
25 paragraph (1) shall be construed as superseding, al-

1       tering, or otherwise affecting the application of the  
2       laws of any State relating to the examination, super-  
3       vision, or regulation of providers of financial services  
4       or the protection of consumers, or as exempting any  
5       company which is or becomes a diversified financial  
6       services holding company, any affiliate of any such  
7       company, or any representative of any such company  
8       or affiliate, except to the extent that the intent, pur-  
9       pose, or effect of those laws is inconsistent with this  
10      subsection or with the purposes of this Act and then  
11      only to the extent of such inconsistency.

12           (3) JUDICIAL DETERMINATION.—Any interested  
13      party may institute an action in the United States  
14      District Court for the District of Columbia or any  
15      other appropriate district court of the United States,  
16      including an action for declaratory judgment, as  
17      may be appropriate to determine whether and to  
18      what extent any provision of the constitution or law  
19      of any State is superseded by any provision of this  
20      subsection or to enjoin application of any such provi-  
21      sion.

22           (c) ACCESS TO STATE COURTS.—

23           (1) IN GENERAL.—No State may, directly or in-  
24      directly, deny an insured depository institution  
25      which is not located in that State the right to main-

1       tain or defend in a court in that State any action  
2       which could be maintained or defended under similar  
3       circumstances by a company which—

4               (A) is not located in that State; and

5               (B) is not an insured depository institu-  
6       tion.

7       (2) EXCEPTION FOR CERTAIN INSTITUTIONS.—

8       Paragraph (1) shall not apply in the case of an in-  
9       sured depository institution described in such para-  
10      graph which establishes or maintains a domestic  
11      branch (as defined in section 3(o) of the Federal De-  
12      posit Insurance Act) in the State referred to in such  
13      paragraph if the laws of such State do not permit  
14      an out-of-State insured depository institution to es-  
15      tablish a domestic branch in such State.

16      (3) APPLICABILITY OF VARIOUS CONDITIONS.—

17      If the maintenance or defense of an action in the  
18      courts of a State by a company which is not located  
19      in that State and is not an insured depository insti-  
20      tution is subject to conditions which are applied in  
21      a nondiscriminatory manner to fulfill legitimate  
22      State objectives, the maintenance or defense of such  
23      an action by an insured depository institution de-  
24      scribed in paragraph (1) may be subject to the same  
25      conditions to the extent that the conditions do not

1 have the effect, directly or indirectly, of denying the  
2 institution the opportunity to maintain or defend  
3 such action.

4 (d) REPRESENTATIVES.—

5 (1) IN GENERAL.—No State may, directly or in-  
6 directly, limit or deny the authority of any diversi-  
7 fied financial services holding company or any affili-  
8 ate of such company to utilize or compensate any  
9 representative or other person who is located in that  
10 State and is representing such company or affiliate  
11 in any lawful capacity.

12 (2) EXCEPTION FOR CERTAIN LAWS APPLIED IN  
13 NONDISCRIMINATORY MANNER.—Paragraph (1) shall  
14 not apply with respect to any licensing, marketing,  
15 compensation, or employment law or requirement of  
16 a State—

17 (A) which is applied in a nondiscriminatory  
18 manner to fulfill legitimate State regulatory ob-  
19 jectives; and

20 (B) the intent, purpose, or effect of which  
21 is not inconsistent with the purposes of this  
22 Act.

23 (3) EXCEPTION FOR CERTAIN ACTIVITIES.—In  
24 the case of any State the laws of which do not per-  
25 mit an out-of-State insured depository institution to

1 establish a domestic branch (as defined in section  
2 3(o) of the Federal Deposit Insurance Act) in such  
3 State, paragraph (1) shall not apply with respect to  
4 the performance of activities in such State by any  
5 representative or other person described in para-  
6 graph (1) on behalf of an insured depository institu-  
7 tion if the performance of such activities at any loca-  
8 tion within a State other than the main office or any  
9 branch office of such insured depository institution  
10 would constitute, under any Federal law or the law  
11 of the State, the establishment and operation of a  
12 domestic branch in the State.

13 (e) AFFILIATE AND CONTROL DEFINED.—Notwith-  
14 standing section 3, the following definitions shall apply for  
15 purposes of this section:

16 (1) AFFILIATE.—The term “affiliate” means a  
17 person that directly or indirectly controls or is con-  
18 trolled by, or is under common control with another  
19 person.

20 (2) CONTROL.—

21 (A) IN GENERAL.—The term “control”  
22 means the power, directly or indirectly, to direct  
23 the management or policies of a person.

24 (B) PRESUMPTION.—A person shall be  
25 presumed to control another person if the per-

1 son, directly or indirectly, owns, controls, or  
2 holds with power to vote 10 percent or more of  
3 the voting securities of such other person.

4 **SEC. 8. INSIDER LENDING AND TYING PROVISIONS.**

5 (a) **APPLICABILITY OF INSIDER LENDING RESTRIC-**  
6 **TIONS.**—A diversified financial services holding company  
7 shall be treated as a bank holding company for purposes  
8 of section 22(h) of the Federal Reserve Act and any regu-  
9 lation prescribed under such section.

10 (b) **TYING.**—

11 (1) **IN GENERAL.**—Any diversified financial  
12 services holding company and any subsidiary of such  
13 company shall be subject to the restrictions of sec-  
14 tion 106 of the Bank Holding Company Act Amend-  
15 ments of 1970 in connection with any transaction  
16 involving the products or services of such company  
17 or subsidiary or an insured depository institution af-  
18 filiate of such company, in the same manner such  
19 section would apply if the company or subsidiary  
20 was a bank and the insured depository institution  
21 subsidiary was a subsidiary of the bank holding com-  
22 pany.

23 (2) **SUBSIDIARY DEFINED.**—For purposes of  
24 paragraph (1), the term “subsidiary” has the same

1 meaning as in section 2(d) of the Bank Holding  
2 Company Act of 1956.

3 **SEC. 9. ENFORCEMENT AND EXAMINATION; PAYMENT SYS-**  
4 **TEM SERVICES; OVERSIGHT.**

5 (a) ADMINISTRATIVE ENFORCEMENT.—

6 (1) IN GENERAL.—Compliance with the require-  
7 ments imposed under this Act and regulations pre-  
8 scribed by any appropriate Federal banking agency  
9 shall be enforced by the appropriate Federal banking  
10 agency under section 8 of the Federal Deposit Insur-  
11 ance Act.

12 (2) ADDITIONAL ENFORCEMENT POWERS.—

13 (A) VIOLATION OF THIS ACT TREATED AS  
14 VIOLATION OF OTHER ACTS.—For purposes of  
15 applying section 8 of the Federal Deposit Insur-  
16 ance Act with respect to any diversified finan-  
17 cial services holding company or any affiliate of  
18 such company pursuant to paragraph (1), a vio-  
19 lation of a requirement imposed under this Act  
20 shall be deemed to be a violation of a require-  
21 ment imposed under section 8 of the Federal  
22 Deposit Insurance Act.

23 (B) ENFORCEMENT AUTHORITY UNDER  
24 OTHER ACTS.—In addition to any appropriate  
25 Federal banking agency's powers under section

1           8 of the Federal Deposit Insurance Act, each  
2           such agency may exercise, for purposes of en-  
3           forcing compliance with any requirement im-  
4           posed under this Act, any other authority con-  
5           ferred on such agency by any other law.

6           (b) EXAMINATION.—The appropriate Federal bank-  
7           ing agency may examine the books, records and affairs  
8           of, or require reports from, any affiliate of an insured de-  
9           pository institution which is a subsidiary of a diversified  
10          financial services holding company in order to ensure com-  
11          pliance with the requirements of this Act.

12          (c) FEDERAL RESERVE PAYMENT SERVICES.—

13           (1) IN GENERAL.—All Federal reserve bank  
14          services described in section 13 of the Federal Re-  
15          serve Act, the 14th undesignated paragraph of sec-  
16          tion 16 of such Act, and the Expedited Funds Avail-  
17          ability Act shall be available to all insured depository  
18          institutions, on the same terms and conditions and  
19          subject to the same limitations and restrictions,  
20          without regard to the identity of the insured depository  
21          institution’s affiliates, except to the extent nec-  
22          essary to avoid a material adverse effect on a large  
23          dollar payment system.

24           (2) DEFINITION.—For purposes of this sub-  
25          section, the term “a material adverse effect on a

1 large dollar payment system” means any activity of  
2 an insured depository institution which results in  
3 violations of any uniformly applied payment system  
4 risk-reduction policy cap or limitation established by  
5 the Board of Governors of the Federal Reserve Sys-  
6 tem which—

7 (A) occur during any period consisting of  
8 5 consecutive business days; and

9 (B) exceed the median number of viola-  
10 tions for all users of the applicable large dollar  
11 payment services during that same period.

12 (3) FEDERAL RESERVE ENFORCEMENT  
13 POWER.—

14 (A) ADMINISTRATIVE ENFORCEMENT.—In  
15 the case of an insured depository institution  
16 which has engaged in any activity that has re-  
17 sulted in a material adverse effect on a large  
18 dollar payment system, the Board of Governors  
19 of the Federal Reserve System shall be treated  
20 as the appropriate Federal banking agency for  
21 such institution with respect to such activity for  
22 purposes of subsection (a).

23 (B) EXAMINATION.—The Board of Gov-  
24 ernors of the Federal Reserve System may ex-  
25 amine the books, records and affairs of any in-

1           sured depository institution which has engaged  
2           in any activity that has resulted in a material  
3           adverse effect on a large dollar payment system,  
4           or require reports from any such institution  
5           with respect to any such activity.

6 **SEC. 10. CRIMINAL AND CIVIL PENALTIES.**

7           (a) KNOWING AND INTENTIONAL VIOLATIONS.—

8                 (1) IN GENERAL.—Whoever knowingly violates  
9           or participates in a violation of—

10                     (A) any provision of this Act, or any regu-  
11                     lation prescribed or order issued by an appro-  
12                     priate Federal banking agency pursuant to this  
13                     Act;

14                     (B) being a company, violates any regula-  
15                     tion prescribed or order issued by the Board  
16                     under this Act; or

17                     (C) any written agreement between—

18                             (i) any diversified financial services  
19                             holding company or any affiliate of such  
20                             company which is not an insured deposi-  
21                             tory institution; and

22                             (ii) any appropriate Federal banking  
23                             agency,

1 shall be fined under title 18, United States Code, for  
2 each day during which the violation continues, im-  
3 prisoned for not more than 1 year, or both.

4 (2) VIOLATIONS WITH INTENT TO DECEIVE, DE-  
5 FRAUD, OR PROFIT.—Whoever, with the intent to  
6 deceive, defraud, or profit significantly, knowingly  
7 commits a violation, or participates in a violation,  
8 described in paragraph (1) shall be fined not more  
9 than \$1,000,000 for each day during which the vio-  
10 lation continues, imprisoned for not more than 5  
11 years, or both.

12 (b) FALSE ENTRY OR STATEMENT.—Each officer, di-  
13 rector, employee, and agent of a diversified financial serv-  
14 ices holding company or any affiliate of any such company  
15 which is not an insured depository institution, shall be  
16 subject to the same penalties for false entries in any book,  
17 report, or statement of such company as are applicable  
18 to officers, directors, employees and agents of member  
19 banks, bank holding companies, and savings and loan  
20 holding companies for false entries in any books, reports,  
21 or statements of member banks, bank holding companies,  
22 and savings and loan holding companies under section  
23 1005 of title 18, United States Code, to the extent that  
24 any such false entry refers in any material way to the af-

1 fairs of an insured depository institution affiliate of such  
2 company.

3 (c) CIVIL PENALTY.—

4 (1) FIRST TIER.—Any person who—

5 (A) violates this Act or any regulation pre-  
6 scribed or order issued by the Board under this  
7 Act; or

8 (B) violates any written agreement be-  
9 tween such person and the Board;

10 shall forfeit and pay a civil penalty of not more than  
11 \$5,000 for each day during which such violation con-  
12 tinues.

13 (2) SECOND TIER.—Notwithstanding subpara-  
14 graph (A), if any person—

15 (A) commits any violation described in any  
16 clause of subparagraph (A) or breaches any fi-  
17 duciary duty; and

18 (B) such violation or breach—

19 (i) is part of a pattern of misconduct;

20 (ii) causes or is likely to cause more  
21 than a minimal loss to a depository institu-  
22 tion; or

23 (iii) results in pecuniary gain or other  
24 benefit to such person,

1 such person shall forfeit and pay a civil penalty of  
2 not more than \$25,000 for each day during which  
3 such violation or breach continues.

4 (3) THIRD TIER.—Notwithstanding subpara-  
5 graphs (A) and (B), if any person—

6 (A) knowingly commits any violation de-  
7 scribed in subparagraph (A) or breaches any fi-  
8 duciary duty; and

9 (B) knowingly or recklessly causes a sub-  
10 stantial loss to a depository institution or a  
11 substantial pecuniary gain or other benefit to  
12 such person by reason of such violation or  
13 breach,

14 such person shall forfeit and pay a civil penalty in  
15 an amount not to exceed the applicable maximum  
16 amount determined under paragraph (4) for each  
17 day during which such violation or breach continues.

18 (4) MAXIMUM AMOUNTS OF PENALTIES FOR  
19 ANY VIOLATION DESCRIBED IN SUBPARAGRAPH  
20 (C).—The maximum daily amount of any civil pen-  
21 alty which may be assessed pursuant to paragraph  
22 (3) for any violation or breach described in such  
23 paragraph is—

1 (A) in the case of any person other than  
2 an insured depository institution, an amount  
3 not to exceed \$1,000,000; and

4 (B) in the case of any insured depository  
5 institution, an amount not to exceed the lesser  
6 of—

7 (i) \$1,000,000; or

8 (ii) 1 percent of the total assets of  
9 such institution.

10 (5) ASSESSMENT.—

11 (A) WRITTEN NOTICE.—Any penalty im-  
12 posed under paragraph (1), (2), or (3) may be  
13 assessed and collected by the Board by written  
14 notice.

15 (B) FINALITY OF ASSESSMENT.—If, with  
16 respect to any assessment under subparagraph  
17 (A), a hearing is not requested pursuant to  
18 paragraph (8) within the period of time allowed  
19 under such subparagraph, the assessment shall  
20 constitute a final and unappealable order.

21 (6) AUTHORITY TO MODIFY OR REMIT PEN-  
22 ALTY.—The Board may compromise, modify, or  
23 remit any penalty which the Board may assess or  
24 had already assessed under paragraph (1), (2), or  
25 (3).

1           (7) MITIGATING FACTORS.—In determining the  
2 amount of any penalty imposed under paragraph  
3 (1), (2), or (3), the Board shall take into account  
4 the appropriateness of the penalty with respect to—

5           (A) the size of financial resources and good  
6 faith of the person charged;

7           (B) the gravity of the violation;

8           (C) the history of previous violations; and

9           (D) such other matters as justice may re-  
10 quire.

11          (8) HEARING.—The person against whom any  
12 penalty is assessed under this paragraph shall be af-  
13 farded an agency hearing if such person submits a  
14 request for such hearing within 20 days after the is-  
15 suance of the notice of assessment.

16          (9) COLLECTION.—

17           (A) REFERRAL.—If any person fails to pay  
18 an assessment after any penalty assessed under  
19 this subsection has become final, the Board  
20 shall recover the amount assessed by action in  
21 the appropriate United States district court.

22           (B) APPROPRIATENESS OF PENALTY NOT  
23 REVIEWABLE.—In any civil action under sub-  
24 paragraph (A), the validity and appropriateness  
25 of the penalty shall not be subject to review.

1           (10) DISBURSEMENT.—All penalties collected  
2           under authority of this paragraph shall be deposited  
3           into the Treasury.

4           (11) REGULATIONS.—The Board shall prescribe  
5           regulations establishing such procedures as may be  
6           necessary to carry out this paragraph.

7           (d) VIOLATE DEFINED.—For purposes of this sec-  
8           tion, the term “violate” includes any action (alone or with  
9           another or others) for or toward causing, bringing about,  
10          participating in, counseling, or aiding and abetting a viola-  
11          tion.

12   **SEC. 11. TECHNICAL AND CONFORMING AMENDMENTS.**

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

14               (1) Section 2(a)(1) of the Bank Holding Com-  
15               pany Act of 1956 (12 U.S.C. 1841(a)(1)) is amend-  
16               ed by inserting “or subsection (n)” after “paragraph  
17               (5) of this subsection”.

18               (2) Section 2(c)(2) of the Bank Holding Com-  
19               pany Act of 1956 (12 U.S.C. 1841(c)) is amended  
20               by adding at the end the following new subpara-  
21               graph:

22                       “(K) An insured bank (as defined in sec-  
23                       tion 3(h) of the Federal Deposit Insurance Act)  
24                       which is not controlled by any company other  
25                       than a diversified financial services holding

1           company (as defined in the Financial Services  
2           Competitiveness Act).”.

3           (3) Section 5(d) of the Bank Holding Company  
4           Act of 1956 (12 U.S.C. 1844(d)) is amended by in-  
5           serting “or the Financial Services Competitiveness  
6           Act” after “this Act”.

7           (b) AMENDMENT TO THE BANK HOLDING COMPANY  
8           ACT AMENDMENTS OF 1970.—Section 106(b) of the Bank  
9           Holding Company Act Amendments of 1970 (12 U.S.C.  
10          1972) is amended—

11           (1) by adding at the end the following new  
12          paragraphs:

13           “(3) EXEMPTION FOR CERTAIN TYING AR-  
14          RANGEMENTS.—A bank shall not be prohibited from  
15          providing a loan, discount, deposit, or trust service,  
16          or fixing or varying the consideration of any of the  
17          foregoing, on the condition or requirement that—

18           “(A) the customer shall obtain or provide  
19          some additional loan, discount, deposit, or trust  
20          service from, or to, such bank or from, or to,  
21          such bank holding company of such bank or  
22          from, or to, any subsidiary of such bank hold-  
23          ing company; or

24           “(B) the customer provide some additional  
25          credit, property, or service to such bank, or to

1 such bank holding company of such bank, or to  
2 any subsidiary of such bank holding company,  
3 if such additional credit, property, or service is  
4 related to and usually provided in connection  
5 with a loan, discount, deposit, or trust service.

6 “(4) EXCEPTIONS BY REGULATION OR  
7 ORDER.—The Board may, by regulation or order,  
8 permit such exceptions to the prohibitions contained  
9 in paragraph (1) as the Board considers will not be  
10 contrary to the purposes of this title.”;

11 (2) in paragraph (1), by striking “(1) A bank”  
12 and inserting “(1) IN GENERAL.—Except as pro-  
13 vided in paragraph (3), a bank”;

14 (3) in paragraph (1)(A) by striking “other than  
15 a loan, discount, deposit, or trust service”;

16 (4) in paragraph (1)(C) by striking “other than  
17 those related to and usually provided in connection  
18 with a loan, discount, deposit or trust service”; and

19 (5) by striking the last sentence of paragraph  
20 (1).

21 (c) AMENDMENTS TO THE FEDERAL RESERVE  
22 ACT.—Section 23A of the Federal Reserve Act (12 U.S.C.  
23 371c) is amended by—

24 (1) inserting at the end of subsection (a) the  
25 following new paragraph:

1           “(5) CERTAIN LOANS NOT TREATED AS TRANS-  
2           ACTIONS WITH AFFILIATES.—Notwithstanding para-  
3           graph (2), a loan or extension of credit shall not be  
4           deemed to be made to any affiliate, for purposes of  
5           this section, if—

6                   “(A) the member bank approves such loan  
7                   or extension of credit in accordance with sub-  
8                   stantially the same standards and procedures  
9                   and on substantially the same terms that it ap-  
10                  plies to similar loans or extensions of credit the  
11                  proceeds of which are not transferred to or for  
12                  the benefit of an affiliate; and

13                   “(B) such loan or extension of credit is not  
14                   made for the purposes of evading any of the re-  
15                   quirements of this section.”; and

16                  (2) by adding at the end the following new sub-  
17                  section:

18                  “(f) COORDINATION WITH FINANCIAL SERVICES  
19                  COMPETITIVENESS ACT.—The provisions of this section  
20                  shall be subject to section 102 of the Financial Services  
21                  Competitiveness Act.”.

22                  (d) AMENDMENTS TO THE FEDERAL DEPOSIT IN-  
23                  SURANCE ACT.—

1           (1) Section 7(j)(8) of the Federal Deposit In-  
2           surance Act (12 U.S.C. 1817(j)(8)) is amended to  
3           read as follows:

4           “(8) CONTROL DEFINED.—

5           “(A) IN GENERAL.—For purposes of this  
6           subsection, the term “control” has the same  
7           meaning as in section 2(a) of the Bank Holding  
8           Company Act of 1956.

9           “(B) EXCEPTION FOR SECURITIES AC-  
10          QUIRED IN CERTAIN CAPACITIES.—For pur-  
11          poses of this subsection, no company shall be  
12          deemed to control or to have acquired control of  
13          any other company by virtue of the company’s  
14          ownership of the voting securities of such other  
15          company which were—

16                 “(i) acquired or held in an agency,  
17                 trust, or other fiduciary capacity (whether  
18                 with or without the sole discretion to vote  
19                 such securities);

20                 “(ii) acquired or held in connection  
21                 with or incidental to—

22                         “(I) the underwriting of securi-  
23                         ties if such securities are held only for  
24                         such period of time as will permit the  
25                         sale thereof on a reasonable basis; or

1                   “(II) acquired or held in connec-  
2                   tion with or incidental to market mak-  
3                   ing, dealing, trading, brokerage or  
4                   other securities related activities and  
5                   not with a view to acquiring, exercis-  
6                   ing or transferring any control over  
7                   the management or policies of such  
8                   company; or

9                   “(iii) acquired in securing or collect-  
10                  ing a debt previously contracted in good  
11                  faith, during the 2-year period beginning  
12                  on the date of such acquisition or for such  
13                  additional time (not exceeding 3 years) as  
14                  the appropriate Federal banking agency  
15                  may permit if the appropriate Federal  
16                  banking agency determines that such ex-  
17                  tension will not be detrimental to the pub-  
18                  lic interest.

19                  “(C) EXCEPTION FOR COMPANIES FORMED  
20                  FOR PROXY SOLICITATIONS.—For purposes of  
21                  this subsection, no company formed for the sole  
22                  purpose of participating in a proxy solicitation  
23                  shall be deemed to control or to have acquired  
24                  control of any other company by virtue of the  
25                  company’s acquisition of voting rights with re-

1           spect to shares of such other company which  
2           were acquired in the course of such sollicita-  
3           tion.”.

4           (2) Paragraph (9) of section 5(e) of the Federal  
5           Deposit Insurance Act (12 U.S.C. 1815 (e)(9)) is  
6           amended—

7                   (A) by striking “or” at the end of subpara-  
8                   graph (A);

9                   (B) by redesignating subparagraph (B) as  
10                  subparagraph (C); and

11                  (C) by inserting after subparagraph (A)  
12                  the following new subparagraph:

13                  “(B) such institutions are controlled by the  
14                  same diversified financial services holding company  
15                  (as defined in section 3(a) of the Financial Services  
16                  Competitiveness Act); or”.

17           (3) Section 3(u) of the Federal Deposit Insur-  
18           ance Act (12 U.S.C. section 1813(u)) is amended—

19                   (A) in paragraph (1), by inserting “, a di-  
20                   versified financial services holding company,”  
21                   after “bank holding company”; and

22                   (B) by adding at the end the following new  
23                   paragraph:

24                  “(7) DIVERSIFIED FINANCIAL SERVICES HOLD-  
25                  ING COMPANY.—The term ‘diversified financial serv-

1       ices holding company” has the same meaning as in  
2       section 3(9) of the Financial Services Competitive-  
3       ness Act.”.

4       (e) AMENDMENT TO THE CLAYTON ACT.—Section  
5       7A(c)(8) of the Clayton Act (15 U.S.C. 18a(C)(8)), is  
6       amended by striking “of 1933 (12 U.S.C. 1464)” and in-  
7       serting “(12 U.S.C. 1464) or transactions which require  
8       agency notification under section 4 of the Financial Serv-  
9       ices Competitiveness Act or section 7(j) of the Federal De-  
10      posit Insurance Act”.

11      (f) AMENDMENTS TO THE COMMUNITY REINVEST-  
12      MENT ACT.—Section 803(3) of the Community Reinvest-  
13      ment Act (12 U.S.C. 2902(3)) is amended—

14           (1) by inserting “or notice, as the case may  
15      be,” after “an application”;

16           (2) by striking “or” at the end of subparagraph  
17      (E);

18           (3) by striking the period at the end of sub-  
19      paragraph (F) and inserting “; or”; and

20           (4) by adding at the end the following new sub-  
21      paragraph:

22                   “(G) the acquisition of an insured bank or  
23      an insured institution requiring prior notice

1           under section 4 of the Financial Services Com-  
2           petitiveness Act.”.

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