

104TH CONGRESS
1ST SESSION

H. R. 18

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1995

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

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Financial Services
5 Competitiveness Act of 1995”.

1 **TITLE I—BANK SECURITIES ACTIVITIES**
2 **AND AFFILIATIONS**

3 **Subtitle A—Securities Activities**

4 **SEC. 101. ANTI-AFFILIATION PROVISION OF GLASS-**
5 **STEAGALL ACT REPEALED.**

6 (a) SECTION 20 REPEALED.—Section 20 (12 U.S.C.
7 377) of the Banking Act of 1933 is repealed.

8 (b) CONFORMING AMENDMENT TO SECTION 32.—
9 Section 32 (12 U.S.C. 78) of the Banking Act of 1933
10 is amended by adding at the end the following sentence:
11 “This section does not prohibit an officer, director, or em-
12 ployee of a securities affiliate (as defined in section 2 of
13 the Bank Holding Company Act of 1956) from serving
14 at the same time as an officer, director, or employee of
15 a member bank affiliated with that securities affiliate
16 under section 10 of the Bank Holding Company Act of
17 1956.”.

18 **SEC. 102. BANK HOLDING COMPANIES AUTHORIZED TO**
19 **HAVE SECURITIES AFFILIATES.**

20 Section 4(c) of the Bank Holding Company Act of
21 1956 (12 U.S.C. 1843(c)) is amended—

22 (1) by striking “or” at the end of paragraph
23 (13);

24 (2) by striking the period at the end of para-
25 graph (14) and inserting “; or”; and

1 (3) by adding after paragraph (14) the follow-
2 ing new paragraph:

3 “(15) shares of a securities affiliate in accord-
4 ance with section 10.”.

5 **SEC. 103. ESTABLISHMENT AND OPERATIONS OF SECURI-**
6 **TIES AFFILIATES.**

7 (a) IN GENERAL.—Section 10 of the Bank Holding
8 Company Act of 1956 (12 U.S.C. 1841 et seq.) is amend-
9 ed to read as follows:

10 **“SEC. 10. SECURITIES ACTIVITIES.**

11 “(a) ACTIVITIES PERMISSIBLE FOR SECURITIES AF-
12 FILIATES.—A securities affiliate may engage in one or
13 more of the following activities:

14 “(1) Underwrite, deal in, broker, place, or dis-
15 tribute securities of any type, and engage in other
16 securities activities as permitted by the Board.

17 “(2) Sponsor, organize, control, manage, and
18 act as investment adviser to an investment company.

19 “(3) Engage in, or acquire the shares of a com-
20 pany engaged in, any activity if—

21 “(A) a provision of section 4(c) permits
22 bank holding companies generally to engage in
23 that activity or acquire those shares; and—

24 “(B) either—

1 “(i) the Board permits the bank hold-
2 ing company to engage in that activity or
3 acquire those shares through the securities
4 affiliate; or

5 “(ii) that provision permits the bank
6 holding company to engage in that activity
7 or acquire those shares without the
8 Board’s approval.

9 “(b) ACQUIRING INTEREST IN SECURITIES AFFILI-
10 ATE.—

11 “(1) NOTICE REQUIRED.—A bank holding com-
12 pany shall not, without complying with and receiving
13 approval pursuant to the notice procedure in section
14 4(j), directly or indirectly acquire or retain more
15 than 5 percent of the voting shares of, or all or sub-
16 stantially all of the assets of, a securities affiliate (or
17 a company that would be a securities affiliate if the
18 Board permitted the bank holding company to ac-
19 quire that company).

20 “(2) CRITERIA FOR APPROVAL.—The Board
21 shall disapprove a notice required under paragraph
22 (1) unless the Board determines that all of the fol-
23 lowing are satisfied:

24 “(A) CAPITAL.—

1 “(i) INSURED DEPOSITORY INSTITU-
2 TIONS.—

3 “(I) The lead insured depository
4 institution of the bank holding com-
5 pany is well capitalized;

6 “(II) Well capitalized insured de-
7 pository institutions control at least
8 80 percent of the total assets of in-
9 sured depository institutions con-
10 trolled by the bank holding company;
11 and

12 “(III) All insured depository in-
13 stitutions controlled by the bank hold-
14 ing company are well capitalized or
15 adequately capitalized.

16 “(ii) BANK HOLDING COMPANY.—The
17 bank holding company is (and immediately
18 after the acquisition would continue to be)
19 adequately capitalized.

20 “(iii) FOREIGN BANKS AND COMPA-
21 NIES.—The Board shall establish and
22 apply comparable capital standards for the
23 ownership or control of a securities affili-
24 ate in the United States by a foreign bank
25 (as defined in section 1(b) of the Inter-

1 national Banking Act of 1978), giving due
2 regard to the principle of national treat-
3 ment and equality of competitive oppor-
4 tunity in the United States.

5 “(B) MANAGERIAL RESOURCES.—

6 “(i) IN GENERAL.—The bank holding
7 company and each of its subsidiary insured
8 depository institutions—

9 “(I) are well managed; and

10 “(II) were well managed during
11 the preceding 12-month period (but
12 for purposes of this subparagraph the
13 Board may disregard any insured de-
14 pository institution acquired by the
15 bank holding company during that
16 period).

17 “(ii) SECURITIES ACTIVITIES.—The
18 bank holding company has the managerial
19 resources to conduct the proposed securi-
20 ties activities safely and soundly.

21 “(C) INTERNAL CONTROLS.—The bank
22 holding company has established adequate poli-
23 cies and procedures to manage financial and
24 operational risks and to provide reasonable as-

1 surance of compliance with this section and
2 other applicable laws.

3 “(D) NO DETRIMENTAL EFFECT ON BANK
4 HOLDING COMPANY OR ITS SUBSIDIARY IN-
5 SURED DEPOSITORY INSTITUTIONS.—The ac-
6 quisition would not adversely affect the safety
7 and soundness of—

8 “(i) the bank holding company; or

9 “(ii) any insured depository institu-
10 tion subsidiary of the bank holding com-
11 pany.

12 “(E) CONCENTRATION OF RESOURCES.—
13 The acquisition would not result in an undue
14 concentration of resources in the commercial
15 banking and investment banking business.

16 “(3) EXPEDITED NOTICE PROCEDURE FOR AC-
17 QUISITION OF ADDITIONAL SECURITIES AFFILI-
18 ATES.—

19 “(A) ADDITIONAL SECURITIES AFFILI-
20 ATES.—A bank holding company may, without
21 providing the notice required under subsection
22 (b), directly or indirectly acquire the shares or
23 substantially all of the assets of any company
24 that is engaged predominantly in activities de-
25 scribed in subsection (a) (1) and (2), if—

1 “(i) the bank holding company pre-
2 viously received the Board’s approval
3 under subsection (b) to control a securities
4 affiliate and continues to control the secu-
5 rities affiliate pursuant to that approval;

6 “(ii) the bank holding company is
7 adequately capitalized and would continue
8 to be adequately capitalized following the
9 acquisition; and

10 “(iii) all insured depository institu-
11 tions controlled by the bank holding com-
12 pany are well capitalized and would con-
13 tinue to be well capitalized following the
14 acquisition.

15 “(B) APPROVAL REQUIRED.—

16 “(i) ABBREVIATED NOTICE PROCE-
17 DURE.—A bank holding company may not
18 acquire shares or assets under subpara-
19 graph (A) unless the company has pro-
20 vided the Board at least 30-days written
21 notice prior to the transaction and, during
22 that period, the Board has not disapproved
23 the transaction.

24 “(ii) LIMITED EXTENSION OF PE-
25 RIOD.—The Board may extend the dis-

1 approval period provided in clause (i) for
2 up to an additional 15 days.

3 “(iii) STANDARDS APPLIED BY THE
4 BOARD.—In reviewing a notice under this
5 paragraph, the Board shall consider wheth-
6 er the activities of the company to be ac-
7 quired are authorized under section 10 and
8 shall apply the standards provided in sec-
9 tion 4(j)(2).

10 “(c) ADDITIONAL INVESTMENT IN SECURITIES AF-
11 FILIATE.—

12 “(1) PRIOR NOTICE REQUIRED.—A bank hold-
13 ing company that has acquired control of a securi-
14 ties affiliate under this section shall not, directly or
15 indirectly, make any additional investment in the se-
16 curities affiliate that is considered capital for pur-
17 poses of any capital requirement imposed on the se-
18 curities affiliate under the Securities Exchange Act
19 of 1934 (other than an extension of credit under a
20 revolving credit agreement approved by the Board),
21 unless the bank holding company gives the Board
22 prior written notice of the proposed investment
23 and—

24 “(A) the Board issues a written statement
25 of its intent not to disapprove the notice; or

1 “(B) the Board does not disapprove the
2 notice within 30 days after the notice is filed.

3 “(2) NO PRIOR NOTICE REQUIRED FOR CER-
4 TAIN BANK HOLDING COMPANIES.—A bank holding
5 company is not required to provide prior notice
6 under paragraph (1) if after making any investment
7 described in paragraph (1)—

8 “(A) the bank holding company would ade-
9 quately capitalized and each of the bank hold-
10 ing company’s subsidiary insured depository in-
11 stitutions would be well capitalized; and

12 “(B) the bank holding company and each
13 of its subsidiary insured depository institutions
14 are well managed (but for purposes of this
15 clause the Board may disregard any insured de-
16 pository institution acquired by the bank hold-
17 ing company during the previous 12-month pe-
18 riod). A bank holding company that makes an
19 investment pursuant to this paragraph shall
20 provide written notice to the Board of the addi-
21 tional investment within 10 days after making
22 the investment.

23 “(3) CRITERIA FOR DISAPPROVING NOTICE.—
24 The Board may disapprove a notice filed under
25 paragraph (1) if any insured depository institution

1 affiliate of the securities affiliate is undercapitalized,
2 or if the Board determines that the bank holding
3 company would be undercapitalized after making the
4 investment or that the investment would otherwise
5 be unsafe or unsound.

6 “(4) EMERGENCY APPROVAL.—Notwithstanding
7 any provision of this subsection, in the event of ad-
8 verse market conditions, or concerns regarding the
9 financial or operational condition of the securities
10 affiliate, the Board may approve any additional in-
11 vestment in the securities affiliate on an emergency
12 basis.

13 “(d) PROVISIONS APPLICABLE IF AFFILIATED IN-
14 SURED DEPOSITORY INSTITUTION CEASES TO BE WELL
15 CAPITALIZED.—

16 “(1) CERTAIN SECURITIES ACTIVITIES RE-
17 STRICTED UNLESS AFFILIATED INSTITUTIONS ARE
18 WELL CAPITALIZED.—

19 “(A) APPLICABILITY.—This paragraph
20 shall apply to a securities affiliate if—

21 “(i) the lead insured depository insti-
22 tution of the bank holding company is not
23 well capitalized, or

24 “(ii) well capitalized insured deposi-
25 tory institutions do not control at least 80

1 percent of the assets of insured depository
2 institutions affiliated with the securities
3 affiliate.

4 “(B) IN GENERAL.—Except as provided in
5 subparagraph (C), the securities affiliate shall
6 not, beginning 180 days after subparagraph (A)
7 applies, agree to underwrite or deal in any secu-
8 rities other than—

9 “(i) securities expressly specified by
10 section 5136 of the Revised Statutes as
11 permissible for a national bank to under-
12 write or deal in;

13 “(ii) securities backed by or represent-
14 ing interests in notes, drafts, acceptances,
15 loans, leases, receivables, other obligations,
16 or pools of any such obligations; or

17 “(iii) securities issued by an open-end
18 investment company registered under the
19 Investment Company Act of 1940.

20 “(C) EXCEPTION.—The Board may permit
21 the securities affiliate to underwrite or deal in
22 securities not described in clauses (i) through
23 (iii) of subparagraph (B) for a period of 1 year
24 from the date on which subparagraph (A) ap-
25 plies, if—

1 “(i) the bank holding company sub-
2 mits a capital restoration plan to the
3 Board specifying the steps the bank hold-
4 ing company will take to meet the require-
5 ments of section 10(b)(2)(A), and contain-
6 ing such other information as the Board
7 may require; and

8 “(ii) the Board approves the plan.

9 “(D) EXTENSION OF PERIOD.—Upon ap-
10 plication by the bank holding company, the
11 Board may extend, for not more than 1 year at
12 a time, the period provided in subparagraph
13 (C), but no such extension shall in the aggre-
14 gate exceed 2 years.

15 “(2) DIVESTITURE.—

16 “(A) IN GENERAL.—The bank holding
17 company shall divest itself of the securities af-
18 filiate if any of the bank holding company’s
19 subsidiary insured depository institutions has
20 been undercapitalized for more than 24 months.

21 “(B) EXTENDING TIME.—The Board may
22 provide additional time for divestiture not ex-
23 ceeding 12 months if the appropriate Federal
24 banking agency has approved the
25 undercapitalized institution’s capital restoration

1 plan under section 38(e) of the Federal Deposit
2 Insurance Act, and the Board determines
3 that—

4 “(i) the bank holding company has at-
5 tempted in good faith to sell the securities
6 affiliate at a realistic price; and

7 “(ii) the securities affiliate poses no
8 significant risk to any affiliated insured de-
9 pository institution.

10 “(e) SECURITIES AFFILIATE EXCLUDED IN DETER-
11 MINING WHETHER BANK HOLDING COMPANY IS ADE-
12 QUATELY CAPITALIZED.—

13 “(1) IN GENERAL.—In determining whether a
14 bank holding company is adequately capitalized—

15 “(A) the bank holding company’s capital
16 and total assets shall each be reduced by—

17 “(i) an amount equal to the amount
18 of the bank holding company’s equity in-
19 vestment in any securities affiliate; and

20 “(ii) an amount equal to the amount
21 of any extensions of credit by the bank
22 holding company to any securities affiliate
23 that are considered capital for purposes of
24 any capital requirement imposed on the se-

1 securities affiliate under section 15(c)(3) of
2 the Securities Exchange Act of 1934; and

3 “(B) the securities affiliate’s assets and li-
4 abilities shall not be consolidated with those of
5 the bank holding company.

6 “(2) EXCEPTION FOR NONSECURITIES ACTIVI-
7 TIES.—Paragraph (1) does not apply to the extent
8 that the Board determines by regulation or order
9 that an item described in that paragraph relates to
10 activities that are not described in paragraph (1) or
11 (2) of subsection (a).

12 “(f) SAFEGUARDS RELATING TO SECURITIES AFFILI-
13 ATES.—

14 “(1) EXTENSION OF CREDIT AND ASSET PUR-
15 CHASES RESTRICTED.—

16 “(A) IN GENERAL.—No insured depository
17 institution affiliated with a securities affiliate
18 shall, directly or indirectly, do any of the follow-
19 ing:

20 “(i) Extend credit in any manner to
21 the securities affiliate.

22 “(ii) Issue a guarantee, acceptance, or
23 letter of credit, including an endorsement
24 or a standby letter of credit, for the benefit
25 of the securities affiliate.

1 “(iii) Purchase for its own account fi-
2 nancial assets of the securities affiliate, ex-
3 cept to the extent permitted by the Board
4 with respect to purchasing at the current
5 market value (based on reliable and regu-
6 larly available price quotations)—

7 “(I) securities expressly specified
8 by section 5136 of the Revised Status
9 as permissible for a national bank to
10 underwrite or deal in; or

11 “(II) securities that—

12 “(aa) the securities affiliate
13 has been marking to market
14 daily; and

15 “(bb) are rated investment
16 grade by at least 1 nationally
17 recognized statistical rating orga-
18 nization.

19 “(B) EXCEPTION FOR CLEARING SECURI-
20 TIES.—Subparagraph (A)(i) does not prohibit
21 an extension of credit by a well capitalized in-
22 sured depository institution made to acquire or
23 sell securities if—

24 “(i) the extension of credit is inciden-
25 tal to clearing transactions in those securi-

1 ties through that insured depository insti-
2 tution;

3 “(ii) both the principal of and the in-
4 terest on the extension of credit are fully
5 secured by those securities;

6 “(iii) either—

7 “(I) the extension of credit is to
8 be repaid on the same calendar day;
9 or

10 “(II) all of the following condi-
11 tions are satisfied:

12 “(aa) the securities cannot,
13 in the ordinary course of busi-
14 ness, be cleared on that calendar
15 day;

16 “(bb) the extension of credit
17 is to be repaid before the close of
18 business on the next calendar
19 day; and

20 “(cc) extensions of credit
21 under this subclause, when ag-
22 gregated with all other covered
23 transactions between the institu-
24 tion and all affiliated securities
25 affiliates do not exceed 10 per-

1 cent of the institution's capital
2 stock and surplus; and

3 “(iv) either—

4 “(I) the securities are securities
5 expressly specified by section 5136 of
6 the Revised Statutes as permissible
7 for a national bank to underwrite or
8 deal in; or

9 “(II) to the extent that the
10 Board permits transactions under this
11 paragraph in securities not described
12 in subclause (I), the securities affiliate
13 provides the insured depository insti-
14 tution such addition security or other
15 assurance of performance, if any, as
16 the Board shall require to prevent
17 such transactions from posing any ap-
18 preciable risk to the institution.

19 “(C) OTHER EXCEPTIONS.—The board
20 may make exceptions to subparagraph (A) for
21 well capitalized insured depository institutions
22 if—

23 “(i) the transaction is fully secured in
24 accordance with section 23A(c) of the Fed-
25 eral Reserve Act; and

1 “(ii) the aggregate amount of covered
2 transactions between the institution and all
3 securities affiliates of the bank holding
4 company, excluding transactions permitted
5 under subparagraph (A)(iii)(I) or
6 (B)(iii)(I), does not exceed 10 percent of
7 the institution’s capital stock and surplus.

8 “(2) CREDIT ENHANCEMENT RESTRICTED.—

9 “(A) IN GENERAL.—No insured depository
10 institution affiliated with a securities affiliate
11 shall, directly or indirectly, extend credit, or
12 issue or enter into a standby letter of credit,
13 asset purchase agreement, indemnity, guaran-
14 tee, insurance, or other facility, for the purpose
15 of enhancing the marketability of a securities
16 issue underwritten by the securities affiliate.

17 “(B) EXCEPTIONS.—The Board may make
18 exceptions to subparagraph (A)—

19 “(i) for well capitalized insured depos-
20 itory institutions if there is substantial
21 participation by other lenders in the exten-
22 sion of credit, standby letter of credit,
23 asset purchase agreement, indemnity,
24 guarantee, insurance or other facility; and

1 “(ii) for securities expressly specified
2 by section 5136 of the Revised Status as
3 permissible for a national bank to under-
4 write or deal in.

5 “(3) PROHIBITION ON FINANCING PURCHASE
6 OF SECURITY BEING UNDERWRITTEN.—

7 “(A) IN GENERAL.—No bank holding com-
8 pany or subsidiary of a bank holding company
9 (other than a securities affiliate) shall know-
10 ingly extend or arrange for the extension of
11 credit, directly or indirectly, secured by or for
12 the purpose of purchasing any security while, or
13 for 30 days after, that security is the subject of
14 a distribution in which a securities affiliate of
15 that bank holding company participates as an
16 underwriter or a member of a selling group.
17 For purposes of this subparagraph, a bank
18 holding company or subsidiary may rely on an
19 express written acknowledgement signed by the
20 borrower that the credit is not secured by or for
21 the purpose of purchasing a security described
22 in this subparagraph.

23 “(B) EXCEPTIONS.—The Board may make
24 exceptions to subparagraph (A)—

1 “(i) for extensions of credit if the se-
2 curities are securities expressly specified by
3 section 5136 of the Revised Statutes as
4 permissible for a national bank to under-
5 write or deal in;

6 “(ii) for any other extension of credit,
7 after consultation with and considering the
8 views of the Securities and Exchange Com-
9 mission, if:

10 “(I) the bank holding company is
11 adequately capitalized,

12 “(II) the bank holding company’s
13 lead insured depository institution is
14 well capitalized, and

15 “(III) well capitalized insured de-
16 pository institutions control at least
17 80 percent of the assets of insured de-
18 pository institutions controlled by the
19 bank holding company and all insured
20 depository institutions controlled by
21 the bank holding company are well
22 capitalized or adequately capitalized.

23 “(C) CONSISTENCY WITH THE FEDERAL
24 SECURITIES LAWS.—Nothing in this paragraph
25 shall permit a securities affiliate to extend or

1 maintain credit or arrange for an extension of
2 credit except in compliance with applicable pro-
3 visions of the Securities Exchange Act of 1934
4 and the rules and interpretations thereunder.

5 “(4) RESTRICTION ON EXTENDING CREDIT TO
6 MAKE PAYMENTS ON SECURITIES.—

7 “(A) IN GENERAL.—No insured depository
8 institution affiliated with a securities affiliate
9 shall, directly or indirectly, extend credit to an
10 issuer of securities underwritten by the securi-
11 ties affiliate for the purpose of paying the prin-
12 cipal of those securities or interest or dividends
13 on those securities. This subparagraph does not
14 apply to an extension of credit for a docu-
15 mented purpose (other than paying principal,
16 interest, or dividends) if the timing, maturity,
17 and other terms of the credit, taken as a whole,
18 are substantially different from those of the un-
19 derwritten securities.

20 “(B) EXCEPTIONS.—The Board may make
21 exceptions to subparagraph (A) if the insured
22 depository institution is well capitalized, and—

23 “(i) the securities are securities ex-
24 pressly specified by section 5136 of the Re-

1 vised Statutes as permissible for a national
2 bank to underwrite or deal in; or

3 “(ii) there is substantial participation
4 by other lenders in the extension of credit.

5 “(5) DIRECTOR AND SENIOR EXECUTIVE OFFI-
6 CER INTERLOCKS RESTRICTED.—

7 “(A) IN GENERAL.—No director or senior
8 executive officer of a securities affiliate shall
9 serve at the same time as a director or senior
10 executive officer of any affiliated insured depos-
11 itory institution.

12 “(B) EXCEPTION FOR SMALL BANK HOLD-
13 ING COMPANIES.—Notwithstanding subpara-
14 graph (A), a director or senior executive officer
15 of a securities affiliate may serve at the same
16 time as a director or senior executive officer of
17 an affiliated insured depository institution if
18 that institution and all affiliated insured deposi-
19 tory institutions have, in the aggregate, total
20 assets of not more than \$500,000,000. The dol-
21 lar limitation in the preceding sentence shall be
22 adjusted annually after December 31, 1995, by
23 the annual percentage increase in the Consumer
24 Price Index for Urban Wage Earners and Cleri-

1 cal Workers published by the Bureau of Labor
2 Statistics.

3 “(C) BOARD’S AUTHORITY TO MAKE EX-
4 CEPTIONS.—

5 “(i) IN GENERAL.—The Board may,
6 by regulation or order, make exceptions to
7 subparagraph (A).

8 “(ii) STANDARDS.—The Board—

9 “(I) shall, in determining wheth-
10 er to make such exceptions, consider
11 the size of the bank holding compa-
12 nies, insured depository institutions,
13 and securities affiliates involved, any
14 burdens that may be imposed by sub-
15 paragraph (A), the safety and sound-
16 ness of the insured depository institu-
17 tions and securities affiliates, and
18 other appropriate factors, including
19 unfair competition in securities activi-
20 ties or the improper exchange of
21 nonpublic customer information; and

22 “(II) shall not permit—

23 “(aa) more than half of the
24 insured depository institution’s
25 directors to be directors or senior

1 executive officers of the securities
2 affiliate; or

3 “(bb) more than half of the
4 securities affiliate’s directors to
5 be directors or senior executive
6 officers of the insured depository
7 institution.

8 “(D) SENIOR EXECUTIVE OFFICER DE-
9 FINED.—For purposes of this paragraph, the
10 term ‘senior executive officer’ has the same
11 meaning as the term ‘executive officer’ has in
12 section 22(h) of the Federal Reserve Act.

13 “(6) DISCLOSURE REQUIRED BY SECURITIES
14 AFFILIATE.—At the time a securities account is
15 opened, a securities affiliate shall conspicuously dis-
16 close in writing to each of its customers that—

17 “(A) securities sold, offered, or rec-
18 ommended by the securities affiliate are not de-
19 posits, are not insured by the Federal Deposit
20 Insurance Corporation, are not guaranteed by
21 an affiliated insured depository institution, and
22 are not otherwise an obligation of an insured
23 depository institution (unless such is the case);

24 “(B) the securities affiliate is not an in-
25 sured depository institution, and is a corpora-

1 tion separate from any insured depository insti-
2 tution; and

3 “(C) the securities affiliate may be under-
4 writing or dealing in the securities being sold,
5 offered or recommended, and if so, would have
6 a financial interest in the transaction.

7 “(7) DISCLOSURE REQUIRED BY INSURED DE-
8 POSITORY INSTITUTIONS.—No insured depository in-
9 stitution that is affiliated with a securities affiliate
10 shall knowingly express any opinion on the value of,
11 or the advisability of purchasing or selling, securities
12 being underwritten or dealt in by a securities affili-
13 ate of that bank holding company unless the insured
14 depository institution conspicuously discloses in writ-
15 ing to the customer that—

16 “(A) the securities affiliate is underwriting
17 or dealing in the securities and has a financial
18 interest in the transaction;

19 “(B) the securities recommended are not
20 deposits, are not insured by the Federal De-
21 posit Insurance Corporation, are not guaran-
22 teed by the institution or any other affiliated
23 insured depository institution, and are not oth-
24 erwise an obligation of an insured depository in-
25 stitution (unless such is the case), and are sub-

1 ject to investment risks including possible loss
2 of principal invested; and

3 “(C) the securities affiliate is not an in-
4 sured depository institution, and is a corpora-
5 tion separate from any insured depository insti-
6 tution.

7 “(8) IMPROPER DISCLOSURE OF CONFIDENTIAL
8 CUSTOMER INFORMATION PROHIBITED.—

9 “(A) IN GENERAL.—No insured depository
10 institution subsidiary of a bank holding com-
11 pany shall disclose to a securities affiliate of
12 that bank holding company, nor shall a securi-
13 ties affiliate disclose to any affiliated insured
14 depository institution or subsidiary of such an
15 institution, any nonpublic customer conforma-
16 tion (including an evaluation of the credit-
17 worthiness of an issuer or other customer of
18 that institution or securities affiliate), unless it
19 is clearly and conspicuously disclosed that such
20 information may be communicated among such
21 persons and the customer is given the oppor-
22 tunity, prior to the time that the information is
23 initially communicated, to direct that such in-
24 formation not be communicated among such
25 persons.

1 “(B) DEFINITION.—For purposes of sub-
2 paragraph (A), the term ‘nonpublic customer
3 information’ does not include—

4 “(i) customers’ names and addresses
5 (unless a customer has specified other-
6 wise);

7 “(ii) information that could be ob-
8 tained from unaffiliated credit bureaus or
9 similar companies in the ordinary course of
10 business; or

11 “(iii) information that is customarily
12 provided to unaffiliated credit bureaus or
13 similar companies in the ordinary course of
14 business by—

15 “(I) insured depository institu-
16 tions not affiliated with securities af-
17 filiates; or

18 “(II) brokers and dealers not af-
19 filiated with insured depository insti-
20 tutions.

21 “(9) UNDERWRITING SECURITIES REPRESENT-
22 ING OBLIGATIONS ORIGINATED BY AFFILIATE RE-
23 STRICTED.—A securities affiliate shall not under-
24 write securities secured by or representing an inter-
25 est in mortgages or other obligations originated or

1 purchased by an affiliated insured depository institu-
2 tion or subsidiary of such an institution—

3 “(A) unless those securities—

4 “(i) are rated by at least one unaffili-
5 ated, nationally recognized statistical rat-
6 ing organization;

7 “(ii) are issued or guaranteed by the
8 Federal Home Loan Mortgage Corpora-
9 tion, the Federal National Mortgage Asso-
10 ciation, or the Government National Mort-
11 gage Association; or

12 “(iii) represent interests in securities
13 described in clause (ii); or

14 “(B) except as permitted by the Board.

15 “(10) RECIPROCAL ARRANGEMENTS PROHIB-
16 ITED.—No bank holding company and no subsidiary
17 of a bank holding company may enter into any
18 agreement, understanding, or other arrangement
19 under which—

20 “(A) one bank holding company (or sub-
21 sidiary of that bank holding company) agrees to
22 engage in a transaction with, or on behalf of,
23 another bank holding company (or subsidiary of
24 that bank holding company), in exchange for

1 “(B) the agreement of the second bank
2 holding company referred to in subparagraph
3 (A) (or a subsidiary of that bank holding com-
4 pany) to engage in any transaction with, or on
5 behalf of, the first bank holding company re-
6 ferred to in that subparagraph (or any subsidi-
7 ary of that bank holding company), for the pur-
8 pose of evading any requirement or restriction
9 of Federal law on transactions between, or for
10 the benefit of, affiliates of bank holding compa-
11 nies.

12 “(11) SAFEGUARDS APPLY TO CERTAIN SUB-
13 SIDIARIES.—Except as provided in this subsection:

14 “(A) SECURITIES AFFILIATE.—No subsidi-
15 ary of a securities affiliate may do anything
16 that this subsection prohibits the securities af-
17 filiate from doing.

18 “(B) DEPOSITORY INSTITUTION.—No sub-
19 sidiary of an insured depository institution or of
20 a wholesale financial institution may do any-
21 thing that this subsection prohibits the institu-
22 tion from doing.

23 “(12) AUTHORITY TO MODIFY AND IMPOSE AD-
24 DITIONAL SAFEGUARDS; INTERPRETIVE AUTHOR-
25 ITY—

1 “(A) IN GENERAL.—The Board may, by
2 regulation or order—

3 “(i) adopt additional limitations, re-
4 strictions or conditions on relationships or
5 transactions among insured depository in-
6 stitutions, their affiliates, and their cus-
7 tomers; and

8 “(ii) make any modification to any
9 limitation, restriction or condition on rela-
10 tionships or transactions among insured
11 depository institutions, their affiliates and
12 their customers imposed under this sub-
13 section, including modifications in addition
14 to those expressly provided for in this sub-
15 section.

16 “(B) STANDARDS.—The Board may not
17 exercise authority under subparagraph (A)(i) or
18 subparagraph (A)(ii) unless the Board finds
19 that such action is consistent with the purposes
20 of this Act, including the avoidance of any sig-
21 nificant risk to the safety and soundness of in-
22 sured depository institutions or the Federal de-
23 posit insurance funds, enhancement of the fi-
24 nancial stability of bank holding companies,
25 prevention of the subsidization of securities af-

1 filiates by insured depository institutions, avoid-
2 ance of conflicts of interest or other abuses, and
3 application of the principle of national treat-
4 ment and equality of competitive opportunity
5 between securities affiliates owned or controlled
6 by domestic bank holding companies and securi-
7 ties affiliates owned or controlled by foreign
8 banks operating in the United States.

9 “(13) COMPLIANCE PROGRAMS REQUIRED.—

10 “(A) IN GENERAL.—Each appropriate
11 Federal banking agency and the Securities and
12 Exchange Commission shall establish a program
13 for—

14 “(i) sharing information concerning
15 compliance with subtitles A, B, or C of
16 title I of the Financial Services Competi-
17 tiveness Act of 1995 by:

18 “(I) entities that are brokers,
19 dealers, investment advisers or invest-
20 ment companies registered with the
21 Securities and Exchange Commission
22 that are affiliated with insured deposi-
23 tory institutions, or are separately
24 identifiable departments or divisions

1 of insured depository institutions reg-
2 istered as investment advisers; and

3 “(II) such insured depository in-
4 stitutions and their affiliates;

5 “(ii) enforcing compliance with sub-
6 title A of title I of the Financial Services
7 Competitiveness Act of 1995 and section
8 3(a)(4) and 3(a)(5) of the Securities Ex-
9 change Act of 1934 by entities under its
10 supervision; and

11 “(iii) responding to any complaints
12 from customers about inappropriate cross-
13 marketing of securities products or inad-
14 equate disclosure.

15 “(B) DATA COLLECTION.—

16 “(i) IN GENERAL.—The appropriate
17 Federal banking agencies, after consulta-
18 tion with and consideration of the views of
19 the Securities and Exchange Commission,
20 may require any depository institution that
21 has effected securities transactions pursu-
22 ant to any exception enumerated in sec-
23 tions 3(a)(4)(C) and 3(a)(5) of the Securi-
24 ties Exchange Act of 1934 to identify the
25 exceptions relied upon and to submit such

1 information necessary to monitor compli-
2 ance under sections 3(a)(4)(C) and 3(a)(5)
3 of the Securities Exchange Act of 1934.

4 “(ii) COMMISSION ACCESS.—The ap-
5 propriate Federal banking agency shall
6 make any such information available to the
7 Commission upon request.

8 “(iii) COMPLIANCE.—In implementing
9 the provisions of this subparagraph, the
10 appropriate Federal banking agencies shall
11 ensure that any information requests to in-
12 sured depository institutions take into ac-
13 count the size and activities of the institu-
14 tions and do not cause undue reporting
15 burdens.

16 “(C) COMMISSION’S ENFORCEMENT AU-
17 THORITY.—Without limiting in any way the au-
18 thority of the appropriate Federal banking
19 agencies under this subsection, the Securities
20 and Exchange Commission shall have the au-
21 thority to enforce the provisions of this sub-
22 section against a securities affiliate to the ex-
23 tent that those provisions govern the conduct or
24 activities of the securities affiliate as if they

1 were provisions of the Securities Exchange Act
2 of 1934.

3 “(D) EXAMINATION REPORTS.—The ap-
4 propriate Federal banking agencies shall, to the
5 extent practicable, use the reports of examina-
6 tion of any broker, dealer, investment adviser,
7 or investment company made by or on behalf of
8 the Securities and Exchange Commission and
9 reports made by or on behalf of a registered se-
10 curities association or national securities ex-
11 change, and shall defer to such examinations
12 for compliance with the Federal securities laws.

13 “(E) INTERPRETATIONS OF THE FEDERAL
14 SECURITIES LAWS.—The appropriate Federal
15 banking agencies shall defer to the Securities
16 and Exchange Commission regarding all inter-
17 pretations and enforcement of the Federal secu-
18 rities laws relating to the application of the
19 Federal securities laws to the activities and con-
20 duct of brokers, dealers, investment advisers,
21 and investment companies.

22 “(F) NOTICE OF CERTAIN ACTIONS.—

23 “(i) SECURITIES AND EXCHANGE
24 COMMISSION.—The Securities and Ex-
25 change Commission shall give notice to the

1 appropriate Federal banking agency upon
2 the entry of an order of investigation of, or
3 the commencement of any disciplinary or
4 law enforcement proceedings by the Com-
5 mission and a copy of any order entered by
6 the Commission against—

7 “(I) any broker, dealer, or invest-
8 ment adviser that—

9 “(aa) is registered with the
10 Securities and Exchange Com-
11 mission; and

12 “(bb) is affiliated with or is
13 a separately identifiable depart-
14 ment or division of an insured
15 depository institution;

16 “(II) any investment company
17 registered with the Securities and Ex-
18 change Commission that is an affiliate
19 of or is advised by an investment ad-
20 viser affiliated with an insured deposi-
21 tory institution or by a separately
22 identifiable department or division of
23 an insured depository institution that
24 is a registered investment adviser; or

1 “(III) any bank holding com-
2 pany, insured depository institution,
3 or subsidiary of such company or in-
4 stitution, if the proposed action re-
5 lates to subtitles A, B, or C of title I
6 of the Financial Services Competitive-
7 ness Act of 1995.

8 “(ii) APPROPRIATE FEDERAL BANK-
9 ING AGENCIES.—Upon the entry of an
10 order of investigation of, or the commence-
11 ment of any disciplinary or law enforce-
12 ment proceedings to enforce the provisions
13 of subtitle A of title I of the Financial
14 Services Competitiveness Act of 1995 by
15 an appropriate Federal banking agency
16 against any broker, dealer, investment ad-
17 viser, or investment company that is reg-
18 istered under the Federal securities laws
19 and is affiliated with an insured depository
20 institution, the appropriate Federal bank-
21 ing agency shall give notice to the Securi-
22 ties and Exchange Commission of the pro-
23 posed action.

24 “(iii) EXTENSION.—The notice re-
25 quired under clause (i) or (ii) may be pro-

1 vided promptly after action by the Securi-
2 ties and Exchange Commission or the ap-
3 propriate Federal banking agency, if—

4 “(I) the Commission determines
5 that the protection of investors re-
6 quires immediate action by the Com-
7 mission and prior notice under clause
8 (i) is not practical under the cir-
9 cumstances; or

10 “(II) the appropriate Federal
11 banking agency determines that con-
12 cerns for the safety and soundness of
13 an insured depository institution or its
14 affiliate require immediate action by
15 the agency and prior notice under
16 clause (ii) is not practical under the
17 circumstances.

18 “(G) COORDINATED ENFORCEMENT AC-
19 TIONS.—The Securities and Exchange Commis-
20 sion and the appropriate Federal banking agen-
21 cies shall, to the extent practicable, coordinate
22 supervisory actions based on applicable law
23 where the actions are based on the same or re-
24 lated events or practices.

1 “(H) INVESTMENT COMPANIES NOT AF-
2 FILIATED WITH AN INSURED DEPOSITORY IN-
3 STITUTION.—The appropriate Federal banking
4 agency shall not have authority under this title
5 or any other provision of law to inspect or ex-
6 amine any investment company registered
7 under the Federal securities laws that is not—

8 “(i) affiliated with an insured depository
9 institution; or

10 “(ii) advised by an investment adviser
11 affiliated with an insured depository insti-
12 tution or by a separately identifiable de-
13 partment or division of an insured depository
14 institution that is a registered invest-
15 ment adviser.

16 “(I) DEFINITION.—For purposes of this
17 paragraph, the term ‘Federal securities laws’
18 shall mean the provisions of Federal law gov-
19 erning securities activities that are within the
20 jurisdiction of the Securities and Exchange
21 Commission as set forth in the Securities Act of
22 1993, the Securities Exchange Act of 1934, the
23 Investment Company Act of 1940, the Invest-
24 ment Advisers Act of 1940, and the Trust In-
25 denture Act of 1939.

1 “(g) ACTIVITIES NOT PERMISSIBLE FOR DEPOSI-
2 TORY INSTITUTIONS OR SECURITIES AFFILIATES.—

3 “(1) A bank holding company that acquires
4 control of a securities affiliate shall not, beginning
5 1 year after the date of that acquisition, permit any
6 depository institution (as defined in section 3 of the
7 Federal Deposit Insurance Act) of which it has con-
8 trol or any subsidiary of that institution—

9 “(A) to engage, directly or indirectly, in
10 the United States—

11 “(i) in underwriting securities backed
12 by or representing interests in notes,
13 drafts, acceptances, loans, leases, receiv-
14 ables, other obligations, or pools of any
15 such obligations, originated or purchased
16 by the insured depository institution or its
17 affiliates;

18 “(ii) in underwriting or dealing in any
19 other securities, except securities expressly
20 specified by section 5136 of the Revised
21 Statutes as permissible for a national bank
22 to underwrite or deal in; or

23 “(iii) in effecting sales as part of a
24 primary offering to an accredited investor
25 (as defined in section 2 of the Securities

1 Act of 1933) of securities of an issuer, not
2 involving a public offering, pursuant to
3 section 3(b), 4(2), or 4(6) of the Securities
4 Act of 1933 and the rules and regulations
5 issued thereunder; or

6 “(B) to make an equity investment in any
7 securities affiliate.

8 “(2) The limitations in paragraph (1)(A) shall
9 not apply to activities conducted by a subsidiary held
10 pursuant to section 25 or 25A of the Federal Re-
11 serve Act or section 4(c)(13) of this Act.

12 “(3) Nothing in this section shall permit a secu-
13 rities affiliate to accept deposits in contravention of
14 section 21 of the Banking Act of 1933 (12 U.S.C.
15 378(a)).

16 “(h) APPROVAL OF SECURITIES ACTIVITIES UNDER
17 SECTION 4(c)(8) RESTRICTED.—The Board shall deny
18 any notice or application by a bank holding company
19 under authority of section 4(c)(8) to engage in, or acquire
20 the shares of a company engaged in, underwriting or deal-
21 ing in securities in the United States, except securities ex-
22 pressly specified by section 5136 of the Revised Statutes
23 as permissible for a national bank to underwrite or deal
24 in.

1 “(i) BANKERS’ BANKS.—For purposes of this sec-
2 tion, each shareholder of or participant in a company that
3 controls a depository institution described in section
4 5169(b)(1) of the Revised Statutes or in a similar statute
5 of any State, and each subsidiary of such a shareholder
6 or participant, shall be treated as if it were a subsidiary
7 of that company. This subsection shall not apply to a
8 shareholder or participant in that company (or subsidiary
9 of that shareholder or participant) if the shareholder or
10 participant and its affiliates do not, in the aggregate, con-
11 trol more than 5 percent of any class of voting shares of
12 that company.

13 “(j) SHARES ACQUIRED IN CONNECTION WITH UN-
14 DERWRITING AND INVESTMENT BANKING ACTIVITIES.—

15 “(1) IN GENERAL.—Notwithstanding section
16 4(a), a bank holding company may directly or indi-
17 rectly own or control shares of any company engaged
18 in activities not authorized pursuant to section 4 of
19 this Act if—

20 “(A) the shares are acquired and held by
21 a securities affiliate as part of a bona fide un-
22 derwriting or investment banking activity and
23 such shares are held only for such period of
24 time as will permit the sale thereof on a reason-

1 able basis consistent with the nature of such ac-
2 tivity; and

3 “(B) during the period such shares are
4 held, the bank holding company does not di-
5 rectly or indirectly participate in the day to day
6 management or operation of the company.

7 “(2) BOARD RULES.—The Board may establish
8 rules governing the acquisition and retention of
9 shares under this subsection, including limitations
10 governing the amount and percentage of shares that
11 may be held under this paragraph and the cir-
12 cumstances and time period such shares may be
13 held, in order to assure compliance with the pur-
14 poses of this Act, including the separation of bank-
15 ing and commerce.

16 “(k) DEFINITIONS.—For purposes of this section—

17 “(1) CAPITAL CATEGORIES.—

18 “(A) INSURED DEPOSITORY INSTITU-
19 TIONS.—With respect to insured depository in-
20 stitutions, the terms ‘well capitalized’, ‘ade-
21 quately capitalized’, and ‘undercapitalized’ have
22 the meaning given to those terms in section
23 38(b) of the Federal Deposit Insurance Act.

24 “(B) BANK HOLDING COMPANIES.—A
25 bank holding company is ‘adequately capital-

1 ized’ if it meets the required minimum level for
2 each relevant capital measure established by the
3 Board for bank holding companies, and
4 ‘undercapitalized’ if it fails to meet the required
5 minimum level for any such relevant capital
6 measure.

7 “(2) CAPITAL STOCK AND SURPLUS.—The term
8 ‘capital stock and surplus’ has the same meaning as
9 in section 23A of the Federal Reserve Act.

10 “(3) COVERED TRANSACTION.—The term ‘cov-
11 ered transaction’ has the same meaning as in section
12 23A of the Federal Reserve Act.

13 “(4) FOREIGN BANKS.—A branch or agency of
14 a foreign bank or a commercial lending company
15 controlled by a foreign bank (as in terms ‘agency’,
16 ‘branch’, ‘commercial lending company’, and ‘foreign
17 bank’ are defined in section 1 of the International
18 Banking Act of 1978) shall be deemed to be an in-
19 sured depository institution.

20 “(5) SECURITY.—

21 “(A) IN GENERAL.—The term ‘security’
22 has the meaning given to that term in section
23 3(a)(10) of the Securities Exchange Act of
24 1934.

1 “(B) EXCEPTIONS.—For purposes of this
2 section, other than subsection (a), the term ‘se-
3 curity’ does not include any of the following:

4 “(i) A contract of insurance.

5 “(ii) A deposit account, savings ac-
6 count, certificate of deposit, or other de-
7 posit instrument issued by a depository in-
8 stitution.

9 “(iii) A share account issued by a sav-
10 ings association if the account is insured
11 by the Federal Deposit Insurance Corpora-
12 tion.

13 “(iv) A banker’s acceptance.

14 “(v) A letter of credit issued by a de-
15 pository institution.

16 “(vi) A debit account at a depository
17 institution arising from a credit card or
18 similar arrangement.

19 “(vii) A traditional loan or loan par-
20 ticipation (as determined by the Board).

21 “(C) BOARD’S AUTHORITY TO EXEMPT
22 TRADITIONAL BANKING PRODUCTS.—The Board
23 may, after consultation and consideration of the
24 views of the Securities and Exchange Commis-
25 sion, by regulation exempt from the definition

1 of 'security' a banking product that national
2 banks have traditionally and customarily origi-
3 nated or handled (such as mortgage notes) if
4 the exemption is consistent with the purposes of
5 this section.

6 “(D) DEFINITION FOR LIMITED PUR-
7 POSE.—The fact that a particular instrument is
8 excluded pursuant to subparagraphs (B) or (C)
9 from the definition of 'security' for purposes of
10 this section shall not be construed as finding or
11 implying that such instrument is or is not a 'se-
12 curity' for purposes of section 3(a)(10) of the
13 Securities Exchange Act of 1934.”.

14 (b) TRANSITION RULE FOR SECURITIES AFFILIATES
15 APPROVED UNDER SECTION 4(c)(8).—

16 (1) IN GENERAL.—Effective 18 months after
17 the date of enactment of this Act, no bank holding
18 company may engage in, or retain the shares of any
19 company engaged in, underwriting or dealing in se-
20 curities based on the approval of an application
21 under section 4(c)(8) of the Bank Holding Company
22 Act of 1956—

23 (A) unless the bank holding company has
24 obtained the Board's approval to retain the
25 shares of that company under section 10; or

1 (B) except underwriting or dealing in secu-
2 rities expressly specified by section 5136 of the
3 Revised Statutes as permissible for a national
4 bank to underwrite or deal in.

5 (2) EXTENDING TIME.—

6 (A) IN GENERAL.—The Board may, for
7 good cause shown, extend the time provided
8 under paragraph (1) for not more than 18
9 months.

10 (B) PENDING NOTICES.—If a bank holding
11 company has filed a notice under section 10(b)
12 of the Bank Holding Company Act of 1956 not
13 later than 180 days after the date of enactment
14 of this Act, paragraph (1) shall not apply with
15 respect to the company engaged in such under-
16 writing or dealing until 180 days after the
17 Board has acted on the notice.

18 (c) CONFORMING AMENDMENTS.—

19 (1) DEFINITIONS.—Section 2 of the Bank
20 Holding Company Act of 1956 (12 U.S.C. 1841) is
21 amended by adding at the end the following new
22 subsections:

23 “(n) SECURITIES AFFILIATE.—The term ‘securities
24 affiliate’ means any company—

1 “(1) that is (or is required to be) registered
2 under the Securities Exchange Act of 1934 as a
3 broker or dealer; and

4 “(2) the acquisition or retention of the shares
5 or assets of which the Board has approved under
6 section 10.

7 “(o) INSURED DEPOSITORY INSTITUTION.—The
8 term ‘insured depository institution’ has the meaning
9 given to that term in section 3 of the Federal Deposit In-
10 surance Act.

11 “(p) LEAD INSURED DEPOSITORY INSTITUTION.—
12 The term ‘lead insured depository institution’ shall mean
13 the largest insured depository institution controlled by the
14 bank holding company, based on a comparison on the av-
15 erage total assets controlled by each insured depository in-
16 stitution during the previous 12-month period.

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

21 (2) AMENDMENT REGARDING CONDITIONAL AP-
22 PROVAL OF APPLICATIONS.—Section 4(a)(2) of the
23 Bank Holding Company Act of 1956 (12 U.S.C.
24 1843(a)(2)) is amended by striking “paragraph (8)”
25 and all that follows through “issued by the Board

1 under such paragraph” and inserting “section 10,
2 subsection (l) or subsection (c)(8), subject to all the
3 conditions specified in those provisions or in any
4 order or regulation issued by the Board under those
5 provisions”.

6 (3) AMENDMENT TO NOTICE PROCEDURES.—
7 Section 4(j) of the Bank Holding Company Act of
8 1956 (12 U.S.C. 1843(j)) is amended—

9 (A) in paragraph (1)(A) by striking “sub-
10 section (c)(8) or (a)(2)” and inserting in its
11 place “subsection (c)(8), (c)(15), (l), or (a)(2)”;

12 (B) in paragraph (1)(E) by striking “sub-
13 section (c)(8) or (a)(2)” and inserting in its
14 place “subsection (c)(8), (c)(15), (l), or (a)(2)”;

15 (C) by redesignating paragraphs (2)(B)
16 and (2)(C) as paragraphs (2)(C) and (2)(D) re-
17 spectively, and inserting a new paragraph
18 (2)(B) as follows:

19 “(B) CRITERIA FOR NOTICES INVOLVING
20 SECURITIES AFFILIATES.—In considering any
21 notice that involves the acquisition of shares of
22 a securities affiliate pursuant to section
23 4(c)(15), the Board shall apply the criteria and
24 safeguards contained in this paragraph and in
25 section 10.”.

1 (d) AMENDMENT TO THE FEDERAL RESERVE ACT.—
2 Section 23B(b)(1)(B) of the Federal Reserve Act (12
3 U.S.C. 371c–1(b)(1)(B)) is amended by inserting “and for
4 30 days thereafter” after “during the existence of any un-
5 derwriting or selling syndicate”.

6 (e) EXEMPTION FROM SECTION 305(b) OF THE FED-
7 ERAL POWER ACT.—Section 305(b) of the Federal Power
8 Act (16 U.S.C. 825d(b)) shall not apply to any person
9 now holding or proposing to hold the position of officer
10 or director of a public utility and officer or director of
11 a bank, trust company, banking association, or firm per-
12 mitted by section 10 of the Bank Holding Company Act
13 of 1956 (as amended by subsection (a)) or section 5136(b)
14 of the Revised Statutes (12 U.S.C. 24(b)) (as amended
15 by section 716) to underwrite or participate in the market-
16 ing of securities (including commercial paper) of a public
17 utility, if that bank, trust company, banking association,
18 or firm does not underwrite or participate in the market-
19 ing of securities of the public utility for which the person
20 serves or proposes to serve as an officer or director.

21 (f) RETENTION OF CERTAIN INVESTMENTS BY SECURITIES COMPANIES AFFILIATING WITH INSURED DEPOSITORY INSTITUTIONS.—Section 4 of the Bank Holding
22 Company Act (12 U.S.C. 1843) is amended by adding at
23 the end the following new subsection:
24
25

1 “(k) OWNERSHIP OF SHARES OF CERTAIN COMPA-
2 NIES BY SECURITIES COMPANIES THAT BECOME BANK
3 HOLDING COMPANIES.—

4 “(1) FINANCIAL COMPANIES.—Notwithstanding
5 subsection (a), a bank holding company may retain
6 direct or indirect ownership or control of voting
7 shares of any company that engages solely in activi-
8 ties that the Board determines to be financial in na-
9 ture if—

10 “(A) the bank holding company acquired
11 the shares of such company or of each company
12 to which it is a successor more than two years
13 prior to the date that such bank holding com-
14 pany becomes a bank holding company;

15 “(B) the aggregate investment by the bank
16 holding company in shares ownership or control
17 of which the bank holding company would be
18 prohibited from retaining but for this para-
19 graph does not exceed 10 percent of the total
20 consolidated capital and surplus of the bank
21 holding company on the date that it becomes a
22 bank holding company or on the date of any ad-
23 ditional investment by the bank holding com-
24 pany in such shares; and

1 “(C) more than 50 percent of the business
2 of the bank holding company for each of the
3 two calendar years prior to the date it becomes
4 a bank holding company involved securities ac-
5 tivities described in sections 10(a) (1) and (2),
6 excluding from such calculation activities (other
7 than securities activities) in which bank holding
8 companies were permitted to engage prior to
9 the enactment of the Financial Services Com-
10 petitiveness Act of 1995.

11 “(2) NONFINANCIAL COMPANIES.—

12 “(A) IN GENERAL.—Notwithstanding sub-
13 section (a), a bank holding company that is de-
14 scribed in paragraph (1)(C) may, for a period
15 of 5 years from the date that the company be-
16 comes a bank holding company, retain direct or
17 indirect ownership or control of voting shares of
18 any company that the bank holding company
19 owns or controls on the date it becomes a bank
20 holding company.

21 “(B) EXTENSION OF DIVESTITURE PE-
22 RIOD.—The Board may extend the period de-
23 scribed in subparagraph (A) for an additional
24 period not to exceed 5 years if the Board deter-
25 mines that such extension is necessary to avert

1 substantial loss to the bank holding company
2 and finds that the bank holding company has
3 made good faith efforts to divest such shares.

4 “(C) NO EXPANSION OF NONFINANCIAL
5 COMPANIES PRIOR TO DIVESTITURE.—Unless
6 such acquisition or activity is permitted in ac-
7 cordance with section 4(c)—

8 “(i) no bank holding company or com-
9 pany whose shares are owned or controlled
10 by a bank holding company pursuant to
11 this paragraph (2) may acquire any inter-
12 est in or assets of any company, and

13 “(ii) no company whose shares are
14 owned or controlled by a bank holding
15 company pursuant to this paragraph (2)
16 may engage directly or indirectly in any
17 activity that the company did not conduct
18 on the day before the bank holding com-
19 pany registered as a bank holding com-
20 pany.

21 “(3) RESTRICTIONS ON JOINT MARKETING.—
22 No insured depository institution (and no subsidiary
23 of such institution) shall—

24 “(A) offer or market, directly or indirectly
25 through any arrangement, any product or serv-

1 ice of any affiliate whose shares are owned or
2 controlled by the bank holding company pursu-
3 ant to this subsection or section 10(j), or

4 “(B) permit any of its products or services
5 to be offered or marketed, directly or indirectly
6 through any arrangement, by or through any
7 affiliate whose shares are owned or controlled
8 by the bank holding company pursuant to this
9 subsection or section 10(j),

10 unless the product or service is permissible for bank
11 holding companies to provide under section 10 or
12 section 4(c)(8).”.

13 (g) AMENDMENT TO THE RIGHT TO FINANCIAL PRI-
14 VACY ACT.—Section 1112(e) of the Right to Financial
15 Privacy Act (12 U.S.C. 3412(e)) is amended as follows—

16 (1) by deleting “this chapter” and inserting in
17 its place “law”; and

18 (2) by adding “, examination reports” after “fi-
19 nancial records”.

20 (h) EXCEPTION TO RESTRICTION ON ASSET GROWTH
21 OF NONBANK BANKS.—Section 4(f)(3)(B)(iv) of the Bank
22 Holding Company Act of 1956 (12 U.S.C.
23 1843(f)(3)(B)(iv)) is amended by striking the period and
24 inserting the following: “unless—

1 “(I) the company has provided at
2 least 60 days prior written notice to the
3 Board and, during that period, the Board
4 has not disapproved the proposal after ap-
5 plying the standards provided in subsection
6 (j)(2);

7 “(II) each insured depository institu-
8 tion controlled by the company is at all
9 times well-capitalized; and

10 “(III) the company engages, directly
11 or indirectly, only in activities—

12 “(aa) permitted pursuant to sub-
13 section 4(c)(8) or (15); or

14 “(bb) determined by the Board to
15 be financial in nature and the com-
16 pany satisfies the provisions of sub-
17 section (k)(1) (B) and (C), or would
18 satisfy the provisions of subsection
19 (k)(1) (B) and (C) if the company
20 were a bank holding company.”.

21 (i) CONFORMING AMENDMENT FOR CERTAIN HOLD-
22 ING COMPANIES.—Section 10(c) of the Home Owners’
23 Loan Act (12 U.S.C. 1467a(c)) is amended by striking
24 paragraphs (3), (5), and (6) and redesignating other para-
25 graphs accordingly.

1 **SEC. 104. SECURITIES COMPANY AFFILIATIONS OF FDIC-IN-**
2 **SURED BANKS.**

3 Section 18 of the Federal Deposit Insurance Act (12
4 U.S.C. 1828) is amended by adding at the end the follow-
5 ing new subsections:

6 “(s) SECURITIES AFFILIATIONS OF INSURED
7 BANKS.—

8 “(1) IN GENERAL.—A bank shall not be an af-
9 filiate of any company that, directly or indirectly,
10 acts as an underwriter or dealer of any security, ex-
11 cept—

12 “(A) as provided in section 10 of the Bank
13 Holding Company Act of 1956; or

14 “(B) a company that underwrites or deals
15 only in securities expressly specified by section
16 5136 of the Revised Statutes as permissible for
17 a national bank to underwrite or deal in.

18 “(2) EXCEPTION.—This subsection does not
19 apply to an insured bank described in subparagraph
20 (D), (F), or (H) or section 2(c)(2) of the Bank
21 Holding Company Act of 1956 or to a company held
22 pursuant to section 25 or 25A of the Federal Re-
23 serve Act or section 4(c)(13) of the Bank Holding
24 Company Act.

25 “(3) GRANDFATHER PROVISION.—This sub-
26 section does not prohibit—

1 “(A) the continuation of an affiliation that
2 existed on January 1, 1995; or

3 “(B) any new affiliation by an insured
4 bank that has an affiliation that would be pro-
5 hibited if the affiliation were not covered by
6 subparagraph (A).

7 “(4) DEFINITIONS.—For purposes of this sub-
8 section:

9 “(A) AFFILIATE.—The term ‘affiliate’ has
10 the meaning given to that term in section 2(k)
11 of the Bank Holding Company Act of 1956.

12 “(B) COMPANY.—The term ‘company’ has
13 the meaning given to that term in section 2(b)
14 of the Bank Holding Company Act of 1956.

15 “(C) BROKER.—The term ‘broker’ has the
16 meaning given to that term in section 3(a)(4)
17 of the Securities Exchange Act of 1934.

18 “(D) DEALER.—The term ‘dealer’ has the
19 meaning given to that term in section 3(a)(5)
20 of the Securities Exchange Act of 1934.

21 “(E) SECURITY.—

22 “(i) IN GENERAL.—The term ‘secu-
23 rity’ has the meaning given to that term in
24 section 3(a)(10) of the Securities Ex-
25 change Act of 1934.

1 “(ii) EXCEPTIONS.—For purposes of
2 this subsection, the term ‘security’ does
3 not include any of the following:

4 “(I) A contract of insurance.

5 “(II) A deposit account, savings
6 account, certificate of deposit, or
7 other deposit instrument issued by a
8 depository institution.

9 “(III) A share account issued by
10 a savings association if the account is
11 insured under the Federal Deposit In-
12 surance Act.

13 “(IV) A banker’s acceptance.

14 “(V) A letter of credit issued by
15 a depository institution.

16 “(VI) A debit account at a depos-
17 itory institution arising from a credit
18 card or similar arrangement.

19 “(VII) A traditional loan or loan
20 participation (as determined by the
21 Board).

22 “(iii) FEDERAL RESERVE BOARD’S
23 AUTHORITY TO EXEMPT TRADITIONAL
24 BANKING PRODUCTS.—The Board of Gov-
25 ernors of the Federal Reserve System may,

1 after consultation with and considering the
2 views of the Securities and Exchange Com-
3 mission, by regulation exempt from the
4 definition of ‘security’ a banking product
5 that national banks have traditionally and
6 customarily originated or handled (such as
7 mortgage notes) if the exemption is con-
8 sistent with the purposes of this sub-
9 section.

10 “(iv) DEFINITION FOR LIMITED PUR-
11 POSE.—The fact that a particular instru-
12 ment is excluded pursuant to clauses (ii) or
13 (iii) from the definition of ‘security’ for
14 purposes of this subsection shall not be
15 construed as finding or implying that such
16 instrument is or is not a ‘security’ for pur-
17 poses of section 3(a)(10) of the Securities
18 Exchange Act of 1934.

19 “(E) UNDERWRITER.—The term ‘under-
20 writer’ has the meaning given to that term in
21 section 2(11) of the Securities Act of 1933.

22 “(t) BROKER/DEALER REGISTRATION.—An insured
23 bank may not use the United States mails or any means
24 or instrumentality of interstate commerce to act as a
25 broker or dealer without registration under the Securities

1 Exchange Act of 1934, except to the extent permitted
2 under section 3(a)(4) or 3(a)(5), or unless otherwise ex-
3 empt pursuant to rules promulgated by the Securities and
4 Commission.”.

5 **SEC. 105. AUTHORITY TO TERMINATE GRANDFATHER**
6 **RIGHTS UNDER THE INTERNATIONAL BANK-**
7 **ING ACT OF 1978.**

8 Section 8(c) of the International Banking Act of
9 1978 (12 U.S.C. 3106(c)) is amended by adding at the
10 end the following new paragraph:

11 “(3) PARITY IN CONDUCT OF AUTHORIZED SE-
12 CURITIES ACTIVITIES.—

13 “(A) IN GENERAL.—Notwithstanding any
14 provision of paragraph (1) or any other provi-
15 sion of law, any authority conferred under this
16 subsection on any foreign bank or company
17 with respect to an activity of an affiliate en-
18 gaged in securities activities shall terminate 18
19 months after the Board determines that such
20 activity is authorized for bank holding compa-
21 nies in the United States, except that—

22 “(i) the foreign bank or company may
23 retain the shares of an affiliate engaged in
24 securities activities, if, prior to the expira-
25 tion of such 18 months period, the foreign

1 bank or company has obtained the Board's
2 approval under section 10 or section
3 4(c)(8) of the Bank Holding Company Act
4 to retain such shares, and

5 “(ii) the Board, for good cause shown,
6 may extend the termination period for an
7 additional period not to exceed 18 months.

8 “(B) EXTENSION TO OBTAIN REQUIRED
9 APPROVAL.—If the foreign bank or company
10 has filed a notice under section 10(b) of the
11 Bank Holding Company Act not later than 180
12 days after the board has made a determination
13 under subparagraph (A), the effective date of
14 any termination of authority for that foreign
15 bank or company under subparagraph (A) shall
16 be 24 months after the Board has acted on the
17 notice.”.

18 **SEC. 106. EFFECT ON STATE LAWS PROHIBITING THE AF-**
19 **FILIATION OF BANKS AND SECURITIES COM-**
20 **PANIES.**

21 Section 7 of the Bank Holding Company Act of 1956
22 (12 U.S.C. 1846) is amended by inserting before the final
23 period the following: “, except that no State may prohibit
24 or limit the affiliation of a bank or bank holding company
25 with a securities affiliate solely because the securities affil-

1 iate is engaged in activities described in paragraph (1) or
2 (2) of section 10(a) of this Act.”.

3 **SEC. 107. MUNICIPAL SECURITIES**

4 At the end of section 5136 of the Revised Statutes
5 (12 U.S.C. 24(Seventh)), add the following new sentences:

6 “Notwithstanding any other provision of this para-
7 graph, a national banking association may deal in, under-
8 write, and purchase for such association’s own account
9 any obligation of, or obligation guaranteed as to principal
10 or interest by, a State or of any political subdivision there-
11 of, or any agency or instrumentality of a State or any po-
12 litical subdivision thereof, if the association—

13 “(1) is well capitalized (as defined in section
14 38(b) of the Federal Deposit Insurance Act);

15 “(2) engages in the business of banking;

16 “(3) has not been affiliated with a securities af-
17 filiate under section 10 of the Bank Holding Com-
18 pany Act of 1956 for more than 1 year; and

19 “(4) maintains its main office or any branch in
20 such State or political subdivision, or within 100
21 miles of such State or political subdivision.”.

22 **SEC. 108. INVESTMENT BANK HOLDING COMPANIES.**

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

1 “(r) WHOLESAL E FINANCIAL INSTITUTION.—The
2 term ‘wholesale financial institution’ means any institution
3 that is an uninsured state member bank authorized pursu-
4 ant to section 9B of the Federal Reserve Act.

5 “(s) INVESTMENT BANK HOLDING COMPANY.—The
6 term ‘investment bank holding company’ means any bank
7 holding company that controls or seeks to control—

8 “(1) a wholesale financial institution, and

9 “(2) a company engaged in underwriting, dis-
10 tributing or dealing in securities pursuant to section
11 10.”.

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

15 “(l) PERMISSIBLE AFFILIATIONS FOR INVESTMENT
16 BANK HOLDING COMPANIES.—

17 “(1) FINANCIAL ACTIVITIES.—

18 “(A) ACTIVITIES AUTHORIZED.—An in-
19 vestment bank holding company may directly or
20 indirectly own or control shares of any company
21 the activities of which the Board has deter-
22 mined to be of a financial nature, without re-
23 gard to the limitations contained in subsections
24 (k)(1) or (k)(3).

1 “(B) INSURANCE UNDERWRITING ACTIVI-
2 TIES LIMITED TO INCIDENTAL ACTIVITIES.—In
3 the event that the Board determines that insur-
4 ance underwriting activities (other than activi-
5 ties permissible under subsection (c)(8)) are fi-
6 nancial in nature, the aggregate investment by
7 an investment bank holding company in shares
8 of all companies that engage in insurance un-
9 derwriting activities (other than insurance un-
10 derwriting activities permissible under section
11 (c)(8)) shall not exceed 10 percent of the total
12 consolidated capital and surplus of the invest-
13 ment bank holding company.

14 “(C) NOTICE REQUIRED.—An investment
15 bank holding company may not own or control
16 shares of any company described in subpara-
17 graph (A) without complying with the notice
18 procedures provided in subsection (j).

19 “(2) SECURITIES ACTIVITIES.—

20 “(A) INSTITUTIONS MUST BE WELL-CAP-
21 ITALIZED.—The Board shall disapprove a no-
22 tice under section 10 by an investment bank
23 holding company to acquire a securities affiliate
24 if any wholesale financial institution controlled
25 by the investment bank holding company is not

1 well capitalized or would not be well capitalized
2 following the transaction.

3 “(B) TRANSACTIONS WITH A SECURITIES
4 AFFILIATE.—

5 “(i) IN GENERAL.—A wholesale finan-
6 cial institution controlled by an investment
7 bank holding company shall be a ‘bank’ for
8 purposes of the provisions of sections 23A
9 and 23B of the Federal Reserve Act.

10 “(ii) OTHER RESTRICTIONS DETER-
11 MINED BY THE BOARD.—A securities affili-
12 ate and a wholesale financial institution
13 controlled by an investment bank holding
14 company shall not be subject to the provi-
15 sions of section 10(f), except that the secu-
16 rities affiliate and wholesale financial insti-
17 tution shall be subject to paragraphs (12)
18 and (13) of that section as if the wholesale
19 financial institution were an insured depos-
20 itory institution.

21 “(3) LIMITATION ON AFFILIATION WITH IN-
22 SURED DEPOSITORY INSTITUTIONS.—An investment
23 bank holding company may not directly or indirectly
24 own or control—

1 “(A) any bank, other than a wholesale fi-
2 nancial institution;

3 “(B) any savings association;

4 “(C) any institution described in section
5 2(c)(2); or

6 “(D) any institution that accepts—

7 “(i) initial deposits of \$100,000 or
8 less, other than on an incidental or occa-
9 sional basis, or

10 “(ii) deposits that are insured under
11 the Federal Deposit Insurance Act.”.

12 (c) CONFORMING AMENDMENTS.—

13 (1) INSURANCE REQUIREMENT IN THE BANK
14 HOLDING COMPANY ACT.—Section 3(e) of the Bank
15 Holding Company Act of 1956 (12 U.S.C. 1842(e))
16 is amended by adding at the end the following:
17 “‘This subsection does not apply to a wholesale fi-
18 nancial institution that is controlled by an invest-
19 ment bank holding company that controls no banks
20 other than wholesale financial institutions.’”.

21 (2) APPROPRIATE FEDERAL BANKING AGENCY.—
22 Section 3(q)(2)(A) of the Federal Deposit Insurance
23 Act (12 U.S.C. 1813(q)(2)(A)) is amended to read
24 as follows:

1 “(A) any State member insured bank (ex-
2 cept a District bank) and wholesale financial in-
3 stitution as authorized pursuant to section 9B
4 of the Federal Reserve Act.”.

5 **SEC. 109. CONFORMING AMENDMENTS FOR INVESTMENT**
6 **BANK HOLDING COMPANIES.**

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

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

11 “(a) APPLICATION FOR MEMBERSHIP AS WHOLE-
12 SALE FINANCIAL INSTITUTION.—

13 “(1) APPLICATION REQUIRED.—Any bank in-
14 corporated by special law of any State, or organized
15 under the general laws of any State, may apply to
16 the Board of Governors of the Federal Reserve Sys-
17 tem to subscribe to the stock of the Federal Reserve
18 bank organized within the district where the apply-
19 ing bank is located as a wholesale financial institu-
20 tion. Such application shall be treated as an applica-
21 tion under, and shall be subject to the provisions of
22 section 9.

23 “(2) APPROVAL OF MEMBERSHIP.—No bank
24 may become a wholesale financial institution un-
25 less—

1 “(A) the Board has approved an applica-
2 tion by the bank, under such rules and regula-
3 tions and subject to such conditions and re-
4 quirements as the Board may prescribe, to be
5 a wholesale financial institution; and

6 “(B) in the case of a bank that is insured
7 under the Federal Deposit Insurance Act, the
8 bank has met all requirements under that Act
9 for voluntary termination of deposit insurance.

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

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

23 “(2) PROMPT CORRECTIVE ACTION.—A whole-
24 sale financial institution shall be deemed to be an in-
25 sured depository institution for purposes of section

1 38 of the Federal Deposit Insurance Act except
2 that—

3 “(A) the relevant capital levels and capital
4 measures for each capital category shall be the
5 levels specified by the Board for wholesale fi-
6 nancial institutions in accordance with sub-
7 section (c);

8 “(B) the provisions applicable to well cap-
9 italized insured depository institutions shall be
10 inapplicable to wholesale financial institutions;

11 “(C) the provisions authorizing or requir-
12 ing an institution to be placed into receivership
13 shall not apply to a wholesale financial institu-
14 tion, and, in its place, the Board is authorized
15 or required, as the case may be, to terminate
16 the wholesale financial institution’s membership
17 in the Federal Reserve System or, where pro-
18 vided in section 38 of the Federal Deposit
19 Insurance Act, place the bank into
20 conservatorship and, in the Board’s discretion,
21 terminate the bank’s membership; and

22 “(D) for purposes of applying the provi-
23 sions of section 38 of the Federal Deposit In-
24 surance Act to wholesale financial institutions,
25 all references to the appropriate Federal bank-

1 ing agency or to the Corporation that section
2 shall be deemed to be references to the Board.

3 “(3) ENFORCEMENT AUTHORITY.—Section 7 (j)
4 and (k), subsections (b) through (n), (s), (u), and
5 (v) of section 8, and section 19 of the Federal De-
6 posit Insurance Act shall apply to a wholesale finan-
7 cial institution in the same manner and to the same
8 extent as they apply to State member insured banks
9 and any reference in such sections to an insured de-
10 pository institution shall also be deemed to be a ref-
11 erence to a wholesale financial institution.

12 “(4) CERTAIN OTHER STATUTES APPLICA-
13 BLE.—A wholesale financial institution shall be
14 deemed to be a banking institution and the Board
15 shall be the appropriate Federal banking agency for
16 such bank and all of its affiliates for purposes of the
17 International Lending Supervision Act.

18 “(5) BANK MERGER ACT.—A wholesale finan-
19 cial institution shall be subject to the provisions of
20 the Bank Merger Act in the same manner as if the
21 wholesale financial institution were a State member
22 insured bank for purposes of that Act.

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

25 “(1) LIMITATIONS ON DEPOSITS.—

1 “(A) MINIMUM AMOUNT.—Pursuant to
2 regulations of the Board, no wholesale financial
3 institution shall receive initial deposits of
4 \$100,000 or less, other than on an incidental
5 and occasional basis and where such deposits in
6 no event represent more than 5 percent of the
7 institution’s total deposits.

8 “(B) NO DEPOSIT INSURANCE.—No depos-
9 its held by a wholesale financial institution shall
10 be insured deposits under the Federal Deposit
11 Insurance Act.

12 “(C) ADVERTISING AND DISCLOSURE.—
13 The Board shall prescribe regulations pertain-
14 ing to advertising and disclosure by wholesale
15 financial institutions to ensure that each deposi-
16 tor is notified that deposits at the wholesale fi-
17 nancial institution are not federally insured or
18 otherwise guaranteed by the United States Gov-
19 ernment.

20 “(2) SPECIAL CAPITAL REQUIREMENTS APPLI-
21 CABLE TO WHOLESAL FINANCIAL INSTITUTIONS.—

22 “(A) MINIMUM CAPITAL LEVELS.—

23 “(i) IN GENERAL.—The Board shall,
24 by regulation, adopt capital requirements
25 for wholesale financial institutions. The

1 capital levels for wholesale financial insti-
2 tutions shall be sufficiently higher than the
3 capital levels applicable to State member
4 insured banks—

5 “(I) to account for the status of
6 wholesale financial institutions as in-
7 stitutions that accept deposits that
8 are not insured under the Federal De-
9 posit Insurance Act; and

10 “(II) to provide for the safe and
11 sound operation of the wholesale fi-
12 nancial institution without undue risk
13 to creditors or other persons, includ-
14 ing Federal Reserve banks, engaged
15 in transactions with the bank.

16 “(ii) MINIMUM LEVERAGE RATIO.—
17 The minimum leverage ratio of tier one
18 capital to total assets of wholesale financial
19 institutions shall be not less than the level
20 required for a State member insured bank
21 to be well capitalized.

22 “(B) CAPITAL CATEGORIES FOR PROMPT
23 CORRECTIVE ACTION.—For purposes of apply-
24 ing the provisions of section 38 of Federal De-
25 posit Insurance Act, the Board shall, by regula-

1 tion, establish, for each relevant capital meas-
2 ure specified by the Board under subparagraph
3 (A), the levels at which a wholesale financial
4 institution is adequately capitalized,
5 undercapitalized, significantly undercapitalized,
6 and critically undercapitalized.

7 “(3) ADDITIONAL REQUIREMENTS APPLICABLE
8 TO WHOLESALE FINANCIAL INSTITUTIONS.—In addi-
9 tion to any requirements otherwise applicable to
10 State member banks or otherwise applicable under
11 this section, the Board may prescribe, by rule or
12 order, for wholesale financial institutions—

13 “(A) limitations on transactions with affili-
14 ates to prevent an affiliate from gaining access
15 to, or the benefits of, credit from a Federal Re-
16 serve bank, including overdrafts at a Federal
17 Reserve bank;

18 “(B) special clearing balance requirements;
19 and

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

23 “(i) promote the safety and soundness
24 of the wholesale financial institution, or

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

5 “(4) EXEMPTIONS FOR WHOLESale FINANCIAL
6 INSTITUTIONS.—The Board may, by rule or order,
7 exempt any wholesale financial institution from any
8 provision applicable to a State member bank that is
9 not a wholesale financial institution, provided that
10 the Board finds that such exemption is not incon-
11 sistent with—

12 “(i) the promotion of the safety and sound-
13 ness of the wholesale financial institution; and

14 “(ii) the protection of creditors and other
15 persons, including Federal Reserve banks, en-
16 gaged in transactions with the wholesale finan-
17 cial institution.

18 “(5) NO EFFECT ON OTHER PROVISIONS.—This
19 section shall not be construed to limit the Board’s
20 authority over member banks under any other provi-
21 sion of law, or to create any obligation for any Fed-
22 eral Reserve bank to make, increase, renew, or ex-
23 tend any advances or discount under this Act to any
24 member bank or other depository institution.

1 “(d) CONSERVATORSHIP AUTHORITY.—The Board is
2 authorized to appoint a conservator to take possession and
3 control of a wholesale financial institution to the same ex-
4 tent and in the same manner as the Comptroller of the
5 Currency is authorized to appoint a conservator for a na-
6 tional bank under section 203 of the Bank Conservation
7 Act.

8 “(e) DEFINITIONS.—For purposes of this section—

9 “(1) the term ‘wholesale financial institution’
10 means a bank whose application to become an unin-
11 sured State member bank has been approved by the
12 Board of Governors of the Federal Reserve System
13 under this section;

14 “(2) the term ‘deposit’ has the meaning given
15 to such term by the Board under the Federal Re-
16 serve Act; and

17 “(3) the term ‘State member insured bank’
18 means a State member bank, the deposits of which
19 are insured under the Federal Deposit Insurance
20 Act.”.

21 (b) VOLUNTARY TERMINATION OF INSURED STATUS
22 BY CERTAIN INSTITUTIONS.—

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

1 (A) in the section heading, by inserting
2 “**INVOLUNTARY**” after “**SEC. 8**”; and

3 (B) in subsection (a)—

4 (i) by striking paragraph (1); and

5 (ii) by redesignating paragraphs (2)
6 through (9) as paragraphs (1) through (8),
7 respectively.

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

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

14 “(a) **IN GENERAL.**—Except as provided in subsection
15 (b), an insured State-chartered bank or a national bank
16 may voluntarily terminate its status as an insured deposi-
17 tory institution in accordance with regulations of the Cor-
18 poration if—

19 “(1) such institution provides written notice of
20 its intent to terminate its insured status—

21 “(A) to the Corporation, not less than 6
22 months before the effective date of such termi-
23 nation; and

1 “(B) to its depositors, not less than 6
2 months before the effective date of such termi-
3 nation; and

4 “(2) the deposit insurance fund of which such
5 bank is a member equals or exceeds the fund’s des-
6 ignated reserve ratio as set forth in section
7 7(b)(2)(A)(iv) of the Federal Deposit Insurance Act
8 (12 U.S.C. 1817(b)(2)(A)(iv) as of the date the
9 bank provides a written notice of its intent to termi-
10 nate its insured status.

11 “(b) EXCEPTION.—The option to terminate insured
12 status under subsection (a) shall not be available to—

13 “(1) an insured savings association;

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

17 “(3) any institution described in section 2(c)(2)
18 of the Bank Holding Company Act of 1956.

19 “(c) ELIGIBILITY FOR INSURANCE TERMINATED.—
20 A depository institution that voluntarily elects to termi-
21 nate its insured status under subsection (a) shall not re-
22 ceive insurance of any of its deposits or any other assist-
23 ance authorized under this Act after the period specified
24 in subsection (f)(1).

1 “(d) INSTITUTION MUST BECOME WHOLESAL E FI-
2 NANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING
3 ACTIVITIES.—Any institution that voluntarily terminates
4 its status as an insured depository institution under this
5 section may not, upon termination of insurance, accept
6 any deposits unless the institution is a wholesale financial
7 institution under section 9B of the Federal Reserve Act.

8 “(e) EXIT FEES.—

9 “(1) IN GENERAL.—Any institution that volun-
10 tarily terminates its status as an insured depository
11 institution under this section shall pay an exit fee in
12 an amount that the Corporation determines is suffi-
13 cient to account for the institution’s pro rata share
14 of contingent and other liabilities of the relevant de-
15 posit insurance fund.

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

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

21 “(1) TRANSITION PERIOD.—The insured depos-
22 its of each depositor in a State-chartered bank or a
23 national bank on the effective date of the voluntary
24 termination of the institution’s insured status, less
25 all subsequent withdrawals from any deposits of

1 such depositor, shall continue to be insured for a pe-
2 riod of not less than 6 months nor more than 2
3 years, within the discretion of the Corporation. Dur-
4 ing such period, no additions to any such deposits,
5 and no new deposits in the depository institution
6 made after the effective date of such termination
7 shall be insured by the Corporation,

8 “(2) TEMPORARY ASSESSMENTS; OBLIGATIONS
9 AND DUTIES.—During the period specified in para-
10 graph (1), a depository institution shall continue to
11 pay assessments required under this Act as if it
12 were an insured depository institution. Such depository
13 institution shall, in all other respects, be subject
14 to the authority of the Corporation and the duties
15 and obligations of an insured depository institution
16 during such period as provided in this Act, and in
17 the event that the depository institution is closed
18 due to an inability to meet the demands of its de-
19 positors during such period, the Corporation shall
20 have the same powers and rights with respect to
21 such depository institution as in the case of an in-
22 sured depository institution.

23 “(g) ADVERTISEMENTS.—

24 “(1) IN GENERAL.—A depository institution
25 that voluntarily terminates its insured status under

1 this section shall not advertise or hold itself out as
2 having insured deposits, except that it may advertise
3 the temporary insurance of deposits under sub-
4 section (f) if, in connection with any such advertise-
5 ment, it shall also state with equal prominence that
6 additions to deposits and new deposits made after
7 the effective date of the termination are not insured.

8 “(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS,
9 AND SECURITIES.—Any certificate of deposit or
10 other obligation or security issued by a State-char-
11 tered bank or a national bank after the effective
12 date of the voluntary termination of its insured sta-
13 tus under this section shall be accompanied by a
14 conspicuous, prominently displayed notice that such
15 certificate of deposit or other obligation or security
16 is not insured under this Act.

17 “(h) NOTICE REQUIREMENTS.—

18 “(1) NOTICE TO THE CORPORATION.—The no-
19 tice to the Corporation of an institution’s intent to
20 terminate its insured status required under sub-
21 section (a) shall be in such form as the Corporation
22 may require.

23 “(2) NOTICE TO DEPOSITORS.—The notice to
24 depositors of an institution’s intent to terminate its

1 insured status required under subsection (a) shall
2 be—

3 “(A) at such depositor’s last address of
4 record with the institution; and

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

8 **SEC. 110. EFFECTIVE DATE.**

9 The amendments made by this subtitle shall become
10 effective 90 days after the date of enactment of this Act.

11 **Subtitle B—Brokers and Dealers**

12 **SEC. 120. DEFINITION OF BROKER.**

13 Section 3(a)(4) of the Securities Exchange Act of
14 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

15 “(4) ‘BROKER’.—

16 “(A) IN GENERAL.—The term ‘broker’
17 means any person engaged in the business of
18 effecting transactions in securities for the ac-
19 count of others.

20 “(B) EXCLUSION OF BANKS.—The term
21 ‘broker’ does not include a bank unless such
22 bank publicly solicits the business of effecting
23 securities transactions for the account of others
24 or is compensated for such business by the pay-
25 ment of commissions or similar remuneration

1 based on effecting transactions in securities
2 (other than fees calculated as a percentage of
3 assets under management) in excess of the
4 bank's incremental costs directly attributable to
5 effecting such transactions (hereafter referred
6 to as 'incentive compensation').

7 "(C) EXEMPTION FOR CERTAIN BANK AC-
8 TIVITIES.—A bank shall not be deemed to be a
9 'broker' because it engages in any of the follow-
10 ing activities:

11 "(i) THIRD PARTY BROKERAGE AR-
12 RANGEMENTS.—The bank enters into a
13 contractual or other arrangement with a
14 broker or dealer registered under this title
15 under which the broker or dealer offers
16 brokerage services on or off the premises
17 of the bank if—

18 "(I) such broker or dealer is
19 clearly identified as the person per-
20 forming the brokerage services;

21 "(II) such broker or dealer per-
22 forms brokerage services in an area
23 that is clearly marked and physically
24 separate from the retail deposit-taking
25 activities of the bank;

1 “(III) any materials used to ad-
2 vertise or promote the availability of
3 brokerage services under the contrac-
4 tual or other arrangement are ap-
5 proved by the broker or dealer for
6 compliance with the Federal securities
7 laws prior to distribution and are
8 deemed to be the materials of the
9 broker or dealer;

10 “(IV) bank employees perform
11 only clerical or ministerial functions in
12 connection with brokerage trans-
13 actions, unless such employees are as-
14 sociated persons of a broker or dealer
15 and are qualified pursuant to the re-
16 quirements of a self-regulatory organi-
17 zation;

18 “(V) bank employees do not re-
19 ceive incentive compensation for any
20 brokerage activities unless such em-
21 ployees are associated persons of a
22 broker or dealer and are qualified
23 pursuant to the requirements of a
24 self-regulatory organization;

1 “(VI) such services are provided
2 by the broker or dealer on a basis in
3 which all customers that receive such
4 services are fully disclosed to that
5 broker or dealer; and

6 “(VII) the broker or dealer in-
7 forms each customer that the broker-
8 age services are provided by the
9 broker or dealer and not by the bank
10 and that the securities are not guar-
11 anteed by the bank, the Federal De-
12 posit Insurance Corporation, or any
13 other federal or state deposit guaran-
14 tee fund relating to banks.

15 “(ii) TRUST ACTIVITIES.—The bank
16 engages in trust activities (including
17 effecting transactions in the course of such
18 trust activities) permissible for national
19 banks under the first section of the Act of
20 September 28, 1962 or for State banks
21 under relevant State trust statutes or law
22 (including securities safekeeping, self-di-
23 rected individual retirement accounts, or
24 managed agency accounts or other func-

1 tionally equivalent accounts of a bank) un-
2 less the bank—

3 “(I) publicly solicits brokerage
4 business, other than by advertising
5 that it effects transactions in securi-
6 ties in conjunction with advertising its
7 other trust activities; or

8 “(II) receives incentive com-
9 pensation for such brokerage activi-
10 ties.

11 “(iii) PERMISSIBLE SECURITIES
12 TRANSACTIONS.—The bank effects trans-
13 actions in exempted securities, other than
14 municipal securities, or in commercial
15 paper, bankers acceptances, commercial
16 bills, qualified Canadian Government obli-
17 gations as defined in section 5136 of the
18 Revised Statutes, obligations of the Wash-
19 ington Metropolitan Area Transit Author-
20 ity which are guaranteed by the Secretary
21 of Transportation under section 9 of the
22 National Capital Transportation Act of
23 1969, obligations of the North American
24 Development Bank, and obligations of any
25 local public agency (as defined in section

1 110(h) of the Housing Act of 1949) or any
2 public housing agency (as defined in the
3 United States Housing Act of 1937) that
4 are expressly specified by section 5136 of
5 the Revised statutes as permissible for a
6 national bank to underwrite or deal in.

7 “(iv) MUNICIPAL SECURITIES.—The
8 bank effects transactions in municipal se-
9 curities, and has not been affiliated with a
10 securities affiliate under section 10 of the
11 Bank Holding Company Act of 1956 for
12 more than 1 year.

13 “(v) EMPLOYEE AND SHAREHOLDER
14 BENEFIT PLANS.—The bank effects trans-
15 actions as part of any bonus, profit-shar-
16 ing, pension, retirement, thrift, savings, in-
17 centive, stock purchase, stock ownership,
18 stock appreciation, stock option, dividend
19 reinvestment, or similar plan for employees
20 or shareholders of an issuer or its subsidi-
21 aries.

22 “(vi) SWEEP ACCOUNTS.—The bank
23 effects transactions as part of a program
24 for the investment or reinvestment of bank
25 deposit funds into any no-loan, open-end

1 management investment company reg-
2 istered under the Investment Company Act
3 of 1940 that holds itself out as a money
4 market fund.

5 “(vii) AFFILIATE TRANSACTIONS.—

6 The bank effects transactions for the ac-
7 count of any affiliate of the bank, as de-
8 fined in section 2 of the Bank Holding
9 Company Act of 1956.

10 “(viii) PRIVATE SECURITIES OFFER-

11 INGS.—The bank—

12 “(I) effects sales as part of a pri-
13 mary offering of securities by an is-
14 suer, not involving a public offering,
15 pursuant to section 3(b), 4(2), or 4(6)
16 of the Securities Act of 1933 and the
17 rules and regulations issued there-
18 under, other than securities backed by
19 or representing an interest in obliga-
20 tions originated or purchased by the
21 bank, its affiliates, or its subsidiaries
22 unless those securities are described
23 in section 3(a)(5)(B)(ii)(IV) (aa) or
24 (bb);

1 “(II) effects such sales exclu-
2 sively to an accredited investor, as de-
3 fined in section 3 of the Securities Act
4 of 1933; and

5 “(III) if affiliated with a securi-
6 ties affiliate, as provided under sec-
7 tion 10 of the Bank Holding Company
8 Act of 1956, has not been so affiliated
9 for more than 1 year.

10 “(ix) DE MINIMIS EXEMPTION.—If the
11 bank does not have a subsidiary or affiliate
12 registered as a broker or dealer under sec-
13 tion 15, the bank effects, other than in
14 transactions referenced in clauses (i)
15 through (viii), not more than—

16 “(I) 800 transactions in any cal-
17 endar year in securities for which a
18 ready market exists, and

19 “(II) 200 other transactions in
20 securities in any calendar year.

21 “(D) EXEMPTION FOR ENTITIES SUBJECT
22 TO SECTION 15(e).—The term ‘broker’ does not
23 include a bank that is subject to—

24 “(i) section 15(e); and

1 “(ii) such restrictions and require-
2 ments as the Commission deems appro-
3 priate.”.

4 **SEC. 121. DEFINITION OF DEALER.**

5 Section 3(a)(5) of the Securities Exchange Act of
6 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

7 “(5) ‘DEALER’.—

8 “(A) IN GENERAL.—The term ‘dealer’
9 means any person engaged in the business of
10 buying and selling securities for his own ac-
11 count through a broker or otherwise.

12 “(B) EXCEPTIONS.—Such term does not
13 include—

14 “(i) a person that buys or sells securi-
15 ties for his or her own account, either indi-
16 vidually or in a fiduciary capacity, but not
17 as a part of a regular business; or

18 “(ii) a bank, to the extent that the
19 bank—

20 “(I) buys and sells commercial
21 paper, bankers acceptances, exempted
22 securities (other than municipal secu-
23 rities), qualified Canadian Govern-
24 ment obligations as defined in section
25 5136 of the Revised Statutes, obliga-

1 tions of the Washington Metropolitan
2 Area Transit Authority which are
3 guaranteed by the Secretary of Trans-
4 portation under section 9 of the Na-
5 tional Capital Transportation Act of
6 1969, obligations of the North Amer-
7 ican Development Bank, and obliga-
8 tions of any local public agency (as
9 defined in section 110(h) of the Hous-
10 ing Act of 1949) or any public hous-
11 ing agency (as defined in the United
12 States Housing Act of 1937) that are
13 expressly specified by section 5136 of
14 the Revised Statutes as permissible
15 for a national bank to underwrite or
16 deal in;

17 “(II) buys and sells municipal se-
18 curities and has not been affiliated
19 with a securities affiliate, as provided
20 under section 10 of the Bank Holding
21 Company Act of 1956 for more than
22 1 year;

23 “(III) buys and sells securities
24 for investment purposes for the bank

1 or for accounts for which the bank
2 acts as a trustee or fiduciary; or

3 “(IV) has not been affiliated with
4 a securities affiliate under section 10
5 of the Bank Holding Company Act of
6 1956 for more than 1 year and en-
7 gages in the issuance or sale through
8 a grantor trust or otherwise of—

9 “(aa) securities backed by or
10 representing an interest in 1–4
11 family residential mortgages
12 originated or purchased by the
13 bank, its affiliates, or its subsidi-
14 aries; or

15 “(bb) securities backed by or
16 representing an interest in
17 consumer receivables or
18 consumer leases originated or
19 purchased by the bank, its affili-
20 ates, or its subsidiaries.”.

21 **SEC. 122. POWER TO EXEMPT FROM THE DEFINITIONS OF**
22 **BROKER AND DEALER.**

23 Section 3 of the Securities Exchange Act of 1934 (15
24 U.S.C. 78c) is amended by adding at the end the
25 following:

1 “(e) EXEMPTION FROM DEFINITION OF BROKER OR
2 DEALER.—The Commission, by regulation or order, upon
3 its own motion or upon application, may conditionally or
4 unconditionally exclude any person or class of persons
5 from the definitions of ‘broker’ or ‘dealer’, if the Commis-
6 sion finds that such exclusion is consistent with the public
7 interest, the protection of investors, and the purposes of
8 this title.”.

9 **SEC. 123. MARGIN REQUIREMENTS.**

10 (a) Section 7(d) of the Securities Exchange Act of
11 1934 (15 U.S.C. 15g(d)) is amended by:

- 12 (1) deleting the word “or” after clause (D);
- 13 (2) redesignating clause (E) as clause (F); and
- 14 (3) inserting a new clause (E) as follows:

15 “(E) to a loan to a broker or dealer by a
16 member bank or any other person that has en-
17 tered into an agreement pursuant to section
18 8(a) hereof if the proceeds of the loan are to be
19 used in the ordinary course of the broker’s or
20 dealer’s business other than for the purpose of
21 funding the purchase of securities for the ac-
22 count of such broker or dealer, or”.

23 (b) Section 8(a) of the Securities and Exchange Act
24 of 1934 is amended:

1 (1) by deleting the phrase “nonmember bank”
2 in clause (2) and replacing it with the phrase “per-
3 son other than a member bank”; and

4 (2) by deleting the phrase “such bank” in the
5 second sentence and replacing it with the phrase
6 “such person”.

7 **SEC. 124. EFFECTIVE DATE.**

8 This subtitle shall become effective 270 days after the
9 date of enactment of this Act.

10 **Subtitle C—Bank Investment Company**

11 **Activities**

12 **SEC. 130. CUSTODY OF INVESTMENT COMPANY ASSETS BY**

13 **AFFILIATED BANK.**

14 (a) **MANAGEMENT COMPANIES.**—Section 17(f) of the
15 Investment Company Act of 1940 (15 U.S.C. 80a–17(f))
16 is amended—

17 (1) by redesignating paragraphs (1), (2), and
18 (3) as subparagraphs (A), (B), and (C), respectively;

19 (2) by designating the five sentences of such
20 subsection as paragraphs (1) through (5), respec-
21 tively, and by indenting those paragraphs appro-
22 priately; and

23 (3) by adding at the end the following new
24 paragraph:

1 “(6) Notwithstanding paragraph (1)(A), if a
2 bank described in paragraph (1) or an affiliated per-
3 son of such bank is an affiliated person, promoter,
4 organizer, or sponsor of, or principal underwriter for
5 the registered company, such bank may serve as cus-
6 todian under this subsection in accordance with such
7 rules, regulations, or orders as the Commission may
8 prescribe, consistent with the protection of investors,
9 after consulting in writing with the appropriate Fed-
10 eral banking agency, as defined in section 3 of the
11 Federal Deposit Insurance Act.”.

12 (b) UNIT INVESTMENT TRUSTS.—Section 26(a)(1) of
13 the Investment Company Act of 1940 (15 U.S.C. 80a-
14 26(a)(1)) is amended by inserting after “bank” the follow-
15 ing: “not affiliated with such underwriter or depositor, or
16 if such bank is so affiliated, only in accordance with such
17 regulations or orders as the Commission may prescribe,
18 consistent with the protection of investors, after consulting
19 in writing with the appropriate Federal banking agency,
20 as defined in section 3 of the Federal Deposit Insurance
21 Act”.

22 (c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a)
23 of the Investment Company Act of 1940 (15 U.S.C. 80a-
24 35(a)) is amended—

1 (1) in paragraph (1), by striking “or” at the
2 end;

3 (2) in paragraph (2), by striking the period at
4 the end and inserting “; or”; and

5 (3) by inserting after paragraph (2) the follow-
6 ing:

7 “(3) as custodian.”.

8 **SEC. 131. AFFILIATED TRANSACTIONS.**

9 (a) INDEBTEDNESS TO AFFILIATED PERSON.—Sec-
10 tion 10(f) of the Investment Company Act of 1940 (15
11 U.S.C. 80a–10(f)) is amended in the first sentence—

12 (1) by inserting “(1)” before “a principal un-
13 derwriter”; and

14 (2) by inserting before the period “, or (2) the
15 proceeds of which will be used to retire an indebted-
16 ness owed to an affiliated person of such registered
17 company”.

18 (b) AFFILIATED PERSON OF INVESTMENT COM-
19 PANY.—Section 10(f) of the Investment Company Act of
20 1940 is amended by adding at the end the following: “For
21 purposes of this subsection, a person that is under com-
22 mon control with an investment adviser shall be deemed
23 to be an affiliated person of the registered investment
24 company advised by such investment adviser.”.

1 **SEC. 132. BORROWING FROM AN AFFILIATED BANK.**

2 Section 18(f) of the Investment Company Act of
3 1940 (15 U.S.C. 80a–18(f)) is amended by adding at the
4 end the following:

5 “(3) Notwithstanding the provisions of paragraph
6 (1), it shall be unlawful for any registered investment com-
7 pany to borrow from any bank if such bank or any affili-
8 ated person thereof is an affiliated person, promoter, orga-
9 nizer, or sponsor of, or principal underwriter for, such
10 company, except that the Commission may, by rule, regu-
11 lation, or order, permit such borrowing that the Commis-
12 sion finds to be in the public interest and consistent with
13 the protection of investors.”.

14 **SEC. 133. INDEPENDENT DIRECTORS.**

15 (a) INTERESTED PERSON.—Section 2(a)(19)(A)(v)
16 of the Investment Company Act of 1940 (15 U.S.C. 80a–
17 2(a)(19)(A)(v)) is amended by striking “1934 or any af-
18 filiated person of such a broker or dealer, and” and insert-
19 ing “1934 or any person that, at any time during the pre-
20 ceding 6 months, has acted as custodian or transfer agent
21 or has executed any portfolio transactions for, engaged in
22 any principal transactions with, or loaned money to, the
23 investment company, or any other investment company
24 having the same investment adviser, principal underwriter,
25 sponsor, or promoter, or any affiliated person of such a
26 broker, dealer, or person, and”.

1 (b) AFFILIATION OF DIRECTORS.—Section 10(c) of
2 the Investment Company Act of 1940 (15 U.S.C. 80a-
3 10(c)) is amended by striking “bank, except” and insert-
4 ing “bank (and its subsidiaries) or any single bank holding
5 company (and its affiliates and subsidiaries), as those
6 terms are defined in the Bank Holding Company Act of
7 1956, except”.

8 (c) EFFECTIVE DATE.—The provisions of subsection
9 (a) of this section shall become effective 1 year after the
10 date of enactment of this subtitle.

11 **SEC. 134. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

12 (a) MISREPRESENTATION.—Section 35(a) of the In-
13 vestment Company Act of 1940 (15 U.S.C. 80a-34(a)) is
14 amended to read as follows:

15 **“SEC. 35. MISREPRESENTATIONS.**

16 “(a) MISREPRESENTATIONS OF GUARANTEES.—

17 “(1) IN GENERAL.—It shall be unlawful for any
18 person, in issuing or selling any security of which a
19 registered investment company is the issuer, to rep-
20 resent or imply in any manner whatsoever that such
21 security or company—

22 “(A) has been guaranteed, sponsored, rec-
23 ommended, or approved by the United States,
24 or any agency, instrumentality or officer there-
25 of,

1 “(B) has been insured by the Federal De-
2 posit Insurance Corporation; or

3 “(C) is guaranteed by or is otherwise an
4 obligation of any bank or insured institution.

5 “(2) DISCLOSURES.—The Commission shall re-
6 quire the person issuing or selling the securities of
7 a registered investment company to prominently dis-
8 close, in writing or orally, as appropriate, that the
9 investment company or any security issued by it is
10 not insured by the Federal Deposit Insurance Cor-
11 poration and is not guaranteed by an affiliated de-
12 pository institution, and is not otherwise an obliga-
13 tion of such a bank or insured institution, in any
14 case where—

15 “(A) a bank holding company, bank, or
16 separately identifiable division or department of
17 a bank, or any affiliate or subsidiary thereof is
18 an investment adviser, organizer, sponsor, pro-
19 moter, principal underwriter, or an affiliated
20 person of the investment company; or

21 “(B) a bank or an affiliated person of a
22 bank is offering or selling securities of the in-
23 vestment company.

24 The requirement of any disclosures referred to above
25 shall be subject to regulations adopted by the Com-

1 mission, after consultation with the appropriate Fed-
2 eral banking agencies (as defined in section 3 of the
3 Federal Deposit Insurance Act).”.

4 (b) DECEPTIVE USE OF NAMES.—Section 35(d) of
5 the Investment Company Act of 1940 (15 U.S.C. 80a-
6 34(d)) is amended by inserting after the first sentence the
7 following: “It shall be deceptive and misleading for any
8 registered investment company which has an insured de-
9 pository institution (as defined in section 3 of the Federal
10 Deposit Insurance Act) or any affiliated person thereof as
11 an affiliated person, promoter, or principal underwriter,
12 to adopt, as part of the name or title of such company,
13 or of any security of which it is the issuer, any word which
14 is the same as or similar to, or a variation of, the name
15 or title of such insured depository institution or affiliate
16 thereof. The Commission, by rules or regulations upon its
17 own motion or by order upon application, may condi-
18 tionally or unconditionally exempt an investment company
19 from the preceding sentence if the Commission finds that
20 such exemption is consistent with the public interest, the
21 protection of investors, and the purposes of this title.”.

1 **SEC. 135. DEFINITION OF BROKER UNDER THE INVEST-**
2 **MENT COMPANY ACT OF 1940.**

3 Section 2(a)(6) of the Investment Company Act of
4 1940 (15 U.S.C. 80a-2(a)(6)) is amended to read as
5 follows:

6 “(6) ‘Broker’ has the same meaning as in the
7 Securities Exchange Act of 1934, except that it does
8 not include any person solely by reason of the fact
9 that such person is an underwriter for 1 or more in-
10 vestment companies.”.

11 **SEC. 136. DEFINITION OF DEALER UNDER THE INVEST-**
12 **MENT COMPANY ACT OF 1940.**

13 Section 2(a)(11) of the Investment Company Act of
14 1940 (15 U.S.C. 80a-2(a)(11)) is amended to read as fol-
15 lows:

16 “(11) ‘Dealer’ has the same meaning as in the
17 Securities Exchange Act of 1934, but does not in-
18 clude an insurance company or investment com-
19 pany.”.

20 **SEC. 137. REMOVAL OF THE EXCLUSION FROM THE DEFINI-**
21 **TION OF INVESTMENT ADVISER FOR BANKS**
22 **THAT ADVISE INVESTMENT COMPANIES.**

23 (a) INVESTMENT ADVISER.—Section 202(a)(11) of
24 the Investment Advisers Act of 1940 (15 U.S.C. 80b-
25 2(a)(11)) is amended in subparagraph (A), by striking
26 “investment company” and inserting “investment com-

1 pany, except that the term ‘investment adviser’ includes
2 any bank or bank holding company to the extent that such
3 bank or bank holding company acts as an investment ad-
4 viser to a registered investment company, or if, in the case
5 of a bank, such services are performed through a sepa-
6 rately identifiable department or division, the department
7 or division, and not the bank itself shall be deemed to be
8 the ‘investment adviser’ ”; and

9 (b) SEPARATELY IDENTIFIABLE DEPARTMENT OR
10 DIVISION.—Section 202(a) of the Investment Advisers Act
11 of 1940 (15 U.S.C. 80b–2(a)) is amended by adding at
12 the end the following:

13 “(25) ‘Separately identifiable department or di-
14 vision’ of a bank means a unit—

15 “(A) that is under the direct supervision of
16 an officer or officers designated by the board of
17 directors of the bank as responsible for the day-
18 to-day conduct of the bank’s investment adviser
19 activities for 1 or more investment companies,
20 including the supervision of all bank employees
21 engaged in the performance of such activities;
22 and

23 “(B) for which all of the records relating
24 to its investment adviser activities, are sepa-
25 rately maintained in or extractable from such

1 unit's own facilities or the facilities of the bank,
2 and such records are so maintained or other-
3 wise accessible as to permit independent exam-
4 ination and enforcement of this Act and rules
5 and regulations promulgated under this Act.”.

6 **SEC. 138. DEFINITION OF BROKER UNDER THE INVEST-**
7 **MENT ADVISERS ACT OF 1940.**

8 Section 202(a)(3) of the Investment Advisers Act of
9 1940 (15 U.S.C. 80b-2(a)(3)) is amended to read as
10 follows:

11 “(3) ‘Broker’ has the same meaning as in the
12 Securities Exchange Act of 1934.”.

13 **SEC. 139. DEFINITION OF DEALER UNDER THE INVEST-**
14 **MENT ADVISERS ACT OF 1940.**

15 Section 202(a)(7) of the Investment Advisers Act of
16 1940 (15 U.S.C. 80b-2(a)(7)) is amended to read as
17 follows:

18 “(7) ‘Dealer’ has the same meaning as in the
19 Securities Exchange Act of 1934, but does not in-
20 clude an insurance company or investment com-
21 pany.”.

22 **SEC. 140. INTERAGENCY CONSULTATION.**

23 The Investment Advisers Act of 1940 (15 U.S.C.
24 80b-1 et seq.) is amended by inserting after section 210
25 the following new section:

1 **“SEC. 210A. CONSULTATION.**

2 “(a) EXAMINATION RESULTS AND OTHER INFORMA-
3 TION.—

4 “(1) The appropriate Federal banking agency
5 shall provide the Commission upon request the re-
6 sults of any examination, reports, records, or other
7 information as each may have with respect to the in-
8 vestment advisory activities of any bank holding
9 company, bank, or department or division of a bank,
10 any of which is registered under section 203 of this
11 title, or, in the case of a bank holding company or
12 bank, has a subsidiary, department, or division reg-
13 istered under that section, to the extent necessary
14 for the Commission to carry out its statutory re-
15 sponsibilities.

16 “(2) The Commission shall provide to the ap-
17 propriate Federal banking agency upon request the
18 results of any examination, reports, records, or other
19 information with respect to the investment advisory
20 activities of any bank holding company, bank, or de-
21 partment or division of a bank, any of which is reg-
22 istered under section 203 of this title, to the extent
23 necessary for the agency to carry out its statutory
24 responsibilities.

25 “(b) EFFECT ON OTHER AUTHORITY.—Nothing
26 herein shall limit in any respect the authority of the appro-

1 piate Federal banking agency with respect to such bank
2 holding company, bank, or department or division under
3 any provision of law.

4 “(c) DEFINITION.—For purposes of this section, the
5 term ‘appropriate Federal banking agency’ shall have the
6 same meaning as in section 3 of the Federal Deposit In-
7 surance Act.”.

8 **SEC. 141. TREATMENT OF BANK COMMON TRUST FUNDS.**

9 (a) SECURITIES ACT OF 1933.—Section 3(a)(2) of
10 the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is
11 amended by striking “or any interest or participation in
12 any common trust fund or similar fund maintained by a
13 bank exclusively for the collective investment and reinvest-
14 ment of assets contributed thereto by a bank in its capac-
15 ity as trustee, executor, administrator, or guardian” and
16 inserting “or any interest or participation in any common
17 trust fund or similar fund that is excluded from the defini-
18 tion of the term ‘investment company’ under section
19 3(c)(3) of the Investment Company Act of 1940”.

20 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
21 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934
22 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as fol-
23 lows:

24 “(iii) any interest or participation in
25 any common trust fund or similar fund

1 that is excluded from the definition of the
2 term ‘investment company’ under section
3 3(c)(3) of the Investment Company Act of
4 1940.’’.

5 (c) INVESTMENT COMPANY ACT OF 1940.—Section
6 3(c)(3) of the Investment Company Act of 1940 (15
7 U.S.C. 80a-3(c)(3)) is amended by inserting before the
8 period the following: “, if—

9 “(A) such fund is employed by the bank
10 solely as an aid to the administration of trusts,
11 estates, or other accounts created and main-
12 tained for a fiduciary purpose;

13 “(B) except in connection with the ordi-
14 nary advertising of the bank’s fiduciary serv-
15 ices, interests in such fund are not—

16 “(i) advertised; or

17 “(ii) offered for sale to the general
18 public; and

19 “(C) such fund is not charged any fees or
20 expenses that, when added to any other com-
21 pensation charged by the bank to a participa-
22 tion account, would exceed the total amount of
23 compensation that would have been charged to
24 such participant account if no assets of the ac-
25 count had been invested in interests in the

1 fund, except that any reasonable and necessary
2 expenses related to the prudent operation of the
3 fund, as determined by the appropriate Federal
4 banking agency (as defined in section 3(q) of
5 the Federal Deposit Insurance Act), shall be
6 permitted to be charged directly to the fund.”.

7 (d) TAX EFFECT.—It is the sense of the Congress
8 that the public interest would be furthered by enacting
9 legislation to amend section 584 of the Internal Revenue
10 Code of 1986 by inserting after subsection (g) the follow-
11 ing new subsection:

12 “(h) CONVERSION, MERGERS, OR REORGANIZATION
13 OF COMMON TRUST FUNDS.—Notwithstanding any other
14 provision of the Internal Revenue Code, any transfer of
15 all or substantially all of the assets of a common trust
16 fund taxable under this section to a registered investment
17 company taxable under subchapter M shall not result in
18 a gain or loss to the participants in such common trust
19 fund where the transfer is a result of a merger, conversion,
20 reorganization, transfer, or other similar transaction or se-
21 ries of transactions.”.

1 **SEC. 142. INVESTMENT ADVISERS PROHIBITED FROM HAV-**
2 **ING CONTROLLING INTEREST IN REG-**
3 **ISTERED INVESTMENT COMPANY.**

4 Section 15 of the Investment Company Act of 1940
5 (15 U.S.C. 80a-15) is amended by adding at the end the
6 following new subsection:

7 “(g) CONTROLLING INTEREST IN INVESTMENT COM-
8 PANY PROHIBITED.—

9 “(1) IN GENERAL.—If any investment adviser
10 to a registered investment company, or an affiliated
11 person of that investment adviser, also holds shares
12 of the investment company in a trustee or fiduciary
13 capacity, that investment adviser or affiliated person
14 may own, directly or indirectly, a controlling interest
15 in that registered investment company only—

16 “(A) if it passes the power to vote the
17 shares of the investment company through to—

18 “(i) the beneficial owners of the
19 shares;

20 “(ii) any person acting in a fiduciary
21 capacity who is not an affiliated person of
22 that investment adviser or any affiliated
23 person thereof; or

24 “(iii) any person authorized to receive
25 statements and information with respect to
26 the trust who is not an affiliated person of

1 that investment adviser or any affiliated
2 person thereof;

3 “(B) if it votes the shares of the invest-
4 ment company held by it in the same proportion
5 as shares held by all other shareholders of the
6 investment company; or

7 “(C) as otherwise permitted under such
8 rules, regulations, or orders as the Commission
9 may prescribe for the protection of investors.

10 “(2) EXEMPTION.—Paragraph (1) shall not
11 apply to any investment adviser to a registered in-
12 vestment company, or an affiliated person of that in-
13 vestment adviser, holding shares of the investment
14 company in a trustee or fiduciary capacity if that
15 registered investment company consists solely of as-
16 sets of—

17 “(A) any common trust fund or similar
18 fund described in section 3(c)(3) of the Invest-
19 ment Company Act of 1940;

20 “(B) any employees’ stock bonus, pension,
21 or profit-sharing trust that qualifies under sec-
22 tion 401 of the Internal Revenue Code of 1986;

23 “(C) any governmental plan described in
24 section 3(a)(2)(C) of the Securities Act of
25 1933; or

1 “(D) any collective trust fund maintained
2 by a bank and consisting solely of assets of
3 trusts or governmental plans described in sub-
4 paragraph (B) or (C).”.

5 **SEC. 143. PURCHASE OF INVESTMENT COMPANY SECURI-**
6 **TIES AS FIDUCIARY.**

7 (a) IN GENERAL.—Section 17 of the Investment
8 Company Act of 1940 (15 U.S.C. 80a-17) is amended by
9 adding at the end the following:

10 “(k) PURCHASE OF INVESTMENT COMPANY SECURI-
11 TIES AS FIDUCIARY.—

12 “(1) IN GENERAL.—An investment adviser to a
13 registered investment company, or an affiliated per-
14 son of the investment adviser, promoter, organizer,
15 or sponsor of the registered investment company, or
16 principal underwriter for the registered company
17 may purchase securities issued by such investment
18 company for the account of a beneficiary as fidu-
19 ciary, only if disclosure of such information as the
20 Commission shall prescribe under paragraph (2) has
21 been provided to the person (other than to the in-
22 vestment advisor to the registered investment com-
23 pany, or an affiliated person of the investment advi-
24 sor, promoter, organizer, or sponsor of the registered
25 investment company, or principal underwriter for the

1 registered company who may purchase securities of
2 the registered company as fiduciary for the account)
3 to whom periodic financial statements are customar-
4 ily provided.

5 “(2) DISCLOSURE RULES.—The Commission
6 shall prescribe, by rule, regulation, or order, the
7 manner, form, and content of the information re-
8 quired to be disclosed under paragraph (1), as the
9 Commission determines necessary or appropriate in
10 the public interest and for the protection of inves-
11 tors.

12 “(3) PROSPECTIVE EFFECT.—This subsection
13 shall be effective for purchase for fiduciary accounts
14 made after the effective date of this subtitle.”.

15 (b) EXAMINATION OF TRUST DEPARTMENT SECURI-
16 TIES PURCHASES.—Section 10(d) of the Federal Deposit
17 Insurance Act (12 U.S.C. 1820(d)) is amended by adding
18 at the end the following:

19 “(6) TRUST DEPARTMENT EXAMINATION.—In
20 performing an examination under this subsection,
21 the appropriate Federal banking agency shall exam-
22 ine purchases by an insured depository institution’s
23 trust department or division of the securities of an
24 affiliated investment company, or an investment
25 company that is an affiliated person of an affiliated

1 person of the institution (as those terms are defined
2 in sections 2 and 3 of the Investment Company Act
3 of 1940), to assure compliance with applicable Fed-
4 eral and State trust laws.”.

5 **SEC. 144. CONFORMING CHANGE IN DEFINITION.**

6 Section 2(a)(5) of the Investment Company Act of
7 1940 (15 U.S.C. 80a-2(a)(5)) is amended by striking
8 “(A) a banking organization organized under the laws of
9 the United States” and inserting “(A) a depository insti-
10 tution, as that term is defined in section 3 of the Federal
11 Deposit Insurance Act or a U.S. branch or agency of a
12 foreign bank”.

13 **SEC. 145. EFFECTIVE DATE.**

14 This subtitle shall become effective 270 days after the
15 date of enactment of this Act.

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