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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.

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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

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# A BILL

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

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Financial Services Competitiveness Act of 1995''.

# TITLE I—BANK SECURITIES ACTIVITIES AND AFFILIATIONS

## Subtitle A—Securities Activities

### SEC. 101. ANTI-AFFILIATION PROVISION OF GLASS-STEAGALL ACT REPEALED.

(a) SECTION 20 REPEALED.—Section 20 (12 U.S.C. 377) of the Banking Act of 1933 is repealed.

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

### SEC. 102. BANK HOLDING COMPANIES AUTHORIZED TO HAVE SECURITIES AFFILIATES.

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

(1) by striking ''or'' at the end of paragraph (13);

(2) by striking the period at the end of paragraph (14) and inserting ''; or''; and

(3) by adding after paragraph (14) the following new paragraph:

''(15) shares of a securities affiliate in accordance with section 10.''.

**SEC. 103. ESTABLISHMENT AND OPERATIONS OF SECURITIES AFFILIATES.**

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

**''SEC. 10. SECURITIES ACTIVITIES.**

''(a) ACTIVITIES PERMISSIBLE FOR SECURITIES AFFILIATES.—A securities affiliate may engage in one or more of the following activities:

''(1) Underwrite, deal in, broker, place, or distribute securities of any type, and engage in other securities activities as permitted by the Board.

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

''(3) Engage in, or acquire the shares of a company engaged in, any activity if—

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

''(B) either—

''(i) the Board permits the bank holding company to engage in that activity or acquire those shares through the securities affiliate; or

''(ii) that provision permits the bank holding company to engage in that activity or acquire those shares without the Board's approval.

''(b) ACQUIRING INTEREST IN SECURITIES AFFILIATE.—

''(1) NOTICE REQUIRED.—A bank holding company shall not, without complying with and receiving approval pursuant to the notice procedure in section 4(j), directly or indirectly acquire or retain more than 5 percent of the voting shares of, or all or substantially all of the assets of, a securities affiliate (or a company that would be a securities affiliate if the Board permitted the bank holding company to acquire that company).

''(2) CRITERIA FOR APPROVAL.—The Board shall disapprove a notice required under paragraph (1) unless the Board determines that all of the following are satisfied:

''(A) CAPITAL.—

''(i) INSURED DEPOSITORY INSTITUTIONS.—

''(I) The lead insured depository institution of the bank holding company is well capitalized;

''(II) Well capitalized insured depository institutions control at least 80 percent of the total assets of insured depository institutions controlled by the bank holding company; and

''(III) All insured depository institutions controlled by the bank holding company are well capitalized or adequately capitalized.

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

''(iii) FOREIGN BANKS AND COMPANIES.—The Board shall establish and apply comparable capital standards for the ownership or control of a securities affiliate in the United States by a foreign bank (as defined in section 1(b) of the Inter-

national Banking Act of 1978), giving due regard to the principle of national treatment and equality of competitive opportunity in the United States.

''(B) MANAGERIAL RESOURCES.—

''(i) IN GENERAL.—The bank holding company and each of its subsidiary insured depository institutions—

''(I) are well managed; and

''(II) were well managed during the preceding 12-month period (but for purposes of this subparagraph the Board may disregard any insured depository institution acquired by the bank holding company during that period).

''(ii) SECURITIES ACTIVITIES.—The bank holding company has the managerial resources to conduct the proposed securities activities safely and soundly.

''(C) INTERNAL CONTROLS.—The bank holding company has established adequate policies and procedures to manage financial and operational risks and to provide reasonable as-

surance of compliance with this section and other applicable laws.

''(D) NO DETRIMENTAL EFFECT ON BANK HOLDING COMPANY OR ITS SUBSIDIARY INSURED DEPOSITORY INSTITUTIONS.—The acquisition would not adversely affect the safety and soundness of—

''(i) the bank holding company; or

''(ii) any insured depository institution subsidiary of the bank holding company.

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

''(3) EXPEDITED NOTICE PROCEDURE FOR ACQUISITION OF ADDITIONAL SECURITIES AFFILIATES.—

''(A) ADDITIONAL SECURITIES AFFILIATES.—A bank holding company may, without providing the notice required under subsection (b), directly or indirectly acquire the shares or substantially all of the assets of any company that is engaged predominantly in activities described in subsection (a) (1) and (2), if—

''(i) the bank holding company previously received the Board's approval under subsection (b) to control a securities affiliate and continues to control the securities affiliate pursuant to that approval;

''(ii) the bank holding company is adequately capitalized and would continue to be adequately capitalized following the acquisition; and

''(iii) all insured depository institutions controlled by the bank holding company are well capitalized and would continue to be well capitalized following the acquisition.

''(B) APPROVAL REQUIRED.—

''(i) ABBREVIATED NOTICE PROCEDURE.—A bank holding company may not acquire shares or assets under subparagraph (A) unless the company has provided the Board at least 30-days written notice prior to the transaction and, during that period, the Board has not disapproved the transaction.

''(ii) LIMITED EXTENSION OF PERIOD.—The Board may extend the dis-

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

''(iii) STANDARDS APPLIED BY THE BOARD.—In reviewing a notice under this paragraph, the Board shall consider whether the activities of the company to be acquired are authorized under section 10 and shall apply the standards provided in section 4(j)(2).

''(c) ADDITIONAL INVESTMENT IN SECURITIES AFFILIATE.—

''(1) PRIOR NOTICE REQUIRED.—A bank holding company that has acquired control of a securities affiliate under this section shall not, directly or indirectly, make any additional investment in the securities affiliate that is considered capital for purposes of any capital requirement imposed on the securities affiliate under the Securities Exchange Act of 1934 (other than an extension of credit under a revolving credit agreement approved by the Board), unless the bank holding company gives the Board prior written notice of the proposed investment and—

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

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

''(2) NO PRIOR NOTICE REQUIRED FOR CERTAIN BANK HOLDING COMPANIES.—A bank holding company is not required to provide prior notice under paragraph (1) if after making any investment described in paragraph (1)—

''(A) the bank holding company would adequately capitalized and each of the bank holding company's subsidiary insured depository institutions would be well capitalized; and

''(B) the bank holding company and each of its subsidiary insured depository institutions are well managed (but for purposes of this clause the Board may disregard any insured depository institution acquired by the bank holding company during the previous 12-month period). A bank holding company that makes an investment pursuant to this paragraph shall provide written notice to the Board of the additional investment within 10 days after making the investment.

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

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

''(4) EMERGENCY APPROVAL.—Notwithstanding any provision of this subsection, in the event of adverse market conditions, or concerns regarding the financial or operational condition of the securities affiliate, the Board may approve any additional investment in the securities affiliate on an emergency basis.

''(d) PROVISIONS APPLICABLE IF AFFILIATED INSURED DEPOSITORY INSTITUTION CEASES TO BE WELL CAPITALIZED.—

''(1) CERTAIN SECURITIES ACTIVITIES RESTRICTED UNLESS AFFILIATED INSTITUTIONS ARE WELL CAPITALIZED.—

''(A) APPLICABILITY.—This paragraph shall apply to a securities affiliate if—

''(i) the lead insured depository institution of the bank holding company is not well capitalized, or

''(ii) well capitalized insured depository institutions do not control at least 80

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

''(B) IN GENERAL.—Except as provided in subparagraph (C), the securities affiliate shall not, beginning 180 days after subparagraph (A) applies, agree to underwrite or deal in any securities other than—

''(i) securities expressly specified by section 5136 of the Revised Statutes as permissible for a national bank to underwrite or deal in;

''(ii) securities backed by or representing interests in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations; or

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

''(C) EXCEPTION.—The Board may permit the securities affiliate to underwrite or deal in securities not described in clauses (i) through (iii) of subparagraph (B) for a period of 1 year from the date on which subparagraph (A) applies, if—

''(i) the bank holding company submits a capital restoration plan to the Board specifying the steps the bank holding company will take to meet the requirements of section 10(b)(2)(A), and containing such other information as the Board may require; and

''(ii) the Board approves the plan.

''(D) EXTENSION OF PERIOD.—Upon application by the bank holding company, the Board may extend, for not more than 1 year at a time, the period provided in subparagraph (C), but no such extension shall in the aggregate exceed 2 years.

''(2) DIVESTITURE.—

''(A) IN GENERAL.—The bank holding company shall divest itself of the securities affiliate if any of the bank holding company's subsidiary insured depository institutions has been undercapitalized for more than 24 months.

''(B) EXTENDING TIME.—The Board may provide additional time for divestiture not exceeding 12 months if the appropriate Federal banking agency has approved the undercapitalized institution's capital restoration

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

''(i) the bank holding company has attempted in good faith to sell the securities affiliate at a realistic price; and

''(ii) the securities affiliate poses no significant risk to any affiliated insured depository institution.

''(e) SECURITIES AFFILIATE EXCLUDED IN DETERMINING WHETHER BANK HOLDING COMPANY IS ADEQUATELY CAPITALIZED.—

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

''(A) the bank holding company's capital and total assets shall each be reduced by—

''(i) an amount equal to the amount of the bank holding company's equity investment in any securities affiliate; and

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

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

''(B) the securities affiliate's assets and liabilities shall not be consolidated with those of the bank holding company.

''(2) EXCEPTION FOR NONSECURITIES ACTIVITIES.—Paragraph (1) does not apply to the extent that the Board determines by regulation or order that an item described in that paragraph relates to activities that are not described in paragraph (1) or (2) of subsection (a).

''(f) SAFEGUARDS RELATING TO SECURITIES AFFILIATES.—

''(1) EXTENSION OF CREDIT AND ASSET PURCHASES RESTRICTED.—

''(A) IN GENERAL.—No insured depository institution affiliated with a securities affiliate shall, directly or indirectly, do any of the following:

''(i) Extend credit in any manner to the securities affiliate.

''(ii) Issue a guarantee, acceptance, or letter of credit, including an endorsement or a standby letter of credit, for the benefit of the securities affiliate.

''(iii) Purchase for its own account financial assets of the securities affiliate, except to the extent permitted by the Board with respect to purchasing at the current market value (based on reliable and regularly available price quotations)—

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

''(II) securities that—

''(aa) the securities affiliate has been marking to market daily; and

(bb) are rated investment grade by at least 1 nationally recognized statistical rating organization.

''(B) EXCEPTION FOR CLEARING SECURITIES.—Subparagraph (A)(i) does not prohibit an extension of credit by a well capitalized insured depository institution made to acquire or sell securities if—

''(i) the extension of credit is incidental to clearing transactions in those securi-

ties through that insured depository institution;

''(ii) both the principal of and the interest on the extension of credit are fully secured by those securities;

''(iii) either—

''(I) the extension of credit is to be repaid on the same calendar day; or

''(II) all of the following conditions are satisfied:

''(aa) the securities cannot, in the ordinary course of business, be cleared on that calendar day;

''(bb) the extension of credit is to be repaid before the close of business on the next calendar day; and

''(cc) extensions of credit under this subclause, when aggregated with all other covered transactions between the institution and all affiliated securities affiliates do not exceed 10 per-

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

''(iv) either—

''(I) the securities are securities expressly specified by section 5136 of the Revised Statutes as permissible for a national bank to underwrite or deal in; or

''(II) to the extent that the Board permits transactions under this paragraph in securities not described in subclause (I), the securities affiliate provides the insured depository institution such addition security or other assurance of performance, if any, as the Board shall require to prevent such transactions from posing any appreciable risk to the institution.

''(C) OTHER EXCEPTIONS.—The board may make exceptions to subparagraph (A) for well capitalized insured depository institutions if—

''(i) the transaction is fully secured in accordance with section 23A(c) of the Federal Reserve Act; and

''(ii) the aggregate amount of covered transactions between the institution and all securities affiliates of the bank holding company, excluding transactions permitted under subparagraph (A)(iii)(I) or (B)(iii)(I), does not exceed 10 percent of the institution's capital stock and surplus.

''(2) CREDIT ENHANCEMENT RESTRICTED.—

''(A) IN GENERAL.—No insured depository institution affiliated with a securities affiliate shall, directly or indirectly, extend credit, or issue or enter into a standby letter of credit, asset purchase agreement, indemnity, guarantee, insurance, or other facility, for the purpose of enhancing the marketability of a securities issue underwritten by the securities affiliate.

''(B) EXCEPTIONS.—The Board may make exceptions to subparagraph (A)—

''(i) for well capitalized insured depository institutions if there is substantial participation by other lenders in the extension of credit, standby letter of credit, asset purchase agreement, indemnity, guarantee, insurance or other facility; and

''(ii) for securities expressly specified by section 5136 of the Revised Status as permissible for a national bank to underwrite or deal in.

''(3) PROHIBITION ON FINANCING PURCHASE OF SECURITY BEING UNDERWRITTEN.—

''(A) IN GENERAL.—No bank holding company or subsidiary of a bank holding company (other than a securities affiliate) shall knowingly extend or arrange for the extension of credit, directly or indirectly, secured by or for the purpose of purchasing any security while, or for 30 days after, that security is the subject of a distribution in which a securities affiliate of that bank holding company participates as an underwriter or a member of a selling group. For purposes of this subparagraph, a bank holding company or subsidiary may rely on an express written acknowledgement signed by the borrower that the credit is not secured by or for the purpose of purchasing a security described in this subparagraph.

''(B) EXCEPTIONS.—The Board may make exceptions to subparagraph (A)—

''(i) for extensions of credit if the securities are securities expressly specified by section 5136 of the Revised Statutes as permissible for a national bank to underwrite or deal in;

''(ii) for any other extension of credit, after consultation with and considering the views of the Securities and Exchange Commission, if:

''(I) the bank holding company is adequately capitalized,

''(II) the bank holding company's lead insured depository institution is well capitalized, and

''(III) well capitalized insured depository institutions control at least 80 percent of the assets of insured depository institutions controlled by the bank holding company and all insured depository institutions controlled by the bank holding company are well capitalized or adequately capitalized.

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

maintain credit or arrange for an extension of credit except in compliance with applicable provisions of the Securities Exchange Act of 1934 and the rules and interpretations thereunder.

''(4) RESTRICTION ON EXTENDING CREDIT TO MAKE PAYMENTS ON SECURITIES.—

''(A) IN GENERAL.—No insured depository institution affiliated with a securities affiliate shall, directly or indirectly, extend credit to an issuer of securities underwritten by the securities affiliate for the purpose of paying the principal of those securities or interest or dividends on those securities. This subparagraph does not apply to an extension of credit for a documented purpose (other than paying principal, interest, or dividends) if the timing, maturity, and other terms of the credit, taken as a whole, are substantially different from those of the underwritten securities.

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

''(i) the securities are securities expressly specified by section 5136 of the Re-

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

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

''(5) DIRECTOR AND SENIOR EXECUTIVE OFFICER INTERLOCKS RESTRICTED.—

''(A) IN GENERAL.—No director or senior executive officer of a securities affiliate shall serve at the same time as a director or senior executive officer of any affiliated insured depository institution.

''(B) EXCEPTION FOR SMALL BANK HOLDING COMPANIES.—Notwithstanding subparagraph (A), a director or senior executive officer of a securities affiliate may serve at the same time as a director or senior executive officer of an affiliated insured depository institution if that institution and all affiliated insured depository institutions have, in the aggregate, total assets of not more than $500,000,000. The dollar limitation in the preceding sentence shall be adjusted annually after December 31, 1995, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Cleri-

cal Workers published by the Bureau of Labor Statistics.

''(C) BOARD'S AUTHORITY TO MAKE EXCEPTIONS.—

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

''(ii) STANDARDS.—The Board—

''(I) shall, in determining whether to make such exceptions, consider the size of the bank holding companies, insured depository institutions, and securities affiliates involved, any burdens that may be imposed by subparagraph (A), the safety and soundness of the insured depository institutions and securities affiliates, and other appropriate factors, including unfair competition in securities activities or the improper exchange of nonpublic customer information; and

''(II) shall not permit—

''(aa) more than half of the insured depository institution's directors to be directors or senior

executive officers of the securities affiliate; or

''(bb) more than half of the securities affiliate's directors to be directors or senior executive officers of the insured depository institution.

''(D) SENIOR EXECUTIVE OFFICER DEFINED.—For purposes of this paragraph, the term 'senior executive officer' has the same meaning as the term 'executive officer' has in section 22(h) of the Federal Reserve Act.

''(6) DISCLOSURE REQUIRED BY SECURITIES AFFILIATE.—At the time a securities account is opened, a securities affiliate shall conspicuously disclose in writing to each of its customers that—

''(A) securities sold, offered, or recommended by the securities affiliate are not deposits, are not insured by the Federal Deposit Insurance Corporation, are not guaranteed by an affiliated insured depository institution, and are not otherwise an obligation of an insured depository institution (unless such is the case);

''(B) the securities affiliate is not an insured depository institution, and is a corpora-

tion separate from any insured depository institution; and

''(C) the securities affiliate may be underwriting or dealing in the securities being sold, offered or recommended, and if so, would have a financial interest in the transaction.

''(7) DISCLOSURE REQUIRED BY INSURED DEPOSITORY INSTITUTIONS.—No insured depository institution that is affiliated with a securities affiliate shall knowingly express any opinion on the value of, or the advisability of purchasing or selling, securities being underwritten or dealt in by a securities affiliate of that bank holding company unless the insured depository institution conspicuously discloses in writing to the customer that—

''(A) the securities affiliate is underwriting or dealing in the securities and has a financial interest in the transaction;

''(B) the securities recommended are not deposits, are not insured by the Federal Deposit Insurance Corporation, are not guaranteed by the institution or any other affiliated insured depository institution, and are not otherwise an obligation of an insured depository institution (unless such is the case), and are sub-

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

''(C) the securities affiliate is not an insured depository institution, and is a corporation separate from any insured depository institution.

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

''(A) IN GENERAL.—No insured depository institution subsidiary of a bank holding company shall disclose to a securities affiliate of that bank holding company, nor shall a securities affiliate disclose to any affiliated insured depository institution or subsidiary of such an institution, any nonpublic customer conformation (including an evaluation of the creditworthiness of an issuer or other customer of that institution or securities affiliate), unless it is clearly and conspicuously disclosed that such information may be communicated among such persons and the customer is given the opportunity, prior to the time that the information is initially communicated, to direct that such information not be communicated among such persons.

''(B) DEFINITION.—For purposes of subparagraph (A), the term 'nonpublic customer information' does not include—

''(i) customers' names and addresses (unless a customer has specified otherwise);

''(ii) information that could be obtained from unaffiliated credit bureaus or similar companies in the ordinary course of business; or

''(iii) information that is customarily provided to unaffiliated credit bureaus or similar companies in the ordinary course of business by—

''(I) insured depository institutions not affiliated with securities affiliates; or

''(II) brokers and dealers not affiliated with insured depository institutions.

''(9) UNDERWRITING SECURITIES REPRESENTING OBLIGATIONS ORIGINATED BY AFFILIATE RESTRICTED.—A securities affiliate shall not underwrite securities secured by or representing an interest in mortgages or other obligations originated or

purchased by an affiliated insured depository institution or subsidiary of such an institution—

''(A) unless those securities—

''(i) are rated by at least one unaffiliated, nationally recognized statistical rating organization;

''(ii) are issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association; or

''(iii) represent interests in securities described in clause (ii); or

''(B) except as permitted by the Board.

''(10) RECIPROCAL ARRANGEMENTS PROHIBITED.—No bank holding company and no subsidiary of a bank holding company may enter into any agreement, understanding, or other arrangement under which—

''(A) one bank holding company (or subsidiary of that bank holding company) agrees to engage in a transaction with, or on behalf of, another bank holding company (or subsidiary of that bank holding company), in exchange for

''(B) the agreement of the second bank holding company referred to in subparagraph (A) (or a subsidiary of that bank holding company) to engage in any transaction with, or on behalf of, the first bank holding company referred to in that subparagraph (or any subsidiary of that bank holding company), for the purpose of evading any requirement or restriction of Federal law on transactions between, or for the benefit of, affiliates of bank holding companies.

''(11) SAFEGUARDS APPLY TO CERTAIN SUBSIDIARIES.—Except as provided in this subsection:

''(A) SECURITIES AFFILIATE.—No subsidiary of a securities affiliate may do anything that this subsection prohibits the securities affiliate from doing.

''(B) DEPOSITORY INSTITUTION.—No subsidiary of an insured depository institution or of a wholesale financial institution may do anything that this subsection prohibits the institution from doing.

''(12) AUTHORITY TO MODIFY AND IMPOSE ADDITIONAL SAFEGUARDS; INTERPRETIVE AUTHORITY—

''(A) IN GENERAL.—The Board may, by regulation or order—

''(i) adopt additional limitations, restrictions or conditions on relationships or transactions among insured depository institutions, their affiliates, and their customers; and

''(ii) make any modification to any limitation, restriction or condition on relationships or transactions among insured depository institutions, their affiliates and their customers imposed under this subsection, including modifications in addition to those expressly provided for in this subsection.

''(B) STANDARDS.—The Board may not exercise authority under subparagraph (A)(i) or subparagraph (A)(ii) unless the Board finds that such action is consistent with the purposes of this Act, including the avoidance of any significant risk to the safety and soundness of insured depository institutions or the Federal deposit insurance funds, enhancement of the financial stability of bank holding companies, prevention of the subsidization of securities af-

filiates by insured depository institutions, avoidance of conflicts of interest or other abuses, and application of the principle of national treatment and equality of competitive opportunity between securities affiliates owned or controlled by domestic bank holding companies and securities affiliates owned or controlled by foreign banks operating in the United States.

''(13) COMPLIANCE PROGRAMS REQUIRED.—

''(A) IN GENERAL.—Each appropriate Federal banking agency and the Securities and Exchange Commission shall establish a program for—

''(i) sharing information concerning compliance with subtitles A, B, or C of title I of the Financial Services Competitiveness Act of 1995 by:

''(I) entities that are brokers, dealers, investment advisers or investment companies registered with the Securities and Exchange Commission that are affiliated with insured depository institutions, or are separately identifiable departments or divisions

of insured depository institutions registered as investment advisers; and

''(II) such insured depository institutions and their affiliates;

''(ii) enforcing compliance with subtitle A of title I of the Financial Services Competitiveness Act of 1995 and section 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934 by entities under its supervision; and

''(iii) responding to any complaints from customers about inappropriate cross-marketing of securities products or inadequate disclosure.

''(B) DATA COLLECTION.—

''(i) IN GENERAL.—The appropriate Federal banking agencies, after consultation with and consideration of the views of the Securities and Exchange Commission, may require any depository institution that has effected securities transactions pursuant to any exception enumerated in sections 3(a)(4)(C) and 3(a)(5) of the Securities Exchange Act of 1934 to identify the exceptions relied upon and to submit such

information necessary to monitor compliance under sections 3(a)(4)(C) and 3(a)(5) of the Securities Exchange Act of 1934.

''(ii) COMMISSION ACCESS.—The appropriate Federal banking agency shall make any such information available to the Commission upon request.

''(iii) COMPLIANCE.—In implementing the provisions of this subparagraph, the appropriate Federal banking agencies shall ensure that any information requests to insured depository institutions take into account the size and activities of the institutions and do not cause undue reporting burdens.

''(C) COMMISSION'S ENFORCEMENT AUTHORITY.—Without limiting in any way the authority of the appropriate Federal banking agencies under this subsection, the Securities and Exchange Commission shall have the authority to enforce the provisions of this subsection against a securities affiliate to the extent that those provisions govern the conduct or activities of the securities affiliate as if they

were provisions of the Securities Exchange Act of 1934.

''(D) EXAMINATION REPORTS.—The appropriate Federal banking agencies shall, to the extent practicable, use the reports of examination of any broker, dealer, investment adviser, or investment company made by or on behalf of the Securities and Exchange Commission and reports made by or on behalf of a registered securities association or national securities exchange, and shall defer to such examinations for compliance with the Federal securities laws.

''(E) INTERPRETATIONS OF THE FEDERAL SECURITIES LAWS.—The appropriate Federal banking agencies shall defer to the Securities and Exchange Commission regarding all interpretations and enforcement of the Federal securities laws relating to the application of the Federal securities laws to the activities and conduct of brokers, dealers, investment advisers, and investment companies.

''(F) NOTICE OF CERTAIN ACTIONS.—

''(i) SECURITIES AND EXCHANGE COMMISSION.—The Securities and Exchange Commission shall give notice to the

appropriate Federal banking agency upon the entry of an order of investigation of, or the commencement of any disciplinary or law enforcement proceedings by the Commission and a copy of any order entered by the Commission against—

''(I) any broker, dealer, or investment adviser that—

''(aa) is registered with the Securities and Exchange Commission; and

''(bb) is affiliated with or is a separately identifiable department or division of an insured depository institution;

''(II) any investment company registered with the Securities and Exchange Commission that is an affiliate of or is advised by an investment adviser affiliated with an insured depository institution or by a separately identifiable department or division of an insured depository institution that is a registered investment adviser; or

''(III) any bank holding company, insured depository institution, or subsidiary of such company or institution, if the proposed action relates to subtitles A, B, or C of title I of the Financial Services Competitiveness Act of 1995.

''(ii) APPROPRIATE FEDERAL BANKING AGENCIES.—Upon the entry of an order of investigation of, or the commencement of any disciplinary or law enforcement proceedings to enforce the provisions of subtitle A of title I of the Financial Services Competitiveness Act of 1995 by an appropriate Federal banking agency against any broker, dealer, investment adviser, or investment company that is registered under the Federal securities laws and is affiliated with an insured depository institution, the appropriate Federal banking agency shall give notice to the Securities and Exchange Commission of the proposed action.

''(iii) EXTENSION.—The notice required under clause (i) or (ii) may be pro-

vided promptly after action by the Securities and Exchange Commission or the appropriate Federal banking agency, if—

''(I) the Commission determines that the protection of investors requires immediate action by the Commission and prior notice under clause (i) is not practical under the circumstances; or

''(II) the appropriate Federal banking agency determines that concerns for the safety and soundness of an insured depository institution or its affiliate require immediate action by the agency and prior notice under clause (ii) is not practical under the circumstances.

''(G) COORDINATED ENFORCEMENT ACTIONS.—The Securities and Exchange Commission and the appropriate Federal banking agencies shall, to the extent practicable, coordinate supervisory actions based on applicable law where the actions are based on the same or related events or practices.

''(H) INVESTMENT COMPANIES NOT AFFILIATED WITH AN INSURED DEPOSITORY INSTITUTION.—The appropriate Federal banking agency shall not have authority under this title or any other provision of law to inspect or examine any investment company registered under the Federal securities laws that is not—

''(i) affiliated with an insured depository institution; or

''(ii) advised by an investment adviser affiliated with an insured depository institution or by a separately identifiable department or division of an insured depository institution that is a registered investment adviser.

''(I) DEFINITION.—For purposes of this paragraph, the term 'Federal securities laws' shall mean the provisions of Federal law governing securities activities that are within the jurisdiction of the Securities and Exchange Commission as set forth in the Securities Act of 1993, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and the Trust Indenture Act of 1939.

''(g) ACTIVITIES NOT PERMISSIBLE FOR DEPOSITORY INSTITUTIONS OR SECURITIES AFFILIATES.—

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

''(A) to engage, directly or indirectly, in the United States—

''(i) in underwriting securities backed by or representing interests in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations, originated or purchased by the insured depository institution or its affiliates;

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

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

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

''(B) to make an equity investment in any securities affiliate.

''(2) The limitations in paragraph (1)(A) shall not apply to activities conducted by a subsidiary held pursuant to section 25 or 25A of the Federal Reserve Act or section 4(c)(13) of this Act.

''(3) Nothing in this section shall permit a securities affiliate to accept deposits in contravention of section 21 of the Banking Act of 1933 (12 U.S.C. 378(a)).

''(h) APPROVAL OF SECURITIES ACTIVITIES UNDER SECTION 4(c)(8) RESTRICTED.—The Board shall deny any notice or application by a bank holding company under authority of section 4(c)(8) to engage in, or acquire the shares of a company engaged in, underwriting or dealing in securities in the United States, except securities expressly specified by section 5136 of the Revised Statutes as permissible for a national bank to underwrite or deal in.

''(i) BANKERS' BANKS.—For purposes of this section, each shareholder of or participant in a company that controls a depository institution described in section 5169(b)(1) of the Revised Statutes or in a similar statute of any State, and each subsidiary of such a shareholder or participant, shall be treated as if it were a subsidiary of that company. This subsection shall not apply to a shareholder or participant in that company (or subsidiary of that shareholder or participant) if the shareholder or participant and its affiliates do not, in the aggregate, control more than 5 percent of any class of voting shares of that company.

''(j) SHARES ACQUIRED IN CONNECTION WITH UNDERWRITING AND INVESTMENT BANKING ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding section 4(a), a bank holding company may directly or indirectly own or control shares of any company engaged in activities not authorized pursuant to section 4 of this Act if—

''(A) the shares are acquired and held by a securities affiliate as part of a bona fide underwriting or investment banking activity and such shares are held only for such period of time as will permit the sale thereof on a reason-

able basis consistent with the nature of such activity; and

''(B) during the period such shares are held, the bank holding company does not directly or indirectly participate in the day to day management or operation of the company.

''(2) BOARD RULES.—The Board may establish rules governing the acquisition and retention of shares under this subsection, including limitations governing the amount and percentage of shares that may be held under this paragraph and the circumstances and time period such shares may be held, in order to assure compliance with the purposes of this Act, including the separation of banking and commerce.

''(k) DEFINITIONS.—For purposes of this section—

''(1) CAPITAL CATEGORIES.—

''(A) INSURED DEPOSITORY INSTITUTIONS.—With respect to insured depository institutions, the terms 'well capitalized', 'adequately capitalized', and 'undercapitalized' have the meaning given to those terms in section 38(b) of the Federal Deposit Insurance Act.

''(B) BANK HOLDING COMPANIES.—A bank holding company is 'adequately capital-

ized' if it meets the required minimum level for each relevant capital measure established by the Board for bank holding companies, and 'undercapitalized' if it fails to meet the required minimum level for any such relevant capital measure.

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

''(3) COVERED TRANSACTION.—The term 'covered transaction' has the same meaning as in section 23A of the Federal Reserve Act.

''(4) FOREIGN BANKS.—A branch or agency of a foreign bank or a commercial lending company controlled by a foreign bank (as in terms 'agency', 'branch', 'commercial lending company', and 'foreign bank' are defined in section 1 of the International Banking Act of 1978) shall be deemed to be an insured depository institution.

''(5) SECURITY.—

''(A) IN GENERAL.—The term 'security' has the meaning given to that term in section 3(a)(10) of the Securities Exchange Act of 1934.

''(B) EXCEPTIONS.—For purposes of this section, other than subsection (a), the term 'security' does not include any of the following:

''(i) A contract of insurance.

''(ii) A deposit account, savings account, certificate of deposit, or other deposit instrument issued by a depository institution.

''(iii) A share account issued by a savings association if the account is insured by the Federal Deposit Insurance Corporation.

''(iv) A banker's acceptance.

''(v) A letter of credit issued by a depository institution.

''(vi) A debit account at a depository institution arising from a credit card or similar arrangement.

''(vii) A traditional loan or loan participation (as determined by the Board).

''(C) BOARD'S AUTHORITY TO EXEMPT TRADITIONAL BANKING PRODUCTS.—The Board may, after consultation and consideration of the views of the Securities and Exchange Commission, by regulation exempt from the definition

of 'security' a banking product that national banks have traditionally and customarily originated or handled (such as mortgage notes) if the exemption is consistent with the purposes of this section.

''(D) DEFINITION FOR LIMITED PURPOSE.—The fact that a particular instrument is excluded pursuant to subparagraphs (B) or (C) from the definition of 'security' for purposes of this section shall not be construed as finding or implying that such instrument is or is not a 'security' for purposes of section 3(a)(10) of the Securities Exchange Act of 1934.''.

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

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

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

(B) except underwriting or dealing in securities expressly specified by section 5136 of the Revised Statutes as permissible for a national bank to underwrite or deal in.

(2) EXTENDING TIME.—

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

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

(c) CONFORMING AMENDMENTS.—

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

''(n) SECURITIES AFFILIATE.—The term 'securities affiliate' means any company—

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

''(2) the acquisition or retention of the shares or assets of which the Board has approved under section 10.

''(o) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the meaning given to that term in section 3 of the Federal Deposit Insurance Act.

''(p) LEAD INSURED DEPOSITORY INSTITUTION.—The term 'lead insured depository institution' shall mean the largest insured depository institution controlled by the bank holding company, based on a comparison on the average total assets controlled by each insured depository institution during the previous 12-month period.

''(q) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the same meaning as in section 3(q) of the Federal Deposit Insurance Act.''.

(2) AMENDMENT REGARDING CONDITIONAL APPROVAL OF APPLICATIONS.—Section 4(a)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(a)(2)) is amended by striking ''paragraph (8)'' and all that follows through ''issued by the Board

under such paragraph'' and inserting ''section 10, subsection (l) or subsection (c)(8), subject to all the conditions specified in those provisions or in any order or regulation issued by the Board under those provisions''.

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

(A) in paragraph (1)(A) by striking ''subsection (c)(8) or (a)(2)'' and inserting in its place ''subsection (c)(8), (c)(15), (l), or (a)(2)'';

(B) in paragraph (1)(E) by striking ''subsection (c)(8) or (a)(2)'' and inserting in its place ''subsection (c)(8), (c)(15), (l), or (a)(2)'';

(C) by redesignating paragraphs (2)(B) and (2)(C) as paragraphs (2)(C) and (2)(D) respectively, and inserting a new paragraph (2)(B) as follows:

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

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

(e) EXEMPTION FROM SECTION 305(b) OF THE FEDERAL POWER ACT.—Section 305(b) of the Federal Power Act (16 U.S.C. 825d(b)) shall not apply to any person now holding or proposing to hold the position of officer or director of a public utility and officer or director of a bank, trust company, banking association, or firm permitted by section 10 of the Bank Holding Company Act of 1956 (as amended by subsection (a)) or section 5136(b) of the Revised Statutes (12 U.S.C. 24(b)) (as amended by section 716) to underwrite or participate in the marketing of securities (including commercial paper) of a public utility, if that bank, trust company, banking association, or firm does not underwrite or participate in the marketing of securities of the public utility for which the person serves or proposes to serve as an officer or director.

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

''(k) OWNERSHIP OF SHARES OF CERTAIN COMPANIES BY SECURITIES COMPANIES THAT BECOME BANK HOLDING COMPANIES.—

''(1) FINANCIAL COMPANIES.—Notwithstanding subsection (a), a bank holding company may retain direct or indirect ownership or control of voting shares of any company that engages solely in activities that the Board determines to be financial in nature if—

''(A) the bank holding company acquired the shares of such company or of each company to which it is a successor more than two years prior to the date that such bank holding company becomes a bank holding company;

''(B) the aggregate investment by the bank holding company in shares ownership or control of which the bank holding company would be prohibited from retaining but for this paragraph does not exceed 10 percent of the total consolidated capital and surplus of the bank holding company on the date that it becomes a bank holding company or on the date of any additional investment by the bank holding company in such shares; and

''(C) more than 50 percent of the business of the bank holding company for each of the two calendar years prior to the date it becomes a bank holding company involved securities activities described in sections 10(a) (1) and (2), excluding from such calculation activities (other than securities activities) in which bank holding companies were permitted to engage prior to the enactment of the Financial Services Competitiveness Act of 1995.

''(2) NONFINANCIAL COMPANIES.—

''(A) IN GENERAL.—Notwithstanding subsection (a), a bank holding company that is described in paragraph (1)(C) may, for a period of 5 years from the date that the company becomes a bank holding company, retain direct or indirect ownership or control of voting shares of any company that the bank holding company owns or controls on the date it becomes a bank holding company.

''(B) EXTENSION OF DIVESTITURE PERIOD.—The Board may extend the period described in subparagraph (A) for an additional period not to exceed 5 years if the Board determines that such extension is necessary to avert

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

''(C) NO EXPANSION OF NONFINANCIAL COMPANIES PRIOR TO DIVESTITURE.—Unless such acquisition or activity is permitted in accordance with section 4(c)—

''(i) no bank holding company or company whose shares are owned or controlled by a bank holding company pursuant to this paragraph (2) may acquire any interest in or assets of any company, and

''(ii) no company whose shares are owned or controlled by a bank holding company pursuant to this paragraph (2) may engage directly or indirectly in any activity that the company did not conduct on the day before the bank holding company registered as a bank holding company.

''(3) RESTRICTIONS ON JOINT MARKETING.—No insured depository institution (and no subsidiary of such institution) shall—

''(A) offer or market, directly or indirectly through any arrangement, any product or serv-

ice of any affiliate whose shares are owned or controlled by the bank holding company pursuant to this subsection or section 10(j), or

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

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

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

(1) by deleting ''this chapter'' and inserting in its place ''law''; and

(2) by adding '', examination reports'' after ''financial records''.

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

''(I) the company has provided at least 60 days prior written notice to the Board and, during that period, the Board has not disapproved the proposal after applying the standards provided in subsection (j)(2);

''(II) each insured depository institution controlled by the company is at all times well-capitalized; and

''(III) the company engages, directly or indirectly, only in activities—

''(aa) permitted pursuant to subsection 4(c)(8) or (15); or

''(bb) determined by the Board to be financial in nature and the company satisfies the provisions of subsection (k)(1) (B) and (C), or would satisfy the provisions of subsection (k)(1) (B) and (C) if the company were a bank holding company.''.

(i) CONFORMING AMENDMENT FOR CERTAIN HOLDING COMPANIES.—Section 10(c) of the Home Owners' Loan Act (12 U.S.C. 1467a(c)) is amended by striking paragraphs (3), (5), and (6) and redesignating other paragraphs accordingly.

**SEC. 104. SECURITIES COMPANY AFFILIATIONS OF FDIC-INSURED BANKS.**

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsections:

''(s) SECURITIES AFFILIATIONS OF INSURED BANKS.—

''(1) IN GENERAL.—A bank shall not be an affiliate of any company that, directly or indirectly, acts as an underwriter or dealer of any security, except—

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

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

''(2) EXCEPTION.—This subsection does not apply to an insured bank described in subparagraph (D), (F), or (H) or section 2(c)(2) of the Bank Holding Company Act of 1956 or to a company held pursuant to section 25 or 25A of the Federal Reserve Act or section 4(c)(13) of the Bank Holding Company Act.

''(3) GRANDFATHER PROVISION.—This subsection does not prohibit—

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

''(B) any new affiliation by an insured bank that has an affiliation that would be prohibited if the affiliation were not covered by subparagraph (A).

''(4) DEFINITIONS.—For purposes of this subsection:

''(A) AFFILIATE.—The term 'affiliate' has the meaning given to that term in section 2(k) of the Bank Holding Company Act of 1956.

''(B) COMPANY.—The term 'company' has the meaning given to that term in section 2(b) of the Bank Holding Company Act of 1956.

''(C) BROKER.—The term 'broker' has the meaning given to that term in section 3(a)(4) of the Securities Exchange Act of 1934.

''(D) DEALER.—The term 'dealer' has the meaning given to that term in section 3(a)(5) of the Securities Exchange Act of 1934.

''(E) SECURITY.—

''(i) IN GENERAL.—The term 'security' has the meaning given to that term in section 3(a)(10) of the Securities Exchange Act of 1934.

''(ii) EXCEPTIONS.—For purposes of this subsection, the term 'security' does not include any of the following:

''(I) A contract of insurance.

''(II) A deposit account, savings account, certificate of deposit, or other deposit instrument issued by a depository institution.

''(III) A share account issued by a savings association if the account is insured under the Federal Deposit Insurance Act.

''(IV) A banker's acceptance.

''(V) A letter of credit issued by a depository institution.

''(VI) A debit account at a depository institution arising from a credit card or similar arrangement.

''(VII) A traditional loan or loan participation (as determined by the Board).

''(iii) FEDERAL RESERVE BOARD'S AUTHORITY TO EXEMPT TRADITIONAL BANKING PRODUCTS.—The Board of Governors of the Federal Reserve System may,

after consultation with and considering the views of the Securities and Exchange Commission, by regulation exempt from the definition of 'security' a banking product that national banks have traditionally and customarily originated or handled (such as mortgage notes) if the exemption is consistent with the purposes of this subsection.

''(iv) DEFINITION FOR LIMITED PURPOSE.—The fact that a particular instrument is excluded pursuant to clauses (ii) or (iii) from the definition of 'security' for purposes of this subsection shall not be construed as finding or implying that such instrument is or is not a 'security' for purposes of section 3(a)(10) of the Securities Exchange Act of 1934.

''(E) UNDERWRITER.—The term 'underwriter' has the meaning given to that term in section 2(11) of the Securities Act of 1933.

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

Exchange Act of 1934, except to the extent permitted under section 3(a)(4) or 3(a)(5), or unless otherwise exempt pursuant to rules promulgated by the Securities and Commission.''.

**SEC. 105. AUTHORITY TO TERMINATE GRANDFATHER RIGHTS UNDER THE INTERNATIONAL BANKING ACT OF 1978.**

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

''(3) PARITY IN CONDUCT OF AUTHORIZED SECURITIES ACTIVITIES.—

''(A) IN GENERAL.—Notwithstanding any provision of paragraph (1) or any other provision of law, any authority conferred under this subsection on any foreign bank or company with respect to an activity of an affiliate engaged in securities activities shall terminate 18 months after the Board determines that such activity is authorized for bank holding companies in the United States, except that—

''(i) the foreign bank or company may retain the shares of an affiliate engaged in securities activities, if, prior to the expiration of such 18 months period, the foreign

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

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

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

**SEC. 106. EFFECT ON STATE LAWS PROHIBITING THE AFFILIATION OF BANKS AND SECURITIES COMPANIES.**

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

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

**SEC. 107. MUNICIPAL SECURITIES**

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

''Notwithstanding any other provision of this paragraph, a national banking association may deal in, underwrite, and purchase for such association's own account any obligation of, or obligation guaranteed as to principal or interest by, a State or of any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, if the association—

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

''(2) engages in the business of banking;

''(3) has not been affiliated with a securities affiliate under section 10 of the Bank Holding Company Act of 1956 for more than 1 year; and

''(4) maintains its main office or any branch in such State or political subdivision, or within 100 miles of such State or political subdivision.''.

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

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

''(r) WHOLESALE FINANCIAL INSTITUTION.—The term 'wholesale financial institution' means any institution that is an uninsured state member bank authorized pursuant to section 9B of the Federal Reserve Act.

''(s) INVESTMENT BANK HOLDING COMPANY.—The term 'investment bank holding company' means any bank holding company that controls or seeks to control—

''(1) a wholesale financial institution, and

''(2) a company engaged in underwriting, distributing or dealing in securities pursuant to section 10.''.

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

''(l) PERMISSIBLE AFFILIATIONS FOR INVESTMENT BANK HOLDING COMPANIES.—

''(1) FINANCIAL ACTIVITIES.—

''(A) ACTIVITIES AUTHORIZED.—An investment bank holding company may directly or indirectly own or control shares of any company the activities of which the Board has determined to be of a financial nature, without regard to the limitations contained in subsections (k)(1) or (k)(3).

''(B) INSURANCE UNDERWRITING ACTIVITIES LIMITED TO INCIDENTAL ACTIVITIES.—In the event that the Board determines that insurance underwriting activities (other than activities permissible under subsection (c)(8)) are financial in nature, the aggregate investment by an investment bank holding company in shares of all companies that engage in insurance underwriting activities (other than insurance underwriting activities permissible under section (c)(8)) shall not exceed 10 percent of the total consolidated capital and surplus of the investment bank holding company.

''(C) NOTICE REQUIRED.—An investment bank holding company may not own or control shares of any company described in subparagraph (A) without complying with the notice procedures provided in subsection (j).

''(2) SECURITIES ACTIVITIES.—

''(A) INSTITUTIONS MUST BE WELL-CAPITALIZED.—The Board shall disapprove a notice under section 10 by an investment bank holding company to acquire a securities affiliate if any wholesale financial institution controlled by the investment bank holding company is not

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

''(B) TRANSACTIONS WITH A SECURITIES AFFILIATE.—

''(i) IN GENERAL.—A wholesale financial institution controlled by an investment bank holding company shall be a 'bank' for purposes of the provisions of sections 23A and 23B of the Federal Reserve Act.

''(ii) OTHER RESTRICTIONS DETERMINED BY THE BOARD.—A securities affiliate and a wholesale financial institution controlled by an investment bank holding company shall not be subject to the provisions of section 10(f), except that the securities affiliate and wholesale financial institution shall be subject to paragraphs (12) and (13) of that section as if the wholesale financial institution were an insured depository institution.

''(3) LIMITATION ON AFFILIATION WITH INSURED DEPOSITORY INSTITUTIONS.—An investment bank holding company may not directly or indirectly own or control—

''(A) any bank, other than a wholesale financial institution;

''(B) any savings association;

''(C) any institution described in section 2(c)(2); or

''(D) any institution that accepts—

''(i) initial deposits of $100,000 or less, other than on an incidental or occasional basis, or

''(ii) deposits that are insured under the Federal Deposit Insurance Act.''.

(c) CONFORMING AMENDMENTS.—

(1) INSURANCE REQUIREMENT IN THE BANK HOLDING COMPANY ACT.—Section 3(e) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(e)) is amended by adding at the end the following: ''This subsection does not apply to a wholesale financial institution that is controlled by an investment bank holding company that controls no banks other than wholesale financial institutions.''.

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

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

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

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

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

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

''(1) APPLICATION REQUIRED.—Any bank incorporated by special law of any State, or organized under the general laws of any State, may apply to the Board of Governors of the Federal Reserve System to subscribe to the stock of the Federal Reserve bank organized within the district where the applying bank is located as a wholesale financial institution. Such application shall be treated as an application under, and shall be subject to the provisions of section 9.

''(2) APPROVAL OF MEMBERSHIP.—No bank may become a wholesale financial institution unless—

''(A) the Board has approved an application by the bank, under such rules and regulations and subject to such conditions and requirements as the Board may prescribe, to be a wholesale financial institution; and

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

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

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

''(2) PROMPT CORRECTIVE ACTION.—A wholesale financial institution shall be deemed to be an insured depository institution for purposes of section

38 of the Federal Deposit Insurance Act except that—

''(A) the relevant capital levels and capital measures for each capital category shall be the levels specified by the Board for wholesale financial institutions in accordance with subsection (c);

''(B) the provisions applicable to well capitalized insured depository institutions shall be inapplicable to wholesale financial institutions;

''(C) the provisions authorizing or requiring an institution to be placed into receivership shall not apply to a wholesale financial institution, and, in its place, the Board is authorized or required, as the case may be, to terminate the wholesale financial institution's membership in the Federal Reserve System or, where provided in section 38 of the Federal Deposit Insurance Act, place the bank into conservatorship and, in the Board's discretion, terminate the bank's membership; and

''(D) for purposes of applying the provisions of section 38 of the Federal Deposit Insurance Act to wholesale financial institutions, all references to the appropriate Federal bank-

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

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

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

''(5) BANK MERGER ACT.—A wholesale financial institution shall be subject to the provisions of the Bank Merger Act in the same manner as if the wholesale financial institution were a State member insured bank for purposes of that Act.

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

''(1) LIMITATIONS ON DEPOSITS.—

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

''(B) NO DEPOSIT INSURANCE.—No deposits held by a wholesale financial institution shall be insured deposits under the Federal Deposit Insurance Act.

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

''(2) SPECIAL CAPITAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—

''(A) MINIMUM CAPITAL LEVELS.—

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

capital levels for wholesale financial institutions shall be sufficiently higher than the capital levels applicable to State member insured banks—

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

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

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

''(B) CAPITAL CATEGORIES FOR PROMPT CORRECTIVE ACTION.—For purposes of applying the provisions of section 38 of Federal Deposit Insurance Act, the Board shall, by regula-

tion, establish, for each relevant capital measure specified by the Board under subparagraph (A), the levels at which a wholesale financial institution is adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized.

''(3) ADDITIONAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—In addition to any requirements otherwise applicable to State member banks or otherwise applicable under this section, the Board may prescribe, by rule or order, for wholesale financial institutions—

''(A) limitations on transactions with affiliates to prevent an affiliate from gaining access to, or the benefits of, credit from a Federal Reserve bank, including overdrafts at a Federal Reserve bank;

''(B) special clearing balance requirements; and

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

''(i) promote the safety and soundness of the wholesale financial institution, or

''(ii) protect creditors and other persons, including Federal Reserve banks, engaged in transactions with the wholesale financial institution.

''(4) EXEMPTIONS FOR WHOLESALE FINANCIAL INSTITUTIONS.—The Board may, by rule or order, exempt any wholesale financial institution from any provision applicable to a State member bank that is not a wholesale financial institution, provided that the Board finds that such exemption is not inconsistent with—

''(i) the promotion of the safety and soundness of the wholesale financial institution; and

''(ii) the protection of creditors and other persons, including Federal Reserve banks, engaged in transactions with the wholesale financial institution.

''(5) NO EFFECT ON OTHER PROVISIONS.—This section shall not be construed to limit the Board's authority over member banks under any other provision of law, or to create any obligation for any Federal Reserve bank to make, increase, renew, or extend any advances or discount under this Act to any member bank or other depository institution.

''(d) CONSERVATORSHIP AUTHORITY.—The Board is authorized to appoint a conservator to take possession and control of a wholesale financial institution to the same extent and in the same manner as the Comptroller of the Currency is authorized to appoint a conservator for a national bank under section 203 of the Bank Conservation Act.

''(e) DEFINITIONS.—For purposes of this section—

''(1) the term 'wholesale financial institution' means a bank whose application to become an uninsured State member bank has been approved by the Board of Governors of the Federal Reserve System under this section;

''(2) the term 'deposit' has the meaning given to such term by the Board under the Federal Reserve Act; and

''(3) the term 'State member insured bank' means a State member bank, the deposits of which are insured under the Federal Deposit Insurance Act.''.

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

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

(A) in the section heading, by inserting ''**INVOLUNTARY**'' after ''**SEC. 8**''; and

(B) in subsection (a)—

(i) by striking paragraph (1); and

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

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

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

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

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

''(A) to the Corporation, not less than 6 months before the effective date of such termination; and

''(B) to its depositors, not less than 6 months before the effective date of such termination; and

''(2) the deposit insurance fund of which such bank is a member equals or exceeds the fund's designated reserve ratio as set forth in section 7(b)(2)(A)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(A)(iv) as of the date the bank provides a written notice of its intent to terminate its insured status.

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

''(1) an insured savings association;

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

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

''(c) ELIGIBILITY FOR INSURANCE TERMINATED.—A depository institution that voluntarily elects to terminate its insured status under subsection (a) shall not receive insurance of any of its deposits or any other assistance authorized under this Act after the period specified in subsection (f)(1).

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

''(e) EXIT FEES.—

''(1) IN GENERAL.—Any institution that voluntarily terminates its status as an insured depository institution under this section shall pay an exit fee in an amount that the Corporation determines is sufficient to account for the institution's pro rata share of contingent and other liabilities of the relevant deposit insurance fund.

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

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

''(1) TRANSITION PERIOD.—The insured deposits of each depositor in a State-chartered bank or a national bank on the effective date of the voluntary termination of the institution's insured status, less all subsequent withdrawals from any deposits of

such depositor, shall continue to be insured for a period of not less than 6 months nor more than 2 years, within the discretion of the Corporation. During such period, no additions to any such deposits, and no new deposits in the depository institution made after the effective date of such termination shall be insured by the Corporation,

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

''(g) ADVERTISEMENTS.—

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

this section shall not advertise or hold itself out as having insured deposits, except that it may advertise the temporary insurance of deposits under subsection (f) if, in connection with any such advertisement, it shall also state with equal prominence that additions to deposits and new deposits made after the effective date of the termination are not insured.

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

''(h) NOTICE REQUIREMENTS.—

''(1) NOTICE TO THE CORPORATION.—The notice to the Corporation of an institution's intent to terminate its insured status required under subsection (a) shall be in such form as the Corporation may require.

''(2) NOTICE TO DEPOSITORS.—The notice to depositors of an institution's intent to terminate its

insured status required under subsection (a) shall be—

''(A) at such depositor's last address of record with the institution; and

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

**SEC. 110. EFFECTIVE DATE.**

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

## Subtitle B—Brokers and Dealers

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

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

''(4) 'BROKER'.—

''(A) IN GENERAL.—The term 'broker' means any person engaged in the business of effecting transactions in securities for the account of others.

''(B) EXCLUSION OF BANKS.—The term 'broker' does not include a bank unless such bank publicly solicits the business of effecting securities transactions for the account of others or is compensated for such business by the payment of commissions or similar remuneration

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

''(C) EXEMPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be deemed to be a 'broker' because it engages in any of the following activities:

''(i) THIRD PARTY BROKERAGE ARRANGEMENTS.—The bank enters into a contractual or other arrangement with a broker or dealer registered under this title under which the broker or dealer offers brokerage services on or off the premises of the bank if—

''(I) such broker or dealer is clearly identified as the person performing the brokerage services;

''(II) such broker or dealer performs brokerage services in an area that is clearly marked and physically separate from the retail deposit-taking activities of the bank;

''(III) any materials used to advertise or promote the availability of brokerage services under the contractual or other arrangement are approved by the broker or dealer for compliance with the Federal securities laws prior to distribution and are deemed to be the materials of the broker or dealer;

''(IV) bank employees perform only clerical or ministerial functions in connection with brokerage transactions, unless such employees are associated persons of a broker or dealer and are qualified pursuant to the requirements of a self-regulatory organization;

''(V) bank employees do not receive incentive compensation for any brokerage activities unless such employees are associated persons of a broker or dealer and are qualified pursuant to the requirements of a self-regulatory organization;

''(VI) such services are provided by the broker or dealer on a basis in which all customers that receive such services are fully disclosed to that broker or dealer; and

''(VII) the broker or dealer informs each customer that the brokerage services are provided by the broker or dealer and not by the bank and that the securities are not guaranteed by the bank, the Federal Deposit Insurance Corporation, or any other federal or state deposit guarantee fund relating to banks.

''(ii) TRUST ACTIVITIES.—The bank engages in trust activities (including effecting transactions in the course of such trust activities) permissible for national banks under the first section of the Act of September 28, 1962 or for State banks under relevant State trust statutes or law (including securities safekeeping, self-directed individual retirement accounts, or managed agency accounts or other func-

tionally equivalent accounts of a bank) unless the bank—

''(I) publicly solicits brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities; or

''(II) receives incentive compensation for such brokerage activities.

''(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in exempted securities, other than municipal securities, or in commercial paper, bankers acceptances, commercial bills, qualified Canadian Government obligations as defined in section 5136 of the Revised Statutes, obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969, obligations of the North American Development Bank, and obligations of any local public agency (as defined in section

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

''(iv) MUNICIPAL SECURITIES.—The bank effects transactions in municipal securities, and has not been affiliated with a securities affiliate under section 10 of the Bank Holding Company Act of 1956 for more than 1 year.

''(v) EMPLOYEE AND SHAREHOLDER BENEFIT PLANS.—The bank effects transactions as part of any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment, or similar plan for employees or shareholders of an issuer or its subsidiaries.

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

management investment company registered under the Investment Company Act of 1940 that holds itself out as a money market fund.

''(vii) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate of the bank, as defined in section 2 of the Bank Holding Company Act of 1956.

''(viii) PRIVATE SECURITIES OFFERINGS.—The bank—

''(I) effects sales as part of a primary offering of securities by an issuer, not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations issued thereunder, other than securities backed by or representing an interest in obligations originated or purchased by the bank, its affiliates, or its subsidiaries unless those securities are described in section 3(a)(5)(B)(ii)(IV) (aa) or (bb);

''(II) effects such sales exclusively to an accredited investor, as defined in section 3 of the Securities Act of 1933; and

''(III) if affiliated with a securities affiliate, as provided under section 10 of the Bank Holding Company Act of 1956, has not been so affiliated for more than 1 year.

''(ix) DE MINIMIS EXEMPTION.—If the bank does not have a subsidiary or affiliate registered as a broker or dealer under section 15, the bank effects, other than in transactions referenced in clauses (i) through (viii), not more than—

''(I) 800 transactions in any calendar year in securities for which a ready market exists, and

''(II) 200 other transactions in securities in any calendar year.

''(D) EXEMPTION FOR ENTITIES SUBJECT TO SECTION 15(e).—The term 'broker' does not include a bank that is subject to—

''(i) section 15(e); and

''(ii) such restrictions and requirements as the Commission deems appropriate.''.

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

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

''(5) 'DEALER'.—

''(A) IN GENERAL.—The term 'dealer' means any person engaged in the business of buying and selling securities for his own account through a broker or otherwise.

''(B) EXCEPTIONS.—Such term does not include—

''(i) a person that buys or sells securities for his or her own account, either individually or in a fiduciary capacity, but not as a part of a regular business; or

''(ii) a bank, to the extent that the bank—

''(I) buys and sells commercial paper, bankers acceptances, exempted securities (other than municipal securities), qualified Canadian Government obligations as defined in section 5136 of the Revised Statutes, obliga-

tions of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969, obligations of the North American Development Bank, and obligations of any local public agency (as defined in section 110(h) of the Housing Act of 1949) or any public housing agency (as defined in the United States Housing Act of 1937) that are expressly specified by section 5136 of the Revised Statutes as permissible for a national bank to underwrite or deal in;

''(II) buys and sells municipal securities and has not been affiliated with a securities affiliate, as provided under section 10 of the Bank Holding Company Act of 1956 for more than 1 year;

''(III) buys and sells securities for investment purposes for the bank

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

''(IV) has not been affiliated with a securities affiliate under section 10 of the Bank Holding Company Act of 1956 for more than 1 year and engages in the issuance or sale through a grantor trust or otherwise of—

''(aa) securities backed by or representing an interest in 1–4 family residential mortgages originated or purchased by the bank, its affiliates, or its subsidiaries; or

''(bb) securities backed by or representing an interest in consumer receivables or consumer leases originated or purchased by the bank, its affiliates, or its subsidiaries.''.

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

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

''(e) EXEMPTION FROM DEFINITION OF BROKER OR DEALER.—The Commission, by regulation or order, upon its own motion or upon application, may conditionally or unconditionally exclude any person or class of persons from the definitions of 'broker' or 'dealer', if the Commission finds that such exclusion is consistent with the public interest, the protection of investors, and the purposes of this title.''.

**SEC. 123. MARGIN REQUIREMENTS.**

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

(1) deleting the word ''or'' after clause (D);

(2) redesignating clause (E) as clause (F); and

(3) inserting a new clause (E) as follows:

''(E) to a loan to a broker or dealer by a member bank or any other person that has entered into an agreement pursuant to section 8(a) hereof if the proceeds of the loan are to be used in the ordinary course of the broker's or dealer's business other than for the purpose of funding the purchase of securities for the account of such broker or dealer, or''.

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

(1) by deleting the phrase ''nonmember bank'' in clause (2) and replacing it with the phrase ''person other than a member bank''; and

(2) by deleting the phrase ''such bank'' in the second sentence and replacing it with the phrase ''such person''.

**SEC. 124. EFFECTIVE DATE.**

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

## Subtitle C—Bank Investment Company Activities

**SEC. 130. CUSTODY OF INVESTMENT COMPANY ASSETS BY AFFILIATED BANK.**

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

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

(2) by designating the five sentences of such subsection as paragraphs (1) through (5), respectively, and by indenting those paragraphs appropriately; and

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

''(6) Notwithstanding paragraph (1)(A), if a bank described in paragraph (1) or an affiliated person of such bank is an affiliated person, promoter, organizer, or sponsor of, or principal underwriter for the registered company, such bank may serve as custodian under this subsection in accordance with such rules, regulations, or orders as the Commission may prescribe, consistent with the protection of investors, after consulting in writing with the appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act.''.

(b) UNIT INVESTMENT TRUSTS.—Section 26(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–26(a)(1)) is amended by inserting after ''bank'' the following: ''not affiliated with such underwriter or depositor, or if such bank is so affiliated, only in accordance with such regulations or orders as the Commission may prescribe, consistent with the protection of investors, after consulting in writing with the appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act''.

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

(1) in paragraph (1), by striking ''or'' at the end;

(2) in paragraph (2), by striking the period at the end and inserting ''; or''; and

(3) by inserting after paragraph (2) the following:

''(3) as custodian.''.

**SEC. 131. AFFILIATED TRANSACTIONS.**

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

(1) by inserting ''(1)'' before ''a principal underwriter''; and

(2) by inserting before the period '', or (2) the proceeds of which will be used to retire an indebtedness owed to an affiliated person of such registered company''.

(b) AFFILIATED PERSON OF INVESTMENT COMPANY.—Section 10(f) of the Investment Company Act of 1940 is amended by adding at the end the following: ''For purposes of this subsection, a person that is under common control with an investment adviser shall be deemed to be an affiliated person of the registered investment company advised by such investment adviser.''.

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

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

''(3) Notwithstanding the provisions of paragraph (1), it shall be unlawful for any registered investment company to borrow from any bank if such bank or any affiliated person thereof is an affiliated person, promoter, organizer, or sponsor of, or principal underwriter for, such company, except that the Commission may, by rule, regulation, or order, permit such borrowing that the Commission finds to be in the public interest and consistent with the protection of investors.''.

**SEC. 133. INDEPENDENT DIRECTORS.**

(a) INTERESTED PERSON.—Section 2(a)(19)(A)(v) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(A)(v)) is amended by striking ''1934 or any affiliated person of such a broker or dealer, and'' and inserting ''1934 or any person that, at any time during the preceding 6 months, has acted as custodian or transfer agent or has executed any portfolio transactions for, engaged in any principal transactions with, or loaned money to, the investment company, or any other investment company having the same investment adviser, principal underwriter, sponsor, or promoter, or any affiliated person of such a broker, dealer, or person, and''.

(b) AFFILIATION OF DIRECTORS.—Section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(c)) is amended by striking ''bank, except'' and inserting ''bank (and its subsidiaries) or any single bank holding company (and its affiliates and subsidiaries), as those terms are defined in the Bank Holding Company Act of 1956, except''.

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

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

(a) MISREPRESENTATION.—Section 35(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–34(a)) is amended to read as follows:

"**SEC. 35. MISREPRESENTATIONS.**

''(a) MISREPRESENTATIONS OF GUARANTEES.—

''(1) IN GENERAL.—It shall be unlawful for any person, in issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company—

''(A) has been guaranteed, sponsored, recommended, or approved by the United States, or any agency, instrumentality or officer thereof,

''(B) has been insured by the Federal Deposit Insurance Corporation; or

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

''(2) DISCLOSURES.—The Commission shall require the person issuing or selling the securities of a registered investment company to prominently disclose, in writing or orally, as appropriate, that the investment company or any security issued by it is not insured by the Federal Deposit Insurance Corporation and is not guaranteed by an affiliated depository institution, and is not otherwise an obligation of such a bank or insured institution, in any case where—

''(A) a bank holding company, bank, or separately identifiable division or department of a bank, or any affiliate or subsidiary thereof is an investment adviser, organizer, sponsor, promoter, principal underwriter, or an affiliated person of the investment company; or

''(B) a bank or an affiliated person of a bank is offering or selling securities of the investment company.

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

mission, after consultation with the appropriate Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act).''.

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

**SEC. 135. DEFINITION OF BROKER UNDER THE INVESTMENT COMPANY ACT OF 1940.**

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

''(6) 'Broker' has the same meaning as in the Securities Exchange Act of 1934, except that it does not include any person solely by reason of the fact that such person is an underwriter for 1 or more investment companies.''.

**SEC. 136. DEFINITION OF DEALER UNDER THE INVESTMENT COMPANY ACT OF 1940.**

Section 2(a)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(11)) is amended to read as follows:

''(11) 'Dealer' has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.''.

**SEC. 137. REMOVAL OF THE EXCLUSION FROM THE DEFINITION OF INVESTMENT ADVISER FOR BANKS THAT ADVISE INVESTMENT COMPANIES.**

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

pany, except that the term 'investment adviser' includes any bank or bank holding company to the extent that such bank or bank holding company acts as an investment adviser to a registered investment company, or if, in the case of a bank, such services are performed through a separately identifiable department or division, the department or division, and not the bank itself shall be deemed to be the 'investment adviser' ''; and

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

''(25) 'Separately identifiable department or division' of a bank means a unit—

''(A) that is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's investment adviser activities for 1 or more investment companies, including the supervision of all bank employees engaged in the performance of such activities; and

''(B) for which all of the records relating to its investment adviser activities, are separately maintained in or extractable from such

unit's own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement of this Act and rules and regulations promulgated under this Act.''.

**SEC. 138. DEFINITION OF BROKER UNDER THE INVESTMENT ADVISERS ACT OF 1940.**

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

''(3) 'Broker' has the same meaning as in the Securities Exchange Act of 1934.''.

**SEC. 139. DEFINITION OF DEALER UNDER THE INVESTMENT ADVISERS ACT OF 1940.**

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

''(7) 'Dealer' has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.''.

**SEC. 140. INTERAGENCY CONSULTATION.**

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

**"SEC. 210A. CONSULTATION.**

''(a) EXAMINATION RESULTS AND OTHER INFORMATION.—

''(1) The appropriate Federal banking agency shall provide the Commission upon request the results of any examination, reports, records, or other information as each may have with respect to the investment advisory activities of any bank holding company, bank, or department or division of a bank, any of which is registered under section 203 of this title, or, in the case of a bank holding company or bank, has a subsidiary, department, or division registered under that section, to the extent necessary for the Commission to carry out its statutory responsibilities.

''(2) The Commission shall provide to the appropriate Federal banking agency upon request the results of any examination, reports, records, or other information with respect to the investment advisory activities of any bank holding company, bank, or department or division of a bank, any of which is registered under section 203 of this title, to the extent necessary for the agency to carry out its statutory responsibilities.

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

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

''(c) DEFINITION.—For purposes of this section, the term 'appropriate Federal banking agency' shall have the same meaning as in section 3 of the Federal Deposit Insurance Act.''.

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

(a) SECURITIES ACT OF 1933.—Section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended by striking ''or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by a bank in its capacity as trustee, executor, administrator, or guardian'' and inserting ''or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940''.

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

''(iii) any interest or participation in any common trust fund or similar fund

that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940.''.

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

''(A) such fund is employed by the bank solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose;

''(B) except in connection with the ordinary advertising of the bank's fiduciary services, interests in such fund are not—

''(i) advertised; or

''(ii) offered for sale to the general public; and

''(C) such fund is not charged any fees or expenses that, when added to any other compensation charged by the bank to a participation account, would exceed the total amount of compensation that would have been charged to such participant account if no assets of the account had been invested in interests in the

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

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

''(h) CONVERSION, MERGERS, OR REORGANIZATION OF COMMON TRUST FUNDS.—Notwithstanding any other provision of the Internal Revenue Code, any transfer of all or substantially all of the assets of a common trust fund taxable under this section to a registered investment company taxable under subchapter M shall not result in a gain or loss to the participants in such common trust fund where the transfer is a result of a merger, conversion, reorganization, transfer, or other similar transaction or series of transactions.''.

**SEC. 142. INVESTMENT ADVISERS PROHIBITED FROM HAVING CONTROLLING INTEREST IN REGISTERED INVESTMENT COMPANY.**

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

''(g) CONTROLLING INTEREST IN INVESTMENT COMPANY PROHIBITED.—

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

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

''(i) the beneficial owners of the shares;

''(ii) any person acting in a fiduciary capacity who is not an affiliated person of that investment adviser or any affiliated person thereof; or

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

that investment adviser or any affiliated person thereof;

''(B) if it votes the shares of the investment company held by it in the same proportion as shares held by all other shareholders of the investment company; or

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

''(2) EXEMPTION.—Paragraph (1) shall not apply to any investment adviser to a registered investment company, or an affiliated person of that investment adviser, holding shares of the investment company in a trustee or fiduciary capacity if that registered investment company consists solely of assets of—

''(A) any common trust fund or similar fund described in section 3(c)(3) of the Investment Company Act of 1940;

''(B) any employees' stock bonus, pension, or profit-sharing trust that qualifies under section 401 of the Internal Revenue Code of 1986;

''(C) any governmental plan described in section 3(a)(2)(C) of the Securities Act of 1933; or

''(D) any collective trust fund maintained by a bank and consisting solely of assets of trusts or governmental plans described in subparagraph (B) or (C).''.

**SEC. 143. PURCHASE OF INVESTMENT COMPANY SECURITIES AS FIDUCIARY.**

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

''(k) PURCHASE OF INVESTMENT COMPANY SECURITIES AS FIDUCIARY.—

''(1) IN GENERAL.—An investment adviser to a registered investment company, or an affiliated person of the investment adviser, promoter, organizer, or sponsor of the registered investment company, or principal underwriter for the registered company may purchase securities issued by such investment company for the account of a beneficiary as fiduciary, only if disclosure of such information as the Commission shall prescribe under paragraph (2) has been provided to the person (other than to the investment advisor to the registered investment company, or an affiliated person of the investment advisor, promoter, organizer, or sponsor of the registered investment company, or principal underwriter for the

registered company who may purchase securities of the registered company as fiduciary for the account) to whom periodic financial statements are customarily provided.

''(2) DISCLOSURE RULES.—The Commission shall prescribe, by rule, regulation, or order, the manner, form, and content of the information required to be disclosed under paragraph (1), as the Commission determines necessary or appropriate in the public interest and for the protection of investors.

''(3) PROSPECTIVE EFFECT.—This subsection shall be effective for purchase for fiduciary accounts made after the effective date of this subtitle.''.

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

''(6) TRUST DEPARTMENT EXAMINATION.—In performing an examination under this subsection, the appropriate Federal banking agency shall examine purchases by an insured depository institution's trust department or division of the securities of an affiliated investment company, or an investment company that is an affiliated person of an affiliated

person of the institution (as those terms are defined in sections 2 and 3 of the Investment Company Act of 1940), to assure compliance with applicable Federal and State trust laws.''.

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

Section 2(a)(5) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(5)) is amended by striking ''(A) a banking organization organized under the laws of the United States'' and inserting ''(A) a depository institution, as that term is defined in section 3 of the Federal Deposit Insurance Act or a U.S. branch or agency of a foreign bank''.

**SEC. 145. EFFECTIVE DATE.**

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

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