

104TH CONGRESS
2D SESSION

H. R. 4182

To enhance competition in the financial services sector and merge the commercial bank and savings association charters.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 25, 1996

Mrs. ROUKEMA (for herself, Mr. McCOLLUM, Mr. VENTO, Mr. DREIER, Ms. FURSE, Mr. FLAKE, Mr. KING, Mr. BONO, and Ms. MCKINNEY) introduced the following bill; which was referred to the Committee on Banking and Financial Services, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Depository Institution Affiliation and Thrift Charter
6 Conversion Act”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

TITLE I—FINANCIAL SERVICES HOLDING COMPANY ACT

Sec. 101. Short title.

Subtitle A—General Provisions

- Sec. 102. Definitions.
 Sec. 103. Changes in control of depository institutions.
 Sec. 104. Affiliate transactions.
 Sec. 105. Capital requirements.
 Sec. 106. Interstate acquisitions of insured banks.
 Sec. 107. Differential treatment prohibition; laws inconsistent with this Act.
 Sec. 108. Tying and insider lending provisions.
 Sec. 109. Reports, examination and enforcement.
 Sec. 110. Divestiture.
 Sec. 111. Criminal penalties.
 Sec. 112. Civil enforcement, cease-and-desist orders, civil money penalties, removal, and prohibition authority.
 Sec. 113. Judicial review.
 Sec. 114. National Financial Services Committee.

Subtitle B—Securities Activities of Financial Services Holding Companies

- Sec. 121. Limitation on securities activities of depository institutions affiliated with securities affiliates.
 Sec. 122. Safeguards relating to securities affiliates.
 Sec. 123. Joint standards relating to retail sales of certain nondeposit investment products.

Subtitle C—Insurance and Real Estate Development Activities of Financial Services Holding Companies

- Sec. 131. Limitation on insurance underwriting and real estate development activities of depository institutions.
 Sec. 132. Acquisition of preexisting insurance agency by bank holding companies.
 Sec. 133. Existing contracts.

TITLE II—CONFORMING AMENDMENTS TO OTHER LAWS FOR FINANCIAL SERVICES HOLDING COMPANIES

- Sec. 201. Exemption of financial services holding companies from the Bank Holding Company Act of 1956.
 Sec. 202. Amendment to the Federal Reserve Act.
 Sec. 203. Amendments to the Banking Act of 1933.
 Sec. 204. Amendments to the Federal Deposit Insurance Act.
 Sec. 205. Amendment to the Community Reinvestment Act.
 Sec. 206. Amendment to the Federal Power Act.
 Sec. 207. Amendment to the Right to Financial Privacy Act.
 Sec. 208. Amendments to the International Banking Act.

TITLE III—FUNCTIONAL REGULATION AMENDMENTS TO SECURITIES LAWS FOR FINANCIAL SERVICES HOLDING COMPANIES

Subtitle A—Broker Dealer Provisions

- Sec. 301. Definition of broker.
 Sec. 302. Definition of dealer.
 Sec. 303. Power to exempt from the definitions of broker and dealer.
 Sec. 304. Margin requirements.

Subtitle B—Investment Company Provisions

- Sec. 311. Custody of investment company assets by affiliated bank.
- Sec. 312. Lending to an affiliated investment company.
- Sec. 313. Independent directors.
- Sec. 314. Additional SEC disclosure authority.
- Sec. 315. Definition of broker under the Investment Company Act of 1940.
- Sec. 316. Definition of dealer under the Investment Company Act of 1940.
- Sec. 317. Removal of the exclusion from the definition of investment adviser for banks that advise investment companies.
- Sec. 318. Definition of broker under the Investment Advisors Act of 1940.
- Sec. 319. Definition of dealer under the Investment Advisors Act of 1940.
- Sec. 320. Interagency consultation.
- Sec. 321. Treatment of bank common trust funds.
- Sec. 322. Investment advisers prohibited from having controlling interest in registered investment company.
- Sec. 323. Conforming change in definition.
- Sec. 324. Effective date.

TITLE IV—WHOLESALE FINANCIAL INSTITUTIONS OWNED BY
FINANCIAL SERVICES HOLDING COMPANIES

- Sec. 401. National wholesale financial institutions.
- Sec. 402. State member wholesale financial institutions.
- Sec. 403. Amendments to the Federal Deposit Insurance Act.

TITLE V—MERGER OF BANK AND THRIFT CHARTERS,
REGULATORS, AND INSURANCE FUNDS

Subtitle A—Conversion of Thrift Charters

- Sec. 501. Short title.
- Sec. 502. Termination of Federal savings associations; treatment of State savings associations as banks for purposes of Federal banking law.
- Sec. 503. Treatment of certain activities and affiliations of bank holding companies resulting from this Act.
- Sec. 504. Transition provisions for activities of savings associations which convert into or become treated as banks.
- Sec. 505. Registration of bank holding companies resulting from conversions of savings associations to banks or treatment of savings associations as banks.
- Sec. 506. Additional transition provisions and special rules.
- Sec. 507. Technical and conforming amendments.
- Sec. 508. References to savings associations and state banks in federal law.
- Sec. 509. Repeal of Home Owners' Loan Act.
- Sec. 510. Definitions.

Subtitle B—Elimination of Office of Thrift Supervision

- Sec. 511. Office of Thrift Supervision abolished.
- Sec. 512. Determination of transferred functions and employees.
- Sec. 513. Savings provisions.
- Sec. 514. Cost of funds indexes.
- Sec. 515. References in federal law to director of the Office of Thrift Supervision.
- Sec. 516. Reconfiguration of board of directors of FDIC as a result of removal of director of the Office of Thrift Supervision.

Subtitle C—Merger of BIF and SAIF

Sec. 521. Amendment to Budget Reconciliation Act.

TITLE VI—NATIONAL MARKET FUNDED LENDING INSTITUTIONS

Sec. 601. National market funded lending institutions.

TITLE VII—EFFECTIVE DATE

Sec. 701. Effective date.

1 SECTION 2. FINDINGS AND PURPOSES.

2 (a) FINDINGS.—The Congress finds that—

3 (1) current laws and regulations restrain effi-
4 ciency, competition, and innovation in the design
5 and delivery of financial services to the disadvantage
6 of consumers;

7 (2) restrictions on ownership of depository insti-
8 tutions and affiliations with other business organiza-
9 tions interfere with their ability to attract and retain
10 capital and managerial resources;

11 (3) the vulnerability of the financial system and
12 its discrete components is increased and effective
13 monitoring, supervision, and coordination of actions
14 during periods of stress is impeded by fragmented
15 and disparate regulation;

16 (4) the thrift charter has become obsolete;

17 (5) market demand and safety and soundness
18 considerations warrant the creation of a new charter
19 for uninsured wholesale financial institutions; and

20 (6) current laws inhibit the ability of domestic
21 financial markets and intermediaries to respond to

1 the serious competitive challenges presented by for-
2 eign intermediaries and the globalization of markets.

3 (b) PURPOSES.—The purposes of this Act are to pro-
4 mote the safety and soundness of the Nation’s financial
5 system, enhance the quality of regulation and supervision
6 of financial intermediaries, and achieve a more efficient
7 market and effective regulatory structure by—

8 (1) establishing an alternative and comprehen-
9 sive legislative framework for the creation and regu-
10 lation of financial services holding companies;

11 (2) enhancing the capital adequacy of commer-
12 cial banks, brokers and dealers, and other financial
13 companies by eliminating prohibitions on common
14 ownership and affiliation within a financial services
15 holding company;

16 (3) permitting affiliates to engage in regulated
17 activities subject to functional and equal regulation
18 by the appropriate Federal or State regulator;

19 (4) insulating and protecting insured depository
20 institutions through enhanced capital requirements,
21 expanded restrictions on relationships with affiliates,
22 broader examination and enforcement authority, and
23 increased civil and criminal penalties;

24 (5) permitting the efficient marketing and dis-
25 tribution of financial services to consumers subject

1 to safeguards against coercive tie-ins and other un-
2 fair and abusive practices;

3 (6) establishing the National Financial Services
4 Committee to oversee the evolution and supervision
5 of the financial services industry and to report to the
6 Congress;

7 (7) eliminating the thrift charter and requiring
8 thrifts to convert to banks, subject to appropriate
9 transition provisions;

10 (8) merging the bank and thrift insurance
11 funds; and

12 (9) creating new State and Federal charters for
13 uninsured wholesale financial institutions.

14 **TITLE I—FINANCIAL SERVICES HOLDING**
15 **COMPANY ACT**

16 **SEC. 101. SHORT TITLE.**

17 This title may be cited as the “Financial Services
18 Holding Company Act”.

19 **Subtitle A—General Provisions**

20 **SEC. 102. DEFINITIONS.**

21 For purposes of this Act, the following definitions
22 apply.

23 (a) **FINANCIAL SERVICES HOLDING COMPANY.**—The
24 term “financial services holding company” means a com-
25 pany that—

1 (1) has filed with the National Financial Serv-
2 ices Committee a notice stating such company’s in-
3 tent to comply with the requirements of this Act and
4 has not withdrawn such notice;

5 (2) controls, acquires control of, or operates a
6 depository institution; and

7 (3) is predominantly a financial company.

8 (b) COMPANY.—The term “company” means any cor-
9 poration, partnership, business, trust, association, or simi-
10 lar organization, or any other trust unless by its terms
11 it must terminate within 25 years or not later than 21
12 years and 10 months after the death of individuals living
13 on the effective date of the trust, but shall not include
14 any corporation the majority of the shares of which are
15 owned by the United States or by any State.

16 (c) BANK HOLDING COMPANY.—The term “bank
17 holding company” has the same meaning as in section
18 2(a) of the Bank Holding Company Act of 1956.

19 (d) CONTROL.—Except as provided in section
20 107(e)(2), the term “control” means, directly or indi-
21 rectly, owns or has the power to vote 25 percent or more
22 of any class of voting securities of a company, or has the
23 power to elect a majority of the directors of a company,
24 except that—

1 (1) no company shall be deemed to control or
2 to have acquired control of any other company by
3 virtue of its ownership of the voting securities of
4 such other company—

5 (A) acquired or held in an agency, trust, or
6 other fiduciary capacity, unless the company
7 has sole discretionary authority to exercise vot-
8 ing rights with respect thereto;

9 (B) acquired or held in connection with or
10 incidental to the underwriting of securities if
11 such securities are held only for such period of
12 time as will permit the sale thereof on a reason-
13 able basis; or

14 (C) acquired in securing or collecting a
15 debt previously contracted in good faith, until 2
16 years after the date of acquisition or for such
17 additional period of time as the appropriate
18 Federal banking agency may permit; and

19 (2) no company formed for the sole purpose of
20 participating in a proxy solicitation shall be deemed
21 to be in control of a company by virtue of its acqui-
22 sition of voting rights with respect to shares of such
23 company acquired in the course of such solicitation.

24 (e) AFFILIATE.—Except as provided in section
25 107(e)(1), the term “affiliate” of a company means any

1 other company which controls, is controlled by, or is under
2 common control with such company.

3 (f) SUBSIDIARY.—The term “subsidiary” has the
4 same meaning as in section 2(d) of the Bank Holding
5 Company Act of 1956.

6 (g) DEPOSITORY INSTITUTION AND INSURED DEPOS-
7 ITORY INSTITUTION.—

8 (1) IN GENERAL.—The terms “depository insti-
9 tution” and “insured depository institution” have
10 the same meanings as in section 3 of the Federal
11 Deposit Insurance Act, except that the term “depos-
12 itory institution” also means—

13 (A) any wholesale financial institution; and

14 (B) any branch, agency, or commercial
15 lending company operated in the United States
16 by a foreign bank.

17 (2) EXCEPTION RELATED TO FOREIGN
18 BANKS.—Notwithstanding paragraph (1)(B), the
19 National Financial Services Committee may, for
20 purposes of any section or provision of this Act, ex-
21 empt from the definition of “depository institution”
22 any branch, agency, or commercial lending company
23 operated in the United States by a foreign bank as
24 the Committee deems appropriate, provided that
25 such exemption is—

1 (A) issued by regulation, and

2 (B) consistent with the principles of na-
3 tional treatment and equality of competitive op-
4 portunity.

5 (h) LEAD DEPOSITORY INSTITUTION.—The term
6 “lead depository institution” means the largest depository
7 institution controlled by the financial services holding
8 company, based on a comparison of the average total as-
9 sets controlled by each depository institution during the
10 previous 12-month period.

11 (i) WHOLESALE FINANCIAL INSTITUTION.—The
12 term “wholesale financial institution” means a national
13 wholesale financial institution described in section 5136B
14 of the Revised Statutes of the United States or a State
15 member wholesale financial institution described in section
16 9B of the Federal Reserve Act.

17 (j) FOREIGN BANK TERMS.—

18 (1) IN GENERAL.—The terms “agency”,
19 “branch”, “foreign bank”, and “commercial lending
20 company” have the same meaning as in Section 1(b)
21 of the International Banking Act.

22 (2) COMMERCIAL LENDING COMPANY OPER-
23 ATED BY A FOREIGN BANK.—The term “commercial
24 lending company operated by a foreign bank” means

1 a commercial lending company controlled by a for-
2 eign bank.

3 (3) BRANCH OR AGENCY OPERATED BY A FOR-
4 EIGN BANK.—A branch or agency operated by a for-
5 eign bank shall be deemed to be controlled by that
6 foreign bank.

7 (k) DOMESTIC BRANCH.—The term “domestic
8 branch” has the same meaning as in section 3(o) of the
9 Federal Deposit Insurance Act;

10 (l) PREDOMINANTLY A FINANCIAL COMPANY.

11 (1) IN GENERAL.—A company is “predomi-
12 nantly a financial company” if at least 75 percent
13 of its business (in the United States) is derived
14 from—

15 (A) financial service institutions controlled
16 by such company; or

17 (B) financial activities engaged in by such
18 company or any of its affiliates.

19 (2) FOREIGN BANK ALTERNATIVE.—As an al-
20 ternative to a paragraph (1), a foreign bank, and
21 any company of which a foreign bank is a subsidi-
22 ary, is “predominantly a financial company” if—

23 (A) all of the business of such foreign bank
24 and any such company (including the business

1 of direct and indirect subsidiaries of the foreign
2 bank) in the United States is derived from—

3 (i) financial services institutions con-
4 trolled or operated by such foreign bank;

5 (ii) financial activities engaged in by
6 such foreign bank or any of its affiliates;

7 (iii) companies that, with respect to
8 that foreign bank, would meet the stand-
9 ard for investment under sections 2(h)(2)
10 or 4(c)(9) of the Bank Holding Company
11 Act of 1956 as if that foreign bank were
12 subject to that Act; or

13 (iv) activities that, with respect to
14 that foreign bank, would be permissible
15 under section 4(c)(9) of the Bank Holding
16 Company Act of 1956 if that foreign bank
17 were subject to that Act; and

18 (B) the amount of banking business con-
19 ducted outside the United States by such for-
20 eign bank and such company of which that for-
21 eign bank is a subsidiary satisfies the standard
22 described in section 2(h)(2) of the Bank Hold-
23 ing Company Act of 1956.

24 (3) RECIPROCAL NATIONAL TREATMENT.—

1 (A) IN GENERAL.—A foreign bank that op-
2 erates a branch, agency or commercial lending
3 company in the United States, and any com-
4 pany that owns or controls such a foreign bank,
5 shall be eligible for the treatment afforded
6 under paragraph (1) and section 122(m) only if
7 the home country of such foreign bank or com-
8 pany accords to the United States banks the
9 same competitive opportunities in banking as
10 such country accords to domestic banks of such
11 country.

12 (B) COORDINATION WITH NAFTA.—Sub-
13 paragraph (A) shall not apply in derogation of
14 any obligation under the North American Free
15 Trade Agreement.

16 (C) HOME COUNTRY DEFINED.—For pur-
17 poses of subparagraph (A), the term “home
18 country” means, with respect to any foreign
19 bank or company referred to in subparagraph
20 (A), the country under the laws of which the
21 foreign bank or company is organized.

22 (4) INTERPRETIVE AUTHORITY.—The National
23 Financial Services Committee shall issue regulations
24 describing the method for calculating compliance
25 with the standard described in paragraphs (1) and

1 (2), taking into account such factors as revenues
2 and assets, including assets under management.

3 (5) IMPLEMENTATION AND AUTHORITY.—The
4 appropriate Federal banking agency of the lead de-
5 pository institution of a financial services holding
6 company shall implement and enforce the regula-
7 tions prescribed pursuant to paragraph (4) with re-
8 spect to such holding company.

9 (m) FINANCIAL SERVICES INSTITUTION.—The term
10 “financial services institution” means—

11 (1) A depository institution;

12 (2) A broker or dealer (as defined in section 3
13 of the Securities Exchange Act of 1934);

14 (3) A futures commission merchant (as defined
15 in section 1(a)(12) of the Commodity Exchange
16 Act);

17 (4) An investment company (as defined in sec-
18 tion 3 of the Investment Company Act of 1940);

19 (5) An investment adviser (as defined in section
20 202(a)(11) of the Investment Act of 1940);

21 (6) An insurance company organized or licensed
22 under the law of any State, including a company
23 that only incurs liabilities under annuity contracts,
24 the income on which is tax deferred under Section
25 72 of the Internal Revenue Code of 1986;

1 (7) A trust company organized under the laws
2 of the United States or the laws of any State; or

3 (8) A national market funded lending institu-
4 tion organized pursuant to section 5158 of the Re-
5 vised Statutes of the United States, as added by sec-
6 tion 601 of the Depository Institution Affiliation and
7 Thrift Charter Conversion Act;

8 (9) Any other type of company that is “engaged
9 in the business of providing financial services”, as
10 determined by the National Financial Services Com-
11 mittee by rule, regulation, or order.

12 (n) FINANCIAL ACTIVITIES.—The term “financial ac-
13 tivities” means any of the following—

14 (1) receiving money subject to a deposit or
15 other repayment obligation;

16 (2) lending, exchanging, transferring or safe-
17 guarding money or other financial assets;

18 (3) providing any device or other instrumentality
19 for the transfer of money or other financial as-
20 sets;

21 (4) insuring, guaranteeing or indemnifying
22 against loss, harm, damage, illness, disability or
23 death;

24 (5) providing financial, investment or economic
25 advisory or information services, including advising

1 an investment company (as defined in section 3 of
2 the Investment Company Act of 1940);

3 (6) directly or indirectly acquiring or control-
4 ling, whether as principal, on behalf of 1 or more en-
5 tities (including entities, other than a depository in-
6 stitution or subsidiary of a depository institution,
7 that the financial services holding company con-
8 trols), or otherwise, shares, assets, or ownership in-
9 terests (including without limitation debt or equity
10 securities, partnership interests, trust certificates, or
11 other instruments representing ownership) of a com-
12 pany or other entity, whether or not constituting
13 control of such company or entity, engaged in any
14 activity if—

15 (A) the shares, assets, or ownership inter-
16 ests are not acquired or held by a depository in-
17 stitution or a subsidiary of a depository institu-
18 tion;

19 (B) such shares, assets, or ownership in-
20 terests are acquired and held as part of a bona
21 fide underwriting, investment banking, or insur-
22 ance company investment activity, which in-
23 cludes investment activities engaged in for the
24 purpose of appreciation and ultimate resale or
25 other disposition of the investment, and such

1 shares, assets, or ownership interest are held
2 for such a period of time as will permit the sale
3 or disposition thereof on a reasonable basis con-
4 sistent with the nature of such activities; and

5 (C) during the period such shares, assets,
6 or ownership interests are held, the financial
7 services holding company does not actively man-
8 age or operate the company or entity except in-
9 sofar as necessary to achieve the objectives of
10 subparagraph (B);

11 (7) arranging, effecting or facilitating financial
12 transactions for the account of third parties;

13 (8) underwriting, dealing in or making a mar-
14 ket in securities;

15 (9) engaging in any activity that is permissible
16 for a bank holding company pursuant to section
17 4(c)(8) of the Bank Holding Company Act of 1956
18 by rule, order or regulation;

19 (10) engaging in any activity (in the United
20 States) that is—

21 (A) permissible for a bank holding com-
22 pany to engage in outside the United States,
23 and

24 (B) considered a financial activity or bank-
25 ing or financial operation, pursuant to section

1 4(c)(13) of the Bank Holding Company Act of
2 1956 or any rule, order, or regulation issued
3 thereunder;

4 (11) owning shares of any company that would
5 be permissible for a bank holding company to own
6 pursuant to sections 4(c)(6) and 4(c)(7) of the Bank
7 Holding Company Act of 1956;

8 (12) engaging in the functional equivalent of
9 any of the foregoing; or

10 (13) engaging in any activity that the National
11 Financial Services Committee determines by rule,
12 order, or regulation to be financial in nature or inci-
13 dental to such financial activities, taking into ac-
14 count—

15 (A) changes or reasonably expected
16 changes in the marketplace in which financial
17 services holding company compete;

18 (B) changes or reasonably expected
19 changes in the technology by which financial
20 services are delivered; or

21 (C) whether such activity is necessary or
22 appropriate to—

23 (i) allow a financial services holding
24 company and its affiliates to compete effec-

1 tively against any company seeking to pro-
2 vide financial services in the United States;

3 (ii) use any available or emerging
4 technological means to provide financial
5 services; or

6 (iii) offer customers any available or
7 emerging technological means for using fi-
8 nancial services.

9 (o) APPROPRIATE FEDERAL BANKING AGENCY.—

10 The term “appropriate Federal banking agency” has the
11 same meaning as in section 3 of the Federal Deposit In-
12 surance Act.

13 (p) STATE.—The term “State” has the same mean-
14 ing as in section 3 of the Federal Deposit Insurance Act.

15 (q) CAPITAL TERMS.—

16 (1) IN GENERAL.—The terms “adequately cap-
17 italized” and “well capitalized” have the same mean-
18 ings as in—

19 (A) section 38(b)(1) of the Federal Deposit
20 Insurance Act with respect to an insured depos-
21 itory institution;

22 (B) section 9B(c)(2)(B) of the Federal Re-
23 serve Act with respect to a State member
24 wholesale financial institution; and

1 (C) section 5136(B)(e) of the Revised
2 Statutes of the United States with respect to a
3 national wholesale financial institution.

4 (2) FOREIGN BANK CAPITAL.—With respect to
5 a branch, agency, or commercial lending company
6 operated in the United States by a foreign bank, the
7 terms “adequately capitalized” and “well capital-
8 ized” shall be defined and established by the Na-
9 tional Financial Services Committee for purposes of
10 this Act, provided that such capital standards—

11 (A) are comparable to the capital stand-
12 ards that apply to other depository institutions
13 for purposes of this Act; and

14 (B) give due regard to the principle of na-
15 tional treatment and equality of competitive op-
16 portunity.

17 (r) SECURITIES AFFILIATE.—The term “securities
18 affiliate” means a company that—

19 (1) is an affiliate of a financial services holding
20 company, other than a depository institution; and

21 (2) underwrites or deals in any security; and

22 (3) is (or is required to be) registered under the
23 Securities Exchange Act of 1934 as a broker or
24 dealer,

1 but does not include a company that underwrites or deals
2 exclusively in securities that are expressly authorized by
3 section 5136 of the Revised Statutes of the United States
4 as permissible for a national bank to underwrite or deal
5 in.

6 **SEC. 103. CHANGES IN CONTROL OF DEPOSITORY INSTITU-**
7 **TIONS.**

8 No financial services holding company acting directly
9 or indirectly, or through or in concert with one or more
10 other persons, all acquire control of a depository institu-
11 tion, bank holding company, or financial services holding
12 company not controlled by such company on the date it
13 became a financial services holding company, if such ac-
14 quisition and control occurs through a purchase, assign-
15 ment, transfer, pledge, or other deposition of voting stock
16 of such depository institution, bank holding company, or
17 financial services holding company, unless the financial
18 services holding company has complied with the require-
19 ments of section 7(j) of the Federal Deposit Insurance
20 Act. Any failure to comply with the preceding require-
21 ments shall subject the relevant financial services holding
22 company to the penalties and other procedures provided
23 in sections 109 through 112, in addition to otherwise ap-
24 plicable penalties.

1 **SEC. 104. AFFILIATE TRANSACTIONS.**

2 (a) APPLICABILITY OF SECTIONS 23A AND 23B OF
3 THE FEDERAL RESERVE ACT.—

4 (1) IN GENERAL.—The provisions of sections
5 23A and 23B of the Federal Reserve Act shall be
6 applicable to every depository institution controlled
7 by a financial services holding company in the same
8 manner and to the same extent as if such depository
9 institution were a member bank; and for this pur-
10 pose, any company which would be an affiliate of a
11 depository institution for purposes of such sections
12 23A and 23B if such depository institution were a
13 member bank shall be deemed to be an affiliate of
14 such depository institution.

15 (2) APPLICABILITY TO FOREIGN BANKS.—A de-
16 pository institution that is a branch, agency or com-
17 mercial lending company operated in the United
18 States by a foreign bank that is a financial services
19 holding company shall be deemed to satisfy the re-
20 quirements of paragraph (1) if all of the trans-
21 actions between the depository institution and any of
22 the following companies affiliated with the deposi-
23 tory institution comply with the provisions of Sec-
24 tions 23A and 23B of the Federal Reserve Act in
25 the same manner and to the same extent as if the
26 foreign bank were a member bank—

1 (A) a securities affiliate; and

2 (B) any company that is neither a finan-
3 cial services institution nor primarily engaged
4 in financial activities, other than, with respect
5 to a foreign bank that qualifies as “predomi-
6 nantly a financial company” under section
7 102(l)(2) rather than section 102(l)(1), an affil-
8 iate that is held and operated in compliance
9 with the standards of sections 2(h)(2) and
10 2(h)(4) of the Bank Holding Company Act of
11 1956 that would apply if the foreign bank were
12 subject to that Act.

13 (b) ADDITIONAL LIMITATIONS ON AFFILIATE TRANS-
14 ACTIONS.—

15 (1) IN GENERAL.—The appropriate Federal
16 banking agency may, upon a finding of probable
17 harm that cannot adequately be prevented by less
18 burdensome rules and regulations, adopt such rules
19 and regulations, consistent with the purposes of this
20 Act, as may be necessary in order to prevent a de-
21 pository institution that is controlled or operated by
22 a financial services holding company from engaging
23 in unsafe or unsound practices that involve the fi-
24 nancial services holding company or any of its affili-
25 ates including, without limitation, unsafe or unsound

1 practices that involve covered transactions, as de-
2 fined in section 23A of the Federal Reserve Act, and
3 any transactions described in section 23B(a)(2) of
4 the Federal Reserve Act.

5 (2) REGULATORY ACTIVITY.—Any rule or regu-
6 lation adopted pursuant to paragraph (1) shall be
7 adopted in accordance with section 553 of title 5,
8 United States Code, except that the appropriate
9 Federal banking agency shall give interested persons
10 an opportunity for oral presentations of data, views,
11 and arguments, in addition to written submissions.

12 (3) APPLICATION TO PRIOR APPROVED TRANS-
13 ACTIONS.—Any transaction that was approved by an
14 appropriate Federal banking agency before the date
15 of enactment of this Act shall be exempt from any
16 rules or regulations adopted pursuant to paragraph
17 (1).

18 (c) EXCEPTIONS.—With the concurrence of the Na-
19 tional Financial Services Committee, the appropriate Fed-
20 eral banking agency may, by rule, regulation or order, ex-
21 empt any depository institution that is controlled by a fi-
22 nancial services holding company or class of such institu-
23 tions, or any transaction or class of transactions (includ-
24 ing transactions with affiliates that are neither located nor
25 doing business in the United States) from any require-

1 ment under subsection (b)(1) or section 23A or 23B of
2 the Federal Reserve Act, notwithstanding the provisions
3 of any other law, rule, regulation or order, if the appro-
4 priate Federal banking agency deems such an exemption
5 to be reasonable and not inconsistent with the purposes
6 of this Act and in the public interest.

7 (d) SAFEGUARDS RELATING TO NONFINANCIAL AF-
8 FILIATES.—

9 (1) IN GENERAL.—Except as permitted pursu-
10 ant to regulations issued by the National Financial
11 Services Committee, no depository institution con-
12 trolled by a financial services holding company shall
13 directly or indirectly extend credit, or issue or enter
14 into a standby letter of credit, indemnity, guarantee,
15 insurance, or other similar facility to or for the ben-
16 efit of any affiliate that is neither a financial serv-
17 ices institution nor primarily engaged in financial
18 activities.

19 (2) EXCEPTION FOR CERTAIN FOREIGN
20 BANKS.—A depository institution that is a branch,
21 agency, or commercial lending company operated or
22 controlled by a foreign bank that—

23 (A) is a financial services holding com-
24 pany; and

1 (B) qualifies as “predominantly a financial
2 company” under section 102(l)(2) rather than
3 section 102(l)(1);

4 shall not be subject to the limitation described in
5 paragraph (1) with respect to transactions with af-
6 filiates that, with respect to that foreign bank, are
7 held and operated in compliance with the standard
8 for investment under section 2(h)(2) of the Bank
9 Holding Company Act of 1956 that would apply if
10 that foreign bank were subject to that Act.

11 (e) PRIMARILY ENGAGED IN FINANCIAL ACTIVI-
12 TIES.—For purposes of subsections (a)(2)(B) and (d)(1),
13 the term “primarily engaged in financial activities” shall
14 be defined by regulation by the National Financial Serv-
15 ices Committee.

16 **SEC. 105. CAPITAL REQUIREMENTS.**

17 (a) WELL-CAPITALIZED DEPOSITORY INSTITU-
18 TIONS.—Each depository institution that is controlled by
19 a financial services holding company shall be well capital-
20 ized.

21 (b) ACTIONS BY APPROPRIATE FEDERAL BANKING
22 AGENCY.—In the event of a finding by the appropriate
23 Federal banking agency that a depository institution con-
24 trolled by a financial services holding company is not well
25 capitalized, the financial services holding company shall—

1 (1) execute an agreement with the appropriate
2 Federal banking agency within 30 days to return the
3 depository institution within a reasonable period of
4 time to being well capitalized; or

5 (2) divest control of the depository institution
6 in an orderly manner within 180 days, or such addi-
7 tional period of time as the appropriate Federal
8 banking agency may determine is reasonably re-
9 quired in order to effect such divestiture.

10 (c) NO HOLDING COMPANY CAPITAL REQUIRE-
11 MENTS.—An appropriate Federal banking agency may not
12 impose by regulation, order, agreement, or any other
13 means, any requirement pertaining to the capital of a fi-
14 nancial services holding company.

15 **SEC. 106. INTERSTATE ACQUISITIONS OF INSURED BANKS.**

16 (a) INSURED BANKS.—Except as otherwise author-
17 ized pursuant to section 13(f) of the Federal Deposit In-
18 surance Act, no financial services holding company may
19 acquire control of an additional insured bank (as such
20 term is defined in section 2(c) of the Bank Holding Com-
21 pany Act of 1956) if the acquisition could not be approved
22 by the Board of Governors of the Federal Reserve System
23 under any provision of section 3(d) of the Bank Holding
24 Company Act of 1956, other than subsection (d)(1)(A),
25 if such acquisition were made by a bank holding company.

1 (b) TREATMENT OF FINANCIAL SERVICES HOLDING
2 COMPANIES AND SUBSIDIARIES.—For purposes of section
3 18(r) of the Federal Deposit Insurance Act, a financial
4 services holding company shall be treated as a bank hold-
5 ing company, and any depository institution affiliate of a
6 financial services holding company shall be treated as a
7 bank subsidiary.

8 **SEC. 107. DIFFERENTIAL TREATMENT PROHIBITION; LAWS**
9 **INCONSISTENT WITH THIS ACT.**

10 (a) IN GENERAL.—Notwithstanding any other Fed-
11 eral law, no State, and no Federal or State regulatory
12 agency, including the appropriate Federal banking agency,
13 may act by law, rule, regulation, order, or otherwise if the
14 effect of such action would be to differentiate depository
15 institutions controlled by financial services holding compa-
16 nies from any other depository institutions in a manner
17 adverse to depository institutions controlled by financial
18 services holding companies, or to differentiate financial
19 services holding companies or their affiliates from bank
20 holding companies and their affiliates in a manner adverse
21 to financial services holding companies or their affiliates,
22 except to the extent that the appropriate Federal banking
23 agency may act to implement this Act.

24 (b) APPLICATION OF STATE LAWS.—

25 (1) FINDINGS.—The Congress finds that:

1 (A) Certain State laws and regulations
2 have the purpose or effect of preventing deposi-
3 tory institutions from being or becoming affili-
4 ated with, companies or persons engaged in
5 nonbanking activities.

6 (B) Such laws restrain legitimate competi-
7 tion in interstate commerce and deny consum-
8 ers freedom of choice in selecting financial serv-
9 ices.

10 (C) Such restrictions also threaten the
11 long-term safety and soundness of depository
12 institutions by denying them access to capital.

13 (D) Given the preponderant Federal inter-
14 est in ensuring competition in national markets
15 for financial services and in ensuring the safety
16 and soundness of depository institutions, it is
17 necessary to preempt such anticompetitive State
18 laws and regulations to the extent necessary to
19 permit the formation and efficient operation of
20 financial services holding companies.

21 (E) There is, however, a legitimate and
22 traditional State interest in ensuring that State
23 depository institutions and other State-char-
24 tered or licensed companies are operated in a

1 safe and sound manner to serve the interests of
2 the public and consumers.

3 (F) The preemption provided in paragraph
4 (2) is not intended to preempt State laws that
5 concern the regulation, supervision, and exam-
6 ination of State chartered or licensed entities,
7 and that are not inconsistent with the purposes
8 of this Act.

9 (2) PREEMPTIONS.—

10 (A) CROSS-MARKETING.—Any provision of
11 Federal or State law, rule, regulation, or order
12 that is expressly or impliedly inconsistent with
13 the provisions and purposes of this Act is here-
14 by preempted, including, without limitation,
15 State banking, savings and loan, insurance, real
16 estate, securities, finance company, retail, or
17 other laws which have the purpose or effect
18 of—

19 (i) preventing or impeding depository
20 institutions or affiliates, agents, principals,
21 brokers, directors, officers, employees, or
22 other representatives of such institutions
23 or affiliates thereof, as a result of the
24 types of nonbanking activities engaged in
25 directly or indirectly by such company or

1 any affiliate thereof or by any agent, prin-
2 cipal, solicitor, broker, director, officer,
3 employee, or other representative of such
4 company or affiliate thereof, form being
5 owned or controlled by or from being affili-
6 ated in any way with a financial services
7 holding company or any affiliate thereof;
8 or

9 (ii) preventing or impeding depository
10 institutions or affiliates, agents, principals,
11 brokers, directors, officers, employees or
12 other representatives of such institutions
13 or affiliates thereof from offering or mar-
14 keting products or services of their affili-
15 ated financial services holding company or
16 any affiliate thereof or from having their
17 products or services offered or marketed by
18 their affiliated financial services holding
19 company or any affiliate thereof, or by any
20 agent, principal, broker, director, officer,
21 employee, or other representative of such
22 company or affiliate thereof.

23 (B) INFORMATION SHARING.—

24 (i) IN GENERAL.—Notwithstanding
25 any other provision of law, any depository

1 institution, or any affiliate or subsidiary of
2 any depository institution, may share or
3 exchange information or otherwise transfer
4 information between or among themselves
5 without any restriction or limitation if it is
6 clearly and conspicuously disclosed that the
7 information may be communicated among
8 such persons and the consumer is given
9 the opportunity, before the time that the
10 information is initially communicated, to
11 direct that such information not be com-
12 municated among such persons.

13 (ii) DEFINITION.—For purposes of
14 this subsection, the term “information”
15 means any and all data, records, or other
16 information and material obtained or
17 maintained by any depository institution or
18 any affiliate or subsidiary thereof in the
19 ordinary course of its business that relates
20 in any way to a person who applies for,
21 maintains, or has maintained an account
22 or credit relationship with or applied for,
23 purchased or obtained other products or
24 services from any depository institution or
25 any affiliate or subsidiary of any depository

1 tory institution, regardless of the source or
2 manner in which the information is ob-
3 tained or furnished.

4 (c) LAWS AFFECTING COURT ACTIONS.—

5 (1) IN GENERAL.—No State or State regulatory
6 agency may act by law, rule, regulation, or order if
7 the effect of such action would be to impede or pre-
8 vent a depository institution that is located in an-
9 other State from qualifying to maintain or defend in
10 court any action which could be maintained or de-
11 fended under similar circumstances by a company
12 that is located in such other State and that is not
13 a depository institution, if the depository institution
14 does not establish or operate in that State a domes-
15 tic branch.

16 (2) EXCEPTION.—Where the maintenance or
17 defense of a court action referred to in paragraph
18 (1) by a company that is located in such other State
19 and that is not a depository institution is subject to
20 certain conditions, the maintenance or defense of
21 such an action by a depository institution located in
22 such other State may be subject to those same con-
23 ditions, if such conditions are applied in a non-
24 discriminatory manner to fulfill legitimate State ob-
25 jectives and do not have the effect, directly or indi-

1 rectly, of denying depository institutions located in
2 other States the opportunity to maintain or defend
3 such actions.

4 (d) OTHER RESTRICTIONS.—Except for licensing,
5 marketing, compensation, employment, or other require-
6 ments applied in a nondiscriminatory manner to fulfill le-
7 gitimate State regulatory objectives which are not incon-
8 sistent with the purposes of this Act, no State may,
9 through legislative, administrative, executive, or judicial
10 action, impede or prevent a financial services holding com-
11 pany or affiliate thereof from utilizing or compensating
12 any agent (including an affiliated depository institution
13 acting in accordance with section 18(r) of the Federal De-
14 posit Insurance Act), solicitor, broker, employee, or other
15 person located in that State and representing in any lawful
16 capacity any depository institution or any such financial
17 services holding company or such affiliate thereof, pro-
18 vided that if any such person is being utilized or com-
19 pensated for the performance of activities on behalf of a
20 depository institution, such activities do not result in the
21 establishment or operation by the depository institution of
22 a domestic branch at any location other than the main
23 or branch offices of such depository institution.

24 (e) DEFINITIONS.—As used in subsections (b)
25 through (d) only—

1 (1) the term “affiliate” means a person that di-
2 rectly or indirectly controls or is controlled by, or is
3 under common control with the person specified; and

4 (2) the term “control,” including the terms
5 “controlled by” and “under common control with,”
6 means the power, directly or indirectly, to direct the
7 management or policies of a person and shall be pre-
8 sumed to exist if any person, directly or indirectly,
9 owns, controls, or holds with power to vote 10 per-
10 cent or more of the voting securities of any other
11 person.

12 **SEC. 108. TYING AND INSIDER LENDING PROVISIONS.**

13 (A) IN GENERAL.—A financial services holding com-
14 pany shall be treated as a bank holding company, and any
15 depository institution controlled by such financial services
16 holding company shall be treated as a bank, for purposes
17 of section 106 of the Bank Holding Company Act Amend-
18 ments of 1970 and section 22(h) of the Federal Reserve
19 Act and any regulation prescribed under any such sec-
20 tions.

21 (b) ADDITIONAL LIMITATIONS ON TIE-IN ARRANGE-
22 MENTS.—A financial services holding company and any of
23 such company’s nonbanking subsidiaries shall be subject
24 to the same limitations, if any, including any exceptions
25 thereto, as the Board of Governors of the Federal Reserve

1 System may by regulation impose on bank holding compa-
2 nies and their nonbanking subsidiaries with respect to ex-
3 tending credit, leasing or selling property of any kind, pro-
4 viding any service, or fixing or varying the consideration
5 for any such transaction subject to any condition or re-
6 quirement that, if imposed by a bank, would constitute
7 an unlawful tie-in arrangement under section 106 of the
8 Bank Holding Company Act Amendments of 1970.

9 (c) REGULATORY AUTHORITY.—For purposes of this
10 subsection, the appropriate Federal banking agency shall
11 exercise the authority provided to the Board of Governors
12 of the Federal Reserve System under section 106 of the
13 Bank Holding Company Act Amendments of 1970 and
14 section 22(h) of the Federal Reserve Act.

15 **SEC. 109. REPORTS, EXAMINATION AND ENFORCEMENT.**

16 (a) NOTICE.—

17 (1) TIMING.—Within 90 days after filing the
18 notice referred to in section 102(a)(1), each financial
19 services holding company shall file a separate notice
20 with the appropriate Federal banking agency for the
21 lead depository institution of such company.

22 (2) FORM AND CONTENT.—The notice required
23 by paragraph (1) shall be on forms prescribed by the
24 National Financial Services Committee, and shall in-
25 clude such information under oath or otherwise, with

1 respect to the financial condition, ownership, oper-
2 ation and management of such financial services
3 company and its subsidiaries, and related matters,
4 as the Committee may deem necessary or appro-
5 priate for the appropriate Federal banking agency to
6 ascertain and monitor the impact that such financial
7 services holding company and its subsidiaries may
8 have on the safety and soundness of any depository
9 institution affiliated with such financial services
10 holding company or to otherwise carry out the pur-
11 poses of this Act.

12 (b) REPORTS.—

13 (1) IN GENERAL.—The appropriate Federal
14 banking agency of the lead depository institution of
15 a financial services holding company from time to
16 time may require such holding company and any
17 subsidiary of such company to submit reports under
18 oath to keep such agency informed as to—

19 (A) the company's or the subsidiary's ac-
20 tivities, financial condition, policies, systems for
21 monitoring and controlling financial and oper-
22 ational risks, to the extent that the appropriate
23 Federal banking agency has reason to believe
24 that such activities, financial condition, policies,
25 and systems may materially affect the safety

1 and soundness of any depository institution
2 subsidiary of the company;

3 (B) the company's or the subsidiary's
4 transactions with depository institution subsidi-
5 aries of the company; and

6 (C) the extent to which the company or
7 subsidiary has complied with the provisions of
8 the Act and regulations prescribed and orders
9 issued under this Act.

10 (2) USE OF EXISTING REPORT.—

11 (A) IN GENERAL.—The appropriate Fed-
12 eral banking agency described in paragraph (1)
13 shall, to the fullest extent possible, accept re-
14 ports in fulfillment of such agency's reporting
15 requirements under this paragraph that a fi-
16 nancial services holding company or any sub-
17 sidiary of such company has been required to
18 provide to other Federal and State supervisors
19 or to appropriate self-regulatory organizations.

20 (B) AVAILIBILITY.—A financial services
21 holding company or a subsidiary of such com-
22 pany shall provide to the appropriate Federal
23 banking agency described in paragraph (1), at
24 the request of such agency, a report referred to
25 in subparagraph (A).

1 (3) The National Financial Services Committee
2 shall prescribe by regulation uniform standards for
3 the form and content of the reports required by this
4 subsection.

5 (4) EXEMPTIONS FROM REPORTING REQUIRE-
6 MENTS.—

7 (A) IN GENERAL.—The National Financial
8 Services Committee may, by regulation or
9 order, exempt any company or class of compa-
10 nies, under such terms and conditions and for
11 such periods as the Committee shall provide in
12 such regulation or order, from the provisions of
13 this subsection and any regulations prescribed
14 under this subsection.

15 (B) CRITERIA FOR CONSIDERATION.—In
16 granting any exemption under subparagraph
17 (A), the Committee shall consider, among other
18 factors—

19 (i) whether information of the type re-
20 quired under this subsection is available
21 from a supervisory agency (as defined in
22 section 1101(7) of the Right to Financial
23 Privacy Act of 1978), the Commodity Fu-
24 tures Trading Commission, or a foreign
25 regulatory body of a similar type;

1 (ii) the primary business of the com-
2 pany;

3 (iii) the nature and extent of domestic
4 or foreign regulation of the company's ac-
5 tivities; and

6 (iv) whether the companies' activities
7 could pose a significant risk to the safety
8 and soundness of any depository institu-
9 tion subsidiary of the financial services
10 holding company.

11 (c) EXAMINATIONS.—

12 (1) IN GENERAL.—For purposes of this Act,
13 the appropriate Federal banking agency of the lead
14 depository institution of a financial services holding
15 company may examine such holding company, but
16 only to the extent permitted by this subsection.

17 (2) STANDARD FOR EXAMINATIONS.—The ap-
18 propriate Federal banking agency for the lead depos-
19 itory institution of a financial services holding com-
20 pany shall not examine such holding company un-
21 less—

22 (A) such agency determines, on the basis
23 of all information available to such agency that
24 the operations or activities of the financial serv-
25 ices holding company or any subsidiary of such

1 company, or any transaction involving such
2 company or subsidiary and an affiliated deposi-
3 tory institution, may pose a material risk to the
4 safety and soundness of any depository institu-
5 tion controlled by such holding company; or

6 (B) such agency is unable to determine
7 from reports the nature of the operations, fi-
8 nancial condition, activities, or effectiveness of
9 the risk management systems of the financial
10 services holding company or any subsidiary of
11 such company, or to assess compliance with the
12 provisions of this Act.

13 (3) RESTRICTED FOCUS OF EXAMINATIONS.—

14 The appropriate Federal banking agency of the lead
15 depository institution of a financial services holding
16 company shall limit the focus and scope of any ex-
17 amination permitted by this subsection to the con-
18 solidated holding company, provided, however, that
19 such examination shall not extend to any subsidiary
20 of such holding company (other than a depository
21 institution subsidiary).

22 (4) DEFERENCE TO OTHER BANK EXAMINA-
23 TIONS.—

24 (A) IN GENERAL.—For purposes of this
25 subsection, the appropriate Federal banking

1 agency of the lead depository institution of the
2 financial services holding company shall, to the
3 fullest extent possible, use the report of exami-
4 nations of other appropriate Federal banking
5 agencies or the appropriate State depository in-
6 stitution supervisory authority.

7 (B) APPLICABILITY TO FOREIGN BANKS.—

8 For purposes of this subsection, with respect to
9 a foreign bank that is a financial services hold-
10 ing company, the appropriate Federal banking
11 agency shall give due regard to the primary au-
12 thority and responsibility of the foreign bank's
13 home country regulator for supervision and ex-
14 amination of the bank outside the United
15 States and shall seek to minimize additional ex-
16 amination or regulatory burdens on the foreign
17 bank outside of the United States, by coordinat-
18 ing with and relying on examinations of and in-
19 formation from the home country regulator to
20 the fullest extent possible.

21 (5) USE OF OTHER EXAMINATIONS OF REGU-
22 LATED SUBSIDIARIES.—In order to conduct an ex-
23 amination of a consolidation holding company pursu-
24 ant to this subsection, the appropriate Federal bank-

1 ing agency of the lead depository institution of such
2 company—

3 (A) shall have access to, and may use, the
4 reports of examination made of—

5 (i) any registered broker or dealer by
6 or on behalf of the Securities Exchange
7 Commission, and

8 (ii) any other subsidiary that such
9 agency finds to be comprehensively super-
10 vised under relevant Federal or State law
11 by a Federal or State agency or authority;
12 and

13 (B) may request any agency that regulates
14 a subsidiary described in clause (i) to examine
15 and provide information concerning any aspect
16 of such subsidiary's activities that the appro-
17 priate Federal banking agency deems necessary
18 or appropriate to carry out the purposes of this
19 section, and such other agency shall, to the ex-
20 tent practicable, comply with such request.

21 (6) CONFIDENTIALITY OF REPORTED INFORMA-
22 TION.—

23 (A) IN GENERAL.—Notwithstanding any
24 other provision of law, an appropriate Federal
25 banking agency shall not be compelled to dis-

1 close any information required to be reported
2 under this subsection, or any information sup-
3 plied to such agency by any domestic or foreign
4 regulatory agency, that relates to the financial
5 services holding company or any subsidiary of
6 such company.

7 (B) COMPLIANCE WITH REQUESTS FOR IN-
8 FORMATION.—No provision of this subpara-
9 graph shall be construed as authorizing an ap-
10 propriate Federal banking agency to withhold
11 information from Congress, or preventing such
12 agency from complying with a request for infor-
13 mation from any other Federal department or
14 agency for purposes within the scope of such
15 department's or agency's jurisdiction, or from
16 complying with an order of a court of com-
17 petent jurisdiction in an action brought by the
18 United States or such agency.

19 (C) COORDINATION WITH OTHER LAW.—
20 For purposes of section 552 of title 5, United
21 States Code, this subparagraph shall be consid-
22 ered to be a statute described in subsection
23 (b)(3)(B) of such section.

24 (D) DESIGNATION OF CONFIDENTIAL IN-
25 FORMATION.—In prescribing regulations to

1 carry out the requirements of this subsection,
2 an appropriate Federal banking agency shall
3 designate information described in or obtained
4 pursuant to this paragraph as confidential in-
5 formation.

6 (E) COSTS.—The cost of any examination
7 conducted by an appropriate Federal banking
8 agency under this section may be assessed
9 against, and made payable by, such holding
10 company.

11 (d) TERMINATION.— The National Financial Serv-
12 ices Committee may at any time, upon its own motion or
13 upon application, terminate the status of a company as
14 a financial services holding company, if it is determined
15 that such company no longer controls or operates any de-
16 pository institutions or otherwise fails to qualify as a fi-
17 nancial services holding company as defined in this Act.

18 (e) NO EXTENSION OF INSURANCE COVERAGE.—In
19 no instance shall the benefits of Federal deposit insurance
20 coverage applicable to an insured depository institution
21 that is controlled by a financial services holding company
22 be extended or interpreted to extend to either such finan-
23 cial services holding company or to any other company
24 controlled by such financial services holding company that
25 is not an insured depository institution.

1 (f) ENFORCEMENT OF VIOLATIONS.—Whenever it
2 appears to the appropriate Federal banking agency of the
3 lead depository institution of a financial services holding
4 company that such holding company is violating, has vio-
5 lated, or is about to violate any provision of this Act or
6 any regulation prescribed under this Act, such agency
7 may, in its discretion, apply to the appropriate district
8 court of the United States or the United States court of
9 any territory for—

10 (1) a temporary or permanent injunction or re-
11 straining order enjoining such financial services
12 holding company from violating this Act or any reg-
13 ulation prescribed under this Act; or

14 (2) such other equitable relief, including divesti-
15 ture, as may be necessary to prevent such violation.

16 (g) COURT JURISDICTION.—The district courts of the
17 United States and the United States court in any territory
18 shall have jurisdiction and power to issue any injunction
19 or restraining order or grant any other relief described in
20 subsection (f). When appropriate, any injunction, order,
21 or other equitable relief granted under this subparagraph
22 shall be granted without requiring the posting of any
23 bond.

24 (h) NOTICE OF VIOLATIONS.—Whenever it appears
25 to a Federal or State official or agency with supervisory

1 or examination authority over any affiliate of a financial
2 services holding company that such affiliate or such finan-
3 cial services holding company is violating, has violated, or
4 is about to violate any provision of this Act or any regula-
5 tion prescribed under this Act, such official or agency shall
6 promptly notify the appropriate Federal banking agency
7 of the lead depository institution of such holding company
8 in order that such banking agency, in consultation with
9 the notifying agency, may determine whether action under
10 this section is appropriate.

11 **SEC. 110. DIVESTITURE.**

12 (a) IN GENERAL.—In addition to all of its other reg-
13 ulatory and supervisory powers, if the appropriate Federal
14 banking agency determines that a depository institution
15 under its supervision has engaged in a continuing course
16 of conduct involving its financial services holding company
17 or any affiliate of such holding company which has had,
18 or has a significant probability of having, the effect of
19 causing such depository institution to be in an unsafe or
20 unsound condition, it may make an initial finding that the
21 financial services holding company should be required to
22 terminate its control or operation of the depository institu-
23 tion. If the appropriate Federal banking agency makes
24 such an initial finding, it shall within 3 days so notify the
25 financial services holding company controlling or operating

1 the depository institution and the National Financial Serv-
2 ices Committee. Such notice shall provide a statement for
3 the basis of the appropriate Federal banking agency's ac-
4 tion.

5 (b) HEARING PROCEDURES.—Not later than 30 days
6 after receipt of the notice described in subsection (a), the
7 financial services holding company receiving such notice
8 may request an agency hearing before the appropriate
9 Federal banking agency. In such hearing, all issues shall
10 be determined pursuant to section 554 of title 5, United
11 States Code. The length of the hearing shall be determined
12 by the appropriate Federal banking agency, and such
13 hearing may be before a hearing examiner appointed by
14 such agency. At the conclusion thereof, the appropriate
15 Federal banking agency shall issue a final order, on the
16 basis of the record made at such hearing, affirming or re-
17 versing the initial finding of the appropriate Federal bank-
18 ing agency. A company that fails to request an agency
19 hearing under this paragraph shall be deemed to have con-
20 sented to the issuance of a final order affirming the initial
21 finding without the necessity of the hearing provided for
22 in this paragraph.

23 (c) TERMINATION OF CONTROL.—If such final order
24 affirms the initial finding, the financial services holding
25 company shall, upon completion of the judicial review, if

1 any, of the appropriate Federal banking agency's final
2 order as provided for in section 113, terminate its control
3 or operation of the depository institution involved within
4 1 year or such longer period as the appropriate Federal
5 banking deems necessary and appropriate to protect the
6 safety and soundness of the depository institution or pre-
7 vent financial disruption.

8 **SEC. 111. CRIMINAL PENALTIES.**

9 (a) **WILLFUL VIOLATIONS.**—Any company or insured
10 depository institution which knowingly and willfully par-
11 ticipates in a material violation of any provision of this
12 Act, or any rule, regulation, or order issued by an appro-
13 priate Federal banking agency pursuant thereto, shall,
14 upon conviction, be fined for each violation not more than
15 the greater of \$250,000 or an amount equal to one one
16 hundredth of 1 percent of the minimum required capital
17 of the lead depository institution of the financial services
18 holding company for each day during which the violation
19 continues, except that in no case shall any such amount
20 for any violation or related series of violations exceed 1
21 percent of the minimum required capital of the lead depos-
22 itory institution.

23 (b) **ENFORCEMENT AGAINST INDIVIDUALS.**—Any
24 natural person who knowingly and willfully participates in
25 a material violation of any provision of this Act or any

1 rule, regulation, or order issued pursuant thereto, shall
2 upon conviction be imprisoned not more than 5 years and
3 fined for each violation not more than the greater of
4 \$250,000 or double the individual's annual compensation
5 at the time the violation occurred.

6 (c) ENFORCEABILITY AGAINST OFFICERS AND EM-
7 PLOYEES.—Every officer, director, employee, and agent of
8 a financial services holding company or depository institu-
9 tion also shall be subject to the same penalties for false
10 entries in any book, report, or statement of such company
11 or depository institution as are applicable to officers, di-
12 rectors, employees, and agents of member banks for false
13 entries in any books, reports, or statements of member
14 banks under section 1005 of title 18, United States Code.

15 (d) ENFORCEABILITY AGAINST HOLDING COMPA-
16 NIES.—A financial services holding company and its affili-
17 ates shall be subject to the provisions of title 18, United
18 States Code, to the same extent as a registered bank hold-
19 ing company or any affiliate of such a company.

20 **SEC. 112. CIVIL ENFORCEMENT, CEASE-AND-DESIST OR-**
21 **DERS, CIVIL MONEY PENALTIES, REMOVAL,**
22 **AND PROHIBITION AUTHORITY.**

23 Subsections (b) through (s) and subsection (u) of sec-
24 tion 8 of the Federal Deposit Insurance Act shall apply
25 to any financial services holding company in the same

1 manner as they apply to an insured depository institution.
2 Nothing in subsection (b) or (c) of that section 8 shall
3 authorize any Federal banking agency, other than the ap-
4 propriate Federal banking agency, to issue a notice of
5 charges or cease-and-desist order against a financial serv-
6 ices holding company.

7 **SEC. 113. JUDICIAL REVIEW.**

8 Any party aggrieved by an appropriate Federal bank-
9 ing agency's findings or other actions under this Act may
10 obtain review by the United States court of appeals of the
11 circuit wherein such party has its principal place of busi-
12 ness or the United States Court of Appeals for the District
13 of Columbia Circuit, by filing a Notice of Appeal in such
14 court within 30 days from the date of such action, and
15 simultaneously sending a copy of such notice by registered
16 or certified mail to the appropriate Federal banking agen-
17 cy. The appropriate Federal banking agency shall prompt-
18 ly certify and file in such court the record upon which
19 such action or finding was based. The actions or findings
20 of the appropriate Federal banking agency shall be set
21 aside if not supported by substantial evidence or if found
22 to violate procedures established by this Act. An initial
23 finding by the appropriate Federal banking agency under
24 section 110 shall be subject to judicial review only in the
25 context of review of a final order under section 110(b).

1 **SEC. 114. NATIONAL FINANCIAL SERVICES COMMITTEE.**

2 (a) ESTABLISHMENT.—There is established a Na-
3 tional Financial Services Committee which shall consist
4 of—

5 (1) the Secretary of the Treasury;

6 (2) the Chairman of the Board of Governors of
7 the Federal Reserve System;

8 (3) the Chairman of the Board of Directors of
9 the Federal Deposit Insurance Corporation;

10 (4) the Comptroller of the Currency; and

11 (5) the Chairman of the Securities and Ex-
12 change Commission.

13 (b) MEMBER AGENCIES.—For purposes of this Act,
14 the agencies or departments headed by members of the
15 committee shall be referred to as “member agencies”.

16 (c) CHAIR.—The Chair of the Committee shall be the
17 Secretary of the Treasury.

18 (d) COMPENSATION.—Each member of the Commit-
19 tee shall serve without additional compensation, but shall
20 be entitled to reasonable expenses incurred in carrying out
21 the official duties as such a member.

22 (e) PUBLIC MEETINGS.—The Committee shall hold
23 public meetings at least annually. All meetings of the
24 Committee shall be conducted in conformity with the pro-
25 visions of section 3(a) of the Government in the Sunshine
26 Act (5 U.S.C. 552b). The Committee may not take any

1 action unless such action is approved by a majority vote
2 of the members of the Committee.

3 (f) SECRETARIAT.—The Department of the Treasury
4 shall provide the Secretariat for the Committee and shall
5 assume any expenses arising from execution of the respon-
6 sibilities of the Committee, except for expenses incurred
7 by employees of any Member of the Committee.

8 (g) ACCESS TO RECORDS.—For the purpose of carry-
9 ing out this section, the Committee shall have access to
10 all books, accounts, records, reports, files, memoranda, pa-
11 pers, things, and property belonging to or in use by any
12 appropriate Federal banking agency.

13 (h) FUNCTIONS OF THE COMMITTEE.—

14 (1) UNIFORM PRINCIPLES AND STANDARDS.—

15 The Committee shall, insofar as is practicable, es-
16 tablish uniform principles and standards applicable
17 to the notices, reports, examinations and supervision
18 of financial services institutions regulated by the
19 member agencies, and to the extent permitted by
20 this Act, financial services holding companies, which
21 principles and standards shall be applied by the
22 member agencies.

23 (2) RECOMMENDATIONS.—The Committee shall
24 make recommendations for uniformity in other su-
25 pervisory matters, such as, but not limited to, identi-

1 fying financial services institutions and other provid-
2 ers of financial services in need of special super-
3 visory attention, the adequacy of supervisory tools
4 for determining the impact of affiliate operations on
5 insured depository institutions, and the ability of the
6 member agencies to discover possible fraud or ques-
7 tionable practices.

8 (3) RECOMMENDATIONS TO CONGRESS.—The
9 Committee shall, from time to time, recommend to
10 the Congress additional measures to strengthen the
11 separation between insured depository institutions
12 controlled by depository institutions holding compa-
13 nies from the activities of any of their affiliates, in-
14 cluding the imposition of additional restrictions on
15 interaffiliate transactions and the strict application
16 of Federal deposit insurance coverage only for the
17 benefit of depositors of insured depository institu-
18 tions.

19 (i) CONSULTATION WITH STATE REGULATORS.—The
20 Committee shall consult with the appropriate organiza-
21 tions representing the State regulators of banks, savings
22 and loan associations, savings banks, securities firms, in-
23 surance companies, and other providers of financial serv-
24 ices, and as deemed appropriate, meet with such State reg-
25 ulators. The Committee, when appropriate, shall invite to

1 each public meeting of the Committee representatives of
2 such organizations.

3 (j) STUDIES AND RECOMMENDATIONS.—The Com-
4 mittee may conduct or authorize studies to carry out the
5 purposes of this Act. On the basis of such studies, the
6 Committee may make recommendations to the Congress
7 and member agencies concerning the implementation of
8 this Act and changes in statutes and regulations necessary
9 to promote the strength and stability of the Nation’s fi-
10 nancial system and financial institutions, the competitive-
11 ness of providers of financial services in domestic and
12 international markets, and the purposes of this Act. Not
13 later than 1 year after the date of the enactment of this
14 Act, the Committee shall report to the Congress on pro-
15 posals for legislative or regulatory actions that will im-
16 prove the examination process to permit better oversight
17 of all insured depository institutions. In particular, the
18 Committee shall consider whether the number of, or com-
19 pensation for, examiners employed by the appropriate
20 Federal regulatory agencies should be increased.

21 (k) NOTICE PROCEDURES FOR DETERMINING NEW
22 FINANCIAL SERVICES INSTITUTIONS AND NEW FINAN-
23 CIAL ACTIVITIES.—

1 (1) NOTICE REQUIREMENT.—A financial serv-
2 ices holding company may request the Committee to
3 determine that—

4 (A) an activity not described in section
5 102(n) (1)–(12) constitutes a financial activity
6 pursuant to section 102(n)(13); or

7 (B) a company not described in section
8 102(m) (1)–(8) is a financial services institu-
9 tion pursuant to section 102(m)(9),

10 by providing the Committee with written notice de-
11 scribing the proposed activity or institution.

12 (2) CONTENTS OF NOTICE.—The notice submit-
13 ted to the Committee shall contain such information
14 as the Committee shall prescribe by regulation or by
15 specific request in connection with a particular no-
16 tice.

17 (3) PROCEDURE FOR COMMITTEE ACTION.—

18 (a) NOTICE OF DISAPPROVAL.—Any notice
19 filed under this subsection shall be deemed to
20 be approved by the Committee unless before the
21 end of the 60-day period beginning on the date
22 the Committee receives a complete notice under
23 subparagraph (1), the Committee issues an
24 order determining the activity does not con-
25 stitute a financial activity or the institution is

1 not a financial services institution and setting
2 forth the reasons for disapproval.

3 (B) EXTENSION OF PERIOD.—The Com-
4 mittee may extend the 60-day period referred to
5 in subparagraph (A) for an additional 30 days.
6 The Committee may further extend the period
7 with the agreement of the financial services
8 holding company submitting the notice pursu-
9 ant to this subsection.

10 (4) SHORTER PERIODS.—The Committee may
11 prescribe regulations which provide for a shorter no-
12 tice period than the periods described in subpara-
13 graphs (A) and (B).

14 (5) INCOMPLETE INFORMATION.—The Commit-
15 tee may determine that an activity or an institution
16 for which notice has been submitted pursuant to this
17 subsection, does not constitute a financial activity or
18 is not a financial services institution, if the financial
19 services holding company submitting such notice ne-
20 glects, fails, or refuses to furnish the Committee all
21 the information required by the Committee.

1 **Subtitle B—Securities Activities of Financial**
2 **Services Holding Companies**

3 **SEC. 121. LIMITATION ON SECURITIES ACTIVITIES OF DE-**
4 **POSITORY INSTITUTIONS AFFILIATED WITH**
5 **SECURITIES AFFILIATES.**

6 (a) IN GENERAL.—A financial services holding com-
7 pany that is affiliated with a securities affiliate shall not
8 permit any depository institution, or any subsidiary of any
9 depository institution, which is controlled by such holding
10 company to engage, directly or indirectly in the United
11 States—

12 (1) in underwriting securities backed by or rep-
13 resenting interests in notes, drafts, acceptances,
14 loans, leases, receivables, other obligations, or pools
15 of any such obligations originated or purchased by
16 the institution or its affiliates; or

17 (2) in underwriting or dealing in any other se-
18 curities,

19 except securities expressly authorized by section 5136 of
20 the Revised Statutes of the United States as permissible
21 for a national bank to underwrite or deal in.

22 (b) RULE OF CONSTRUCTION.—No provision of this
23 section shall be construed as permitting a securities affli-
24 ate to accept deposits in contravention of section 21 of
25 the Banking Act of 1933.

1 (c) DEFINITION OF SECURITY.—

2 (1) IN GENERAL.—For purposes of this section,
3 the term “security” has the meaning given to such
4 term in section 3(a)(10) of the Securities Exchange
5 Act of 1934.

6 (2) EXCEPTIONS.—Notwithstanding any other
7 provision of law, the term “security” does not in-
8 clude any of the following for purposes of this sec-
9 tion:

10 (A) A contract of insurance.

11 (B) A deposit account, savings account,
12 certificate of deposit, or other deposit instru-
13 ment issued by a depository institution.

14 (C) A share account issued by a savings
15 association if the account is insured by the Fed-
16 eral Deposit Insurance Corporation.

17 (D) A banker’s acceptance.

18 (E) A letter of credit issued by a deposi-
19 tory institution.

20 (F) A debit account at a depository insti-
21 tution arising from a credit card or similar ar-
22 rangement.

23 (G) A loan or loan participation (as deter-
24 mined by the appropriate Federal banking
25 agency), including any debt security issued in

1 connection with sovereign debt restructuring
2 which a bank purchases and sells pursuant to
3 such bank's lending authority.

4 (H) A qualified financial contract (as de-
5 fined in section 11(e)(8)(d)(i) of the Federal
6 Deposit Insurance Act), as determined by the
7 appropriate Federal Banking agency, after con-
8 sultation with and consideration of the views of
9 the Securities and Exchange Commission, ex-
10 cept that, for purposes of this section such term
11 does not include—

12 (i) any securities contract (as defined
13 in section 11(e)(8)(D)(ii) of such Act) that
14 is based on or directly relates to a security
15 that is not expressly authorized by section
16 5136 of the Revised Statutes of the United
17 States as permissible for a national bank
18 to underwrite or deal in unless the appro-
19 priate Federal banking agency determines,
20 after consultation with and consideration
21 of the views of the Securities and Ex-
22 change Commission, that such securities
23 contract is appropriate for a bank to un-
24 derwrite or deal in, taking into account
25 other qualified financial contracts which a

1 bank is permitted to underwrite or deal in;
2 and

3 (ii) any agreement, contract, or trans-
4 action which is determined by the Federal
5 Deposit Insurance Corporation in a regula-
6 tion prescribed after the date of the enact-
7 ment of this Act to be a qualified financial
8 contract unless the appropriate Federal
9 banking agency determines, after consulta-
10 tion with and consideration of the views of
11 the Securities and Exchange Commission,
12 that such agreement, contract, or trans-
13 action shall be treated as a qualified finan-
14 cial contract for purposes of this section.

15 (3) AUTHORITY TO EXEMPT BANKING PROD-
16 UCTS.—Notwithstanding any other provision of law,
17 the appropriate Federal banking agency may, by
18 regulation or order, exempt a banking product from
19 the definition of security if the appropriate Federal
20 banking agency finds that—

21 (i) the product is available in the
22 course of a banking business and is more
23 appropriately regulated as a banking prod-
24 uct; and

1 (ii) the exemption is otherwise consist-
2 ent with the purposes of this section, the
3 maintenance of fair and orderly markets,
4 and the protection of investors.

5 (4) DEFINITION FOR LIMITED PURPOSE.—The
6 fact that a particular instrument is excluded pursu-
7 ant to paragraph (2) or (3) from the definition of
8 security for purposes of this section shall not be con-
9 strued as finding or implying that such instrument
10 is or is not a security for purposes of—

11 (A) Federal securities law;

12 (B) section 5136 of the Revised Statutes
13 of the United States; or

14 (C) sections 20, 21, or 32 of the Banking
15 Act of 1933 (12 U.S.C. 377, 378, and 78).

16 (5) RESERVATION OF AUTHORITY TO CHARTER-
17 ING AUTHORITY.—A determination by the appro-
18 priate Federal banking agency under this subsection
19 shall not be construed in any way as authorizing a
20 bank to provide any product or service that the bank
21 is not otherwise authorized to provide under relevant
22 law governing the activities and powers of the bank.

23 (6) CONSULTATION WITH COMMISSION.—

24 (A) NOTICE AND CONSULTATION RE-
25 QUIRED.—In determining whether to exempt a

1 banking product pursuant to paragraph (3), the
2 appropriate Federal banking agency shall pro-
3 vide written notice to, consult with, and con-
4 sider the views of the Securities and Exchange
5 Commission.

6 (B) RESPONSE AND PUBLICATION.—If the
7 Securities and Exchange Commission comments
8 in writing on a proposed determination of the
9 appropriate Federal banking agency, such agen-
10 cy shall—

11 (i) respond in writing to such written
12 comment; and

13 (ii) at the request of such Commis-
14 sion, publish such comment and response
15 in the Federal Register at the time the de-
16 termination becomes effective.

17 (7) APPROVAL OF NATIONAL FINANCIAL SERV-
18 ICES COMMITTEE.—

19 (A) IN GENERAL.—An appropriate Federal
20 banking agency may not issue a regulation or
21 order pursuant to paragraph (3) without the
22 approval of the National Financial Services
23 Committee.

24 (B) UNIFORM STANDARDS.—Any regula-
25 tion or order subject to the approval of the Na-

1 tional Financial Services Committee under
2 paragraph (1) shall be identical for each appro-
3 priate Federal banking agency, except as other-
4 wise permitted by such Committee.

5 **SEC. 122. SAFEGUARDS RELATING TO SECURITIES AFFILI-**
6 **ATES.**

7 (a) **EXTENSIONS OF CREDIT AND ASSET PURCHASES**
8 **RESTRICTED.—**

9 (1) **IN GENERAL.—**No depository institution af-
10 affiliated with a securities affiliate shall, directly or in-
11 directly, do any of the following:

12 (A) Extend credit in any manner to the se-
13 curities affiliate.

14 (B) Issue a guarantee, acceptance, or let-
15 ter of credit, including an endorsement or a
16 standby letter of credit, for the benefit of the
17 securities affiliate.

18 (C) Except as provided in paragraph (3),
19 purchase for its own account, or for the account
20 of any subsidiary of such institution, financial
21 assets of the securities affiliate.

22 (2) **EXCEPTION FOR CLEARING SECURITIES.—**
23 Paragraph (1)(A) shall not apply with respect to an
24 extension of credit by a well capitalized depository

1 institution to acquire or sell securities if the follow-
2 ing conditions are met:

3 (A) The extension of credit is incidental to
4 clearing transactions in those securities through
5 the depository institution.

6 (B) Both the principal of and the interest
7 on the extension of credit are fully secured by
8 those securities.

9 (C) Either—

10 (i) the extension of credit is to be re-
11 paid before the close of business on the
12 same business day; or

13 (ii) all of the following conditions are
14 satisfied:

15 (I) The securities cannot, in the
16 ordinary course of business, be cleared
17 on that business day.

18 (II) The extension of credit is to
19 be repaid before the close of business
20 on the next business day.

21 (III) Extensions of credit subject
22 to this clause, when aggregated with
23 all other covered transactions between
24 the institution and all affiliated secu-
25 rities affiliates do not exceed 10 per-

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

3 (D) Either—

4 (i) the securities are securities ex-
5 pressly authorized by section 5136 of the
6 Revised Statutes of the United States as
7 permissible for a national bank to under-
8 write or deal in; or

9 (ii) the appropriate Federal banking
10 agency for the depository institution per-
11 mits transactions under this paragraph in
12 securities not described in clause (i) and
13 the securities affiliate provides the deposi-
14 tory institution with such additional secu-
15 rity or other assurance of performance, if
16 any, as such agency shall require to pre-
17 vent such transactions from posing any ap-
18 preciable risk to the institution.

19 (3) EXCEPTIONS FOR CERTAIN SECURITIES
20 PURCHASED FOR A DEPOSITORY INSTITUTION'S OWN
21 ACCOUNT.—Paragraph (1)(C) shall not apply with
22 respect to purchases at the current market value
23 (based on reliable and regularly available price
24 quotations, including those readily available on elec-
25 tronic quotation systems) of—

1 (A) securities expressly authorized by sec-
2 tion 5136 of the Revised Statutes of the United
3 States as permissible for a national bank to un-
4 derwrite or deal in; or

5 (B) securities that—

6 (i) the securities affiliate has been
7 marking to market daily; and

8 (ii) are rated investment grade by at
9 least one nationally recognized statistically
10 rating organization.

11 (4) OTHER EXCEPTIONS.—The appropriate
12 Federal banking agency may make exceptions to
13 paragraph (1) for well capitalized depository institu-
14 tions it regulates if—

15 (A) the transaction is fully secured in ac-
16 cordance with section 23A(c) of the Federal Re-
17 serve Act; and

18 (B) the aggregate amount of covered
19 transactions between the institution and all se-
20 curities affiliates of the financial services hold-
21 ing company, excluding transactions permitted
22 under paragraph (2)(C)(i) or (3)(A), does not
23 exceed 10 percent of the institution's capital
24 stock and surplus.

25 (b) CREDIT ENHANCEMENT RESTRICTED.—

1 (1) IN GENERAL.—No depository institution af-
2 filiated with a securities affiliate shall, directly or in-
3 directly, extend credit, or issue or enter into a stand-
4 by letter of credit, asset purchase agreement, indem-
5 nity, guarantee, insurance, or other facility, for the
6 purpose of enhancing the marketability of a securi-
7 ties issue underwritten by the securities affiliate.

8 (2) DEFINITION OF TERM BY BOARD.—The ap-
9 propriate Federal banking agency shall prescribe a
10 definition for the term “for the purpose of enhanc-
11 ing the marketability of a securities issue” for pur-
12 pose of paragraph (1).

13 (3) EXCEPTION FOR BANK ELIGIBLE SECURI-
14 TIES.—Paragraph (1) shall not apply with regard to
15 securities expressly authorized by section 5136 of
16 the Revised Statutes of the United States as permis-
17 sible for a national bank to underwrite or deal in.

18 (4) APPLICATION TO WELL CAPITALIZED DE-
19 POSITORY INSTITUTIONS.—

20 (A) IN GENERAL.—A well capitalized de-
21 pository institution may engage in a transaction
22 described in paragraph (1) if—

23 (i) the depository institution has
24 adopted appropriate limits on exposure on
25 a consolidated basis to any single customer

1 whose securities are underwritten by the
2 securities affiliate; and

3 (ii) the institution and its securities
4 affiliate have adopted appropriate proce-
5 dures, including maintenance of necessary
6 documentary records, to assure that any
7 such extension of credit, standby letter of
8 credit, asset purchase agreement indem-
9 nity, guarantee, insurance or other facility,
10 is on arm's length basis.

11 (B) ARM'S LENGTH TRANSACTION DE-
12 SCRIBED.—An extension of credit may be con-
13 sidered to be on arm's length basis if the terms
14 and conditions are substantially the same as
15 those prevailing at the time for comparable
16 transactions involving securities that are not
17 underwritten by the securities affiliate.

18 (C) COMPLIANCE WITH PARAGRAPH (1).—
19 The appropriate Federal banking agency may
20 require, by regulation or order, compliance with
21 paragraph (1) by well capitalized depository in-
22 stitutions exempt under this paragraph in order
23 to achieve any purpose specified in subsection
24 (k).

1 (c) PROHIBITION OF FINANCING PURCHASE OF SE-
2 CURITY BEING UNDERWRITTEN.—

3 (1) IN GENERAL.—No financial services holding
4 company or subsidiary of a financial services holding
5 company (other than a securities affiliate) shall
6 knowingly extend or arrange for the extension of
7 credit, directly or indirectly, secured by or for the
8 purpose of purchasing any security while, or for 30
9 days after, that security is the subject of a distribu-
10 tion in which a securities affiliate of that financial
11 services holding company participates as an under-
12 writer or a member of a selling group.

13 (2) RELIANCE ON ACKNOWLEDGEMENT.—For
14 purposes of paragraph (1), a financial services hold-
15 ing company or subsidiary may rely on an express
16 written acknowledgement signed by the borrower
17 that the credit is not secured by or for the purpose
18 of purchasing a security described in this subpara-
19 graph.

20 (3) APPLICATION TO BANK ELIGIBLE SECURI-
21 TIES.—Paragraph (1) shall not apply with regard to
22 extensions of credit if the securities are securities ex-
23 pressly authorized by section 5136 of the Revised
24 Statutes of the United States as permissible for a
25 national bank to underwrite or deal in.

1 (4) APPLICATION TO WELL CAPITALIZED DE-
2 POSITORY INSTITUTIONS.—The appropriate Federal
3 banking agency may make exceptions, by regulation
4 or order, to paragraph (1) for an extension of credit,
5 after consultation with and considering the views of
6 the Securities and Exchange Commission.

7 (5) CONSISTENCY WITH THE FEDERAL SECURI-
8 TIES LAWS.—No provision of this subsection shall be
9 construed as permitting a securities affiliate to ex-
10 tend or maintain credit, or arrange for an extension
11 of credit, except in compliance with applicable provi-
12 sions of the Securities Exchange Act of 1934 and
13 the regulations prescribed and interpretations issued
14 under such Act.

15 (d) RESTRICTION ON EXTENDING CREDIT TO MAKE
16 PAYMENTS ON SECURITIES.—

17 (1) IN GENERAL.—No depository institution af-
18 filiated with a securities affiliate shall, directly or in-
19 directly, extend credit to an issuer of securities un-
20 derwritten by such securities affiliate for the purpose
21 of paying the principal of those securities or interest
22 or dividends on those securities.

23 (2) EXCEPTIONS FOR CERTAIN EXTENSIONS OF
24 CREDIT.—Paragraph (1) shall not apply to an exten-
25 sion of credit for a documented purpose (other than

1 paying principal, interest, or dividends) if the tim-
2 ing, maturity, and other terms of the credit, taken
3 as a whole, are substantially different from those of
4 the underwritten securities.

5 (3) EXCEPTIONS FOR BANK ELIGIBLE SECURI-
6 TIES.—Paragraph (1) shall not apply with respect to
7 any security expressly authorized by section 5136 of
8 the Revised Statutes of the United States as permis-
9 sible for a national bank to underwrite or deal in.

10 (4) APPLICATION TO WELL CAPITALIZED DE-
11 POSITORY INSTITUTIONS.—

12 (A) IN GENERAL.—Paragraph (1) shall not
13 apply with respect to well capitalized depository
14 institutions if—

15 (i) the depository institution has
16 adopted appropriate limits on exposure on
17 a consolidated basis to any single customer
18 whose securities are underwritten by the
19 securities affiliate; and

20 (ii) the depository institution has
21 adopted appropriate procedures, including
22 maintenance of necessary documentary
23 records, to assure that any extension of
24 credit by the depository institution to an
25 issuer for the purpose of paying the prin-

1 ciproal, interest or dividends on securities
2 underwritten by the securities affiliate is
3 on an arm's length basis.

4 (B) ARM'S LENGTH TRANSACTION DE-
5 SCRIBED.—An extension of credit may be con-
6 sidered to have been made on an arm's length
7 basis if the terms and conditions are substan-
8 tially the same as those prevailing at the time
9 for comparable transactions with issuers whose
10 securities are not underwritten by the securities
11 affiliate.

12 (C) COMPLIANCE WITH SUBPARAGRAPH
13 (A).—The appropriate Federal banking agency
14 may require by regulation or order, compliance
15 with paragraph (1) by well capitalized depository
16 institutions exempt under this paragraph
17 in order to achieve any purpose specified in
18 subsection (k).

19 (e) COMMON DIRECTORS AND SENIOR EXECUTIVE
20 OFFICERS.—

21 (1) IN GENERAL.—The appropriate Federal
22 banking agency shall, by regulation or order, pre-
23 scribe the circumstances under which directors and
24 senior executive officers of a securities affiliate may

1 serve at the same time as directors or senior execu-
2 tive officers of any affiliated depository institutions.

3 (2) STANDARDS.—The appropriate Federal
4 banking agency, in issuing any regulation or order
5 pursuant to paragraph (1), shall consider appro-
6 priate factors including—

7 (A) any burdens imposed by restrictions on
8 director and senior executive officer interlocks;

9 (B) the safety and soundness of depository
10 institutions and securities affiliates;

11 (C) unfair competition in securities activi-
12 ties;

13 (D) improper exchange of customer infor-
14 mation; or

15 (E) harm to customers of securities affili-
16 ates or depository institutions that could rea-
17 sonably result from director and senior officer
18 interlocks.

19 (3) EXCEPTION FOR SMALL FINANCIAL SERV-
20 ICES HOLDING COMPANIES.—

21 (A) IN GENERAL.—Notwithstanding para-
22 graph (1), a director or senior executive officer
23 of a securities affiliate may serve at the same
24 time as a director or senior executive officer of
25 an affiliated depository institution if that insti-

1 tution and all affiliated depository institutions
2 have, in the aggregate, total assets of not more
3 than \$500,000,000.

4 (B) INFLATION ADJUSTMENT.—The dollar
5 limitation contained in subparagraph (A) shall
6 be adjusted annually after December 31, 1995,
7 by the annual percentage increase in the
8 Consumer Price Index for Urban Wage Earners
9 and Clerical Workers published by the Bureau
10 of Labor Statistics.

11 (4) EXCEPTION FOR CERTAIN FOREIGN AFFILI-
12 ATES.—Paragraph (1) shall not prohibit a director
13 or senior executive officer of a securities affiliate
14 from serving at the same time as a director or senior
15 executive officer of an entity which—

16 (A) is organized under section 25 or 25A
17 of the Federal Reserve Act;

18 (B) is an affiliate of such securities affili-
19 ate; and

20 (C) principally engages in business outside
21 the United States.

22 (f) DISCLOSURE REQUIRED BY SECURITIES AFFILI-
23 ATE.—

24 (1) IN GENERAL.—Pursuant to rules adopted
25 by the Securities and Exchange Commission in con-

1 sultation with the appropriate Federal banking agen-
2 cies, a securities affiliate shall conspicuously disclose
3 in writing to each of its customers at the time a se-
4 curities account is opened, or within a reasonable
5 time thereafter if it is not practicable to provide
6 such notice at that time, that—

7 (A) securities sold, offered, or rec-
8 ommended by the securities affiliate—

9 (i) are not deposits;

10 (ii) are not insured by the Federal
11 Deposit Insurance Corporation;

12 (iii) are not guaranteed by an affili-
13 ated insured depository institution;

14 (iv) are not otherwise an obligation of
15 an insured depository institution (unless
16 such is the case); and

17 (v) with regard to any product that
18 includes any investment component, are
19 subject to investment risks including pos-
20 sible loss of principal invested;

21 (B) the securities affiliate is not an in-
22 sured depository institution, and is a corpora-
23 tion separate from any insured depository insti-
24 tution; and

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

5 (2) FORM OF DISCLOSURE.—The disclosures re-
6 quired by paragraph (1) shall be made in clear and
7 concise language that—

8 (A) is readily comprehensible to customers
9 of the securities affiliate; and

10 (B) is designed to promote customer un-
11 derstanding that uninsured investment products
12 are not deposits insured by the Federal Deposit
13 Insurance Corporation.

14 (3) DISCLOSURE AUTHORITY.—Subject to para-
15 graph (2), the Securities and Exchange Commission,
16 after consultation with the appropriate Federal
17 banking agencies may, in its discretion, prescribe
18 disclosures in addition to the disclosures prescribed
19 by paragraph (1).

20 (g) DISCLOSURE REQUIRED BY DEPOSITORY INSTI-
21 TUTIONS.—

22 (1) IN GENERAL.—Pursuant to rules adopted
23 jointly by the appropriate Federal banking agencies
24 in consultation with the Securities and Exchange
25 Commission, no insured depository institution shall

1 knowingly express any opinion on the value of, or
2 the advisability of purchasing or selling, nonbanking
3 products (as defined by the appropriate Federal
4 banking agency) sold by the insured depository insti-
5 tution or any affiliate of an insured depository insti-
6 tution unless the insured depository institution con-
7 spicuously discloses in writing to the customer
8 that—

9 (A) the insured depository institution or
10 affiliate (whichever is applicable) is selling the
11 nonbanking product and has a financial interest
12 in the transaction (if such is the case);

13 (B) the nonbanking products—

14 (i) are not deposits;

15 (ii) are not insured by the Federal
16 Deposit Insurance Corporation;

17 (iii) are not guaranteed by the institu-
18 tion or any other affiliated insured depository
19 institution;

20 (iv) are not otherwise an obligation of
21 an insured depository institution (unless
22 such is the case); and

23 (v) with regard to any nonbanking
24 product that includes any investment com-
25 ponent, are subject to investment risks in-

1 cluding possible loss of principal invested;
2 and

3 (C) an affiliate, if involved, is not an in-
4 sured depository institution (unless such is the
5 case), and is a corporation separate from any
6 insured depository institution (unless such is
7 not the case).

8 (2) FORM OF DISCLOSURE.—The disclosures re-
9 quired by paragraph (1) shall be made in clear and
10 concise language that—

11 (A) is readily comprehensible to customers
12 of the insured depository institution, and

13 (B) is designed to promote customer un-
14 derstanding that nonbanking products are not
15 deposits insured by the Federal Deposit Insur-
16 ance Corporation.

17 (3) CUSTOMER ACKNOWLEDGMENT OF DISCLO-
18 SURE.—

19 (A) IN GENERAL.—Whenever any insured
20 depository institution or securities affiliate
21 opens an account for the purpose of selling a
22 nondeposit investment product or products to a
23 customer, such insured depository institution or
24 securities affiliate, as the case may be, shall ob-
25 tain a one-time acknowledgment of receipt by

1 the customer of such disclosures, including the
2 date of receipt with the customer's name, ad-
3 dress, and the account number.

4 (B) ONE-TIME ACKNOWLEDGMENT.—The
5 one-time written acknowledgment required by
6 subparagraph (A) and obtained with respect to
7 one account from a customer shall satisfy the
8 requirement with respect to all other investment
9 accounts opened by that customer at that de-
10 pository institution or securities affiliate.

11 (C) TIMING OF ACKNOWLEDGMENT.—The
12 one-time acknowledgment required by subpara-
13 graph (A) must be obtained within a reasonable
14 time after the account is opened.

15 (D) SPECIAL RULE FOR ACCREDITED IN-
16 VESTORS.—This paragraph shall not apply to
17 any customer who is, or meets the requirements
18 for, an accredited investor (as defined in section
19 2(15) of the Securities Act of 1933).

20 (4) DISCLOSURE AUTHORITY.—Subject to para-
21 graph (2), the appropriate Federal banking agencies
22 may jointly prescribe, after consultation with the Se-
23 curities and Exchange Commission, disclosures in
24 addition to the disclosures required by paragraph
25 (1).

1 (h) UNDERWRITING SECURITIES REPRESENTING OB-
2 LIGATIONS ORIGINATED BY AFFILIATE RESTRICTED.—A
3 securities affiliate shall not underwrite securities secured
4 by or representing an interest in mortgages or other obli-
5 gations originated or purchased by an affiliated depository
6 institution or subsidiary of such an institution—

7 (1) unless those securities—

8 (A) are rated by at least one unaffiliated,
9 nationally recognized statistical rating organiza-
10 tion;

11 (B) are issued or guaranteed by the Fed-
12 eral Home Loan Mortgage Corporation, the
13 Federal National Mortgage Association, or the
14 Government National Mortgage Association; or

15 (C) represent interests in securities de-
16 scribed in subparagraph (B); or

17 (2) except as permitted by the appropriate Fed-
18 eral banking agency.

19 (i) RECIPROCAL ARRANGEMENTS PROHIBITED.—No
20 financial services holding company and no subsidiary of
21 a financial services holding company may enter into any
22 agreement, understanding, or other arrangement under
23 which—

24 (1) One financial services holding company (or
25 subsidiary of that financial services holding com-

1 pany) agrees to engage in a transaction with, or on
2 behalf of, another financial services holding company
3 (or subsidiary of that financial services holding com-
4 pany), in exchange for

5 (2) the agreement of the second financial serv-
6 ices holding company referred to in paragraph (1)
7 (or a subsidiary of that financial services holding
8 company) to engage in any transaction with, or on
9 behalf of, the first financial services holding com-
10 pany referred to in such paragraph (or any subsidi-
11 ary of that financial services holding company), for
12 the purpose of evading any requirement or restric-
13 tion of Federal law on transactions between, or for
14 the benefit of, affiliates of financial services holding
15 companies.

16 (j) SAFEGUARDS APPLY TO CERTAIN SUBSIDI-
17 ARIES.—Except as provided in this section—

18 (1) SECURITIES AFFILIATE.—No subsidiary of
19 a securities affiliate may do anything that this sec-
20 tion prohibits the securities affiliate from doing.

21 (2) DEPOSITORY INSTITUTION.—No subsidiary
22 of a depository institution may do anything that this
23 subsection prohibits the depository institution from
24 doing.

1 (k) AUTHORITY TO MODIFY AND IMPOSE ADDI-
2 TIONAL SAFEGUARDS; INTERPRETIVE AUTHORITY.—

3 (1) IN GENERAL.—The appropriate Federal
4 banking agency may, by regulation or order—

5 (A) adopt additional limitations, restric-
6 tions or conditions on relationships or trans-
7 actions among depository institutions, their af-
8 filiates, and their customers; and

9 (B) make any modification to any limita-
10 tion, restriction, or condition imposed under
11 this section on relationships or transactions
12 among depository institutions, the affiliates of
13 depository institutions, and the customers of
14 such institutions or affiliates, including modi-
15 fications in addition to those expressly provided
16 for in this section.

17 (2) STANDARDS.—The appropriate Federal
18 banking agency may not exercise authority under
19 paragraph (1) unless such agency finds that such
20 action is consistent with the purposes of this act, in-
21 cluding—

22 (A) the avoidance of any significant risk to
23 the safety and soundness of depository institu-
24 tions or the Federal deposit insurance funds;

1 (B) the enhancement of the financial sta-
2 bility of financial services holding companies;

3 (C) the prevention of the subsidization of
4 securities affiliates by depository institutions;

5 (D) the avoidance of conflicts of interest or
6 other abuses; and

7 (E) the application of the principle of na-
8 tional treatment and equality of competitive op-
9 portunity between securities affiliates owned or
10 controlled by domestic financial services holding
11 companies and securities affiliates owned or
12 controlled by foreign banks operating in the
13 United States.

14 (3) BIENNIAL REVIEW.—Beginning 2 years
15 after the effective date of the Depository Institution
16 Affiliation Act, the appropriate Federal banking
17 agency shall, on a biennial basis—

18 (A) review all restrictions established pur-
19 suant to paragraph (1) to determine whether
20 any such restrictions are required any longer to
21 carry out the purposes of this Act; and

22 (B) modify or eliminate any such restric-
23 tion that such agency determines is no longer
24 required to carry out the purposes of this Act.

25 (l) COMPLIANCE PROGRAMS REQUIRED.—

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

4 (A) sharing information, including reports
5 of examinations, concerning compliance with
6 this section or the amendments made by title
7 III of the Depository Institution Affiliation and
8 Thrift Charter Conversion Act, by—

9 (i) brokers, dealers, investment advis-
10 ers, or investment companies that are reg-
11 istered with the Securities and Exchange
12 Commission and that are affiliated with
13 depository institutions, or are separately
14 identifiable departments or divisions of de-
15 pository institutions registered as invest-
16 ment advisers; and

17 (ii) depository institutions and their
18 affiliates;

19 (B) enforcing compliance with this section
20 and the amendments made by this subtitle and
21 paragraphs (4) and (5) of section 3(a) of the
22 Securities Exchange Act of 1934 by entities
23 under its supervision; and

1 (C) responding to any complaints from
2 customers about inappropriate cross-marketing
3 of securities products or inadequate disclosure.

4 (2) DATA COLLECTION.—

5 (A) IN GENERAL.—The appropriate Fed-
6 eral banking agencies, after consultation with
7 and consideration of the views of the Securities
8 and Exchange Commission, shall (except as oth-
9 erwise provided by the appropriate Federal
10 banking agency after such consultation) require
11 any depository institution that has effected se-
12 curities transactions pursuant to any exception
13 enumerated in paragraphs (4)(C) and (5)(D) of
14 section 3(a) of the Securities Exchange Act of
15 1934 to identify the exceptions relied upon and
16 to submit such information necessary to mon-
17 itor compliance under such paragraphs.

18 (B) COMMISSION ACCESS.—The appro-
19 priate Federal banking agency shall make any
20 information referred to in subparagraph (A)
21 available to the Securities and Exchange Com-
22 mission, upon the request of the Commission.

23 (C) COMPLIANCE.—In implementing the
24 provisions of this paragraph, the appropriate
25 Federal banking agencies shall ensure that any

1 information requests to depository institutions
2 take into account the size and activities of the
3 institutions and do not cause undue reporting
4 burdens.

5 (3) COMMISSION'S ENFORCEMENT AUTHOR-
6 ITY.—Without limiting in any way the authority of
7 the appropriate Federal banking agencies under this
8 section, the Securities and Exchange Commission
9 shall have the authority to enforce provision of this
10 section against a securities affiliate as if such provi-
11 sion were a provision of the Securities Exchange Act
12 of 1934 to the extent that the provision applies with
13 respect to the conduct or activities of the securities
14 affiliate.

15 (4) EXAMINATION REPORTS.—

16 (A) IN GENERAL.—The appropriate Fed-
17 eral banking agencies shall, to the fullest extent
18 possible, use the reports of examination of any
19 broker, dealer, investment adviser, or invest-
20 ment company made by or on behalf of the Se-
21 curities and Exchange Commission and reports
22 made by or on behalf of a registered securities
23 association or national securities exchange, and
24 shall defer to such examinations for compliance
25 with the Federal securities laws.

1 (B) COMPLIANCE WITH SECTION 122 SAFE-
2 GUARDS.—The appropriate Federal banking
3 agencies shall—

4 (i) to the fullest extent possible, use
5 the reports of examination of any securi-
6 ties affiliate made by the appropriate Fed-
7 eral banking agency for such affiliate; and

8 (ii) defer to such examinations for
9 compliance with the provisions of this sec-
10 tion.

11 (5) INTERPRETATIONS OF THE FEDERAL SECU-
12 RITIES LAWS.—The appropriate Federal banking
13 agencies shall defer to the Securities and Exchange
14 Commission regarding all interpretations and en-
15 forcement of the Federal securities laws relating to
16 the application of the Federal securities laws to the
17 activities and conduct of brokers, dealers, investment
18 advisers, and investment companies.

19 (6) NOTICE OF CERTAIN ACTIONS BY SEC.—
20 The Securities and Exchange Commission shall give
21 notice to the appropriate Federal banking agency
22 upon the commencement of any disciplinary or law
23 enforcement proceedings by the Commission and a
24 copy of any order entered by the Commission
25 against—

1 (A) any broker, dealer, or investment ad-
2 viser that—

3 (i) is registered with the Securities
4 and Exchange Commission; and

5 (ii) is affiliated with, or is a sepa-
6 rately identifiable department or division
7 of, a depository institution;

8 (B) any investment company registered
9 with the Securities and Exchange Commission
10 that is an affiliate of or is advised by an invest-
11 ment adviser affiliated with a depository institu-
12 tion or by a separately identifiable department
13 or division of a depository institution that is a
14 registered investment adviser; or

15 (C) any financial services holding company,
16 depository institution, or subsidiary of such
17 company or institution, if the proposed action
18 relates to this section or the amendments made
19 by title III of the Depository Institution Affili-
20 ation and Thrift Charter Conversion Act.

21 (7) NOTICE OF CERTAIN ACTIONS BY APPRO-
22 PRIATE FEDERAL BANKING AGENCIES.—Upon the
23 commencement of any disciplinary or law enforce-
24 ment proceedings to enforce the provisions of this
25 section by an appropriate Federal banking agency

1 against any broker, dealer, investment adviser, or in-
2 vestment company that is registered under the Fed-
3 eral securities laws and is affiliated with a deposi-
4 tory institution or is a separately identifiable depart-
5 ment or division of a depository institution, the ap-
6 propriate Federal banking agency shall give notice to
7 the Securities and Exchange Commission of the pro-
8 posed action.

9 (8) IMMEDIATE ACTION ALLOWED BEFORE NO-
10 TICE.—The notice required under paragraph (6) or
11 (7) may be provided promptly after action by the Se-
12 curities and Exchange Commission or the appro-
13 priate Federal banking agency, if—

14 (A) the Commission determines that the
15 protection of investors requires immediate ac-
16 tion by the Commission and prior notice under
17 paragraph (6) is not practical under the cir-
18 cumstances; or

19 (B) the appropriate Federal banking agen-
20 cy determines that concerns for the safety and
21 soundness of a depository institution or its affil-
22 iate require immediate action by the agency and
23 prior notice under (7) is not practical under the
24 circumstances.

1 (9) COORDINATED ENFORCEMENT ACTION.—

2 The Securities and Exchange Commission and the
3 appropriate Federal banking agencies shall, to the
4 extent practicable, coordinate supervisory actions
5 based on applicable law where the actions are based
6 on the same or related events or practices.

7 (10) INVESTMENT COMPANIES NOT AFFILIATED
8 WITH A DEPOSITORY INSTITUTION.—The appro-
9 priate Federal banking agency shall not have au-
10 thority under this section or any other provision of
11 law to inspect or examine any investment company
12 registered under the Federal securities laws that is
13 not—

14 (A) affiliated with a depository institution;

15 or

16 (B) advised by an investment adviser affili-
17 ated with a depository institution or by a sepa-
18 rately identifiable department or division of a
19 depository institution that is a registered invest-
20 ment adviser.

21 (11) DEFINITION.—For purposes of this sub-
22 section, the term “Federal securities laws” means
23 the provisions of Federal law governing securities ac-
24 tivities that are within the jurisdiction of the Securi-
25 ties and Exchange Commission under the Securities

1 Act of 1933, the Securities Exchange Act of 1934,
2 the Investment Company Act of 1940, the Invest-
3 ment Advisers Act of 1940, and the Trust Indenture
4 Act of 1939.

5 (m) FOREIGN BANK FIREWALLS.—

6 (1) IN GENERAL.—A branch, agency, or com-
7 mercial lending company that is operated by a for-
8 eign bank that is a financial services holding com-
9 pany shall not be subject to the restrictions of any
10 subsection of this section, other than subsections (k)
11 and (l), if—

12 (A) such branch, agency, or commercial
13 lending company accepts no deposits in the
14 United States that are insured under the Fed-
15 eral Deposit Insurance Act;

16 (B) such foreign bank meets risk-based
17 capital standards comparable to the capital
18 standards required for a wholesale financial in-
19 stitution, giving due regard to the principle of
20 national treatment and equality of competitive
21 opportunity; and

22 (C) the home country of such foreign bank
23 satisfies the national treatment standard de-
24 scribed in Section 102(l)(3).

1 (2) APPLICABILITY OF SUBSECTION (K) TO FOR-
2 EIGN BANKS.—Any limitation, restriction, condition,
3 or modification adopted under subsection (k) may be
4 applied by the appropriate Federal banking agency
5 to—

6 (A) a foreign bank that operates a branch,
7 agency, or commercial lending company de-
8 scribed in paragraph (1) (and any company
9 that owns or controls such foreign bank);

10 (B) any branch, agency or commercial
11 lending company operated by such foreign bank
12 in the United States; or

13 (C) any other affiliate of such foreign bank
14 in the United States; if such limitation, restric-
15 tion, condition, or modification is applied by
16 regulation or order of general applicability
17 under subsection (n)(1) to wholesale financial
18 institutions and their securities affiliates, sub-
19 ject to such modifications, conditions, or exemp-
20 tions as the appropriate Federal banking agen-
21 cy of such wholesale financial institution deems
22 appropriate, giving due regard to the principle
23 of national treatment and equality of competi-
24 tive opportunity.

1 (n) FIREWALLS APPLICABLE TO WHOLESALE FI-
2 NANCIAL INSTITUTIONS AND NATIONAL MARKET LEND-
3 ING INSTITUTIONS.—

4 (1) IN GENERAL.—A wholesale financial institu-
5 tion, and transactions between a wholesale financial
6 institution and its securities affiliate, shall not be
7 subject to the provisions of this section, except that
8 a wholesale financial institution and its securities af-
9 filiate shall be subject to subsections (k) and (l) in
10 the same manner and to the same extent such sub-
11 sections would apply if the wholesale financial insti-
12 tution were an insured depository institution.

13 (2) PROHIBITION ON EVASION OF FIREWALLS
14 BY AFFILIATED INSURED DEPOSITORY INSTITU-
15 TIONS.—An insured depository institution that is af-
16 filiated with a wholesale financial institution shall
17 not evade any requirement or restriction imposed by
18 this section by engaging in transactions or arrange-
19 ments with its affiliated wholesale financial institu-
20 tion.

21 (3) SIMILAR TREATMENT FOR NATIONAL MAR-
22 KET LENDING INSTITUTIONS.—A national market
23 lending institution, as defined in section 5158 of the
24 Revised Statutes of the United States, that is con-
25 trolled by a financial services holding company shall

1 be subject to this section in the same manner and
2 to the same extent as a wholesale financial institu-
3 tion.

4 (o) AUTHORITY OF NATIONAL FINANCIAL SERVICES
5 COMMITTEE.—

6 (1) IN GENERAL.—Except for rules issued pur-
7 suant to subsections (f) or (g), no rule, regulation,
8 or order authorized or required by this section shall
9 be issued without the approval of the National Fi-
10 nancial Services Committee.

11 (2) UNIFORM STANDARDS.—Any regulation,
12 rule, or order subject to the approval of the National
13 Financial Services Committee under paragraph (1)
14 shall be identical for each appropriate Federal bank-
15 ing agency, except as otherwise permitted by such
16 Committee, taking into account existing require-
17 ments, coordination of new requirements, minimiza-
18 tion of duplicative regulation, the degree of uniform-
19 ity between regulation of securities affiliates or in-
20 vestment companies affiliated with or advised by de-
21 pository institutions or their affiliates and other
22 broker dealers or investment companies, and an
23 analysis of any of the benefits to be obtained by any
24 unique regulatory burdens placed on securities affli-

1 ates or investment companies affiliated with or ad-
2 vised by depository institutions or their affiliates.

3 **SEC. 123. JOINT STANDARDS RELATING TO RETAIL SALES**
4 **OF CERTAIN NONDEPOSIT INVESTMENT**
5 **PRODUCTS.**

6 (a) IN GENERAL.—The National Financial Services
7 Committee shall prescribe standards applicable to any de-
8 pository institution which—

9 (1) is not registered as a broker under the Se-
10 curities Exchange Act of 1934;

11 (2) effects retail transactions in securities, in-
12 cluding securities issued by an investment company
13 or annuities; and

14 (3) is affiliated with a financial services holding
15 company.

16 (b) SCOPE OF STANDARDS.—The standards required
17 under paragraph (1) with respect to retail sales of securi-
18 ties and annuities referred to in such paragraph shall, at
19 a minimum, establish requirements with respect to—

20 (1) sales practices;

21 (2) disclosures and advertising in connection
22 with transactions in such securities and annuities,
23 including—

24 (A) the content, form, and timing of any
25 such disclosure; and

1 (B) disclaimers concerning the noninsured
2 status of the security or annuity;

3 (3) the compensation of sales personnel with re-
4 spect to referrals or transactions;

5 (4) the training of and qualifications for per-
6 sonnel involved in such transactions, including train-
7 ing in making an accurate judgment about the suit-
8 ability of a particular investment product for a pro-
9 spective customer; and

10 (5) the setting in which and the circumstances
11 under which transactions may be effected, and refer-
12 rals made, by sales personnel with respect to such
13 securities and annuities.

14 (c) COMPARABILITY REQUIREMENT.—The standards
15 required under paragraph (1) shall be comparable to the
16 standards applicable to brokers and dealers registered
17 under the Securities Exchange Act of 1934 unless the Na-
18 tional Financial Services Committee determines that im-
19 plementation of comparable standards is not necessary or
20 appropriate for the maintenance of fair and orderly mar-
21 kets or the protection of investors or is not in the public
22 interest.

1 **Subtitle C—Insurance and Real Estate Devel-**
2 **opment Activities of Financial Services**
3 **Holding Companies**

4 **SEC. 131. LIMITATION ON INSURANCE UNDERWRITING AND**
5 **REAL ESTATE DEVELOPMENT ACTIVITIES OF**
6 **DEPOSITORY INSTITUTIONS.**

7 (a) IN GENERAL.—No depository institution that is
8 an affiliate of a financial services holding company shall
9 directly engage in—

10 (1) insurance underwriting (other than credit-
11 related insurance underwriting); or

12 (2) real estate investment or development, ex-
13 cept to the extent that such activities are performed
14 in relation to the premises of the depository institu-
15 tion or in connection with securing or collecting a
16 debt previously contracted in good faith, or would be
17 authorized for a national bank under section 5137
18 of the Revised Statutes of the United States or the
19 first section of the Act of September 28, 1962 (12
20 U.S.C. 92a).

21 (b) CONSTRUCTION.—Nothing contained in this sec-
22 tion shall be construed to prohibit or impede—

23 (1) a financial services holding company or any
24 affiliate of a financial services holding company

1 other than a depository institution from engaging in
2 any of the activities set forth in paragraph (1); or
3 (2) any employee of a depository institution
4 that is an affiliate of a financial services holding
5 company from promoting or advertising products or
6 services of an affiliate of such insured depository in-
7 stitution that engages in any of such activities.

8 **SEC. 132. ACQUISITION OF PREEXISTING INSURANCE AGEN-**
9 **CY BY BANK HOLDING COMPANIES.**

10 (a) IN GENERAL.— No bank holding company which
11 becomes a financial services holding company and no fi-
12 nancial services holding company which did not at any
13 time prior to becoming such a holding company, directly
14 or indirectly, engage in insurance agency activities other
15 than activities generally permissible for bank holding com-
16 panies under section 4(e)(8) of the Bank Holding Com-
17 pany Act of 1956, shall commence any insurance agency
18 activities not generally permissible for bank holding com-
19 panies under section 4(e)(8) of the Bank Holding Com-
20 pany Act of 1956, unless such activities are conducted
21 through an existing insurance agency acquired directly or
22 indirectly by such financial services holding company or
23 through any successor to such insurance agency, and un-
24 less such acquired insurance agency shall have been ac-

1 tively engaged in such insurance activities during the 2-
2 year period preceding the date of such acquisition.

3 **SEC. 133. EXISTING CONTRACTS.**

4 Nothing in sections 131 or 132 shall require the
5 breach of any contract entered into before the date of en-
6 actment of this Act.

7 **TITLE II—CONFORMING AMENDMENTS TO**
8 **OTHER LAWS FOR FINANCIAL SERV-**
9 **ICES HOLDING COMPANIES**

10 **SEC. 201. EXEMPTION OF FINANCIAL SERVICES HOLDING**
11 **COMPANIES FROM THE BANK HOLDING COM-**
12 **PANY ACT OF 1956.**

13 Section 2(c)(2) of the Bank Holding Company Act
14 of 1956 (12 U.S.C. 1841(c)(2)) is amended by adding at
15 the end the following new subparagraphs:

16 “(K) An insured bank, as defined in sec-
17 tion 3 of the Federal Deposit Insurance Act,
18 that is controlled by a financial services holding
19 company, as defined in section 102(a) of the
20 Financial Services Holding Company Act.

21 “(L) A wholesale financial institution, as
22 defined in section 102(i) of the Financial Serv-
23 ices Holding Company Act, that is controlled by
24 a financial services holding company, as defined
25 in section 102(a) of such Act.”.

1 **SEC. 202. AMENDMENT TO THE FEDERAL RESERVE ACT.**

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

6 **SEC. 203. AMENDMENTS TO THE BANKING ACT OF 1933.**

7 (a) SECTION 20.—Section 20 of the Banking Act of
8 1933 (12 U.S.C. 377) is amended by inserting after the
9 first undesignated paragraph the following: “The provi-
10 sions of this section shall not apply to a financial services
11 holding company or any of its affiliates, as such terms
12 are defined in section 102 of the Financial Services Hold-
13 ing Company Act.”

14 (b) SECTION 32.—Section 32 of the Banking Act of
15 1933 (12 U.S.C. 78) is amended by adding at the end
16 the following: “This section shall not apply so as to pro-
17 hibit an officer, director, or employee of a securities affili-
18 ate (as defined in section 102(r) of the Financial Services
19 Holding Company Act) from serving at the same time as
20 an officer, director, or employee of a member bank affili-
21 ated with the securities affiliate pursuant to such Act.
22 This section shall not apply so as to prohibit an officer,
23 director, or employee of an investment company registered
24 under the Investment Company Act of 1940 or an invest-
25 ment adviser registered under the Investment Advisers
26 Act of 1940 from serving at the same time as an officer,

1 director, or employee of a member bank that is affiliated
2 with a financial services holding company (as defined in
3 section 102(a) of the Financial Services Holding Company
4 Act).”.

5 **SEC. 204. AMENDMENTS TO THE FEDERAL DEPOSIT INSUR-**
6 **ANCE ACT.**

7 (a) SECTION 7.—Section 7(j) of the Federal Deposit
8 Insurance Act (12 U.S.C. 1817(j)) is amended—

9 (1) in paragraph (8), by striking subparagraph
10 (B) and inserting the following:

11 “(B) the term ‘control’ means the power,
12 directly or indirectly, to direct the management
13 or policies of a company, or to vote 25 percent
14 or more of any class of voting securities of a
15 company, except that no company shall be
16 deemed to control or to have acquired control of
17 any other company by virtue of its ownership of
18 the voting securities of such other company—

19 “(i) acquired or held in an agency,
20 trust, or other fiduciary capacity;

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

23 “(I) the underwriting of securi-
24 ties if such securities are held only for

1 such person of time as will permit the
2 sale thereof on a reasonable basis; or

3 “(II) market making, dealing,
4 trading, brokerage, or other securities-
5 related activities and not with a view
6 to acquiring, exercising, or transfer-
7 ring any control over the management
8 or policies of such company; or

9 “(iii) acquired in securing or collect-
10 ing a debt previously contracted in good
11 faith, until 2 years after the date of acqui-
12 sition, except that no company formed for
13 the sole purpose of participating in a proxy
14 solicitation is in control of a company by
15 virtue of its acquisition of voting rights
16 with respect to shares of such company ac-
17 quired in the course of such solicitation.”;
18 and

19 (2) by adding at the end the following new
20 paragraph:

21 “(19) DEFINITION.—For purposes of this sub-
22 section, the term ‘insured depository institution’
23 shall include—

24 “(A) any ‘bank holding company’, as that
25 term is defined in section 2 of the Bank Hold-

1 ing Company Act of 1956, which has control of
2 any insured bank (as defined in that section 2),
3 and the appropriate Federal banking agency in
4 the case of a bank holding company shall be the
5 Board of Governors of the Federal Reserve Sys-
6 tem; and

7 “(B) any ‘financial services holding com-
8 pany’, as that term is defined in section 102(a)
9 of the Financial Services Holding Company
10 Act, which has control of any such insured
11 bank, and the appropriate Federal banking
12 agency in the case of a financial services hold-
13 ing company shall be the appropriate Federal
14 banking agency of the lead depository institu-
15 tion (as defined in section 102(h) of the Finan-
16 cial Services Holding Company Act) of the fi-
17 nancial services holding company.

18 (b) SECTION 18.—Section 18(j)(1)(A) of the Federal
19 Deposit Insurance Act (12 U.S.C. 1828(j)(1)(A)) is
20 amended by striking “Sections” and inserting “Subject to
21 section 104(a)(2) of the Financial Services Holding Com-
22 pany Act, sections”.

23 (c) APPROPRIATE FEDERAL BANKING AGENCY.—

24 (1) STATE MEMBER WHOLESALE FINANCIAL IN-
25 STITUTIONS.—Section 3(g)(2)(A) of the Federal De-

1 posit Insurance Act (12 U.S.C. 1813 (q)(2)(A)) is
2 amended to read as follows:

3 “(A) any State member insured bank (ex-
4 cept a District bank) and State member whole-
5 sale financial institution as authorized pursuant
6 to section 9B of the Federal Reserve Act.”.

7 (2) NATIONAL WHOLESALE FINANCIAL INSTI-
8 TUTION.—Section 3(g)(1) of the Federal Deposit In-
9 surance Act (12 U.S.C. 1813(q)(1)) is amended by
10 inserting “(including any national wholesale finan-
11 cial institution and any national market funded lend-
12 ing institution, as authorized pursuant to sections
13 5136B and 5158 of the Revised Statutes of the
14 United States)”.

15 (d) SECURITIES COMPANY AFFILIATIONS OF FDIC-
16 INSURED BANKS.—Section 18 of the Federal Deposit In-
17 surance Act (12 U.S.C. 1828) is amended by adding at
18 the end thereof the following new subsection:

19 “(s) SECURITIES AFFILIATIONS OF BANKS.—

20 “(1) IN GENERAL.—A bank shall not be an af-
21 filiate of any company that, directly or indirectly,
22 acts as an underwriter or dealer of any security,
23 other than—

24 “(A) a bank;

1 “(B) a securities affiliate as defined in sec-
2 tion 102(r) of the Financial Services Holding
3 Company Act; or

4 “(C) a company that underwrites or deals
5 only in securities that are described in section
6 121 of the Depository Institution Affiliation
7 and Thrift Charter Conversion Act.

8 “(2) EXCEPTIONS.—

9 “(A) CERTAIN BANKS NOT INCLUDED.—
10 For purposes of this subsection, the term ‘bank’
11 does not include—

12 “(i) an insured bank described in sub-
13 paragraph (D), (F), or (H) of section
14 2(c)(2) of the Bank Holding Company Act
15 of 1956; and

16 “(ii) a Federal branch or an insured
17 branch (as defined in section 3 of the Fed-
18 eral Deposit Insurance Act).

19 “(B) AFFILIATIONS WITH EDGE ACT AND
20 AGREEMENT CORPORATIONS.—Paragraph (1)
21 shall not apply with respect to the affiliation of
22 a bank with a company held pursuant to section
23 25 or 25A of the Federal Reserve Act or section
24 4(c)(13) of the Bank Holding Company Act of
25 1956.

1 “(3) GRANDFATHER PROVISION.—This sub-
2 section shall not apply with respect to—

3 “(A) an affiliation between a bank and a
4 company that underwrites or deals in securities,
5 provided that—

6 “(i) the affiliation is authorized pur-
7 suant to an order issued by the Board of
8 Governors of the Federal Reserved System
9 under section 4(c)(8) of the Bank Holding
10 Company Act of 1956; and

11 “(ii) such company complies with the
12 limitations, restrictions, and conditions, in-
13 cluding the limitation on the revenue that
14 may be derived from underwriting or deal-
15 ing activities, that were generally applica-
16 ble to companies that, as of January 1,
17 1996, were subject to orders described in
18 clause (i);

19 “(B) any other lawful affiliation that ex-
20 isted on January 1, 1996; or

21 “(C) any new affiliation by an insured that
22 has an affiliation that would be prohibited if the
23 affiliation were not covered by subparagraph
24 (B).

1 “(4) DEFINITIONS.—For purposes of this sub-
2 section, the following definitions shall apply:

3 “(A) DEALER.—The term ‘dealer’ has the
4 meaning given to such term in section 3(a)(5)
5 of the Securities Exchange Act of 1934.

6 “(B) SECURITY.—The term ‘security’ has
7 the meaning given to such term in section
8 121(c) of the Financial Services Holding Com-
9 pany Act.

10 “(C) UNDERWRITER.—The term ‘under-
11 writer’ has the meaning given to such term in
12 section 2(11) of the Securities Act of 1933.”.

13 **SEC. 205. AMENDMENT TO THE COMMUNITY REINVEST-**
14 **MENT ACT.**

15 Section 803(3) of the Community Reinvestment Act
16 of 1977 (12 U.S.C. 2902(3)) is amended—

17 (1) by inserting “or notice, as appropriate”
18 after “an application”;

19 (2) in subparagraph (E), by striking “or” at
20 the end;

21 (3) in subparagraph (F), by striking the period
22 at the end and inserting “; or”; and

23 (4) by adding at the end the following new sub-
24 paragraph:

1 **SEC. 208. AMENDMENTS TO THE INTERNATIONAL BANKING**
2 **ACT.**

3 (a) EXEMPTION FROM PROVISIONS OF BANK HOLD-
4 ING COMPANY ACT FOR FOREIGN BANKS QUALIFYING AS
5 FINANCIAL SERVICES HOLDING COMPANIES.—Section
6 8(a) of the International Banking Act (12 U.S.C.
7 32016(a)) is amended by adding at the end by striking
8 “provisions.” and inserting the following: “provisions, ex-
9 cept that any such foreign bank or company that qualifies
10 and elects to be treated as a financial services holding
11 company under the Financial Services Holding Company
12 Act, and any affiliate of such financial services holding
13 company, shall not be so subject to the provisions of the
14 Bank Holding Company Act of 1956.”.

15 (b) AUTHORITY TO TERMINATE GRANDFATHER
16 RIGHTS.—Section 8(e) of the International Banking Act
17 of 1978 (12 U.S.C. 3106(e)) is amended by adding at the
18 end the following new paragraph:

19 “(3) PARITY IN CONDUCT OF AUTHORIZED SE-
20 CURITIES ACTIVITIES.—

21 “(A) IN GENERAL.—Notwithstanding the
22 provisions of paragraph (1) or any other provi-
23 sion of law, any authority conferred under this
24 subsection on any foreign bank or company
25 with respect to securities activities authorized
26 for bank holding companies in the United

1 States shall terminate 30 days after such for-
2 eign bank or company becomes a financial serv-
3 ices holding company under the Financial Serv-
4 ices Holding Company Act.”.

5 **TITLE III—FUNCTIONAL REGULATION**
6 **AMENDMENTS TO SECURITIES LAWS**
7 **FOR FINANCIAL SERVICES HOLDING**
8 **COMPANIES**

9 **Subtitle A—Broker Dealer Provisions**

10 **SEC. 301. DEFINITION OF BROKER.**

11 Section 3(a)(4) of the Securities Exchange Act of
12 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

13 “(4) BROKER.—

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

18 “(B) EXCLUSION OF BANKS.—The term
19 ‘broker’ does not include a bank unless such
20 bank is affiliated with a financial services hold-
21 ing company, as defined in section 102(a) of
22 the Financial Services Holding Company Act
23 and—

1 “(i) publicly solicits the business of
2 effecting securities transactions for the ac-
3 count of others; or

4 “(ii) is compensated for such business
5 by the payment of commissions or similar
6 remuneration based on effecting trans-
7 actions in securities (other than fees cal-
8 culated as a percentage of assets under
9 management) in excess of the bank’s incre-
10 mental costs directly attributable to
11 effecting such transactions (hereafter re-
12 ferred to as ‘incentive compensation’).

13 “(C) EXEMPTION FOR CERTAIN BANK AC-
14 TIVITIES.—A bank shall not be considered to be
15 a broker because the bank engages in any of
16 the following activities under the conditions de-
17 scribed:

18 “(i) THIRD PARTY BROKERAGE AR-
19 RANGEMENTS.—The bank enters into a
20 contractual or other arrangement with a
21 broker or dealer registered under this title
22 under which the broker or dealer offers
23 brokerage services on or off the premises
24 of the bank if—

1 “(I) such broker or dealer is
2 clearly identified as the person per-
3 forming the brokerage services;

4 “(II) the broker or dealer per-
5 forms brokerage services in an area
6 that is clearly marked, and unless
7 made impossible by space or personnel
8 considerations, physically separate
9 from the routine deposit-taking activi-
10 ties of the bank;

11 “(III) any materials used by the
12 bank to advertise or promote generally
13 the availability of brokerage services
14 under the contractual or other ar-
15 rangement clearly indicate that the
16 brokerage services are being provided
17 by the broker or dealer and not by the
18 bank;

19 “(IV) any materials used by the
20 bank to advertise or promote generally
21 the availability of brokerage services
22 under the contractual or other ar-
23 rangement are in compliance with the
24 Federal securities laws before dis-
25 tribution;

1 “(V) bank employees perform
2 only clerical or ministerial functions in
3 connection with brokerage actions, in-
4 cluding scheduling appointments with
5 the associated persons of a broker or
6 dealer, and on behalf of a broker or
7 dealer, transmitting orders or han-
8 dling customers’ funds or securities,
9 except that bank employees who are
10 not so qualified may describe in gen-
11 eral terms investment vehicles under
12 the contractual or other arrangement
13 and accept customers’ orders on be-
14 half of the broker or dealer if such
15 employees have received training that
16 is substantially equivalent to the
17 training required for personnel quali-
18 fied to sell securities pursuant to the
19 requirements of a self-regulatory orga-
20 nization (as defined in section 3(a) of
21 the Securities Exchange Act of 1934);

22 “(VI) bank employees do not di-
23 rectly receive incentive compensation
24 for any brokerage transaction unless
25 such employees are associated persons

1 of a broker or dealer and are qualified
2 pursuant to the requirements of a
3 self-regulatory organization (as so de-
4 fined) except that the bank employees
5 may receive nominal cash and
6 noncash compensation for customer
7 referrals if the cash compensation is a
8 one-time fee of a fixed dollar amount
9 and the payment of the fee is not con-
10 tingent on whether the referral results
11 in a transaction;

12 “(VII) such services are provided
13 by the broker or dealer on a basis in
14 which all customers which receive any
15 services are fully disclosed to the
16 broker or dealer; and

17 “(VIII) the broker or dealer in-
18 forms each customer that the broker-
19 age services are provided by the
20 broker or dealer and not by the bank
21 and that the securities are not depos-
22 its or other obligations of the bank,
23 are not guaranteed by the bank, and
24 are not insured by the Federal De-
25 posit Insurance Corporation.

1 “(ii) TRUST ACTIVITIES.—The bank
2 engages in trust activities (including
3 effecting transactions in the course of such
4 trust activities) permissible for national
5 banks under the first section of the Act of
6 September 28, 1962, or for State banks
7 under relevant State trust statutes or law
8 (including securities safekeeping, self-di-
9 rected individual retirement accounts, or
10 managed agency accounts or other func-
11 tionally equivalent accounts of a bank) un-
12 less the bank—

13 “(I) publicly solicits brokerage
14 business, other than by advertising
15 that it effects transactions in securi-
16 ties in conjunction with advertising its
17 other activities; or

18 “(II) receives incentive com-
19 pensation for such brokerage activi-
20 ties.

21 “(iii) PERMISSIBLE SECURITIES
22 TRANSACTIONS.—The bank effects trans-
23 actions in exempted securities, other than
24 municipal securities, in commercial paper,
25 bankers acceptances, commercial bills,

1 qualified Canadian Government obligations
2 as defined in section 5136 of the Revised
3 Statutes, obligations of the Washington
4 Metropolitan Area Transit Authority which
5 are guaranteed by the Secretary of Trans-
6 portation under section 9 of the National
7 Capital Transportation Act of 1969, obli-
8 gations of the North American Develop-
9 ment Bank, and obligations of any local
10 public agency (as defined in section 110(h)
11 of the Housing Act of 1949) or any public
12 housing agency (as defined in the United
13 States Housing Act of 1937) that are ex-
14 pressly authorized by section 5136 of the
15 Revised Statutes of the United States as
16 permissible for a national bank to under-
17 write or deal in.

18 “(iv) MUNICIPAL SECURITIES.—The
19 bank effects transactions in municipal se-
20 curities.

21 “(v) EMPLOYEE AND SHAREHOLDER
22 BENEFIT PLANS.—The bank effects trans-
23 actions as part of any bonus, profit-shar-
24 ing, pension, retirement, thrift, savings, in-
25 centive, stock purchase, stock ownership,

1 stock appreciation, stock option, dividend
2 reinvestment, or similar plan for employees
3 or shareholders of an issuer or its subsidi-
4 aries.

5 “(vi) SWEEP ACCOUNTS.—The bank
6 effects transactions as part of a program
7 for the investment or reinvestment of bank
8 deposit funds into any no-load, open-end
9 management investment company reg-
10 istered under the Investment Company Act
11 of 1940 that holds itself out as a money
12 market fund.

13 “(vii) AFFILIATE TRANSACTIONS.—
14 The bank effects transactions for the ac-
15 count of any affiliate of the bank, as de-
16 fined in section 102(c) of the Financial
17 Services Holding Company Act.

18 “(viii) PRIVATE SECURITIES OFFER-
19 INGS.—The bank—

20 “(I) effects sales as part of pri-
21 mary offering of securities by an is-
22 suer, not involving a public offering,
23 pursuant to section 3(b), 4(2), or 4(6)
24 of the Securities Act of 1933 and the

1 rules and regulations issued there-
2 under; and

3 “(II) effects such sales exclu-
4 sively to an accredited investor, as de-
5 fined in section 3 of the Securities Act
6 of 1933.

7 “(ix) DE MINIMUS EXEMPTION.—If
8 the bank does not have a subsidiary or af-
9 filiate registered as a broker or dealer
10 under section 15, the bank effects, other
11 than in transactions referred to in causes
12 (i) through (viii), not more than—

13 “(I) 800 transactions in any cal-
14 endar year in securities for which a
15 ready market exists, and

16 “(II) 200 other transactions in
17 securities in any calendar year.

18 “(x) SAFEKEEPING AND CUSTODY
19 SERVICES.—The bank, as part of cus-
20 tomary banking activities—

21 “(I) provides safekeeping or cus-
22 tody services with respect to securi-
23 ties, including the exercise of warrants
24 or other rights on behalf of customers;

1 “(II) clears or settles trans-
2 actions in securities;

3 “(III) effects securities lending
4 or borrowing transactions with or on
5 behalf of customers as part of services
6 provided to customers pursuant to
7 subclauses (I) and (II) or invests cash
8 collateral pledged in connection with
9 such transactions; or

10 “(IV) holds securities pledged by
11 one customer to another customer or
12 securities subject to resale agreements
13 between customers or facilitates the
14 pledging or transfer of such securities
15 by book entry.

16 “(xi) BANKING PRODUCTS.—The bank
17 effects transactions in products that—

18 “(I) are described in section
19 121(c)(2) of the Financial Services
20 Holding Company Act; or

21 “(II) have been exempted by the
22 appropriate Federal banking agency
23 pursuant to section 121(c)(3) of such
24 Act.

1 “(D) EXEMPTION FOR ENTITIES SUBJECT
2 TO SECTION 15(e).—The term ‘broker’ does not
3 include a bank that—

4 “(i) was, immediately prior to the en-
5 actment of the Depository Institution Af-
6 filiation Act of 1995, subject to section
7 15(e); and

8 “(ii) is subject to such restrictions
9 and requirements as the Commission con-
10 siders appropriate.”.

11 **SEC. 302. DEFINITION OF DEALER.**

12 Section 3(a)(5) of the Securities Exchange Act of
13 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

14 “(5) DEALER.—

15 “(A) IN GENERAL.—The term ‘dealer’
16 means any person engaged in the business of
17 buying and selling securities for such person’s
18 own account through a broker or otherwise.

19 “(B) EXCEPTION FOR PERSON NOT EN-
20 GAGED IN THE BUSINESS OF DEALING.—The
21 term ‘dealer’ does not include a person that
22 buys or sells securities for such person’s own
23 account, either individually or in a fiduciary ca-
24 pacity, but not as a part of a regular business.

1 “(C) EXCLUSION OF BANKS.—The term
2 ‘dealer’ does not include a bank unless such
3 bank is affiliated with a financial services hold-
4 ing company, as defined in section 102(a) of
5 the Financial Services Holding Company Act.

6 “(D) EXEMPTION FOR CERTAIN BANK AC-
7 TIVITIES.—A bank shall not be considered to be
8 a dealer because the bank engages in any of the
9 following activities under the conditions de-
10 scribed:

11 “(i) The bank buys and sells commer-
12 cial paper, bankers acceptances, exempted
13 securities (other than municipal securities),
14 qualified Canadian Government obligations
15 as defined in section 5136 of the Revised
16 Statutes, obligations of the Washington
17 Metropolitan Area Transit Authority which
18 are guaranteed by the Secretary of Trans-
19 portation under section 9 of the National
20 Capital Transportation Act of 1969, obli-
21 gations of the North American Develop-
22 ment Bank, and obligations of any local
23 public agency (as defined in section 110(h)
24 of the Housing Act of 1949) or any public
25 agency (as defined in the United States

1 Housing Act of 1937) that are expressly
2 authorized by section 5136 of the Revised
3 Statutes of the United States as permis-
4 sible for a national bank to underwrite or
5 deal in.

6 “(ii) The bank buys and sells munici-
7 pal securities that are expressly authorized
8 by section 5136 of the Revised Statutes of
9 the United States as permissible for a na-
10 tional bank to underwrite or deal in.

11 “(iii) The bank buys and sells securi-
12 ties for investment purposes for the bank
13 or for accounts for which the bank acts as
14 a trustee or fiduciary.

15 “(iv) The bank—

16 “(I) has not been affiliated with
17 a securities affiliate for purposes of
18 the Financial Services Holding Com-
19 pany Act for more than 1 year; and

20 “(II) engages in the issuance or
21 sale, through a grantor trust or other-
22 wise, of securities backed by or rep-
23 resenting an interest in notes, drafts,
24 acceptances, loans, leases, receivables,
25 other obligations, or pools of any such

1 obligations originated or purchased by
2 the bank or any affiliate of the bank.

3 “(v) The bank buys and sells products
4 that—

5 “(I) are described in section
6 121(c)(2) of the Financial Services
7 Holding Company Act; or

8 “(II) have been exempted by the
9 appropriate Federal banking agency
10 pursuant to section 121(c)(3) of such
11 Act.”.

12 **SEC. 303. POWER TO EXEMPT FROM THE DEFINITIONS OF**
13 **BROKER AND DEALER.**

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

17 “(e) EXEMPTION FROM THE DEFINITION OF
18 BROKER AND DEALER.—The Commission, by regulation
19 or order, upon its own motion or upon application, may
20 conditionally or unconditionally exclude any person or
21 class of persons from the definitions of ‘broker’ or ‘dealer’,
22 if the Commission finds that such exclusion is consistent
23 with the public interest, the protection of investors, and
24 the purposes of this title.”.

1 **SEC. 304. MARGIN REQUIREMENTS.**

2 (a) Section 7(d) of the Securities Exchange Act of
3 1934 (15 U.S.C. 15g(d)) is amended by striking “or (E)”
4 and inserting “(E) to a loan to a broker or dealer by a
5 member bank or any other person that has entered into
6 an agreement pursuant to section 8(a) if the proceeds of
7 the loan are to be used in the ordinary course of the bro-
8 ker’s or dealer’s business other than for the purpose of
9 funding the purchase of securities for the account of such
10 broker or dealer, or (F)”.

11 (b) Section 8(a) of the Securities and Exchange Act
12 of 1934 is amended—

13 (1) by striking “nonmember bank” and insert-
14 ing “person other than a member bank”; and

15 (2) by striking “such bank” in the second sen-
16 tence and inserting “such person”.

17 **Subtitle B—Investment Company Provisions**

18 **SEC. 311. CUSTODY OF INVESTMENT COMPANY ASSETS BY**
19 **AFFILIATED BANK.**

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

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

1 (2) by striking “(f) Every, registered” and in-
2 serting “(f) CUSTODY OF SECURITIES.—

3 (1) Every registered”;

4 (C) by designating the second, third,
5 fourth, and fifth sentences of such subsection
6 as paragraphs (2) through (5), respectively, and
7 indenting the left margin of such paragraphs
8 appropriately; and

9 (D) by adding at the end the following new
10 paragraph:

11 “(6) Notwithstanding any provision of this sub-
12 section, if a bank described in paragraph (1) and af-
13 filiated with a financial services company, as defined
14 in section 102(a) of the Financial Services Holding
15 Company Act, or an affiliated person of such bank,
16 is an affiliated person, promoter, organizer, or spon-
17 sor of, or principal underwriter for the registered
18 company, such bank may serve as custodian under
19 this subsection in accordance with such rules, regu-
20 lations, or orders as the Commission may prescribe,
21 consistent with the protection of investors, after con-
22 sulting in writing with the appropriate Federal
23 banking agency, as defined in section 3 of the Fed-
24 eral Deposit Insurance Act.”.

1 (b) UNIT INVESTMENT TRUSTS.—Section 26(a)(1) of
2 the Investment Company Act of 1940 (15 U.S.C. 80a–
3 26(a)(1)) is amended by inserting before the semicolon at
4 the end the following: “, except that, if the trustee or cus-
5 todian described in this subsection is an affiliated person
6 of such underwriter or depositor and of a financial services
7 holding company, as defined in section 102(a) of the Fi-
8 nancial Services Holding Company Act, the Commission
9 may adopt rules and regulations or issue orders, consistent
10 with the protection of investors, prescribing the conditions
11 under which such trustee or custodian may serve, after
12 consulting in writing with the appropriate Federal bank-
13 ing agency (as defined in section 3 of the Federal Deposit
14 Insurance Act)”.

15 (c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a)
16 of the Investment Company Act of 1940 (15 U.S.C. 80a–
17 35(a)) is amended—

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

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

22 (3) by inserting after paragraph (2) the follow-
23 ing:

24 “(3) if affiliated with a financial services hold-
25 ing company, as defined section 102(a) of the Fi-

1 that, at any time during the preceding 6
2 months, has executed any portfolio trans-
3 actions for, engaged in any principal trans-
4 actions with, or distributed shares for—

5 “(I) the investment company,

6 “(II) any other investment com-
7 pany having the same investment ad-
8 viser as such investment company or
9 holding itself out to investors as a re-
10 lated company for purposes of invest-
11 ment or investor services, or

12 “(III) any account over which the
13 investment company’s investment ad-
14 viser has brokerage placement discre-
15 tion,

16 or any affiliated person of such a person,”;

17 (2) by redesignating clause (vi) as clause (vii)

18 and

19 (3) by inserting after clause (v) the following
20 new clause:

21 “(vi) any person affiliated with a fi-
22 nancial services holding company (other
23 than a registered investment company)
24 that, at any time during the preceding 6
25 months, has loaned money to—

1 “(I) the investment company,
2 “(II) any other investment com-
3 pany having the same investment ad-
4 viser as such investment company or
5 holding itself out to investors as a re-
6 lated company for purposes of invest-
7 ment or investor services, or
8 “(III) any account for which the
9 investment company’s investment ad-
10 viser has borrowing authority,
11 or any affiliated person of such a person,
12 or”.

13 (b) AFFILIATION OF DIRECTORS.—Section 10(c) of
14 the Investment Company Act of 1940 (15 U.S.C. 80a–
15 10(c)) is amended by striking, “bank, except” and insert-
16 ing “bank affiliated with a financial services holding com-
17 pany (and its subsidiaries) or any single financial services
18 holding company (and its affiliates and subsidiaries), as
19 those terms are defined in the Financial Services Holding
20 Company Act of 1995, except”.

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

1 **SEC. 314. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

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

5 “(a) MISREPRESENTATION OF GUARANTEES.—

6 “(1) IN GENERAL.—It shall be unlawful for any
7 person, issuing or selling any security of which a
8 registered investment company is the issuer, to rep-
9 resent or imply in any manner whatsoever that such
10 security or company—

11 “(A) has been guaranteed, sponsored, rec-
12 ommended, or approved by the United States,
13 or any agency, instrumentality or officer of the
14 United States;

15 “(B) has been insured by the Federal De-
16 posit Insurance Corporation;

17 “(C) is guaranteed by or is otherwise an
18 obligation of any bank or insured depository in-
19 stitution.

20 “(2) DISCLOSURES.—Any person that is affili-
21 ated with an insured depository institution and is-
22 sues or sells the securities of a registered investment
23 company shall prominently disclose that the invest-
24 ment company or any security issued by the invest-
25 ment company—

1 “(A) is not insured by the Federal Deposit
2 Insurance Corporation;

3 “(B) is not guaranteed by an affiliated in-
4 sured depository institution; and

5 “(C) is not otherwise an obligation of any
6 bank or insured depository institution,
7 in accordance with such rules, regulations, or orders
8 as the Commission may prescribe as reasonably nec-
9 essary or appropriate in the public interest for the
10 protection of investors, after consulting in writing
11 with the appropriate Federal banking agencies.

12 “(3) DEFINITIONS.—The terms ‘insured depository
13 institution’ and ‘appropriate Federal banking
14 agency’ have the meanings given to such terms in
15 section 3 of the Federal Deposit Insurance Act.”.

16 (b) DECEPTIVE USE OF NAMES.—Section 35(d) of
17 the Investment Company Act of 1940 (15 U.S.C. 80a-
18 34(d)) is amended to read as follows:

19 “(d)(1) It shall be unlawful for any registered invest-
20 ment company to adopt as part of the name or title of
21 such company, or any securities of which it is the issuer,
22 any word or words that the Commission finds are materi-
23 ally deceptive or misleading. The Commission may adopt
24 such rules or regulations or issue such orders as are nec-

1 essary or appropriate to prevent the use of deceptive or
2 misleading names or titles by investment companies.

3 “(2) It shall be deceptive and misleading for any reg-
4 istered investment company—

5 “(A) that is an affiliated person of a bank that
6 is affiliated with a financial service holding company,
7 as defined in section 102(a) of the Financial Serv-
8 ices Holding Company Act, or an affiliated person of
9 such person, or

10 “(B) for which a bank that is affiliated with a
11 financial service holding company, as defined in sec-
12 tion 102(a) of the Financial Services Holding Com-
13 pany Act, or an affiliated person of such a bank,
14 acts as investment adviser, sponsor, promoter, or
15 principal underwriter,

16 to adopt, as part of the name or title such company, or
17 of any security of which it is an issuer, any word that
18 is the same or similar to, or a variation of, the name or
19 title of such bank, in contravention of such rules, regula-
20 tions, or orders as the Commission may, prescribe as nec-
21 essary or appropriate in the public interest or for the pro-
22 tection of investors.”.

1 **SEC. 315. DEFINITION OF BROKER UNDER THE INVEST-**
2 **MENT COMPANY ACT OF 1940.**

3 Section 2(a)(6) of the Investment Company Act of
4 1940 (15 U.S.C. 89a-2(a)(6)) is amended to read as fol-
5 lows:

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

11 **SEC. 316. DEFINITION OF DEALER UNDER THE INVEST-**
12 **MENT COMPANY ACT OF 1940.**

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

16 “(11) The term ‘dealer’ has the same meaning
17 as in the Securities Exchange Act of 1934, but does
18 not include an insurance company or investment
19 company.”.

20 **SEC. 317. REMOVAL OF THE EXCLUSION FROM THE DEFINI-**
21 **TION OF INVESTMENT ADVISER FOR BANKS**
22 **THAT ADVISE INVESTMENT COMPANIES.**

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

1 pany, except that the term ‘investment adviser’ includes
2 any financial services holding company, as defined in sec-
3 tion 102(a) of the Financial Services Holding Company
4 Act, or any bank affiliated with such company, to the ex-
5 tent that such financial services holding company or bank
6 acts as an investment adviser to a registered investment
7 company, or if, in the case of such a bank, such services
8 are performed through a separately identifiable depart-
9 ment or division, the department or division, and not the
10 bank itself, shall be deemed to be the investment adviser”.

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

15 “(25) The term ‘separately identifiable depart-
16 ment or division’ of a bank means a unit—

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

1 “(B) for which all of the records relating
2 to its investment adviser activities are sepa-
3 rately maintained in or extractable from such
4 unit’s own facilities or the facilities of the bank,
5 and such records are so maintained or other-
6 wise accessible as to permit independent exam-
7 ination and enforcement of this Act or the In-
8 vestment Company Act of 1940 and rules and
9 regulations promulgated under this Act or the
10 Investment Company Act of 1940.”.

11 **SEC. 318. DEFINITION OF BROKER UNDER THE INVEST-**
12 **MENT ADVISERS ACT OF 1940.**

13 Section 202(a)(3) of the Investment Advisers Act of
14 1940 (15 U.S.C. 80b–2(a)(3)) is amended to read as fol-
15 lows:

16 “(3) The term ‘broker’ has the same meaning
17 as in the Securities Exchange Act of 1934.”.

18 **SEC. 319. DEFINITION OF DEALER UNDER THE INVEST-**
19 **MENT ADVISERS ACT OF 1940.**

20 Section 202(a)(7) of the Investment Advisers Act of
21 1940 (15 U.S.C. 80b–2(a)(7)) is amended to read as fol-
22 lows:

23 “(7) The term ‘dealer’ has the same meaning as
24 in the Securities Exchange Act of 1934, but does

1 not include an insurance company or investment
2 company.”.

3 **SEC. 320. INTERAGENCY CONSULTATION.**

4 The Investment Advisers Act of 1940 (15 U.S.C.
5 80b–1 et seq.) is amended by inserting after section 210
6 the following new section:

7 **“SEC. 210A. CONSULTATION.**

8 “(a) EXAMINATION RESULTS AND OTHER INFORMA-
9 TION.—

10 “(1) The appropriate Federal banking agency
11 shall provide the Commission upon request the re-
12 sults of any examination, reports, records, or other
13 information as each may have access to with respect
14 to the investment advisory activities of any financial
15 services holding company, as defined in section
16 102(a) of the Financial Services Holding Company
17 Act, bank that is affiliated with a financial services
18 holding company, or separately identifiable depart-
19 ment or division of a bank, that is registered under
20 section 203 of this title, or, in the case of a financial
21 services holding company or affiliated bank, that has
22 a subsidiary or a separately identifiable department
23 or division registered under that section, to the ex-
24 tent necessary for the Commission to carry out its
25 statutory responsibilities.

1 “(2) The Commission shall provide to the ap-
2 propriate Federal banking agency upon request the
3 results of any examination, reports, records, or other
4 information with respect to the investment advisory
5 activities of any financial services holding company,
6 bank that is affiliated with a financial services hold-
7 ing company, or separately identifiable department
8 or division of a bank, any of which is registered
9 under section 203 of this title, to the extent nec-
10 essary for the agency to carry out its statutory re-
11 sponsibilities.

12 “(b) EFFECT ON OTHER AUTHORITY.—Nothing
13 herein shall limit in any respect the authority of the appro-
14 priate Federal banking agency with respect to such finan-
15 cial services holding company, bank that is affiliated with
16 a financial services holding company, or department or di-
17 vision under any provision of law.

18 “(c) DEFINITION.—For purposes of this section, the
19 term ‘appropriate Federal banking agency’ shall have the
20 same meaning as in section 3 of the Federal Deposit in-
21 surance Act.”

22 **SEC. 321. TREATMENT OF BANK COMMON TRUST FUNDS.**

23 (a) SECURITIES ACT OF 1933.—Section 3(a)(2) of
24 the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is
25 amended by striking “or any interest or participation in

1 any common trust fund or similar fund maintained by a
2 bank exclusively for the collective investment and reinvest-
3 ment of assets contributed thereto by such bank in its ca-
4 pacity as trustee, executor, administrator, or guardian”
5 and inserting “or any interest or participation in any com-
6 mon trust fund or similar fund that is excluded from the
7 definition of the term ‘investment company’ under section
8 3(c)(3) of the Investment Company Act of 1940”.

9 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
10 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934
11 (15 U.S.C. 78c(a)(12)(A)(iii) is amended to read as fol-
12 lows:

13 “(iii) any interest or participation in
14 any common trust fund or similar fund
15 that is excluded from the definition of the
16 term ‘investment company’ under section
17 3(c)(3) of the Investment Company Act of
18 1940;”.

19 (c) INVESTMENT COMPANY ACT OF 1940.—Section
20 3(c)(3) of the Investment Company Act of 1940 (15
21 U.S.C. 80a-3(c)(3)) is amended by inserting before the
22 period the following: ”, if—

23 “(A) such fund is employed by the bank
24 solely as an aid to the administration of trusts,

1 estates, or other accounts created and main-
2 tained for a fiduciary purpose;

3 “(B) except if the bank is not affiliated
4 with a financial services holding company, as
5 defined in section 102(a) of the Financial Serv-
6 ices Holding Company Act, or in connection
7 with the ordinary advertising of the bank’s fidu-
8 ciary services, interests in such fund are not—

9 “(i) advertised; or

10 “(ii) offered for sale to the general
11 public, and

12 “(C) fees and expenses charged by such
13 fund are not in contravention of fiduciary prin-
14 ciples established under applicable Federal or
15 State law.”

16 **SEC. 322. INVESTMENT ADVISERS PROHIBITED FROM HAV-**
17 **ING CONTROLLING INTEREST IN REG-**
18 **ISTERED INVESTMENT COMPANY.**

19 Section 15 of the Investment Company Act of 1940
20 (15 U.S.C. 80a–15) is amended by adding at the end the
21 following new subsection:

22 “(g) **CONTROLLING INTEREST IN INVESTMENT COM-**
23 **PANY PROHIBITED.**—

24 “(1) **IN GENERAL.**—If any investment adviser
25 to a registered investment company, or an affiliated

1 person of that investment adviser, holds a control-
2 ling interest in that registered investment company
3 in a trustee or fiduciary capacity, such person
4 shall—

5 “(A) if it holds the shares in a trustee or
6 fiduciary capacity with respect to any employee
7 benefit plan subject to the Employee Retirement
8 Income Security Act of 1974, transfer the
9 power to vote the shares of the investment com-
10 pany through to another person acting in a fi-
11 duciary capacity with respect to the plan who is
12 not an affiliated person of that investment ad-
13 viser or any affiliated person thereof; or

14 “(B) if it holds the shares in a trustee or
15 fiduciary capacity with respect to any other per-
16 son or entity other than an employee benefit
17 plan subject to the Employee Retirement In-
18 come Security Act of 1974—

19 “(i) transfer the power to vote the
20 shares of the investment company through
21 to—

22 “(I) the beneficial owners of the
23 shares;

24 “(II) another person acting in a
25 fiduciary capacity who is not an affili-

1 ated person of that investment adviser
2 or any affiliated person thereof; or

3 “(III) any person authorized to
4 receive statements and information
5 with respect to the trust who is not an
6 affiliated person of that investment
7 adviser or any affiliated person there-
8 of;

9 “(ii) vote the shares of the investment
10 company held by it in the same proportion
11 as shares held by all other shareholders of
12 the company; or

13 “(iii) vote the shares of the invest-
14 ment company as otherwise permitted
15 under such rules, regulations, or orders as
16 the Commission may prescribe for the pro-
17 tection of investors.

18 “(2) EXEMPTION.—Paragraph (1) shall not
19 apply to any investment adviser to a registered in-
20 vestment company, or an affiliated person of that in-
21 vestment adviser, if such investment adviser or affili-
22 ated person—

23 “(A) is not affiliated with a financial serv-
24 ices holding company, as defined in section

1 102(a) of the Financial Services Holding Com-
2 pany Act; or

3 “(B) holds shares of the investment com-
4 pany in a trustee or fiduciary capacity if that
5 registered investment company consists solely of
6 assets held in such capacities.

7 “(3) SAFE HARBOR.—No investment adviser to
8 a registered investment company or any affiliated
9 person of such investment adviser shall be deemed to
10 have acted unlawfully or to have breached a fidu-
11 ciary duty under State or Federal law solely by rea-
12 son of acting in accordance with clause (i), (ii), or
13 (iii) of paragraph (1)(B).

14 “(4) CHURCH PLAN EXEMPTION.—Paragraph
15 (1) shall not apply to any investment adviser to a
16 registered investment company, or an affiliated per-
17 son of that investment adviser, holding shares in
18 such a capacity, if such investment adviser or such
19 affiliated person is an organization described in sec-
20 tion 414(e)(3)(A) of the Internal Revenue Code of
21 1986.”.

22 **SEC. 323. CONFORMING CHANGE IN DEFINITION.**

23 Section 2(a)(5) of the Investment Company Act of
24 1940 (15 U.S.C. 80a–2(a)(5)) is amended by striking
25 “(A) a banking institution under the laws of the United

1 States” and inserting “(A) a depository institution (as de-
 2 fined in section 3 of the Federal Deposit Insurance Act)
 3 or a branch or agency of a foreign bank (as such terms
 4 are defined in section 101(b) of the International Banking
 5 Act of 1978)”.

6 **SEC. 324. EFFECTIVE DATE.**

7 This subtitle shall take effect 270 days after the ef-
 8 fective date of this Title.

9 **TITLE IV—WHOLESALE FINANCIAL INSTI-**
 10 **TUTIONS OWNED BY FINANCIAL SERV-**
 11 **ICES HOLDING COMPANIES**

12 **SEC. 401. NATIONAL WHOLESALE FINANCIAL INSTITU-**
 13 **TIONS.**

14 Chapter 1 of Title LXII of the Revised Statutes of
 15 the United States (12 U.S.C. 21 et seq.) is amended by
 16 inserting after section 5136A the following new section:

17 **“SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITU-**
 18 **TIONS.**

19 “(a) NATIONAL WHOLESALE FINANCIAL INSTITU-
 20 TIONS.—Any financial services holding company (as de-
 21 fined in Section 102(a) of the Financial Services Holding
 22 Company Act) may apply to the Comptroller of the Cur-
 23 rency on such forms and in accordance with such proce-
 24 dures as the Comptroller may prescribe by regulation, for
 25 permission to organize a national wholesale financial insti-

1 tution. Upon approval of the application, such national
2 wholesale financial institution shall be a body corporate,
3 chartered under the laws of the United States by the
4 Comptroller. A national wholesale financial institution
5 shall operate pursuant to the requirements of this section
6 at the direction of a board of directors elected at an orga-
7 nizational meeting, to be held as soon as practicable after
8 issuance by the Comptroller of a charter, by such financial
9 services holding company for the purpose of electing such
10 board of directors and taking such other action necessary,
11 pursuant to the charter and the regulations issued by the
12 Comptroller, to complete the corporate organization of the
13 national wholesale financial institution. Immediately fol-
14 lowing its election, the board of directors shall meet to
15 elect the officers of the national wholesale financial insti-
16 tution and to take such other action, as prescribed by the
17 Comptroller, to complete the corporate organization of
18 such national wholesale financial institution.

19 “(b) UNAUTHORIZED ORGANIZATION PROHIBITED.—

20 “(1) IN GENERAL.—No person may organize a
21 national wholesale financial institution, collect
22 money from others for such purpose, or represent
23 himself or herself as authorized to do so and no na-
24 tional wholesale financial institution shall transact
25 any business prior to completion of its organization

1 except as provided in this section and in implement-
2 ing regulations of the Comptroller.

3 “(2) INSURANCE TERMINATION.—No bank that
4 is insured under the Federal Deposit Insurance Act
5 may become a national wholesale financial institu-
6 tion unless—

7 “(A) it has met all the requirements under
8 that Act for voluntary termination of deposit in-
9 surance; and

10 “(B) it is affiliated with a financial service
11 holding company, as defined in section 102(a)
12 of the Financial Services Holding Company
13 Act.

14 “(c) AUTHORIZED ACTIVITIES FOR NATIONAL
15 WHOLESALE FINANCIAL INSTITUTION.—Except as other-
16 wise provided in this section, a national wholesale financial
17 institution—

18 “(1) may exercise, in accordance with its arti-
19 cles of organization and such regulations as are is-
20 sued by the Comptroller, all of the powers and privi-
21 leges of a national banking association formed in ac-
22 cordance with section 5133 of the Revised Statutes
23 of the United States; and

24 “(2) shall be subject to any provision of title
25 LXII of the Revised Statutes of the United States

1 that is applicable to a national banking association
2 that is not a national wholesale financial institution.

3 “(d) TERMINATION.—A national wholesale financial
4 institution may terminate its status as a national banking
5 association only with the prior written approval of the
6 Comptroller and on terms and conditions that the Comp-
7 troller determines are appropriate to carry out the pur-
8 poses of this section.

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

13 “(1) the relevant capital levels and capital
14 measures for each capital category shall be the levels
15 specified by the Comptroller for national wholesale
16 financial institutions in accordance with subsection
17 (i)(2);

18 “(2) the provisions applicable to well capitalized
19 insured depository institutions shall be inapplicable
20 to national wholesale financial institutions;

21 “(3) the provisions authorizing or requiring an
22 institution to be placed into receivership shall not
23 apply to a national wholesale financial institution,
24 and, instead, the Comptroller is authorized or re-

1 quired to place the national wholesale financial insti-
2 tution into conservatorship; and

3 “(4) for purposes of applying the provisions of
4 section 38 of the Federal Deposit Insurance Act to
5 national wholesale financial institutions, all ref-
6 erences to the appropriate Federal banking agency
7 or to the Corporation in that section shall be deemed
8 to be references to the Comptroller.

9 “(f) ENFORCEMENT AUTHORITY.—Subsections (j)
10 and (k) of section 7, subsections (b) through (n), (s), (u),
11 and (v) of section 8, and section 19 of the Federal Deposit
12 Insurance Act shall apply to a national wholesale financial
13 institution in the same manner and to the same extent
14 as such provisions apply to insured national banks and
15 any references in such sections to an insured depository
16 institution shall be deemed, for purposes of this para-
17 graph, to be a reference to a national wholesale financial
18 institution.

19 “(g) CERTAIN OTHER STATUTES APPLICABLE.—A
20 national wholesale financial institution shall be deemed to
21 be a banking institution, and the Comptroller shall be the
22 appropriate Federal banking agency for such bank and all
23 such bank’s affiliates, for purposes of the International
24 Lending Supervision Act.

1 “(h) BANK MERGER ACT.—A national wholesale fi-
2 nancial institution shall be subject to the provisions of sec-
3 tions 18(c) and 44 of the Federal Deposit Insurance Act
4 in the same manner and to the same extent the national
5 wholesale financial institution would be subject to such
6 sections if the institution were an insured national bank.

7 “(i) SPECIFIC REQUIREMENTS APPLICABLE TO NA-
8 TIONAL WHOLESALE FINANCIAL INSTITUTIONS.—

9 “(1) LIMITATIONS ON DEPOSITS.—

10 “(A) MINIMUM AMOUNT.—

11 “(i) IN GENERAL.—Pursuant to such
12 regulations as the Comptroller may pre-
13 scribe, no national wholesale financial in-
14 stitution may receive initial deposits of
15 \$100,000 or less, other than on an inciden-
16 tal or occasional basis.

17 “(ii) LIMITATION ON DEPOSITS OF
18 LESS THAN \$100,000.—No bank may be
19 treated as a national wholesale financial
20 institution if the total amount of the initial
21 deposits of \$100,000 or less at such bank
22 constitutes more than 5 percent of the
23 bank’s total deposits.

24 “(B) NO DEPOSIT INSURANCE.—No depos-
25 its held by a national wholesale financial insti-

1 tution shall be insured deposits under the Fed-
2 eral Deposit Insurance Act.

3 “(C) ADVERTISING AND DISCLOSURE.—

4 The Comptroller shall prescribe regulations per-
5 taining to advertising and disclosure by national
6 wholesale financial institutions to ensure that
7 each depositor is notified that deposits at such
8 wholesale financial institution are not federally
9 insured or otherwise guaranteed by the United
10 States Government.

11 “(2) SPECIFIC CAPITAL REQUIREMENTS APPLI-
12 CABLE TO NATIONAL WHOLESALE FINANCIAL INSTI-
13 TUTIONS.—

14 “(A) MINIMUM CAPITAL LEVELS.—

15 “(i) IN GENERAL.—The Comptroller
16 shall, by regulation, adopt capital require-
17 ments for national wholesale financial in-
18 stitutions to—

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

23 “(B) provide for the safe and sound oper-
24 ation of the national wholesale financial institu-
25 tion without undue risk to creditors or other

1 persons engaged in transactions with such insti-
2 tution.

3 “(2) MINIMUM TIER 1 CAPITAL RATIO.—The
4 minimum ratio of tier 1 capital to total risk-weight-
5 ed assets of national wholesale financial institutions
6 shall be not less than the level required for an in-
7 sured national bank to be well capitalized unless the
8 Comptroller determines otherwise, consistent with
9 safety and soundness.

10 “(3) CAPITAL CATEGORIES FOR PROMPT COR-
11 RECTIVE ACTION.—For purposes of applying section
12 38 of the Federal Deposit Insurance Act with re-
13 spect to any national wholesale financial institution,
14 the Comptroller shall, by regulation, establish, for
15 each relevant capital measure specified by the Comp-
16 troller under this subsection, the levels at which a
17 national wholesale financial institution is well cap-
18 italized, adequately capitalized, undercapitalized, sig-
19 nificantly undercapitalized, and critically under-
20 capitalized.

21 “(4) ADDITIONAL REQUIREMENTS APPLICABLE
22 TO NATIONAL WHOLESALE FINANCIAL INSTITU-
23 TIONS.—In addition to any requirement otherwise
24 applicable to State member banks or applicable,
25 under this section, to national wholesale financial in-

1 stitutions, the Comptroller may prescribe, by regula-
2 tion or order, for national wholesale financial institu-
3 tions—

4 “(A) limitations on transaction with affili-
5 ates to prevent an affiliate from gaining access
6 to, or the benefits of, credit from a Federal re-
7 serve bank, including overdrafts at a Federal
8 reserve bank;

9 “(B) special clearing balance requirements;
10 and

11 “(C) any additional requirements that the
12 Comptroller determines to be appropriate or
13 necessary to—

14 “(i) promote the safety and soundness
15 of the national wholesale financial institu-
16 tion, or

17 “(ii) protect creditors and other per-
18 sons engaged in transactions with the na-
19 tional wholesale financial institution.

20 “(5) EXEMPTIONS FOR NATIONAL WHOLESALE
21 FINANCIAL INSTITUTIONS.—The Comptroller may,
22 by regulation or order, exempt any national whole-
23 sale financial institution from any provision applica-
24 ble to a national bank that is not a national whole-

1 sale financial institution, if the Comptroller finds
2 that such exemption is not inconsistent with—

3 “(A) the promotion of the safety and
4 soundness of the national wholesale financial in-
5 stitution; and

6 “(B) the protection of creditors and other
7 persons engaged in transactions with the na-
8 tional wholesale financial institution.

9 “(6) NO EFFECT ON OTHER PROVISIONS.—This
10 section shall not be construed as limiting the Comp-
11 troller’s authority over national banks under any
12 other provision of law, or to create any obligation for
13 any Federal reserve bank to make, increase, review,
14 or extend any advances or discount under the Fed-
15 eral Reserve Act to any member bank or other de-
16 pository institution.

17 “(d) CONSERVATORSHIP AUTHORITY.—The Comp-
18 troller may appoint a conservator to take possession and
19 control of a national wholesale financial institution to the
20 same extent and in the same manner as the Comptroller
21 may appoint a conservator for a national bank under sec-
22 tion 203 of the Bank Conservation Act, and the conserva-
23 tor shall exercise the same powers, functions, and duties,
24 subject to the same limitations, as are provided under such
25 Act for conservators of national banks.

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

3 “(1) NATIONAL WHOLESALE FINANCIAL INSTI-
4 TUTION.—The term ‘national wholesale financial in-
5 stitution’ means a bank that has been approved to
6 become a national wholesale financial institution by
7 the Comptroller under this section pursuant to an
8 application filed under subsection (a).

9 “(2) DEPOSIT.—The term ‘deposit’ has the
10 meaning given to such term by the Comptroller
11 under this Section.

12 “(f) EXCLUSIVE JURISDICTION.—Subsections (c) and
13 (e) of section 43 of the Federal Deposit Insurance Act
14 shall not apply to any national wholesale financial institu-
15 tion.”.

16 **SEC. 402. STATE MEMBER WHOLESALE FINANCIAL INSTITU-**
17 **TIONS.**

18 (a) IN GENERAL.—The Federal Reserve Act (12
19 U.S.C. 221 et seq.) is amended by inserting after section
20 9A the following new section:

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

22 “(a) APPLICATION FOR MEMBERSHIP AS WHOLE-
23 SALE FINANCIAL INSTITUTION.—

24 “(1) APPLICATION REQUIRED.—

1 “(A) IN GENERAL.—Any bank incor-
2 porated by special law of any State, or orga-
3 nized under the general laws of any State, may
4 apply to the Board of Governors of the Federal
5 Reserve System to become a State member
6 wholesale financial institution and to subscribe
7 to the stock of the Federal reserve bank orga-
8 nized within the district where the applying
9 bank is located.

10 “(B) TREATMENT AS STATE MEMBER
11 BANK.—Any application under subparagraph
12 (A) shall be treated as an application to become
13 a State member bank under, and shall be sub-
14 ject to the provisions of, section 9.

15 “(2) INSURANCE TERMINATION.—No bank that
16 is insured under the Federal Deposit Insurance Act
17 may become a State member wholesale financial in-
18 stitution unless—

19 “(A) it has met all requirements under
20 that Act for voluntary termination of deposit in-
21 surance; and

22 “(B) is affiliated with a financial services
23 holding company, as defined in section 102(a)
24 of the Financial Services Holding Company
25 Act.

1 “(b) GENERAL REQUIREMENTS APPLICABLE TO
2 STATE MEMBER WHOLESALE FINANCIAL INSTITU-
3 TIONS.—

4 “(1) FEDERAL RESERVE ACT.—Except as oth-
5 erwise provided in this section, State member whole-
6 sale financial institutions shall be member banks
7 and shall be subject to the provisions of this Act
8 that apply to member banks to the same extent and
9 in the same manner as State member insured banks,
10 except that a State member wholesale financial insti-
11 tution may terminate membership under this Act
12 only with the prior written approval of the Board
13 and on terms and conditions that the Board deter-
14 mines are appropriate to carry out the purposes of
15 this Act.

16 “(2) PROMPT CORRECTIVE ACTION.—A State
17 member wholesale financial institution shall be
18 deemed to be an insured depository institution for
19 purposes of section 38 of the Federal Deposit Insur-
20 ance Act except that—

21 “(A) the relevant capital levels and capital
22 measures for each capital category shall be the
23 levels specified by the Board for State member
24 wholesale financial institutions in accordance
25 with subsection (c);

1 “(B) the provisions applicable to well cap-
2 italized insured depository institutions shall be
3 inapplicable to wholesale financial institutions;

4 “(C) the provisions authorizing or requir-
5 ing an institution to be placed into receivership
6 shall not apply to a State member wholesale fi-
7 nancial institution, and, instead, the Board is
8 authorized or required, as the case may be, to
9 terminate the State member wholesale financial
10 institution’s membership in the Federal Reserve
11 System or place the bank into conservatorship;
12 and

13 “(D) for purposes of applying the provi-
14 sions of section 38 of the Federal Deposit In-
15 surance Act to State member wholesale finan-
16 cial institutions, all references to the appro-
17 priate Federal banking agency or to the Cor-
18 poration in that section shall be deemed to be
19 references to the Board.

20 “(3) ENFORCEMENT AUTHORITY.—Subsections
21 (j) and (k) of section 7, subsections (b) through (n),
22 (s), (u), and (v) of section 8, and section 19 of the
23 Federal Deposit Insurance Act shall apply to a State
24 member wholesale financial institution in the same
25 manner and to the same extent as such provisions

1 apply to State member insured banks and any ref-
2 erences in such sections to an insured depository in-
3 stitution shall be deemed, for purposes of this para-
4 graph, to be a reference to a State member whole-
5 sale financial institution.

6 “(4) CERTAIN OTHER STATUTES APPLICA-
7 BLE.—A State member wholesale financial institu-
8 tion shall be deemed to be a banking institution, and
9 the Board shall be the appropriate Federal banking
10 agency for such bank and all such bank’s affiliates
11 for purposes of the International Lending Super-
12 vision Act.

13 “(5) BANK MERGER ACT.—A State member
14 wholesale financial institution shall be subject to the
15 provisions of sections 18(c) and 44 of the Federal
16 Deposit Insurance Act in the same manner and to
17 the same extent as the State member wholesale fi-
18 nancial institution would be subject to such sections
19 if the institution were a State member insured bank.

20 “(c) SPECIFIC REQUIREMENTS APPLICABLE TO
21 STATE MEMBER WHOLESALE FINANCIAL INSTITU-
22 TIONS.—

23 “(1) LIMITATIONS ON DEPOSITS.—

24 “(A) MINIMUM AMOUNT.—

1 “(i) IN GENERAL.—Pursuant to such
2 regulations as the Board may prescribe, no
3 State member wholesale financial institu-
4 tion may receive initial deposits of
5 \$100,000 or less, other than on an inciden-
6 tal or occasional basis.

7 “(ii) LIMITATION ON DEPOSITS OF
8 LESS THAN \$100,000.—No bank may be
9 treated as a State member wholesale finan-
10 cial institution if the total amount of the
11 initial deposits of \$100,000 or less at such
12 bank constitutes more than 5 percent of
13 the bank’s total deposits.

14 “(B) NO DEPOSIT INSURANCE.—No depos-
15 its held by a State member wholesale financial
16 institution shall be insured deposits under the
17 Federal Deposit Insurance Act.

18 “(C) ADVERTISING AND DISCLOSURE.—
19 The Board shall prescribe regulations pertain-
20 ing to advertising and disclosure by State mem-
21 ber wholesale financial institutions to ensure
22 that each depositor is notified that deposits at
23 such wholesale financial institution are not fed-
24 erally insured or otherwise guaranteed by the
25 United States Government.

1 “(2) SPECIAL CAPITAL REQUIREMENTS APPLI-
2 CABLE TO STATE MEMBER WHOLESALE FINANCIAL
3 INSTITUTIONS.—

4 “(A) MINIMUM CAPITAL LEVELS.—

5 “(i) IN GENERAL.—The Board shall,
6 by regulation, adopt capital requirements
7 for State member wholesale financial insti-
8 tutions—

9 “(I) to account for the status of
10 State member wholesale financial in-
11 stitutions as institutions that accept
12 deposits that are not insured under
13 the Federal Deposit Insurance Act;
14 and

15 “(II) to provide for the safe and
16 sound operation of the State member
17 wholesale financial institution without
18 undue risk to creditors or other per-
19 sons, including Federal reserve banks,
20 engaged in transactions with such in-
21 stitution.

22 “(ii) MINIMUM TIER 1 CAPITAL
23 RATIO.—The minimum ratio of tier 1 cap-
24 ital to total risk-weighted assets of State
25 member wholesale financial institutions

1 shall be not less than the level required for
2 a State member insured bank to be well
3 capitalized unless the Board determines
4 otherwise, consistent with safety and
5 soundness.

6 “(B) CAPITAL CATEGORIES FOR PROMPT
7 CORRECTIVE ACTION.—For purposes of apply-
8 ing section 38 of the Federal Deposit Insurance
9 Act with respect to any wholesale financial in-
10 stitution, the Board shall, by regulation, estab-
11 lish, for each relevant capital measure specified
12 by the Board under subparagraph (A), the lev-
13 els at which a State member wholesale financial
14 institution is well capitalized, adequately cap-
15 italized, undercapitalized, significantly under-
16 capitalized, and critically undercapitalized.

17 “(3) ADDITIONAL REQUIREMENTS APPLICABLE
18 TO STATE MEMBER WHOLESAL FINANCIAL INSTI-
19 TUTIONS.—In addition to any requirement otherwise
20 applicable to State member banks or applicable,
21 under this section, to State member wholesale finan-
22 cial institutions, the Board may prescribe, by regula-
23 tion or order, for State member wholesale financial
24 institutions—

1 “(A) limitations on transaction with affli-
2 ates to prevent an affiliate from gaining access
3 to, or the benefits of, credit from a Federal re-
4 serve bank, including overdrafts at a Federal
5 reserve bank;

6 “(B) special clearing balance requirements;
7 and

8 “(C) any additional requirements that the
9 Board determines to be appropriate or nec-
10 essary to—

11 “(i) promote the safety and soundness
12 of the wholesale financial institution, or

13 “(ii) protect creditors and other per-
14 sons, including Federal reserve banks, en-
15 gaged in transactions with the State mem-
16 ber wholesale financial institution.

17 “(4) EXEMPTIONS FOR STATE MEMBER WHOLE-
18 SALE FINANCIAL INSTITUTIONS.—The Board may,
19 by regulation or order, exempt any State member
20 wholesale financial institution from any provision ap-
21 plicable to a State member bank that is not a State
22 member wholesale financial institution, if the Board
23 finds that such exemption is not inconsistent with—

1 “(A) the promotion of the safety and
2 soundness of the State member wholesale finan-
3 cial institution; and

4 “(B) the protection of creditors and other
5 persons, including Federal reserve banks, en-
6 gaged in transactions with the State member
7 wholesale financial institution.

8 “(5) NO EFFECT ON OTHER PROVISIONS.—This
9 section shall not be construed as limiting the
10 Board’s authority over member banks under any
11 other provision of law, or to create any obligation for
12 any Federal reserve bank to make, increase, renew,
13 or extend any advances or discount under this Act
14 to any member bank or other depository institution.

15 “(d) CONSERVATORSHIP AUTHORITY.—

16 “(1) IN GENERAL.—The Board may appoint a
17 conservator to take possession and control of a State
18 member wholesale financial institution to the same
19 extent and in the same manner as the Comptroller
20 of the Currency may appoint a conservator for a na-
21 tional bank under section 203 of the Bank Con-
22 servation Act, and the conservator shall exercise the
23 same powers, functions, and duties, subject to the
24 same limitations, as are provided under such Act for
25 conservators of national banks.

1 “(2) BOARD AUTHORITY.—The Board shall
2 have the same authority with respect to any con-
3 servator appointed under paragraph (1) and the
4 State member wholesale financial institution for
5 which such conservator has been appointed as the
6 Comptroller of the Currency has under the Bank
7 Conservation Act with respect to a conservator ap-
8 pointed under such Act and a national bank for
9 which the conservator has been appointed.

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

12 “(1) STATE MEMBER WHOLESAL FINANCIAL
13 INSTITUTION.—The term ‘State member wholesale
14 financial institution’ means a bank whose application
15 to become a State member wholesale financial insti-
16 tution and a State member bank has been approved
17 by the Board under this section.

18 “(2) DEPOSIT.—The term ‘deposit’ has the
19 meaning given to such term by the Board under this
20 Act.

21 “(3) STATE MEMBER INSURED BANK.—The
22 term ‘State member insured bank’ means a State
23 member bank which is an insured bank (as defined
24 in section 3(h) of the Federal Deposit Insurance
25 Act).

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

5 **SEC. 403. AMENDMENTS TO THE FEDERAL DEPOSIT INSUR-**
6 **ANCE ACT.**

7 (a) VOLUNTARY TERMINATION OF INSURED STATUS
8 BY CERTAIN INSTITUTIONS.—

9 (1) SECTION 8 DESIGNATIONS.—Section 8(a) of
10 the Federal Deposit Insurance Act (12 U.S.C.
11 1818(a)) is amended—

12 (A) by striking paragraph (1); and

13 (B) by redesignating paragraphs (2)
14 through (9) as paragraphs (1) through (8), re-
15 spectively.

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

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

22 “(a) IN GENERAL.—Except as provided in subsection
23 (b), an insured State bank or a national bank may volun-
24 tarily terminate such bank’s status as an insured deposi-

1 tory institution in accordance with regulations of the Cor-
2 poration if—

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

5 “(A) to the Corporation and either the
6 Board of Governors of the Federal Reserve Sys-
7 tem (in the case of a State member bank) or
8 the Comptroller of the Currency (in the case of
9 a national bank) not less than 6 months before
10 the effective date of such termination; and

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

14 “(2) either—

15 “(A) the deposit insurance fund of which
16 such bank is a member equals or exceeds the
17 fund’s designated reserve ratio as of the date
18 the bank provides a written notice under para-
19 graph (1) and the Corporation determines that
20 the fund will equal or exceed the applicable des-
21 ignated reserve ratio for the 2 semiannual as-
22 sessment periods immediately following such
23 date; or

24 “(B) the Corporation and the Board of
25 Governors of the Federal Reserve System (in

1 the case of a State member bank) or the Comp-
2 troller of the Currency (in the case of a na-
3 tional bank) approve the termination of the
4 bank's insured status and the bank pays an exit
5 fee in accordance with subsection (e).

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

8 “(1) an insured savings association;

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

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

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

20 “(d) INSTITUTION MUST BECOME WHOLESALE FI-
21 NANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING
22 ACTIVITIES.—Any depository institution which voluntarily
23 terminates such institution's status as an insured deposi-
24 tory institution under this section may not, upon termi-
25 nation of insurance, accept any deposits unless the institu-

1 tion is either a State member wholesale financial institu-
2 tion under section 9B of the Federal Reserve Act, or a
3 national wholesale financial institution under section
4 5136B of the Revised Statutes of the United States.

5 “(e) EXIT FEES.—

6 “(1) IN GENERAL.—Any bank that voluntarily
7 terminates such bank’s status as an insured deposi-
8 tory institution under this section shall pay an exit
9 fee in an amount that the Corporation determines is
10 sufficient to account for the institution’s pro rata
11 share of the amount (if any) which would be re-
12 quired to restore the relevant deposit insurance fund
13 to the fund’s designated reserve ratio as of the date
14 the bank provides a written notice under subsection
15 (a)(1).

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

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

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

1 tor, shall continue to be insured for a period of not
2 less than 6 months and not more than 2 years, as
3 determined by the Corporation. During such period,
4 no additions to any such deposits, and no new de-
5 posits in the depository institution made after the ef-
6 fective date of such termination shall be insured by
7 the Corporation.

8 “(2) TEMPORARY ASSESSMENTS; OBLIGATIONS
9 AND DUTIES.—During the period specified in para-
10 graph (1) with respect to any bank, the bank shall
11 continue to pay assessments under section 7 as if
12 the bank were an insured depository institution. The
13 bank shall, in all other respects, be subject to the
14 authority of the Corporation and the duties and obli-
15 gations of an insured depository institution under
16 this Act during such period, and in the event that
17 the bank is closed due to an inability to meet the de-
18 mands of the bank’s depositors during such period,
19 the Corporation shall have the same powers and
20 rights with respect to such bank as in the case of
21 an insured depository institution.

22 “(g) ADVERTISEMENTS.—

23 “(1) IN GENERAL.—A bank that voluntarily
24 terminates the bank’s insured status under this sec-
25 tion shall not advertise or hold itself out as having

1 insured deposits, except that the bank may advertise
2 the temporary insurance of deposits under sub-
3 section (f) if, in connection with any such advertise-
4 ment, the advertisement also states with equal prom-
5 inence that additions to deposits and new deposits
6 made after the effective date of the termination are
7 not insured.

8 “(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS,
9 AND SECURITIES.—Any certificate of deposit or
10 other obligation or security issued by a State bank
11 or a national bank after the effective date of the vol-
12 untary termination of the bank’s insured status
13 under this section shall be accompanied by a con-
14 spicuous, prominently displayed notice that such cer-
15 tificate of deposit or other obligation or security is
16 not insured under this Act.

17 “(h) NOTICE REQUIREMENTS.—

18 “(1) NOTICE TO THE CORPORATION.—The no-
19 tice required under subsection (a)(1)(A) shall be in
20 such form as the Corporation may require.

21 “(2) NOTICE TO DEPOSITORS.—The notice re-
22 quired under subsection (a)(1)(B) shall be—

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

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

4 (b) DEFINITION.—Section 19(b)(1)(A)(i) of the Fed-
5 eral Reserve Act (12 U.S.C. 461(b)(1)(A)(i)) is amended
6 after “such Act” by inserting “, or any State member
7 wholesale financial institution as defined in section 9B of
8 this Act or any national wholesale financial institution as
9 defined in section 5136B of the Revised Statutes of the
10 United States”.

11 (c) REPORTS ON DISCOUNTS AND ADVANCES TO
12 WHOLESALE FINANCIAL INSTITUTIONS.—Section 10B of
13 the Federal Reserve Act (12 U.S.C. 347(b)) is amended
14 by adding at the end the following new subsection:

15 “(c) REPORTS ON DISCOUNTS AND ADVANCES TO
16 WHOLESALE FINANCIAL INSTITUTIONS.—

17 “(1) IN GENERAL.—The Board shall submit a
18 report to the Congress at the end of any year in
19 which any State member wholesale financial institu-
20 tion or national wholesale financial institution (as
21 defined in section 5136B of the Revised Statutes of
22 the United States) has obtained a discount, advance,
23 or other extension of credit from a Federal reserve
24 bank.

1 “(2) CONTENTS.—Any report submitted under
 2 paragraph (1) shall explain the circumstances and
 3 need for any discount, advance, or other extension of
 4 credit to a wholesale financial institution during the
 5 period covered by the report, including the type and
 6 amount of credit extended and the amount of credit
 7 remaining outstanding as of the date of the report.”.

8 **TITLE V—MERGER OF BANK AND THRIFT**
 9 **CHARTERS, REGULATORS, AND INSUR-**
 10 **ANCE FUNDS**

11 **Subtitle A—Conversion of Thrift Charters**

12 **SEC. 501. SHORT TITLE.**

13 This title may be cited as the Thrift Charter Conver-
 14 sion Act of 1996.

15 **SEC. 502. TERMINATION OF FEDERAL SAVINGS ASSOCIA-**
 16 **TIONS; TREATMENT OF STATE SAVINGS ASSO-**
 17 **CIATIONS AS BANKS FOR PURPOSES OF FED-**
 18 **ERAL BANKING LAW.**

19 (a) **TERMINATION OF FEDERAL SAVINGS ASSOCIA-**
 20 **TION CHARTERS.—**

21 (1) **IN GENERAL.—**Each Federal savings asso-
 22 ciation shall—

23 (A) convert to a national bank charter;

24 (B) convert to a State depository institu-
 25 tion charter; or

1 (C) surrender the charter of such savings
2 association and liquidate the institution.

3 (2) CONVERSION TO NATIONAL BANK BY OPER-
4 ATION OF LAW.—If any Federal savings association
5 has not taken any action required under paragraph
6 (1) as of January 1, 1998, the savings association
7 shall—

8 (A) become a national bank on such date
9 by operation of law;

10 (B) immediately file articles of association
11 and an organizational certificate with the
12 Comptroller of the Currency in accordance with
13 sections 5133, 5134, and 5135 of the Revised
14 Statutes of the United States; and

15 (C) cease to exist as a Federal savings as-
16 sociation as of such date.

17 (3) PROHIBITION ON NEW CHARTERS OF FED-
18 ERAL SAVINGS ASSOCIATIONS.—The Director of the
19 Office of Thrift Supervision may not grant any char-
20 ter for a Federal savings association for which an
21 application was received after the date of the enact-
22 ment of this Act.

23 (b) TREATMENT OF STATE SAVINGS ASSOCIATIONS
24 AS BANKS FOR PURPOSES OF FEDERAL BANKING LAW.—

1 (1) AMENDMENTS TO FEDERAL DEPOSIT IN-
2 SURANCE ACT.—Section 3 of the Federal Deposit
3 Insurance Act (12 U.S.C. 1813) is amended—

4 (A) by striking paragraph (2) of subsection
5 (a) and inserting the following new paragraph:
6 “(2) STATE BANK.—

7 “(A) IN GENERAL.—The term ‘State bank’
8 means any bank, banking association, trust
9 company, savings bank, industrial bank (or
10 similar depository institution which the Board
11 of Directors finds to be operating substantially
12 in the same manner as an industrial bank),
13 building and loan association, savings and loan
14 association, homestead association, cooperative
15 bank, or other banking institution—

16 “(i) which is engaged in the business
17 of receiving deposits, other than trust
18 funds (as defined in this section); and

19 “(ii) which—

20 “(I) is incorporated under the
21 laws of any State;

22 “(II) is organized and operating
23 according to the laws of the State in
24 which such institution is chartered or
25 organized; or

1 “(III) is operating under the
2 Code of Law for the District of Co-
3 lumbia (except a national bank).

4 “(B) CERTAIN INSURED BANKS IN-
5 CLUDED.—The term ‘State bank’ includes a co-
6 operative bank or other unincorporated bank
7 the deposits of which were insured by the Cor-
8 poration on the day before the date of the en-
9 actment of the Financial Institutions Reform
10 Recovery, and Enforcement Act of 1989.

11 “(C) CERTAIN UNINSURED BANKS EX-
12 CLUDED.—The term ‘State bank’ does not in-
13 clude any cooperative bank or other unincor-
14 porated bank the deposits of which were not in-
15 sured by the Corporation on the day before the
16 date of the enactment of the Financial Institu-
17 tions Reform, Recovery, and Enforcement Act
18 of 1989.”; and

19 (B) in subsection (q)—

20 (i) by inserting “and” after the semi-
21 colon at the end of paragraph (2);

22 (ii) by striking “; and” at the end of
23 paragraph (3) and inserting a period; and

24 (iii) by striking paragraph (4).

1 (2) AMENDMENTS TO THE BANK HOLDING
2 COMPANY ACT OF 1956.—Section 2 of the Bank
3 Holding Company Act of 1956 (12 U.S.C. 1841) is
4 amended—

5 (A) by striking subparagraph (E) of sub-
6 section (a)(5); and

7 (B) by striking subparagraphs (B) and (J)
8 of subsection (c)(2).

9 (3) AMENDMENTS TO THE FEDERAL RESERVE
10 ACT.—The 2d and 3d paragraphs of the 1st section
11 of the Federal Reserve Act (12 U.S.C. 221) are each
12 amended by inserting “(as defined in section 3(a)(2)
13 of the Federal Deposit Insurance Act)” after “State
14 bank”.

15 (c) COMPARABILITY OF REGULATION FOR STATE-
16 CHARTERED DEPOSITORY INSTITUTIONS.—

17 (1) REVIEW OF STATE SUPERVISION.—The
18 Corporation shall maintain procedures for reviewing,
19 under standards the Board of Directors shall pre-
20 scribe in regulations, the manner in which State de-
21 pository institutions are regulated by a State for the
22 purpose of ensuring that State savings associations
23 are no less rigorously regulated by a State than
24 State banks.

1 (2) INADEQUATE STATE REGULATIONS.—If, in
2 connection with a review of State regulation of State
3 depository institutions pursuant to paragraph (2),
4 the Corporation determines that a State regulates
5 savings associations chartered by such State less rig-
6 orously than the State regulates banks chartered by
7 such State, the Corporation may take such action
8 under section 8(a) of the Federal Deposit Insurance
9 Act as the Corporation determines to be appropriate
10 which shall be effective no later than the end of the
11 1-year period beginning on the date of such deter-
12 mination.

13 (3) DEFINITIONS.—The following definitions
14 shall apply for purposes of this subsection:

15 (A) STATE BANK.—The term “State
16 bank” has the same meaning as in section
17 3(a)(2) of the Federal Deposit Insurance Act
18 (as in effect on the date of the enactment of the
19 Thrift Charter Conversion Act of 1996).

20 (B) STATE SAVINGS ASSOCIATION.—The
21 term “State savings association” has the same
22 meaning as in section 3(b)(2) of the Federal
23 Deposit Insurance Act (as in effect on the date
24 of the enactment of the Thrift Charter Conver-
25 sion Act of 1996).

1 (C) STATE DEPOSITORY INSTITUTION.—

2 The term “State depository institution” has the
3 same meaning as in section 3(c)(5) of the Fed-
4 eral Deposit Insurance Act.

5 **SEC. 503. TREATMENT OF CERTAIN ACTIVITIES AND AFFILI-**
6 **ATIONS OF BANK HOLDING COMPANIES RE-**
7 **SULTING FROM THIS ACT.**

8 Section 4 of the Bank Holding Company Act of 1956
9 (12 U.S.C. 1843) is amended by adding at the end the
10 following new subsection:

11 “(k) TREATMENT OF COMPANIES RESULTING FROM
12 SAVINGS AND LOAN HOLDING COMPANIES.—

13 “(1) IN GENERAL.—Notwithstanding any other
14 provision of this section (other than paragraph (5))
15 or any other provision of Federal law including sec-
16 tions 20 and 32 of the Banking Act of 1933, a
17 qualified bank holding company may, after such
18 company becomes a bank holding company—

19 “(A) maintain or enter into any non-bank-
20 ing affiliation which such company was author-
21 ized to maintain or enter into as of September
22 22, 1995, or was authorized to maintain follow-
23 ing a merger of insured depository institution
24 subsidiaries pursuant to an application filed no
25 later than such date; and

1 “(B) engage, directly or through any affili-
2 ate described in subparagraph (A) which is not
3 a bank, in any activity in which such company
4 or any affiliate described in subparagraph (A)
5 was authorized to engage as of September 22,
6 1995, or in which such company was authorized
7 to engage following a merger of insured deposi-
8 tory institution subsidiaries pursuant to an ap-
9 plication filed no later than such date, if the re-
10 quirements of paragraph (4) are met.

11 “(2) QUALIFIED BANK HOLDING COMPANY DE-
12 FINED.—For purposes of this subsection, the term
13 ‘qualified bank holding company’ means—

14 “(A) any company—

15 “(i) which—

16 “(I) as of September 13, 1995, is
17 a savings and loan holding company;
18 or

19 “(II) as of September 30, 1995,
20 has filed an application to charter a
21 de novo Federal savings association
22 and thereafter becomes a savings and
23 loan holding company by virtue of the
24 establishment of such savings associa-
25 tion; and

1 “(ii) which as of the dates referred to
2 in subclause (I) or (II), as the case may
3 be, is not a bank holding company and be-
4 comes a bank holding company after such
5 date, or any subsidiary of such company;
6 and

7 “(B) any bank holding company which as
8 of September 13, 1995—

9 “(i) is a savings and loan holding
10 company; and

11 “(ii) is exempt from this section pur-
12 suant to an order issued by the Board
13 under subsection (d).

14 “(3) NO LOSS OF SUBSECTION (d) EXEMP-
15 TION.—No qualified bank holding company de-
16 scribed in paragraph (2)(B) shall lose the grounds
17 for the exemption under subsection (d) because a
18 savings association which such company controlled,
19 directly or indirectly, as of September 13, 1995, be-
20 comes a bank after such date so long as such bank
21 continues to meet the requirements of subpara-
22 graphs (A) and (B) of paragraph (4).

23 “(4) PREREQUISITES FOR CONTINUATION OF
24 GRANDFATHERED ACTIVITIES AND AFFILIATIONS.—

25 This subsection shall cease to apply with respect to

1 a qualified bank holding company if, at any time
2 after such company first meets the definition of a
3 qualified bank holding company—

4 “(A) any insured depository institution
5 controlled by such company which, as of the
6 day before the company first meets the defini-
7 tion of a qualified bank holding company—

8 “(i) was subject to the requirements
9 contained in section 10(m) of the Home
10 Owners’ Loan Act, as in effect on such
11 date, (and regulations in effect on such
12 date under such section) for treatment as
13 a qualified thrift lender under such section;
14 and

15 “(ii) was not a savings association de-
16 scribed in section 10(m)(3)(F) of such Act,
17 as in effect on such date,
18 fails to meet any requirement of such section;

19 “(B) any insured depository institution
20 controlled by such company fails to comply with
21 any limitation or restriction on the type of
22 amounts of loans or investments of the institu-
23 tion to which such institution was subject as of
24 the date of the enactment of the Thrift Charter
25 Conversion Act of 1996, other than any limita-

1 tion relating to qualified thrift investments
2 under section 10(m) of the Home Owners' Loan
3 Act, as in effect on such date;

4 “(C) the company or any subsidiary of the
5 company acquires more than 5 percent of the
6 shares or assets of any bank or any savings as-
7 sociation (as such term is defined in section 3
8 of the Federal Deposit Insurance Act, as in ef-
9 fect on the date of the enactment of the Thrift
10 Charter Conversion Act of 1996) after Septem-
11 ber 13, 1995.

12 “(5) NONTRANSFERABLE.—This subsection
13 shall not apply with respect to any qualified bank
14 holding company if, after September 13, 1995—

15 “(A) any person not under common control
16 with such company acquires, directly or indi-
17 rectly, control of the company; or

18 “(B) the company is the subject of any
19 merger, consolidation, or other similar trans-
20 action as a result of which a person not under
21 common control with such company acquires,
22 directly or indirectly, control of such company.

23 “(6) PROHIBITION ON CERTAIN INSURED DE-
24 POSITORY INSTITUTIONS IDENTIFYING THEMSELVES
25 AS NATIONAL BANKS.—

1 “(A) IN GENERAL.—Notwithstanding the
2 requirement of section 5134 of the Revised
3 Statutes of the United States—

4 “(i) the name of an insured depository
5 institution subsidiary of a qualified bank
6 holding company which—

7 “(I) as of the date of the enact-
8 ment of the Thrift Charter Conversion
9 Act of 1996, is a savings and loan
10 holding company described in section
11 10(c)(3) of the Home Owners’ Loan
12 Act (as in effect on such date); and

13 “(II) is subject to the restrictions
14 contained in paragraph (4),
15 may not include the term “national”; and

16 “(ii) such insured depository institu-
17 tion may not be identified as a national
18 bank on any sign displayed by the institu-
19 tion or in any advertisement or other pub-
20 lication of the institution.

21 “(B) DEPOSITORY INSTITUTION NOT LIA-
22 BLE FOR FRAUDULENT MISREPRESENTATION
23 FOR NOT REPRESENTING ITSELF AS A NA-
24 TIONAL BANK.—An insured depository institu-
25 tion which is subject to subparagraph (A) shall

1 not be liable for any civil or criminal penalty
2 under any Federal or State consumer protection
3 law, or in any criminal or civil action, for fraud-
4 ulently misrepresenting the nature of the char-
5 ter of the institution, for falsely advertising the
6 status of the institution, for making a false
7 statement with respect to the status of the in-
8 stitution, or for any similar offense by reason of
9 the institution's compliance with such subpara-
10 graph.

11 “(7) ENFORCEMENT.—In addition to any other
12 power of the Board, the Board may enforce compli-
13 ance with the provisions of this subsection with re-
14 spect to any qualified bank holding company and
15 any bank controlled by such company under section
16 8 of the Federal Deposit Insurance Act.”.

17 **SEC. 504. TRANSITION PROVISIONS FOR ACTIVITIES OF**
18 **SAVINGS ASSOCIATIONS WHICH CONVERT**
19 **INTO OR BECOME TREATED AS BANKS.**

20 (a) IN GENERAL.—Notwithstanding any other provi-
21 sion of Federal law, any insured depository institution
22 which, as of September 13, 1995, is a savings association
23 (as defined in section 3(b) of the Federal Depository In-
24 surance Act (as in effect on such date)) and after such
25 date converts to a national or State bank charter or be-

1 comes treated as a State bank pursuant to the amendment
2 made by section 502(b), may continue to engage, directly
3 or indirectly, in any activity in which such institution was
4 lawfully engaged as of such date during the 2-year period
5 beginning on the effective date of such conversion or the
6 effective date of such amendments, as the case may be.

7 (b) TWO 1-YEAR EXTENSIONS AUTHORIZED.—The
8 2-year period described in subsection (a) with respect to
9 any insured depository institution may be extended for
10 such institution not to exceed two additional times for not
11 more than 1 year each time if the appropriate Federal
12 banking agency determines that such extension is nec-
13 essary to avert substantial loss to the institution and is
14 otherwise consistent with the safety and soundness of the
15 institution.

16 **SEC. 505. REGISTRATION OF BANK HOLDING COMPANIES**
17 **RESULTING FROM CONVERSIONS OF SAV-**
18 **INGS ASSOCIATIONS TO BANKS OR TREAT-**
19 **MENT OF SAVINGS ASSOCIATIONS AS BANKS.**

20 Section 3 of the Bank Holding Company Act of 1956
21 (12 U.S.C. 1842) is amended by adding at the end the
22 following new subsections:

23 “(h) REGISTRATION OF CERTAIN BANK HOLDING
24 COMPANIES.—A company which, as of September 13,
25 1995, is a savings and loan holding company (as defined

1 in section 10(a)(1)(D) of the Home Owners' Loan Act,
2 as in effect on such date) and is not a bank holding com-
3 pany shall not be required to obtain the approval of the
4 Board under subsection (a) to become a bank holding com-
5 pany after September 13, 1995, as a result of the conver-
6 sion of any insured depository institution subsidiary of
7 such company into a bank or by virtue of the treatment
8 of any insured depository institution subsidiary of such
9 company as a bank pursuant to the amendments made
10 by the Thrift Charter Conversion Act of 1996, if such
11 company—

12 “(1) registers as a bank holding company with
13 the Board in accordance with section 5(a); and

14 “(2) does not acquire, directly or indirectly,
15 ownership or control of any additional insured de-
16 pository institution or other company in connection
17 with such conversion or treatment.

18 “(i) REGULATION OF QUALIFIED BANK HOLDING
19 COMPANIES.—The Board shall regulate qualified bank
20 holding companies (as defined in section 4(k)(2)) in a
21 manner consistent with—

22 “(1) the regulation of such companies by the
23 Director of the Office of Thrift Supervision before
24 the date of the enactment of the Thrift Charter Con-
25 version Act of 1996; and

1 “(2) the safety and soundness of insured depos-
2 itory institution subsidiaries of such companies.”.

3 **SEC. 506. ADDITIONAL TRANSITION PROVISIONS AND SPE-**
4 **CIAL RULES.**

5 (a) MUTUAL NATIONAL BANKS AUTHORIZED; CON-
6 VERSION OF MUTUAL SAVINGS ASSOCIATIONS INTO NA-
7 TIONAL BANKS.—

8 (1) IN GENERAL.—Chapter one of title LXII of
9 the Revised Statutes of the United States (12
10 U.S.C. 21 et seq.) is amended by inserting after sec-
11 tion 5133 the following new section:

12 **“SEC. 5133A. MUTUAL NATIONAL BANKS.**

13 “(a) IN GENERAL.—Notwithstanding the paragraph
14 designated the “Third” of section 5134, the Comptroller
15 of the Currency may charter national banks organized in
16 the mutual form either de novo or through a conversion
17 of any stock national or State bank (as defined in section
18 3 of the Federal Deposit Insurance Act) or any State mu-
19 tual bank or credit union, subject to regulations prescribed
20 by the Comptroller of the Currency in accordance with this
21 section.

22 “(b) REGULATIONS.—

23 “(1) TRANSITION RULES.—National banks or-
24 ganized in the mutual form shall be subject to the
25 regulations of the Director of the Office of Thrift

1 Supervision governing corporate organization, gov-
2 ernance, and conversion of mutual institutions, as in
3 effect on September 13, 1995, including parts 543,
4 544, 546, 563b, and 563c) of chapter V of title 12
5 of the Code of Federal Regulations (as in effect on
6 such date), during the 3-year period beginning on
7 the date of the enactment of the Thrift Charter Con-
8 version Act of 1996.

9 “(2) REGULATIONS OF THE COMPTROLLER.—

10 The Comptroller of the Currency shall prescribe ap-
11 propriate regulations for national banks organized in
12 the mutual form, effective as of the end of the 3-
13 year period referred to in paragraph (1).

14 “(3) APPLICABILITY OF CAPITAL STOCK RE-

15 QUIREMENTS.—The Comptroller of the Currency
16 shall prescribe regulations regarding the manner in
17 which requirements of title LXII of the Revised
18 Statutes of the United States with respect to capital
19 stock, and limitations imposed on national banks
20 under such title based on capital stock, shall apply
21 to national banks organized in mutual form pursu-
22 ant to subsection (a).

23 “(c) CONVERSIONS.—

24 “(1) CONVERSION TO STOCK NATIONAL
25 BANK.—Subject to such regulations as the Comp-

1 troller of the Currency may prescribe for the protec-
2 tion of depositors' rights and for any other purpose
3 the Comptroller of the Currency may consider appro-
4 priate, any national bank which is organized in mu-
5 tual form pursuant to paragraph (1) may reorganize
6 as a stock national bank.

7 “(2) CONVERSIONS TO STATE BANKS.—Any na-
8 tional mutual bank may convert to a State bank
9 charter in accordance with regulations prescribed by
10 the Comptroller of the Currency and applicable
11 State law.”.

12 (2) MUTUAL BANK HOLDING COMPANIES.—
13 Subsection (g) of section 3 of the Bank Holding
14 Company Act of 1956 (12 U.S.C. 1842(g)) is
15 amended to read as follows:

16 “(g) MUTUAL BANK HOLDING COMPANIES.—

17 “(1) IN GENERAL.—A national mutual bank
18 may reorganize so as to become a holding company
19 by—

20 “(A) chartering an interim national bank,
21 the stock of which is to be wholly owned, except
22 as otherwise provided in this section by the na-
23 tional mutual bank; and

24 “(B) transferring the substantial part of
25 the national mutual bank's assets and liabil-

1 ities, including all of the bank's insured liabil-
2 ities, to the interim national bank.

3 “(2) DIRECTORS AND CERTAIN ACCOUNT HOLD-
4 ERS” APPROVAL OF PLAN REQUIRED.—A reorga-
5 nization is not authorized under this subsection un-
6 less—

7 “(A) a plan providing for such reorganiza-
8 tion has been approved by a majority of the
9 board of directors of the national mutual bank;
10 and

11 “(B) in the case of a national mutual bank
12 in which holders of accounts and obligers exer-
13 cise voting rights, such plan has been submitted
14 to an approved by a majority of such individ-
15 uals at a meeting held at the call of the direc-
16 tors in accordance with the procedures pre-
17 scribed by the bank's charter and bylaws.

18 “(3) NOTICE TO THE BOARD; DISAPPROVAL PE-
19 RIOD.—

20 “(A) NOTICE REQUIRED.—

21 “(i) IN GENERAL.—At least 60 days
22 before taking any action described in para-
23 graph (1), a national mutual bank seeking
24 to establish a mutual holding company
25 shall provide written notice to the Board.

1 “(ii) CONTENTS OF NOTICE.—The no-
2 tice shall contain such relevant information
3 as the Board shall require by regulation or
4 by specific request in connection with any
5 particular notice.

6 “(B) TRANSACTION ALLOWED IF NOT DIS-
7 APPROVED.—Unless the Board within such 60-
8 day notice period disapproves the proposed
9 holding company formation, or extends for an-
10 other 30 days the period during which such dis-
11 approval may be issued, the national mutual
12 bank providing such notice may proceed with
13 the transaction, if the requirements of para-
14 graph (2) have been met.

15 “(C) GROUNDS FOR DISAPPROVAL.—The
16 Board may disapprove any proposed holding
17 company formation only if—

18 “(i) such disapproval is necessary to
19 prevent unsafe or unsound practices;

20 “(ii) the financial or management re-
21 sources of the national mutual bank in-
22 volved warrant disapproval;

23 “(iii) the national mutual bank fails
24 to furnish the information required under
25 subparagraph (A); or

1 “(iv) the national mutual bank fails to
2 comply with the requirement of paragraph
3 (2).

4 “(D) RETENTION OF CAPITAL ASSETS.—In
5 connection with the transaction described in
6 paragraph (1), a national mutual bank may,
7 subject to the approval of the Board, retain
8 capital assets at the holding company level to
9 the extent that the capital retained at the hold-
10 ing company is in excess of the amount of cap-
11 ital required in order for the interim national
12 bank to meet all relevant capital standards es-
13 tablished by the Comptroller of the Currency
14 for national banks.

15 “(4) OWNERSHIP.—

16 “(A) IN GENERAL.—Persons having own-
17 ership rights in the national mutual bank under
18 section 5133A of the Revised Statutes of the
19 United States (including paragraph 575.5 of
20 chapter V of title 12 of the Code of Federal
21 Regulations, as in effect on September 13,
22 1995, and applicable to national mutual banks
23 pursuant to such section) or State law shall
24 have the same ownership rights with respect to
25 the mutual holding company.

1 “(B) HOLDERS OF CERTAIN ACCOUNTS.—
2 Holders of savings, demand, or other accounts
3 of—

4 “(i) a national bank chartered as part
5 of a transaction described in paragraph
6 (1); or

7 “(ii) a mutual bank acquired pursuant
8 to paragraph (5)(B),
9 shall have the same ownership rights with re-
10 spect to the mutual holding company as persons
11 described in subparagraph (A) of this para-
12 graph.

13 “(5) PERMITTED ACTIVITIES.—A mutual hold-
14 ing company may engage only in the following activi-
15 ties:

16 “(A) Investing in the stock of a national or
17 State bank.

18 “(B) Acquiring a mutual bank through the
19 merger of such bank into a national bank sub-
20 sidiary of such holding company or an interim
21 national bank subsidiary of such holding com-
22 pany.

23 “(C) Subject to paragraph (6), merging
24 with or acquiring another holding company, one
25 of whose subsidiaries is a national mutual bank.

1 “(D) Investing in a corporation the capital
2 stock of which is available for purchase by a na-
3 tional mutual bank under Federal law or under
4 the law of any State where the home office of
5 any subsidiary bank is located.

6 “(E) Engaging in the activities permitted
7 under section 4(c).

8 “(6) LIMITATIONS ON CERTAIN ACTIVITIES OF
9 ACQUIRED HOLDING COMPANIES.—

10 “(A) NEW ACTIVITIES.—If a mutual hold-
11 ing company acquires or merges with another
12 holding company under paragraph (5)(C), the
13 holding company acquired or the holding com-
14 pany resulting from such merger or acquisition
15 may only invest in assets and engage in activi-
16 ties which are authorized under paragraph (5).

17 “(B) GRACE PERIOD FOR DIVESTING PRO-
18 HIBITED OR DISCONTINUING PROHIBITED AC-
19 TIVITIES.—Not later than 2 years following a
20 merger or acquisition described in paragraph
21 (5)(C), the acquired holding company or the
22 holding company resulting from such merger or
23 acquisition shall—

1 “(i) dispose of any asset which is an
2 asset in which a mutual holding company
3 may not invest under paragraph (5); and

4 “(ii) cease any activity which is an ac-
5 tivity in which a mutual holding company
6 may not engage under paragraph (5).

7 “(7) CHARTERING AND OTHER REQUIRE-
8 MENTS.—

9 “(A) IN GENERAL.—A mutual holding
10 company shall be chartered by the Board and
11 shall be subject to such regulations as the
12 Board may prescribe.

13 “(B) OTHER REQUIREMENTS.—Unless the
14 context otherwise required, a mutual holding
15 company shall be subject to the other require-
16 ments of this Act regarding regulation of hold-
17 ing companies.

18 “(8) CAPITAL IMPROVEMENT.—

19 “(A) PLEDGE OF STOCK OF SAVINGS ASSO-
20 CIATION SUBSIDIARY.—This section shall not
21 prohibit a mutual holding company from pledg-
22 ing all or a portion of the stock of a national
23 bank chartered as part of a transaction de-
24 scribed in paragraph (1) to raise capital for
25 such bank.

1 “(B) ISSUANCE OF NONVOTING SHARES.—

2 No provision of this Act shall be construed as
3 prohibiting a national bank chartered as part of
4 a transaction described in paragraph (1) from
5 issuing any nonvoting shares or less than 50
6 percent of the voting shares of such bank to
7 any person other than the mutual holding com-
8 pany.

9 “(9) INSOLVENCY AND LIQUIDATION.—

10 “(A) IN GENERAL.—Notwithstanding any
11 provision of law, upon—

12 “(i) the default of any national
13 bank—

14 “(I) the stock of which is owned
15 by any mutual holding company; and

16 “(II) which was chartered in a
17 transaction described in paragraph
18 (1);

19 “(ii) the default of a mutual holding
20 company; or

21 “(iii) a foreclosure on a pledge by a
22 mutual holding company described in para-
23 graph (8)(A),

24 A trustee shall be appointed receiver of such
25 mutual holding company and such trustee shall

1 have the authority to liquidate the assets of,
2 and satisfy the liabilities of, such mutual hold-
3 ing company pursuant to title 11, United States
4 Code.

5 “(B) DISTRIBUTION OF NET PROCEEDS.—
6 Except as provided in subparagraph (C), the
7 net proceeds of any liquidation of any mutual
8 holding company pursuant to subparagraph (A)
9 shall be transferred to persons who hold owner-
10 ship interests in such mutual holding company.

11 “(C) RECOVERY BY FEDERAL DEPOSIT IN-
12 SURANCE CORPORATION.—If the Federal De-
13 posit Insurance Corporation incurs a loss as a
14 result of the default of any depository institu-
15 tion subsidiary of a mutual holding company
16 which is liquidated pursuant to subparagraph
17 (A), the Federal Deposit Insurance Corporation
18 shall succeed to the ownership interest of the
19 depositors of such depository institution in the
20 mutual holding company, to the extent of the
21 Federal Deposit Insurance Corporation’s loss.

22 “(10) STATE MUTUAL BANK HOLDING COM-
23 PANY.—

24 “(A) IN GENERAL.—Notwithstanding any
25 provision of Federal law, a State bank operat-

1 ing in mutual form may reorganize so as to
2 form a holding company under State law.

3 “(B) REGULATION OF STATE MUTUAL
4 HOLDING COMPANY.—A corporation organized
5 as a holding company in accordance with sub-
6 paragraph (A) shall be regulated on the same
7 terms and be subject to the same limitations as
8 any other holding company which controls a
9 bank.

10 “(11) REGULATIONS.—

11 “(A) TRANSITION RULES.—Mutual bank
12 holding companies organized under this sub-
13 section shall be subject to the regulations of the
14 Director of the Office of Thrift Supervision gov-
15 erning corporate organization, governance, and
16 conversion of mutual institutions, as in effect
17 on September 13, 1995, including part 575 of
18 chapter V of title 12 of the Code of Federal
19 Regulations (as in effect on such date), during
20 the 3-year period beginning on the date of the
21 enactment of the Thrift Charter Conversion Act
22 of 1996.

23 “(B) REGULATIONS OF THE BOARD.—The
24 Board shall prescribe appropriate regulations
25 for mutual holding companies, effective at the

1 end of the 3-year period referred to in subpara-
2 graph (A).

3 “(12) NO CHANGE OF CONTROL.—Any second
4 stage conversion of a mutual holding company to full
5 stock form shall not be deemed to be a change of
6 control if, in connection with such conversion, no
7 company, directly or indirectly, acquires control of
8 such mutual holding company or any successor to
9 such company.

10 “(13) DEFINITIONS.—For purposes of this sub-
11 section, the following definitions shall apply:

12 “(A) MUTUAL HOLDING COMPANY.—The
13 term ‘mutual holding company’ means a cor-
14 poration organized as a holding company under
15 this subsection.

16 “(B) DEFAULT.—The term ‘default’
17 means an adjudication or other official deter-
18 mination of a court of competent jurisdiction or
19 other public authority pursuant to which a con-
20 servator, receiver, or other legal custodian is
21 appointed.

22 “(C) NATIONAL MUTUAL BANK.—The term
23 ‘national mutual bank’ means a national bank
24 organized in mutual form under section 5133A
25 of the Revised Statutes of the United States.”.

1 (3) LIMITATION ON FEDERAL REGULATION OF
2 STATE BANKS.—Except as otherwise provide in Fed-
3 eral law, the Comptroller of the Currency, Board of
4 Governors of the Federal Reserve System, and Fed-
5 eral Deposit Insurance Corporation may not adopt
6 or enforce any regulation which contravenes the cor-
7 poration governance rules prescribed by State law or
8 regulation for State banks unless the Comptroller,
9 Board, or Corporation finds that such Federal regu-
10 lation is necessary to assure the safety and sound-
11 ness of such State banks.

12 (4) CONVERSIONS OF MUTUAL SAVINGS ASSO-
13 CIATION TO MUTUAL NATIONAL BANKS BY OPER-
14 ATION OF LAW.—Notwithstanding any other provi-
15 sion of Federal or State law, any savings association
16 (as defined in section 3 of the Federal Deposit In-
17 surance Act (as in effect on September 13, 1995))
18 which is organized in mutual form as of the date of
19 the enactment of this Act may become a national
20 mutual bank by operation of law if the association—

21 (A) files the articles of association and or-
22 ganization certificate with the Comptroller of
23 the Currency before January 1, 1998, in ac-
24 cordance with chapter one of the LXII of the
25 Revised Statutes of the United States; and

1 (B) provides such other document or infor-
2 mation as the Comptroller of the Currency may
3 prescribe in regulations consistent with this sec-
4 tion and section 5133A of the Revised Statutes
5 of the United States (as added by paragraph
6 (1) of this subsection).

7 (b) MEMBERSHIP IN FEDERAL HOME LOAN
8 BANKS.—Any insured depository institution which—

9 (1) as of the date of the enactment of this Act,
10 is a Federal savings association which, pursuant to
11 section 6(e) of the Federal Home Loan Bank Act,
12 may not voluntarily withdraw from membership in a
13 federal home loan bank; and

14 (2) after such date converts from a Federal
15 savings association to a national bank, shall continue
16 to be subject to the prohibition under such section
17 on voluntary withdrawal from such membership as
18 though such bank were still a Federal savings asso-
19 ciation until the bank ceases to be a national bank.

20 (c) BRANCHES.—

21 (1) IN GENERAL.—Notwithstanding any provi-
22 sion of the Federal Deposit Insurance Act, the Bank
23 Holding Company Act of 1956, or any other Federal
24 or State law, any depository institution which—

1 (A) as of the date of the enactment of this
2 Act, is a savings association; and

3 (B) becomes a bank before January 1,
4 1998, or, pursuant to the amendments made by
5 this subsection, is treated as a bank as of such
6 date under the Federal Deposit Insurance Act,
7 and any depository institution or bank holding com-
8 pany which acquires such depository institution, may
9 continue, after the depository institution becomes or
10 commences to be treated as a bank, to operate any
11 branch or agency which the savings association was
12 operating as a branch or agency or was in the proc-
13 ess of establishing as a branch or agency on Septem-
14 ber 13, 1995.

15 (2) NO ADDITIONAL BRANCHES.—Paragraph
16 (1) shall not be construed as authorizing the estab-
17 lishment, acquisition, or operation of any additional
18 branch of a depository institution, or the conversion
19 of any agency to a branch, in any State by virtue
20 of the operation by such institution of a branch or
21 agency in such State pursuant to such paragraph ex-
22 cept to the extent such establishment, acquisition,
23 operation, or conversion is permitted under the Fed-
24 eral Deposit Insurance Act, Bank Holding Company

1 Act of 1956, and any other applicable Federal or
2 State law.

3 (3) ESTABLISHING A BRANCH OF AGENCY.—

4 For purposes of paragraph (1), a savings association
5 shall be treated as having been in the process of es-
6 tablishing a branch or agency as of September 13,
7 1995, if, as of such date, the savings association—

8 (A) had received approval from the Direc-
9 tor of the Office of Thrift Supervision to estab-
10 lish such branch or agency;

11 (B) had pending with the Director of the
12 Office of Thrift Supervision an application or
13 notice to establish such branch or agency;

14 (C) had a legal and contractual obligation
15 to establish such branch or agency;

16 (D) had received authority from the appro-
17 priate Federal banking agency to establish such
18 branch in connection with the assumption of li-
19 abilities or an acquisition of an insured deposi-
20 tory institution pursuant to subsection (f) or
21 (k) of section 13 of the Federal Deposit Insur-
22 ance Act or section 408(m) of the National
23 Housing Act (as in effect before the date of the
24 enactment of the Financial Institutions Reform,
25 Recovery, and Enforcement Act of 1989); or

1 (E) in the case of a well capitalized deposi-
2 tory institution, is able to demonstrate to the
3 appropriate Federal banking agency that the
4 savings association—

5 (i) had made a significant financial
6 commitment; and

7 (ii) had taken legally binding action or
8 incurred a contractual obligation, in fur-
9 therance of the establishment of such
10 branch or agency.

11 (d) TRANSITION PROVISION RELATING TO LIMITA-
12 TIONS ON LOANS TO ONE BORROWER.—Section 5200 of
13 the Revised Statutes of the United States (12 U.S.C. 84)
14 is amended by adding at the end the following new sub-
15 section:

16 “(e) TRANSITION PROVISIONS FOR SAVINGS ASSO-
17 CIATIONS CONVERTING TO NATIONAL BANKS.—In the
18 case of any depository institution which, as of September
19 13, 1995, is a savings association (as defined in section
20 3(b) of the Federal Deposit Insurance Act (as in effect
21 on such date)) and becomes a national bank on or before
22 January 1, 1998, any loan, or legally binding commitment
23 to make a loan, made or entered into by such institution
24 becomes a national bank may continue to be held without

1 regard to any limitation contained in this section during
2 the 3-year period beginning on such date.”.

3 (e) RIGHTS AND AUTHORITY OF BANKS RESULTING
4 FROM CONVERSIONS OF SAVINGS ASSOCIATIONS.—

5 (1) IN GENERAL.—Upon conversion of a sav-
6 ings association to a national or State bank in ac-
7 cordance with this Act and the amendments made
8 by this title or other provisions of law—

9 (A) the national or State bank shall suc-
10 ceed to all rights, benefits, privileges, powers
11 and franchises, and be subject to all the obliga-
12 tions, duties, restrictions, and disabilities, of
13 such savings association under any contract,
14 agreement, document, or instrument in effect at
15 the time of such conversion to which such sav-
16 ings association was a party; and

17 (B) any reference to the savings associa-
18 tion in any such contract, agreement, docu-
19 ment, or instrument shall be deemed to be a
20 reference to such national or State bank.

21 (2) TREATMENT OF BANK OR SAVINGS AS-
22 SOCIATION.—If the application of paragraph (1)
23 with respect to any national or State bank re-
24 ferred to in such paragraph would—

1 (A) be inconsistent or in conflict with any
2 contract, agreement, document, or instrument
3 described in such paragraph;

4 (B) constitute a default under the con-
5 tract, agreement, document, or instrument;

6 (C) cause such national or State bank to
7 be in default or breach under any provision of
8 the contract, agreement, document, or instru-
9 ment, the national or State bank shall be
10 deemed to be, and treated as, a savings associa-
11 tion for purposes of the contract, agreement,
12 document, or instrument.

13 (f) TRANSFER AND GRANDFATHER OF MUTUAL
14 HOLDINGS COMPANIES.—

15 (1) SUPERVISION AND REGULATION OF MUTUAL
16 HOLDINGS COMPANIES.—

17 (A) IN GENERAL.—The supervision and
18 regulation of any mutual holding company in
19 existence as of the date of the enactment of this
20 Act is hereby transferred to the Board of Gov-
21 ernors of the Federal Reserve System.

22 (B) TRANSITION RULES.—Mutual bank
23 holding companies described in subparagraph
24 (A) shall be subject to the regulations of the
25 Director of the Office of Thrift Supervision, as

1 in effect on September 13, 1995, including part
2 575 of chapter V of title 12 of the Code of Fed-
3 eral Regulations (as in effect on such date),
4 during the 3-year period beginning on the date
5 of the enactment of the Thrift Charter Conver-
6 sion Act of 1996.

7 (2) GRANDFATHER OF EXISTING FEDERAL MU-
8 TUAL HOLDING COMPANIES.—

9 (A) IN GENERAL.—Any Federal mutual
10 holding company in existence as of the date of
11 the enactment of this Act shall be subject to
12 section 4(k) of the Bank Holding Company Act
13 of 1956 (as added by section 2222 of this title).

14 (B) TREATMENT UNDER 4(K).—Any treat-
15 ment of a Federal mutual holding company
16 under section 4(k) shall not be construed as a
17 change in control unless, as a result of the
18 transaction, the holding company no longer con-
19 trols the entity.

20 **SEC. 507. TECHNICAL AND CONFORMING AMENDMENTS.**

21 (a) AMENDMENTS TO THE FEDERAL DEPOSIT IN-
22 SURANCE ACT.—

23 (1) Section 3(z) of the Federal Deposit Insur-
24 ance Act (12 U.S.C. 1813(z)) is amended by strik-

1 ing “, the Director of the Office of Thrift Super-
2 vision”.

3 (2) Section 8(b) of the Federal Deposit Insur-
4 ance Act (12 U.S.C. 1818(b)) is amended by strik-
5 ing paragraph (9).

6 (3) Section 13 of the Federal Deposit Insurance
7 Act (12 U.S.C. 1823) is amended by striking sub-
8 section (k).

9 (4) Subsections (c)(2) and (i)(2) of section 18
10 of the Federal Deposit Insurance Act (12 U.S.C.
11 1828) are each amended—

12 (A) in the subparagraph (B), by inserting
13 “and” after the semicolon;

14 (B) in subparagraph (C), by striking “;
15 and” and inserting a period; and

16 (C) by striking subparagraph (D).

17 (5) Section 18 of the Federal Deposit Insurance
18 Act (12 U.S.C. 1828) is amended by striking sub-
19 section (m).

20 (6) The Federal Deposit Insurance Act (12
21 U.S.C. 1811 et seq.) is amended by striking 28.

22 (b) AMENDMENTS TO THE BANK HOLDING COMPANY
23 ACT OF 1956.—

1 (1) Section 2 of the Bank Holding Company
2 Act of 1956 (12 U.S.C. 1841) is amended by strik-
3 ing subsections (i) and (j).

4 (2) Section 4(e)(8) of the Bank Holding Com-
5 pany Act of 1956 (12 U.S.C. 1843(e)(8)) is amend-
6 ed by striking the sentence preceding the penul-
7 timate sentence.

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

10 (A) in paragraph (2)(A)(i), by striking “or
11 an insured institution” and all that follows
12 through “of this subsection”;

13 (B) in paragraph (2)(A)(ii)—

14 (i) by striking “or a savings associa-
15 tion” where such term appears in the por-
16 tion of such paragraph which precedes sub-
17 clause (I));

18 (ii) by inserting “and” at the end of
19 subclause (VI);

20 (iii) by striking subclauses (VIII),
21 (IX), and (X); and

22 (iv) by striking “(V), and (VIII)”,
23 where such term appears in the portion of
24 such paragraph which appears after the

1 end of subclause (VII), and inserting “and
2 (V)”;

3 (C) by striking paragraphs (10), (11),
4 (12), and (13).

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

7 (A) by striking paragraphs (1) and (2);
8 and

9 (B) in paragraph (3)(A), by striking “any
10 Federal savings association” and all that fol-
11 lows through the period at the end of such
12 paragraph and inserting “such association was
13 authorized to engage under this section as of
14 September 15, 1995.”

15 (c) OTHER TECHNICAL AND CONFORMING AMEND-
16 MENTS.—

17 (1) Section 804(a) of the Alternative Mortgage
18 Transaction Parity Act of 1982 (12 U.S.C. 3803) is
19 amended.—

20 (A) in the portion of such subsection which
21 precedes paragraph (1)—

22 (i) by striking “, and other nonfeder-
23 ally chartered housing creditors,”; and

24 (ii) by inserting “and in order to per-
25 mit other nonfederally chartered housing

1 creditors to make, purchase, and enforce
2 alternative mortgage transactions,” after
3 “enforcing alternative mortgage trans-
4 actions,”; and

5 (B) in paragraph (1), by inserting “(as
6 such term is defined in section 3(a) of the Fed-
7 eral Deposit Insurance Act)” after “with re-
8 spect to banks”.

9 (2) Section 205 of the Depository Institution
10 Management Interlock Act (12 U.S.C. 3204) is
11 amended.—

12 (A) in the portion of paragraph (8)(A)
13 which precedes clause (i), by striking “diversi-
14 fied savings” and all that follows through “with
15 respect to” and inserting “depository institution
16 holding company which, as of September 13,
17 1995, and at all times thereafter, satisfies the
18 consolidated net worth and consolidated net
19 earnings requirements for a diversified savings
20 and loan holding company (as set forth in sec-
21 tion 10(1)(F) of Home Owners’ Loan Act, as
22 such section is in effect on such date, which
23 shall be applicable for purposes of this para-
24 graph without regard to the fact that a deposi-
25 tory institution subsidiary of such holding com-

1 pany has ceased to be a savings association
2 after September 13, 1995) with respect to”;
3 and

4 (B) by striking paragraph (9).

5 (3) Section 19(b)(1)(A) of the Federal Reserve
6 Act (12 U.S.C. 461(b)(1)(A)) is amended—

7 (A) by inserting “and” after the semicolon
8 at the end of clause (v); and

9 (B) by striking clause (vi).

10 (4) Subparagraphs (A), (B), and (C) of section
11 10(e)(5) of the Federal Home Loan Bank Act (12
12 U.S.C. 1430(e)(5)) are each amended by inserting
13 before the period at the end “(as such section is in
14 effect on September 13, 1995)”.

15 **SEC. 508. REFERENCES TO SAVINGS ASSOCIATIONS AND**
16 **STATE BANKS IN FEDERAL LAW.**

17 Effective January 1, 1998, any reference in any Fed-
18 eral banking law to—

19 (1) the term “savings association” shall be
20 deemed to be a reference to a bank as defined in
21 section 3(a) of the Federal Deposit Insurance Act;
22 and

23 (2) the term “State bank” shall be deemed to
24 include any depository institution included in the

1 definition of such term in section 3(a)(2) of such
2 Act.

3 **SEC. 509. REPEAL OF HOME OWNERS' LOAN ACT.**

4 The Home Owners' Loan Act (12 U.S.C. 1461 et
5 seq.) is hereby repealed.

6 **SEC. 510. DEFINITIONS.**

7 For purposes of this subtitle, the terms “appropriate
8 Federal banking agency”, “bank holding company”, “de-
9 pository institution”, “Federal savings association”, “in-
10 sured depository institution”, “savings association”, and
11 “State bank” have the same meanings as in section 3 of
12 the Federal Deposit Insurance Act (as in effect on the
13 date of the enactment of this Act).

14 **Subtitle B—Elimination of Office of The**
15 **Thrift Supervision**

16 **SEC. 511. OFFICE OF THRIFT SUPERVISION ABOLISHED.**

17 Effective January 1, 1998, the Office of Thrift Su-
18 pervision and the position of Director of the Office of
19 Thrift Supervision are hereby abolished.

20 **SEC. 512. DETERMINATION OF TRANSFERRED FUNCTIONS**
21 **AND EMPLOYEES.**

22 (a) ALL OFFICE OF THRIFT SUPERVISION EMPLOY-
23 EES SHALL BE TRANSFERRED.—All employees of the Of-
24 fice of Thrift Supervision shall be identified for transfer
25 under subsection (b) to the Office of the Comptroller of

1 the Currency, the Federal Deposit Insurance Corporation,
2 or the Board of Governors of the Federal Reserve System.

3 (b) FUNCTIONS AND EMPLOYEES TRANSFERRED.—

4 (1) IN GENERAL.—The Director of the Office of
5 Thrift Supervision, the Comptroller of the Currency,
6 the Chairperson of the Federal Deposit Insurance
7 Corporation, and the Chairman of the Board of Gov-
8 ernors of the Federal Reserve System shall jointly
9 determine the functions or activities of the Office of
10 Thrift Supervision, and the number of employees of
11 such Office necessary to perform or support such
12 functions or activities, which are transferred from
13 the Office to the Office of the Comptroller of the
14 Currency, the Federal Deposit Insurance Corpora-
15 tion, or the Board of Governors of the Federal Re-
16 serve System, as the case may be.

17 (2) ALLOCATION OF EMPLOYEES.—The Comp-
18 troller of the Currency, the Chairperson of the Fed-
19 eral Deposit Insurance Corporation, and the Chair-
20 man of the Board of Governors of the Federal Re-
21 serve System shall allocate the employees of the Of-
22 fice of Thrift Supervision consistent with the num-
23 ber determined pursuant to paragraph (1) in a man-
24 ner which such Comptroller, Chairperson, and Chair-
25 man, in their sole discretion, deem equitable except

1 that, within work units, the agency preferences of
2 individual employees shall be accommodated as far
3 as possible.

4 (c) RIGHTS OF EMPLOYEES OF THE OFFICE OF
5 THRIFT SUPERVISION.—All employees of the Office of
6 Thrift Supervision who are identified for transfer under
7 subsection (b) shall be entitled to the following rights:

8 (1) Each employee so identified shall be trans-
9 ferred to the appropriate agency or entity for em-
10 ployment no later than the earlier of the end of the
11 60-day period beginning on the date such employees
12 are identified for transfer under subsection (b) or
13 January 1, 1998, and such transfer shall be deemed
14 a transfer of function for the purpose of section
15 3503 of title 5, United States Code.

16 (2) Each transferred employee holding a perma-
17 nent position shall not be involuntarily separated or
18 reduced in grade or compensation for 1 year after
19 the date of transfer, except for cause or, if the em-
20 ployee is a temporary employee, separated in accord-
21 ance with the terms of the appointment.

22 (3) If any agency or entity to which employees
23 are transferred determines, after the end of the 1-
24 year period beginning on the date the transfer of
25 functions to such agency or entity is completed, that

1 a reorganization of the combined work force is re-
2 quired, that reorganization shall be deemed a “major
3 reorganization” for purposes of affording affected
4 employees retirement under section 833(d)(2) or
5 8414(b)(1)(B) of title 5, United States Code.

6 (d) DISPOSITION OF AFFAIRS.—

7 (1) IN GENERAL.—In winding up the affairs of
8 the Office of Thrift Supervision, the Director of the
9 Office of Thrift Supervision shall consult and co-
10 operate with the Comptroller of the Currency, the
11 Federal Deposit Insurance Corporation, and the
12 Board of Governors of the Federal Reserve System,
13 as the case may be, to facilitate the orderly transfer
14 of the functions to such Comptroller, Corporation, or
15 Board.

16 (2) CONTINUING AUTHORITY OF DIRECTOR OF
17 THE OFFICE OF THRIFT SUPERVISION.—Except as
18 provided in paragraph (1), no provision of this sub-
19 title shall be construed as affecting the authority
20 vested in the Director of the Office of Thrift Super-
21 vision before the date of enactment of this Act which
22 is necessary to carry out the duties of the position
23 until the date upon which the position of Director of
24 the Office of Thrift Supervision is abolished.

1 (3) CONTINUATION OF AGENCY SERVICES.—

2 Any agency, department, or other instrumentality of
3 the United States, or any successor to any such
4 agency, department or instrumentality, which was
5 providing support services to the Director of the Of-
6 fice of Thrift Supervision on the day before the date
7 such position is abolished shall—

8 (A) continue to provide such services on a
9 reimbursable basis, in accordance with the
10 terms of the arrangement pursuant to which
11 such services were provided until the arrange-
12 ment is modified or terminated in accordance
13 with such terms, except that effective January
14 1, 1998, the Comptroller of the Currency, the
15 Federal Deposit Insurance Corporation, or the
16 Board of Governors of the Federal Reserve Sys-
17 tem, as the case may be, shall be substituted
18 for the Director of the Office of Thrift Super-
19 vision as a party to the arrangement; and

20 (B) consult with the Comptroller, the Cor-
21 poration, or the Board to coordinate and facili-
22 tate a prompt and reasonable transition.

23 (e) TRANSFER OF PROPERTY.—Effective January 1,
24 1998, all property of the Office of Thrift Supervision shall
25 be transferred to the Comptroller of the Currency, the

1 Federal Deposit Insurance Corporation, or the Board of
2 Governors of the Federal Reserve System, as determined
3 in accordance with subsections (a) and (b).

4 **SEC. 513. SAVINGS PROVISIONS.**

5 (a) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS
6 NOT AFFECTED.—No provision of this title shall be con-
7 strued as affecting the validity of any right, duty or obliga-
8 tion of the United States, the Director of the Office of
9 Thrift Supervision, or any person, which existed on the
10 day before the date upon which the position of Director
11 of the Office of Thrift Supervision and the Office of Thrift
12 Supervision are abolished.

13 (b) CONTINUATION OF SUITE.—No action or other
14 proceeding commenced by or against the Director of the
15 Office of Thrift Supervision shall abate by reason of enact-
16 ment of this title, except that, effective January 1, 1998,
17 the Comptroller of the Currency, the Federal Deposit In-
18 surance Corporation, or the Board of Governors of the
19 Federal Reserve System, as the case may be, shall be sub-
20 stituted as a party to any such action or proceeding.

21 (c) CONTINUATION OF ADMINISTRATIVE RULES.—
22 All orders, resolutions, determinations, regulations, inter-
23 pretative rules, other interpretations, guidelines, proce-
24 dures, supervisory and enforcement actions, and other ad-
25 visory material (other than any regulation implementing

1 or prescribed pursuant to section 3(f) of the Home Own-
2 ers' Loan Act (as in effect on September 13, 1995))
3 which—

4 (1) have been issued, made, prescribed, or per-
5 mitted to become effective by the Office of Thrift
6 Supervision, and

7 (2) are in effect on December 31, 1997 (or be-
8 come effective after such date pursuant to the terms
9 of the order, resolution, determination, rule, other
10 interpretation, guideline, procedure, supervisory or
11 enforcement action, and other advisory material, as
12 in effect on such date), shall—

13 (A) continue in effect according to the
14 terms of such orders, resolutions, determina-
15 tions, regulations, interpretative rules, other in-
16 terpretations, guidelines, procedures, super-
17 visory or enforcement actions, or other advisory
18 material;

19 (B) be administered by the Comptroller of
20 the Currency, the Federal Deposit Insurance
21 Corporation, or the Board of Governors of the
22 Federal Reserve System; and

23 (C) be enforceable by or against the Comp-
24 troller of the Currency, the Federal Deposit In-
25 surance Corporation, or the Board of Governors

1 of the Federal Reserve System until modified,
2 terminated, set aside, or superseded in accord-
3 ance with applicable law by the Comptroller,
4 Corporation, or Board, by any court of com-
5 petent jurisdiction, or by operation of law.

6 (d) TREATMENT OF REFERENCES IN ADJUSTABLE
7 RATE MORTGAGES ISSUED BEFORE FIRREA.—

8 (1) REFERENCES IN PRIOR LAW.—For purposes
9 of section 402(e) of Financial Institutions Reform,
10 Recovery, and Enactment Act of 1989 (12 U.S.C.
11 1437 note), any reference in such section to—

12 (A) the Director of the Office of Thrift Su-
13 pervision shall be deemed to be a reference to
14 the Secretary of the Treasury; and

15 (B) a Savings Association Insurance Fund
16 member shall be deemed to be a reference to an
17 insured depository institution (as defined in sec-
18 tion 3 of the Federal Deposit Insurance Act).

19 (e) TREATMENT OF REFERENCES IN ADJUSTABLE
20 RATE MORTGAGES INSTRUMENTS ISSUED AFTER
21 FIRREA.—

22 (1) IN GENERAL.—For purposes of adjustable
23 rate mortgage instruments that are in effect as of
24 the date of enactment of this Act, any reference in
25 the instrument to the Director of the Office of

1 Thrift Supervision or Savings Association Insurance
2 Fund members shall be treated as a reference to the
3 Secretary of the Treasury or insured depository in-
4 stitutions (as defined in section 3 of the Federal De-
5 posit Insurance Act), as appropriate.

6 (2) SUBSTITUTION FOR INDEXES.—If any index
7 used to calculate the applicable interest rate on any
8 adjustable rate mortgage instrument is no longer
9 calculated and made available as a direct or indirect
10 result of the enactment of this title, any index—

11 (A) made available by the Secretary of the

12 Treasury; or

13 (B) determined by the Secretary of the

14 Treasury, pursuant to paragraph (4), to be sub-

15 stantially similar to the index which is no

16 longer calculated or made available,

17 may be substituted by the holder of any such adjust-
18 able rate mortgage instrument upon notice to the
19 borrower.

20 (3) AGENCY ACTION REQUIRED TO PROVIDE
21 CONTINUED AVAILABILITY OF INDEXES.—Promptly
22 after the enactment of this subsection, the Secretary
23 of the Treasury, the Chairperson of the Federal De-
24 posit Insurance Corporation, and the Comptroller of
25 the Currency shall take such action as may be nec-

1 essary to assure that the indexes prepared by the
2 Director of the Office of Thrift Supervision imme-
3 diately before the enactment of this subsection and
4 used to calculate the interest rate on adjustable rate
5 mortgage instruments continue to be available.

6 (4) REQUIREMENTS RELATING TO SUBSTITUTE
7 INDEXES.—If any agency can no longer make avail-
8 able an index pursuant to paragraph (3), an index
9 that is substantially similar to such index may be
10 substituted for such index for purposes of paragraph
11 (2) if the Secretary of the Treasury determines,
12 after notice and opportunity for comment, that—

13 (A) the new index is based upon data sub-
14 stantially similar to that of the original index;
15 and

16 (B) the substitution of the new index will
17 result in an interest rate substantially similar to
18 the rate in effect at the time the original index
19 became unavailable.

20 **SEC. 514. COST OF FUNDS INDEXES.**

21 (a) COST OF FUNDS INDEX DEFINED.—The term
22 “cost of funds indexed” means any index that is published
23 by a Federal home loan bank and is based, in whole or
24 in part, upon the cost of funds of such bank’s members.

1 (b) CALCULATIONS BASED ON TYPE OF CHARTER
2 AND INSURANCE FUND MEMBERSHIP OF MEMBERS.— If
3 any cost of funds index includes data based on charter
4 type, insurance fund membership, or other similar charac-
5 teristics of members of a Federal home loan bank, such
6 index shall be calculated after the date of the enactment
7 of this Act using data only from insured depository insti-
8 tutions which were bank members and whose data was in-
9 cluded in such index on or before such date of enactment.

10 (c) ACQUISITION OF DATA.—

11 (1) IN GENERAL.—Each insured depository in-
12 stitution the data from which is required to compile
13 a cost of funds index in accordance with subsection
14 (b) shall provide to the Federal home loan bank
15 which maintains the index such information as may
16 be necessary, and in such form as may be appro-
17 priate, for the bank to calculate and publish the
18 index.

19 (2) ENFORCEMENT BY BANKING AGENCIES.—
20 Each appropriate Federal banking agency shall take
21 such action as may be necessary to ensure that in-
22 sured depository institutions which are required to
23 provide information to any Federal home loan bank
24 under paragraph (1) furnish such information on a
25 timely basis and in the form required by the bank.

1 (3) TREATMENT OF INSTITUTIONS.—Notwith-
2 standing any other provision of law, an insured de-
3 pository institution which furnishes information to a
4 Federal home loan bank pursuant to this section for
5 use in compiling a cost of funds index shall not be
6 deemed to control, directly, or indirectly, such index.

7 (d) CERTAIN DATA EXCLUDED.—Notwithstanding
8 subsections (b) and (c), no cost of funds index shall in-
9 clude any data from any insured depository institution
10 which results from the merger, consolidation, or other
11 combination of a member of a Federal home loan bank
12 with a nonmember of any such bank if—

13 (1) the total assets of the nonmember exceed
14 the total assets of the bank member at the time of
15 such merger, consolidation, or other combination; or

16 (2) in the case of a merger, consolidation, or
17 other merger in which a member of a Federal home
18 loan bank is the resulting insured depository institu-
19 tion, combined ratio of the average amount of sin-
20 gle-family loan balances to average total assets of all
21 insured depository institutions involved in such
22 merger, consolidation, or other combination for the
23 12-months period ending on the date of such trans-
24 action is less than 70 percent.

1 (e) OTHER DEFINITIONS.—For purposes of this sec-
2 tion, the terms “appropriate Federal banking agency” and
3 “insured depository institution” shall have the same
4 meanings as in section 3 of the Federal Deposit Insurance
5 Act.

6 **SEC. 515. REFERENCES IN FEDERAL LAW TO DIRECTOR OF**
7 **THE OFFICE OF THRIFT SUPERVISION.**

8 Effective January 1, 1998, any reference in any Fed-
9 eral law to the Director of the office of Thrift Supervision
10 or the Office of Thrift supervision shall be deemed to be
11 a reference to the appropriate Federal banking agency (as
12 defined in section 3(q) of the Federal Deposit insurance
13 Act).

14 **SEC. 516. RECONFIGURATION OF BOARD OF DIRECTORS OF**
15 **FDIC AS A RESULT OF REMOVAL OF DIREC-**
16 **TOR OF THE OFFICE OF THRIFT SUPER-**
17 **VISION.**

18 (a) IN GENERAL.—Section 2(a)(1) of the Federal
19 Deposit Insurance Act (12 U.S.C. 1812(a)(1)) is amended
20 to read as follows:

21 “(1) IN GENERAL.—The management of the
22 Corporation shall be vested in a Board of Directors
23 consisting of 5 members—

24 (A) 1 of whom shall be the Comptroller of
25 the Currency; and

1 (B) 4 of whom shall be appointed by the
2 President, and with the advice and consent of
3 the Senate, from among individuals who are
4 citizens of the United States, 1 of whom shall
5 have State bank supervisory experience”.

6 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

7 (1) Section 2(d)(2) of the Federal Deposit In-
8 surance Act (12 U.S.C. 1812(d)(2)) is amended—

9 (A) by striking “or the Office of Director
10 of the Office of Thrift Supervision”;

11 (B) by striking “or such Director”;

12 (C) by striking “or the acting Director of
13 the Office of Thrift Supervision, as the case
14 may be”; and

15 (D) by striking “or Director”.

16 (2) Section 2(f)(2) of the Federal Deposit In-
17 surance Act (12 U.S.C. 1812(f)(2)) is amended by
18 striking “or of the Office of Thrift Supervision”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 subsections (a) and (b) shall take effect on January 1,
21 1998.

22 **Subtitle C—Merger of BIF and SAIF**

23 **SEC. 521. AMENDMENT TO BUDGET RECONCILIATION ACT.**

24 Section 2013(c) of the Budget Reconciliation Act is
25 amended to read as follows:

1 “(c) EFFECTIVE DATE.—This section and the
2 amendments made by this section shall become effective
3 on January 1, 1997.”.

4 **TITLE VI—NATIONAL MARKET FUNDING**
5 **LENDING INSTITUTIONS**

6 **SEC. 601. NATIONAL MARKET FUNDED LENDING INSTITU-**
7 **TIONS.**

8 Chapter 1 of title LXII of the Revised Statutes of
9 the United States is amended by adding the following sec-
10 tion:

11 **“SEC. 5158. NATIONAL MARKET FUNDED LENDING INSTITU-**
12 **TIONS.**

13 “(a) NATIONAL MARKET FUNDED LENDING INSTI-
14 TUTIONS.—

15 “(1) ORGANIZATION OF NATIONAL MARKET
16 FUNDED LENDING INSTITUTIONS.—Any company
17 (as defined in section 2(b) of the Bank Holding
18 Company Act of 1956 (12 U.S.C. 1841(b)) or any
19 number of natural persons, not less in any case than
20 five, may apply to the Comptroller of the Currency
21 on such forms and in accordance with such proce-
22 dures as the Comptroller may prescribe by regula-
23 tion, for permission to organize a national market
24 funded lending institution. Upon approval of the ap-
25 plication, such national market funded lending insti-

1 tution shall be a body corporate, chartered under the
2 laws of the United States by the Comptroller. All
3 national market funded lending institutions shall op-
4 erate pursuant to the requirements of this section at
5 the direction of a board of directors elected at an or-
6 ganizational meeting to be held as soon as prac-
7 ticable after issuance by the Comptroller of a charter
8 by such company or such natural persons for the
9 purpose of electing such board of directors and tak-
10 ing such other action necessary, pursuant to the
11 charter and the regulations issued by the Comptrol-
12 ler, to complete the corporate organization of the na-
13 tional market funded lending institution. Imme-
14 diately following their election, the board of directors
15 shall meet to elect officers of the national market
16 funded lending institution and to take such other ac-
17 tion, as prescribed by the Comptroller, to complete
18 the corporate organization of such national market
19 funded lending institution.

20 “(2) UNAUTHORIZED ORGANIZATION PROHIB-
21 ITED.—No company or person may organize a na-
22 tional market funded lending institution, collect
23 money from others for such purpose, or represent it-
24 self, himself, or herself as authorized to do so and
25 no national market funded lending institution shall

1 transact any business prior to completion of its or-
2 ganization except as provided in this Act and in im-
3 plementing regulations of the Comptroller.

4 “(3) AUTHORIZED ACTIVITIES FOR NATIONAL
5 MARKET-FUNDED LENDING INSTITUTION.—Subject
6 to the provisions of paragraphs (4) and (5) of this
7 subsection, and subsections (b) and (c) of this sec-
8 tion, a national market funded lending institution
9 may exercise, in accordance with its articles of orga-
10 nization and such regulations as are issued by the
11 Comptroller, all of the powers and privileges of a na-
12 tional banking association formed in accordance with
13 section 5133 of the Revised Statutes (12 U.S.C. 21).

14 “(4) PROHIBITION OF TAKING DEPOSITS OR
15 RECEIVING FEDERAL DEPOSIT INSURANCE.—No na-
16 tional market funded lending institution may—

17 (A) become an “insured depository institu-
18 tion” within the meaning of section 3(c)(2) of
19 the Federal Deposit Insurance Act (12 U.S.C.
20 1813(c)(2)) or acquire, directly or indirectly
21 through a subsidiary, control of such an insured
22 depository institution;

23 (B) accept any deposits as defined in sec-
24 tion (3)(l)(1) of the Federal Deposit Insurance
25 Act (12 U.S.C. 1813(l)(1));

1 (C) advertise or hold itself out as having
2 deposits insured by the Federal Deposit Insur-
3 ance Corporation.

4 “(5) PROHIBITION ON ACCESS TO DISCOUNT
5 WINDOW.—No national market funded lending insti-
6 tution may exercise discount borrowing privileges
7 pursuant to section 19*b)(7) of the Federal Reserve
8 Act.

9 “(6) PROHIBITION ON ACCESS TO PAYMENTS
10 SYSTEM.—No national market funded lending insti-
11 tution may obtain payment or payment related serv-
12 ices from any Federal Reserve bank, including any
13 service referred to in section 11A of the Federal Re-
14 serve Act.

15 “(7) CAPITAL.—The capital of national market
16 funded lending institution shall be maintained at all
17 times at such level and in such manner as may be
18 prescribed by the Comptroller by regulation.

19 “(8) PROHIBITION ON IDENTIFICATION AS A
20 BANK.—

21 “(A) In general.—Notwithstanding the re-
22 quirement of section 5134 of the Revised Stat-
23 utes of the United States—

1 “(i) the name of a national market
2 lending institution may not include the
3 term “bank”; and

4 “(ii) such institution may not be iden-
5 tified as a bank on any sign displayed by
6 the institution or in any advertisement or
7 other publication of the institution.

8 “(B) DEPOSITORY INSTITUTION NOT LIA-
9 BLE FOR FRAUDULENT MISREPRESENTATION
10 FOR NOT REPRESENTING ITSELF AS A BANK.—

11 A national market lending institution shall not
12 be liable for any civil or criminal penalty under
13 any Federal or State consumer protection law,
14 or in any criminal or civil action, for falsely ad-
15 vertising the status of the institution, for mak-
16 ing a false statement with respect to the status
17 of the institution, or for any similar offense by
18 reason of the institution’s compliance with this
19 paragraph.

20 “(9) IMPLEMENTING REGULATIONS.—The
21 Comptroller shall promulgate such regulations as
22 may be necessary to implement the provisions of this
23 section.

24 “(b) REGULATION AND SUPERVISION OF NATIONAL
25 MARKET FUNDED LENDING INSTITUTION.—

1 “(1) AUTHORITY VESTED IN COMPTROLLER OF
2 THE CURRENCY.—Notwithstanding any other provi-
3 sion of law, the authority to regulate and supervise
4 the activities of national market funding lending in-
5 stitutions shall be vested exclusively in the Comptrol-
6 ler of the Currency.

7 “(2) EXAMINATION.—Each national market
8 funded lending institution and each subsidiary there-
9 of shall be subject to such examinations and to such
10 reporting and recordkeeping requirements as the
11 Comptroller may prescribe. The cost of examinations
12 shall be assessed against and paid by such national
13 market funded lending institution. Examiners ap-
14 pointed by the Comptroller for the purposes of this
15 Act shall be subject to the same requirements, re-
16 sponsibilities, and penalties as are applicable to ex-
17 aminers under the Federal Reserve Act and title
18 LXII of the Revised Statutes and shall have, in the
19 exercise of functions under this Act, the same pow-
20 ers and privileges as are vested in such examiners
21 by law. If any national market funded lending insti-
22 tution fails to pay any assessment required under
23 this subsection within 60 days of such assessment,
24 or refuses to permit any examiner appointed by the
25 Comptroller to make an examination, or refuses to

1 provide any information required to be disclosed by
2 regulation or in the course of any examination, or
3 submits or publishes any false or misleading report
4 or information, the Comptroller may assess against
5 such national market funded lending institution civil
6 penalty of not more than \$5,000 for each day any
7 such failure or refusal continues. And such civil pen-
8 alty shall be assessed by the Comptroller in a man-
9 ner prescribed in subparagraphs (E), (F), (G), (I)
10 and (J) of section 8(i)(2) of the Federal Deposit In-
11 surance Act, for penalties imposed by such section,
12 and such assessment shall also be subject to the pro-
13 visions of subparagraph (H) of that section and of
14 section 8(h) of that Act.

15 “(3) ENFORCEMENT.—

16 “(A) CAPITAL.—If any national market
17 funded lending institution fails to maintain cap-
18 ital at or above the minimum level prescribed
19 by the Comptroller’s regulations, the Comptrol-
20 ler may issue a directive requiring the national
21 market funded lending institution to submit
22 and adhere to a plan for increasing capital
23 which is acceptable to the Comptroller. Any
24 such directive, and such plan when approved by

1 the Comptroller, shall be enforceable as pro-
2 vided in this paragraph.

3 “(B) CEASE-AND-DESIST AUTHORITY.—If
4 a national market funded lending institution
5 subject to a capital directive issued pursuant to
6 subparagraph (A) fails to submit or adhere to
7 a plan for increasing capital which is acceptable
8 to the Comptroller, or if the Comptroller has
9 reasonable cause to believe that any national
10 market funded lending institution has accepted
11 any deposit or has taken action which has
12 caused it to become an “insured depository in-
13 stitution” within the meaning of section 3(e)(2)
14 of the Federal Deposit Insurance Act or has
15 represented to any person that any amount ac-
16 cepted by such national market funded lending
17 institution is an “insured deposit” within the
18 meaning of section 3(m) of Federal Deposit In-
19 surance Act, the Comptroller may issue and
20 serve upon such national market funded lending
21 institution a notice of charges which shall con-
22 tain a statement of the facts constituting the
23 alleged violation or violations of this Act and
24 shall fix a time and a place at which a hearing
25 will be held to determine whether an order to

1 cease-and-desist therefrom should be issued
2 against the national market funded lending in-
3 stitution. Such hearing shall be fixed for a date
4 not earlier than 30 days nor later than 60 days
5 after service of such notice unless an earlier or
6 later date is set by the Comptroller at the re-
7 quest of the national market funded lending in-
8 stitution. Unless the institution so served shall
9 appear at the hearing, it shall be deemed to
10 have consented to the issuance of the cease-and-
11 desist order. In the event of such consent, or if
12 upon the record made at any such hearing the
13 Comptroller shall find that any violation or vio-
14 lations specified in the notice of charges has or
15 have been established, the Comptroller may
16 issue an order to cease-and-desist from any
17 such violation or violations and, in an appro-
18 priate case as determined by the Comptroller in
19 his or her discretion, to take affirmative action
20 to correct the conditions resulting from any
21 such violation or violations. Such order shall be-
22 come effective at the expiration of 30 days after
23 service thereof upon the national market funded
24 lending institution (except in the case of a
25 cease-and-desist order issued upon consent,

1 which shall become effective at the time speci-
2 fied therein), and shall remain effective and en-
3 forceable, as provided therein except as stayed,
4 modified, terminated or set aside by action of
5 the Comptroller or reviewing court. Any hearing
6 provided for in this subsection and judicial re-
7 view of any final cease-and-desist order (other
8 than a cease-and-desist order issued upon con-
9 sent, which shall be unreviewable) shall be in
10 accordance with the provisions of section 8(h)
11 of the Federal Deposit Insurance Act.

12 “(C) CIVIL MONEY PENALTY.—Any person
13 who violates, or has caused a national market
14 funded lending institution to violate any cease-
15 and-desist order issued pursuant to subpara-
16 graph (B) shall forfeit and pay a civil penalty
17 of not more than \$100,000 for each day during
18 which such violation continues. Any such civil
19 penalty shall be assessed and collected by the
20 Comptroller in the manner provided in subpara-
21 graphs (E), (F), (G), (I), and (J) of section
22 8(i)(2) of the Federal Deposit Insurance Act,
23 and any such assessment shall be subject to the
24 provisions of subparagraph (H) of that section
25 and of section 8(h) of that Act.

1 “(D) CHARTER REVOCATION.—If the
2 Comptroller determines that any national mar-
3 ket funded lending institution has violated any
4 cease-and-desist order which was issued under
5 subparagraph (B) of this paragraph and which
6 has become final, the Comptroller may, in addi-
7 tion to or in lieu of any other remedies provided
8 by law, issue an order revoking the charter of
9 such national market funded lending institu-
10 tion. Any order revoking the charter of a na-
11 tional market funded lending institution shall
12 be effected within 20 days of service upon such
13 national market funded lending institution un-
14 less stayed, modified, terminated or set aside by
15 a court in proceedings authorized in this sub-
16 paragraph. The national market funded lending
17 institution shall give notice of such revocation
18 order to each of its depositors in such manner
19 and at such times as the Comptroller may deem
20 necessary and may order for the protection of
21 the depositors. Any national market funded
22 lending institution served with an order revok-
23 ing its charter, may, within 10 days of the date
24 of service of such order, apply to the United
25 States District Court for the District of Colum-

1 bia or the United States District Court for the
2 judicial district in which the home office of such
3 national market funded lending institution is lo-
4 cated for an injunction setting aside, limiting,
5 modifying, or suspending the enforcement, oper-
6 ation, or effectiveness of such order, and such
7 court shall have jurisdiction to issue such in-
8 junction. Failure to seek judicial review within
9 such 10 day period shall constitute a waiver
10 thereof and shall constitute consent by the na-
11 tional market funded lending institution or any
12 company which controls such national market
13 funded lending institution to the issuance of a
14 final order of revocation of its charter.

15 “(c) CRIMINAL PENALTIES.—

16 “(1) UNAUTHORIZED ORGANIZATION.—Any
17 person who violates the provisions of this title or any
18 regulation or order issued by the Comptroller pursu-
19 ant hereto by knowingly organizing a national mar-
20 ket funded lending institution, collecting money from
21 others for such purpose, or representing himself or
22 herself as authorized to do so, or transacting busi-
23 ness as a national market lending institution, with-
24 out a validly issued and unrevoked charter from the
25 Comptroller of the Currency, or, in the case of a na-

1 tional market funded lending institution which has
2 had its charter revoked, by failing to give notice to
3 depositors of charter revocation when and as di-
4 rected by the Comptroller under this section, shall
5 be imprisoned not more than one year, fined not
6 more than \$100,000 for each day during which such
7 violation continues, or both.

8 “(2) VIOLATION OF ACTIVITIES LIMITATION.—
9 Whoever violates this section by knowingly causing
10 a national market funded lending institution to ac-
11 cept any deposit or by representing to any person
12 that any deposit accepted by such national market
13 funded lending institution is an “insured deposit”
14 within the meaning of section 3(m) of Federal De-
15 posit Insurance Act (12 U.S.C. 1813(m)) shall be
16 imprisoned not more than 5 years, fined not more
17 than \$500,000 per day for each day during which
18 such violation continues, or both.

19 “(3) VIOLATION DEFINED.—For purposes of
20 this section, the term “violation” includes any action
21 (alone or with another or others) for or toward caus-
22 ing, bringing about, participating in, counseling or
23 aiding or abetting a violation.

24 “(d) VOLUNTARY LIQUIDATION.—A national market
25 funded lending institution may go into voluntary liquida-

1 tion and be closed by a vote of its shareholders owning
2 two-thirds of its stock, pursuant to sections 5220 and
3 5221 of the Revised States (12 U.S.C. 181, 182).

4 “(e) CONSERVATORSHIP.—The Comptroller may ap-
5 point a conservator to take possession and control of a
6 national market funded lending institution pursuant to the
7 Bank Conservation Act (12 U.S.C. 201 et seq.).

8 “(f) CONVERSIONS OF DEPOSITORY INSTITUTIONS
9 INTO NATIONAL MARKET FUNDED LENDING INSTITU-
10 TIONS.—Any depository institution (as defined in section
11 3(c)(1) of the Federal Deposit Insurance Act) may, by the
12 vote of its shareholders owning not less than two-thirds
13 of the stock of such depository institution, and with the
14 approval of the Comptroller upon such terms as he or she
15 shall determine are necessary to further the purposes of
16 this section, be converted into a national market funded
17 lending institution, provided, however that said conversion
18 shall not be in contravention of any applicable State law.
19 Such national market funded lending institution shall have
20 the same powers and privileges and shall be subject to the
21 same duties, liabilities and regulations in all respects, as
22 national market funded lending institutions originally or-
23 ganized under this section.”

1 **TITLE VII—EFFECTIVE DATE**

2 **SEC. 701. EFFECTIVE DATE.**

3 This Act shall become effective on January 1, 1997.

○