

105TH CONGRESS }
1st Session

HOUSE OF REPRESENTATIVES

{ REPT. 105-164
Part 1

FINANCIAL SERVICES COMPETITION ACT OF
1997

R E P O R T

OF THE

COMMITTEE ON
BANKING AND FINANCIAL SERVICES
HOUSE OF REPRESENTATIVES

ON

H.R. 10

together with

ADDITIONAL, SUPPLEMENTAL, AND DISSENTING
VIEWS

[Including cost estimate of the Congressional Budget Office]



JULY 3, 1997—Ordered to be printed

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WASHINGTON :

FINANCIAL SERVICES COMPETITION ACT OF 1997

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Mr. LEACH, from the Committee on Banking and Financial Services, submitted the following

R E P O R T

together with

ADDITIONAL, SUPPLEMENTAL, AND DISSENTING VIEWS

[To accompany H.R. 10]

[Including cost estimate of the Congressional Budget Office]

The Committee on Banking and Financial Services, to whom was referred the bill (H.R. 10) to enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, and other financial service providers, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

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

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

(a) **SHORT TITLE.**—This Act may be cited as the “Financial Services Competition Act of 1997”.

(b) **PURPOSES.**—The purposes of this Act are as follows:

- (1) To ensure the continued safety and soundness of depository institutions.
- (2) To reduce and, to the maximum extent practicable, to eliminate the legal barriers preventing affiliation among depository institutions, securities firms, insurance companies, and other financial service providers and to provide a prudential framework for achieving that result.
- (3) To enhance competition in the financial services industry.
- (4) To enhance the availability of financial services to citizens of all economic circumstances and in all geographic areas.
- (5) To enhance the competitiveness of United States financial service providers internationally.

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

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

Sec. 1. Short title; purposes; table of contents.

TITLE I—POWERS AND AFFILIATIONS OF INSURED DEPOSITORY INSTITUTIONS

Subtitle A—Removing Barriers to Affiliations Between Insured Depository Institutions and Other Financial Institutions

Sec. 101. Anti-affiliation provisions of “Glass-Steagall Act” repealed.
 Sec. 102. Repeal of activity restrictions of Bank Holding Company Act of 1956.
 Sec. 103. Qualifying bank holding companies.
 Sec. 104. Certain State laws preempted.
 Sec. 105. Mutual bank holding companies authorized.
 Sec. 106. Companies not engaged in activities financial in nature.
 Sec. 107. Amendment to ensure that banks acquired by other entities do not become deposit production offices.
 Sec. 108. Clarification of applicability of branch closure requirements in interstate banking operations.

Subtitle B—Additional Safeguards

Sec. 111. Firewall safeguards.
 Sec. 112. Consumer protection.
 Sec. 113. Obligations of subsidiaries and affiliates cannot be extended to insured depository institutions.

Subtitle C—National Council on Financial Services

Sec. 121. Establishment and operation of the council.
 Sec. 122. Functions of the council
 Sec. 123. Advisory council on community revitalization.

Subtitle D—Bank Holding Company Supervision

Sec. 131. Streamlining bank holding company supervision.
 Sec. 132. Administration of the Bank Holding Company Act of 1956.
 Sec. 133. Bank holding company capital.
 Sec. 134. Authority of State insurance regulator.

Subtitle E—Subsidiaries of Insured Depository Institutions

Sec. 141. Subsidiaries of national banks authorized to engage in financial activities.
 Sec. 142. Activities of subsidiaries of insured State banks.
 Sec. 143. Rules applicable to financial subsidiaries.

Subtitle F—Direct Activities of Banks

Sec. 151. Powers of national banks.
 Sec. 152. Banking products defined.
 Sec. 153. Repeal of stock loan limit in Federal Reserve Act.

Subtitle G—Noninsured Depository Institutions

Sec. 161. Wholesale financial institutions.
 Sec. 162. Holding company control of uninsured depository institutions.

Subtitle H—Federal Home Loan Bank System

Sec. 171. Federal home loan banks—
 Sec. 172. Membership and collateral.
 Sec. 172A. The Office of Finance.
 Sec. 172B. Management of banks.
 Sec. 173. Advances to nonmember borrowers.
 Sec. 174. Powers and duties of banks.
 Sec. 174A. Mergers and consolidations of Federal home loan banks.
 Sec. 174B. Technical amendments.
 Sec. 175. Definitions.
 Sec. 176. Resolution funding corporation
 Sec. 177. Capital structure of the Federal home loan banks.
 Sec. 178. Investments.
 Sec. 179. Federal Housing Finance Board.

Subtitle I—Streamlining Antitrust Review of Bank Acquisitions and Mergers

Sec. 181. Amendments to the Bank Holding Company Act of 1956.
 Sec. 182. Amendments to the Federal Deposit Insurance Act to vest in the Attorney General sole responsibility for antitrust review of depository institution mergers.
 Sec. 183. Information filed by depository institutions; interagency data sharing.
 Sec. 184. Annual GAO report.
 Sec. 185. Applicability of antitrust laws.
 Sec. 186. Effective date.

Subtitle J—Redomestication of Mutual Insurers

Sec. 191. Redomestication of mutual insurers.
 Sec. 192. Effect on State laws restricting redomestication.
 Sec. 193. Definitions.
 Sec. 194. Effective date.

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

- Sec. 195. Applying the principles of national treatment and equality of competitive opportunity to foreign banks and foreign financial institutions.
- Sec. 196. Applying the principles of national treatment and equality of competitive opportunity to foreign banks that are qualifying bank holding companies.
- Sec. 197. Applying the principles of national treatment and equality of competitive opportunity to foreign banks and foreign financial institutions that are wholesale financial institutions.

Subtitle L—Effective Date of Title

- Sec. 199. Effective date.

TITLE II—FUNCTIONAL REGULATION

Subtitle A—Brokers and Dealers

- Sec. 201. Definition of broker.
- Sec. 202. Definition of dealer.
- Sec. 203. Bank broker and dealer activities.
- Sec. 204. Application of this title to banks registered as brokers or dealers.
- Sec. 205. Exclusion from SIPC membership of banks registered as brokers or dealers.
- Sec. 206. Effective date.

Subtitle B—Bank Investment Company Activities

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

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

- Sec. 301. Short title; definitions.

Subtitle A—Facilitating Conversion of Savings Associations to Banks

- Sec. 311. Conversion to State or national banks.
- Sec. 312. Mutual national banks and Federal mutual bank holding companies authorized.
- Sec. 313. Grandfathered activities of savings associations.
- Sec. 314. Branches of former savings associations.
- Sec. 315. Programs for promoting housing finance.
- Sec. 316. Savings and loan holding companies.
- Sec. 317. Treatment of references in adjustable rate mortgages.
- Sec. 318. Cost of funds indexes.

Subtitle B—Ending Separate Federal Regulation of Savings Associations and Savings and Loan Holding Companies

- Sec. 321. State savings associations treated as State banks under Federal banking law.
- Sec. 322. Powers of Federal savings associations accorded to national banks.
- Sec. 323. Home Owners' Loan Act repealed.
- Sec. 324. Conforming amendment reflecting elimination of the Federal thrift charter and the separate system of thrift regulation.
- Sec. 325. Conforming amendments to the Federal Home Loan Bank Act.
- Sec. 326. Amendments to title 11, United States Code.

Subtitle C—Combining OTS and OCC

- Sec. 331. Prohibition of merger or consolidation repealed.
- Sec. 332. Secretary of the Treasury required to formulate plans for combining Office of Thrift Supervision with Office of the Comptroller of the Currency.
- Sec. 333. Office of Thrift Supervision and position of Director of the Office of Thrift Supervision abolished.
- Sec. 334. Reconfiguration of board of directors of FDIC as a result of removal of Director of the Office of Thrift Supervision.
- Sec. 335. Continuation provisions.

Subtitle D—Technical and Conforming Amendments to the Depository Institution Statutes

- Sec. 341. Amendments to the Federal Deposit Insurance Act.
- Sec. 342. Amendment to the Bank Holding Company Act of 1956.
- Sec. 343. Amendments to the Federal Reserve Act.
- Sec. 344. Amendments to Alternative Mortgage Transaction Parity Act of 1982.
- Sec. 345. Amendments to the Bank Protection Act of 1968.
- Sec. 346. Amendments to the Community Reinvestment Act of 1977.
- Sec. 347. Amendments to the Depository Institutions Deregulation and Monetary Control Act of 1980.
- Sec. 348. Amendments to the Depository Institution Management Interlocks Act.
- Sec. 349. Amendment to the Economic Growth and Regulatory Paperwork Reduction Act of 1996.
- Sec. 350. Amendment to the Emergency Home Finance Act of 1970.
- Sec. 351. Amendments to the Expedited Funds Availability Act.
- Sec. 352. Amendments to the Federal Credit Union Act.

- Sec. 353. Amendments to the Federal Financial Institutions Examination Council Act of 1978.
- Sec. 354. Amendments to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.
- Sec. 355. Amendments to the Home Mortgage Disclosure Act of 1975.
- Sec. 356. Amendments to the Housing and Community Development Act of 1992.
- Sec. 357. Amendment to the International Banking Act of 1978.
- Sec. 358. Amendments to the National Housing Act.
- Sec. 359. Amendment to Public Law 93–495.
- Sec. 360. Amendment to the Real Estate Settlement Procedures Act of 1974.
- Sec. 361. Amendment to the Revised Statutes of the United States.
- Sec. 362. Amendments to the Riegle Community Development and Regulatory Improvement Act of 1994.
- Sec. 363. Amendments to the Right to Financial Privacy Act of 1978.
- Sec. 364. Amendments to the Truth in Savings Act.
- Sec. 365. Effective date.

Subtitle E—Technical and Conforming Amendments to Other Statutes

- Sec. 371. Amendments to the Balanced Budget and Emergency Deficit Control Act of 1985.
- Sec. 372. Amendments to the Consumer Credit Protection Act.
- Sec. 373. Amendments to the Flood Disaster Protection Act of 1973.
- Sec. 374. Amendments to the Securities Exchange Act of 1934.
- Sec. 375. Amendments to title 5, United States Code.
- Sec. 376. Amendments to title 18, United States Code.
- Sec. 377. Amendment to title 31, United States Code.
- Sec. 378. Effective date.

TITLE IV—UNIFORM MULTISTATE LICENSING OF STATE-LICENSED INSURANCE AGENTS AND
BROKERS

- Sec. 401. State flexibility in multistate licensing reforms.
- Sec. 402. National Association of Registered Agents and Brokers.
- Sec. 403. Purpose.
- Sec. 404. Relationship to the Federal government.
- Sec. 405. Membership.
- Sec. 406. Corporate powers.
- Sec. 407. Board of directors.
- Sec. 408. Officers.
- Sec. 409. Meetings of board of directors.
- Sec. 410. Bylaws, rules, and disciplinary action.
- Sec. 411. Borrowing authority.
- Sec. 412. Assessments.
- Sec. 413. Functions of the council.
- Sec. 414. Liability of the association and the directors, officers, and employees of the association.
- Sec. 415. Relationship to State law.
- Sec. 416. Coordination with other regulators.
- Sec. 417. Judicial review.
- Sec. 418. Definitions.

TITLE I—POWERS AND AFFILIATIONS OF INSURED DEPOSITORY INSTITUTIONS

Subtitle A—Removing Barriers to Affiliations Between Insured Depository Institutions and Other Financial Institutions

SEC. 101. ANTI-AFFILIATION PROVISIONS OF “GLASS-STEAGALL ACT” REPEALED.

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

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

SEC. 102. REPEAL OF ACTIVITY RESTRICTIONS OF BANK HOLDING COMPANY ACT OF 1956.

(a) IN GENERAL.—Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended by striking subsections (a), (b), (c), (e), (h), (i), and (j).

(b) CONFORMING AMENDMENT TO THE BANK HOLDING COMPANY ACT OF 1956 TO REFLECT EXPANSION OF INSURANCE AUTHORITY.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(f)) is amended—

(1) by striking subsection (f); and

(2) by redesignating subsection (g) as subsection (f).

(c) TECHNICAL AND CONFORMING AMENDMENT TO THE BANK HOLDING COMPANY ACT OF 1956.—Section 2(h)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(h)(2)) is amended by striking the 1st sentence and inserting the following new sentence: “A bank holding company organized under the laws of a foreign country which is principally engaged in the banking business outside of the United States may acquire and hold shares of any company organized under the laws of a foreign country (or shares held by such company in any company engaged in the same general line of business as the investor company or in a business related to the business

of the investor company) that is principally engaged in business outside the United States.”.

(d) CONFORMING CHANGES TO OTHER STATUTES.—

(1) AMENDMENTS TO THE FEDERAL RESERVE ACT TO PRESERVE EXEMPTION FROM SECTION 23A.—Section 23A(d)(5) of the Federal Reserve Act (12 U.S.C. 371c(d)(5)) is amended by striking “of the kinds described in section 4(c)(1) of the Bank Holding Company Act of 1956;” and inserting “engaged or to be engaged solely in—

“(A) holding or operating properties used wholly or substantially by any bank subsidiary of a bank holding company in the operations of such bank subsidiary or acquired for such future use;

“(B) conducting a safe deposit business;

“(C) furnishing services to or performing services for a bank holding company or its bank subsidiaries; or

“(D) liquidating assets acquired from a bank holding company or its bank subsidiaries;”.

(2) AMENDMENTS TO THE BANK EXPORT SERVICES ACT OF 1982.—Section 206 of the Bank Export Services Act of 1982 (12 U.S.C. 635a-4) is amended—

(A) by striking “as defined in section 4(c)(14)(F)(i) of the Bank Holding Company Act of 1956;” and

(B) by inserting at the end of the section the following: “For purposes of this section, the term ‘export trading company’ means a company that does business under the laws of the United States or any State, that is exclusively engaged in activities related to international trade, and that is organized and operated principally for purposes of exporting goods or services produced in the United States or for purposes of facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services. For purposes of this section, the term ‘export trade services’ includes consulting, international market research, advertising, marketing, insurance (other than acting as principal, agent or broker in the sale of insurance on risks resident or located, or activities performed, in the United States, except for insurance covering the transportation of cargo from any point of origin in the United States to a point of final destination outside the United States), product research and design, legal assistance, transportation, including trade and data processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate the export of goods or services produced in the United States.”.

(3) AMENDMENT TO THE FEDERAL DEPOSIT INSURANCE ACT TO PRESERVE DEFINITION OF COMMONLY-CONTROLLED.—Section 5(e)(9)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1815(e)(9)(A)) is amended by striking “section 4(f)(6)” and inserting “section 6(g)(6)”.

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

(5) AMENDMENT TO THE BANK SERVICE COMPANY ACT.—Section 4(f) of the Bank Service Company Act (12 U.S.C. 1864(f)) is amended by striking the period and adding at the end the following: “(as in effect on the day before the date of enactment of the Financial Services Competition Act of 1997).”.

(6) AMENDMENT TO THE INTERNATIONAL BANKING ACT OF 1978.—Section 8(d) of the International Banking Act of 1978 (12 U.S.C. 3106(d)) is amended by striking “and the exemptions provided in sections 4(c)(1), 4(c)(2), 4(c)(3), and 4(c)(4) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(1), (2), (3), and (4))”.

(7) AMENDMENT TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.—Section 1101(6)(B) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401(6)) is amended by striking “4(f)(1)” and inserting “6(f)(1)”.

(8) CONFORMING AMENDMENT TO THE CLAYTON ACT.—Section 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)) is repealed.

SEC. 103. QUALIFYING BANK HOLDING COMPANIES.

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

“SEC. 6. QUALIFYING BANK HOLDING COMPANIES.

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

“(1) QUALIFYING BANK HOLDING COMPANY.—The term ‘qualifying bank holding company’ means any bank holding company—

“(A) all of the subsidiary depository institutions of which are well capitalized;

“(B) all of the subsidiary depository institutions of which are well managed (as defined in section 5136A(a)(5)(D) of the Revised Statutes of the United States);

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

“(D) all of the subsidiary depository institutions of which have a demonstrable record of performance in the provision of low-cost lifeline bank accounts;

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

“(i) has not been adjudicated in any Federal court, or has not entered into a consent decree filed in a Federal court or into a settlement agreement, premised upon a violation of the Fair Housing Act for the activities described in this subparagraph and is not in violation of any such decree or settlement agreement as determined by a court of competent jurisdiction or the agency with which the decree or agreement was entered into; or

“(ii) has been exempted from the requirements of clause (i) by the Board under subsection (f)(3).

“(F) that is deemed under paragraph (2) to be engaged in activities in the United States that are financial in nature or is engaged in activities that are otherwise permissible under this Act (other than activities engaged in pursuant to subsection (k));

“(G) which, with respect to any activities engaged in outside of the United States, engages in such activities in conformance with subsection (f) and section 2(h)(2); and

“(H) that has filed with the Board a declaration that it is a qualifying bank holding company.

“(2) ACTIVITIES FINANCIAL IN NATURE.—A bank holding company shall be deemed to be engaged in activities that are financial in nature if not less than 85 percent of the gross revenues of such company from activities conducted in the United States are derived from financial activities in which such company or any of its subsidiaries engages.

“(3) FINANCIAL ACTIVITY.—The term ‘financial activity’ means any 1 or more of the following:

“(A) Receiving money subject to a deposit or other repayment obligation.

“(B) Lending, exchanging, transferring, investing, or safeguarding money or other financial assets.

“(C) Providing any device or other instrumentality for transferring money or other financial assets;

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

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

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

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

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

“(ii) such shares, assets, or ownership interests are acquired and held as part of a bona fide underwriting, or investment banking activity (in-

cluding investment activities engaged in for the purpose of appreciation and ultimate sale or other disposition of the investment);

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

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

“(H) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including any subsidiary of the holding company which is not a depository institution or a subsidiary of a depository institution), or otherwise, shares, assets, or ownership interests (including debt or equity securities, partnership interests, trust certificates, or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in activities not authorized pursuant to this section if—

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

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

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

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

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

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

“(K) Engaging in any activity that was, by regulation or order, permissible for a bank holding company pursuant to section 4(c)(8) of this Act, as in effect on the day before the date of enactment of the Financial Services Competition Act of 1997.

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

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

“(ii) the Board determined, under regulations issued pursuant to section 4(c)(13) of this Act (as in effect on the day before the date of enactment of the Financial Services Competition Act of 1997) to be usual in connection with the transaction of banking or other financial operations abroad.

“(M) Owning shares of any company to the extent permissible under paragraph (6) or (7) of section 4(c) of this Act, as in effect on the day before the date of enactment of the Financial Services Competition Act of 1997.

“(N) Engaging in any activity that the National Council on Financial Services determines, by regulation or order, to be the functional equivalent of any activity described in 1 or more of subparagraphs (A) through (M).

“(O) Engaging in any activity that the National Council on Financial Services determines by regulation or order to be financial, or related to a financial activity, having taken into account—

“(i) the purposes of this Act and the Financial Services Competition Act of 1997;

“(ii) changes or reasonably expected changes in the market in which bank holding companies compete;

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

“(iv) whether such activity is necessary or appropriate to allow a bank holding company and its affiliates to—

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

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

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

“(4) WELL CAPITALIZED.—The term ‘well capitalized’ has the same meaning as in section 38 of the Federal Deposit Insurance Act. For purposes of this section, the appropriate Federal banking agency shall have exclusive jurisdiction to determine whether an insured depository institution is well capitalized.

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

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

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

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

“(b) AUTHORITY TO ENGAGE IN ACTIVITIES WITHOUT NOTICE.—

“(1) IN GENERAL.—A qualifying bank holding company may engage, directly or through a subsidiary that is not an insured depository institution (or a subsidiary thereof), in any activity to the extent permissible under the Financial Services Competition Act of 1997 without approval from or notice to the Board.

“(2) RULE OF CONSTRUCTION.—No provision of this section shall be construed as authorizing the acquisition of an depository institution other than in accordance with section 3.

“(c) RESTRICTIONS APPLICABLE TO NONQUALIFYING BANK HOLDING COMPANIES.—A bank holding company that is not a qualifying bank holding company may engage, directly or indirectly through a subsidiary that is not an insured depository institution (or a subsidiary of an insured depository institution), only in managing and controlling depository institutions and in any activity that was permissible under section 4(c) (as in effect on the day before the date of the enactment of the Financial Services Competition Act of 1997) other than underwriting securities which a national bank is not authorized to underwrite, except as otherwise provided by law.

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

“(1) IN GENERAL.—If the Board finds that—

“(A) a qualifying bank holding company is engaged, directly or indirectly, in any activity other than activities described in subsection (c); and

“(B) such company is not in compliance with the requirements of subsection (a)(1),

the Board shall give notice to the company to that effect, describing the conditions giving rise to the notice.

“(2) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—Within 45 days of receipt by a qualifying bank holding company of a notice given under paragraph (1) (or such additional period as the Board may permit), the company shall execute an agreement with the Board to comply with the requirements applicable to a qualifying bank holding company.

“(3) BOARD MAY IMPOSE LIMITATIONS.—Until the conditions described in a notice to a qualifying bank holding company under paragraph (1) are corrected, the Board may impose such limitations on the conduct or activities of the company or any affiliate of the company as the Board determines to be appropriate under the circumstances.

“(4) FAILURE TO CORRECT.—If the conditions described in a notice to a qualifying bank holding company under paragraph (1) are not corrected within 180 days after receipt by the company of notice under paragraph (1), the Board may require such company, under such terms and conditions as may be imposed by

the Board and subject to such extension of time as may be granted in the Board's discretion, either—

“(A) to divest control of any subsidiary depository institutions; or

“(B) to cease to engage in any activity conducted by such company or its subsidiaries (other than a depository institution or a subsidiary of a depository institution) that is not an activity that is permissible under subsection (c).

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

“(1) the procedures of the holding company for identifying and managing financial and operational risks within the company and the subsidiaries of such company which are not insured depository institutions (or subsidiaries of such subsidiaries) adequately protect the subsidiaries of such company which are insured depository institutions from such risks;

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

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

“(f) EXEMPTIVE AUTHORITY.—

“(1) FOREIGN BANKS AND FOREIGN INVESTMENTS.—The Board may grant exemptions from any restriction on activities or investments which is otherwise applicable to a bank holding company, including a qualifying bank holding company—

“(A) for shares held or activities conducted by a company organized under the laws of a foreign country the greater part of whose business is conducted outside the United States; or

“(B) for shares held of, or activities conducted by, any company which does no business in the United States except as an incident to such company's international or foreign business,

if the Board, by regulation or order, determines that, under the circumstances and subject to any condition set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this Act or the Financial Services Competition Act of 1997 and would be in the public interest.

“(2) CONTINUATION OF PRIOR EXEMPTION.—To the extent that such action would not be substantially at variance with the purposes of this Act and subject to such conditions as the Board considers necessary to protect the public interest, the Board by order, after opportunity for hearing, may grant exemptions from the provisions of subsection (c) to any bank holding company which controlled 1 bank prior to July 1, 1968, and has not thereafter acquired the control of any other bank in order—

“(A) to avoid disrupting business relationships that have existed over a long period of years without adversely affecting the banks or communities involved;

“(B) to avoid forced sales of small locally owned banks to purchasers not similarly representative of community interests; or

“(C) to allow retention of banks that are so small in relation to the holding company's total interests and so small in relation to the banking market to be served as to minimize the likelihood that the bank's powers to grant or deny credit may be influenced by a desire to further the holding company's other interests.

“(3) VIOLATIONS OF THE FAIR HOUSING ACT.—The Board may, on a case-by-case basis, exempt a bank holding company from meeting the terms of subsection (a)(1)(E)(i) in satisfying the definition of qualified bank holding company.

“(g) CERTAIN COMPANIES NOT TREATED AS BANK HOLDING COMPANIES.—

“(1) IN GENERAL.—Except as provided in paragraph (9), any company which—

“(A) on March 5, 1987, controlled an institution which became a bank as a result of the enactment of the Competitive Equality Amendments of 1987; and

“(B) was not a bank holding company on the day before the date of the enactment of the Competitive Equality Amendments of 1987, shall not be treated as a bank holding company for purposes of this Act solely by virtue of such company's control of such institution.

“(2) LOSS OF EXEMPTION.—Subject to paragraph (3), a company described in paragraph (1) shall no longer qualify for the exemption provided under such paragraph if—

“(A) such company directly or indirectly—

“(i) acquires control of an additional bank or an insured institution (other than an insured institution described in paragraph (10) or (12) of this subsection) after March 5, 1987; or

“(ii) acquires control of more than 5 percent of the shares or assets of an additional bank or a savings association other than—

“(I) shares held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);

“(II) shares held by any person as a bona fide fiduciary solely for the benefit of employees of either the company described in paragraph (1) or any subsidiary of that company and the beneficiaries of those employees;

“(III) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

“(IV) shares held in an account solely for trading purposes;

“(V) shares over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

“(VI) loans or other accounts receivable acquired in the normal course of business;

“(VII) shares or assets acquired in securing or collecting a debt previously contracted in good faith, during the 2-year period beginning on the date of such acquisition or for such additional time (not exceeding 3 years) as the Board may permit if the Board determines that such an extension will not be detrimental to the public interest;

“(VIII) shares or assets of a savings association described in paragraph (10) or (12) of this subsection;

“(IX) shares of a savings association held by any insurance company, as defined in section 2(a)(17) of the Investment Company Act of 1940, except as provided in paragraph (11);

“(X) shares issued in a qualified stock issuance under section 10(q) of the Home Owners’ Loan Act; and

“(XI) assets that are derived from, or are incidental to, activities in which institutions described in section 2(c)(2)(F) are permitted to engage,

except that the aggregate amount of shares held under this clause (other than under subclauses (I), (II), (III), (IV), (V), and (VIII)) may not exceed 15 percent of all outstanding shares or of the voting power of a savings association;

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

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

“(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to 3d parties; and

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

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

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

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

“(B) such overdraft—

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

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

“(4) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—If any company described in paragraph (1) fails to qualify for the exemption provided under such paragraph by operation of paragraph (2), such exemption shall cease to apply to

such company and such company shall divest control of each bank it controls before the end of the 180-day period beginning on the date that the company receives notice from the Board that the company has failed to continue to qualify for such exemption, unless before the end of such 180-day period, the company has—

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

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

“(5) SUBSECTION CEASES TO APPLY UNDER CERTAIN CIRCUMSTANCES.—This subsection shall cease to apply to any company described in paragraph (1) if such company—

“(A) registers as a bank holding company under section 5(a) of this Act; (B) immediately upon such registration, complies with all of the requirements of this Act, and regulations prescribed by the Board pursuant to this Act, including the nonbanking restrictions of this section; and

“(C) does not, at the time of such registration, control banks in more than one State, the acquisition of which would be prohibited by section 3(d) of this Act if an application for such acquisition by such company were filed under section 3(a) of this Act.

“(6) INFORMATION REQUIREMENT.—Each company described in paragraph (1) shall, within 60 days after the date of enactment of the Competitive Equality Amendments of 1987, provide the Board with the name and address of such company, the name and address of each bank such company controls, and a description of each such bank’s activities.

“(7) EXAMINATION.—The Board may, from time to time, examine a company described in paragraph (1), or a bank controlled by such company, or require reports under oath from appropriate officers or directors of such company or bank solely for purposes of assuring compliance with the provisions of this subsection and enforcing such compliance.

“(8) ENFORCEMENT.—

“(A) IN GENERAL.—In addition to any other power of the Board, the Board may enforce compliance with the provisions of this Act which are applicable to any company described in paragraph (1), and any bank controlled by such company, under section 8 of the Federal Deposit Insurance Act and such company or bank shall be subject to such section (for such purposes) in the same manner and to the same extent as if such company or bank were a State member insured bank.

“(B) APPLICATION OF OTHER ACT.—Any violation of this Act by any company described in paragraph (1), and any bank controlled by such company, may also be treated as a violation of the Federal Deposit Insurance Act for purposes of subparagraph (A).

“(C) NO EFFECT ON OTHER AUTHORITY.—No provision of this paragraph shall be construed as limiting any authority of the Comptroller of the Currency or the Federal Deposit Insurance Corporation.

“(9) TYING PROVISIONS.—A company described in paragraph (1) shall be—

“(A) treated as a bank holding company for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 and section 22(h) of the Federal Reserve Act and any regulation prescribed under any such section; and

“(B) subject to the restrictions of section 106 of the Bank Holding Company Act Amendments of 1970, in connection with any transaction involving the products or services of such company or affiliate and those of a bank affiliate, as if such company or affiliate were a bank and such bank were a subsidiary of a bank holding company.

“(10) EXEMPTION UNAFFECTED BY CERTAIN EMERGENCY ACQUISITIONS.—For purposes of clauses (i) and (ii)(VIII) of paragraph (2)(A), an insured institution is described in this paragraph if—

“(A) the insured institution was acquired (or any shares or assets of such institution were acquired) by a company described in paragraph (1) in an acquisition under section 408(m) of the National Housing Act or section 13(k) of the Federal Deposit Insurance Act; and

“(B) either—

“(i) the insured institution is located in a State in which such company controlled a bank on March 5, 1987; or

“(ii) the insured institution has total assets of \$500,000,000 or more at the time of such acquisition.

“(11) SHARES HELD BY INSURANCE AFFILIATES.—Shares described in clause (ii)(IX) of paragraph (2)(A) shall not be excluded for purposes of clause (ii) of such paragraph if—

“(A) all shares held under such clause (ii)(IX) by all insurance company affiliates of such savings association in the aggregate exceed 5 percent of all outstanding shares or of the voting power of the savings association; or

“(B) such shares are acquired or retained with a view to acquiring, exercising, or transferring control of the savings association.

“(12) EXEMPTION UNAFFECTED BY CERTAIN OTHER ACQUISITIONS.—For purposes of clauses (i) and (ii)(VIII) of paragraph (2)(A), an insured institution is described in this paragraph if the insured institution was acquired (or any shares or assets of such institution were acquired) by a company described in paragraph (1)—

“(A) from the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or the Director of the Office of Thrift Supervision, in any capacity; or

“(B) in an acquisition in which the insured institution has been found to be in danger of default (as defined in section 3 of the Federal Deposit Insurance Act) by the appropriate Federal or State authority.

“(13) SPECIAL RULE RELATING TO SHARES ACQUIRED IN A QUALIFIED STOCK ISSUANCE.—A company described in paragraph (1) that holds shares issued in a qualified stock issuance pursuant to section 10(q) of the Home Owners’ Loan Act by any savings association or savings and loan holding company (neither of which is a subsidiary) shall not be deemed to control such savings association or savings and loan holding company solely because such company holds such shares unless—

“(A) the company fails to comply with any requirement or condition imposed by paragraph (2)(A)(ii)(X) or section 10(q) of the Home Owners’ Loan Act with respect to such shares; or

“(B) the shares are acquired or retained with a view to acquiring, exercising, or transferring control of the savings association or savings and loan holding company.

“(h) LIMITATIONS ON CERTAIN BANKS.—

“(1) IN GENERAL.—Notwithstanding any other provision of this section (other than the last sentence of subsection (a)(2)), a bank holding company which controls an institution that became a bank as a result of the enactment of the Competitive Equality Amendments of 1987 may retain control of such institution if such institution does not—

“(A) engage in any activity after the date of the enactment of such Amendments which would have caused such institution to be a bank (as defined in section 2(c), as in effect before such date) if such activities had been engaged in before such date; or

“(B) increase the number of locations from which such institution conducts business after March 5, 1987.

“(2) LIMITATIONS CEASE TO APPLY UNDER CERTAIN CIRCUMSTANCES.—The limitations contained in paragraph (1) shall cease to apply to a bank described in such paragraph at such time as the acquisition of such bank, by the bank holding company referred to in such paragraph, would not be prohibited under section 3(d) of this Act if—

“(A) an application for such acquisition were filed under section 3(a) of this Act; and

“(B) such bank were treated as an additional bank (under section 3(d)).

“(i) LIMITATION ON BANK HOLDING COMPANY AFFILIATIONS.—

“(1) IN GENERAL.—Except as otherwise provided in this Act, a bank holding company may not become affiliated with any company—

“(A) less than 85 percent of the gross revenues of which from activities conducted in the United States are derived from financial activities in which such company or any subsidiary of such company engages; and

“(B) which has consolidated assets, at the time such affiliation first occurs, of more than \$750,000,000.

“(2) MIRROR IMAGE.—Except as otherwise provided in this Act, no company that is, or is affiliated with, a company described in subparagraphs (A) and (B) of paragraph (1) may become a bank holding company.

“(j) TRANSACTIONS WITH NONFINANCIAL AFFILIATES.—A subsidiary insured depository institution of a bank holding company may not engage in a covered transaction (as defined by section 23A(b)(7) of the Federal Reserve Act) with any affiliate unless the affiliate is engaged only in activities that are financial in nature (as defined in subsection (a)(2)).”.

(b) GRANDFATHER SHARES HELD UNDER PRIOR EXCEPTION.—A company that, on the date of the enactment of this Act, holds shares on the basis of an exception provided under section 4 of the Bank Holding Company Act of 1956, as in effect on the day before such date of enactment, may continue to retain such shares after such date subject to the same terms and conditions as were applicable, in accordance with such section 4 (as in effect on such day), to the retention of the shares by the company before such date of enactment.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended by striking subsections (d), (f), and (g).

(2) The heading and section designation for section 4 of the Bank Holding Company Act of 1956 is amended to read as follows:

“SEC. 4. [Repealed].”

(3) Section 2(n) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(n)) is amended by inserting “depository institution,” after “insured depository institution”.

SEC. 104. CERTAIN STATE LAWS PREEMPTED.

(a) IN GENERAL.—No State may by law, regulation, order, interpretation, or otherwise, prevent or restrict an insured depository institution or a wholesale financial institution (as authorized pursuant to section 161 of this Act) from—

(1) being affiliated with an entity (including an entity engaged in insurance activities) as authorized by this Act or any other provision of law; or

(2) engaging, directly or indirectly or in conjunction with such affiliate, in any activity (including the sale of insurance underwritten by an affiliate or any other insurance activity) authorized under this Act or any other provision of law.

(b) RULE OF CONSTRUCTION.—No provision of subsection (a) shall be construed so as to prohibit a State regulator (after giving notice to the appropriate Federal banking agency to the extent practicable) from exercising, with respect to an affiliate of an insured depository institution, such authority as such State regulator may have under State law relating to the rehabilitation, conservatorship, receivership, or liquidation of the affiliate.

SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHORIZED.

(a) IN GENERAL.—Section 3(f)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(f)(2)) (as redesignated by section 102(b) of this Act) is amended to read as follows:

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

SEC. 106. COMPANIES NOT ENGAGED IN ACTIVITIES FINANCIAL IN NATURE.

Section 6 of the Bank Holding Company Act of 1956 (as added by section 103 of this Act) is amended by adding at the end the following new subsection:

“(k) CONTROL OF A QUALIFYING BANK HOLDING COMPANY BY A COMPANY NOT ENGAGED IN ACTIVITIES FINANCIAL IN NATURE.—

“(1) IN GENERAL.—

“(A) CONTROL OF 1 BANK AUTHORIZED.—Notwithstanding subsection (i), a company that is engaged predominantly in nonfinancial activities on a consolidated basis may only control a qualifying bank holding company and not more than 1 bank subject to the provisions of this subsection.

“(B) EXCLUSION FROM TREATMENT AS HOLDING COMPANY.—Any company that is engaged predominantly in nonfinancial activities and controls a qualifying bank holding company and not more than 1 bank in accordance with this subsection, shall not become a bank holding company for purposes of this Act solely by virtue of such company’s control of such qualifying bank holding company and bank.

“(C) FINANCIAL ACTIVITIES REQUIRED TO BE CONDUCTED IN HOLDING COMPANY SUBSIDIARY.—Any financial activity engaged in by a company that controls a qualifying bank holding company pursuant to paragraph (1) must conduct such activity through a subsidiary of the qualifying bank holding company.

“(2) CONTROL OF 1 BANK.—The provisions of subparagraphs (A) and (B) of paragraph (1) shall not apply to any company if—

“(A) such company directly or indirectly acquires control of a bank other than—

“(i) an institution described in section 2(c)(2) or section 6(g)(1) controlled by such company before the date of enactment of the Financial Services Competition Act of 1997 that becomes a bank; or

“(ii) a bank with total consolidated assets not in excess of \$500,000,000 that has been chartered for at least 5 years prior to its date of acquisition by such company; and such bank is and remains at all times a subsidiary of a qualifying bank holding company controlled by such company;

“(B) such company directly or indirectly acquires control of all or substantially all of the assets of an additional bank; or

“(C) the gross revenues of the bank controlled by such company exceed 15 percent of the consolidated gross revenues of such company derived from activities conducted in the United States.

“(3) ENFORCEMENT OF VIOLATIONS.—If the Board finds that a company is not in compliance with the provisions of this subsection, the Board shall enforce the provisions of this subsection in the same manner as that described in subsection (d) for a qualifying bank holding company.

“(4) ANTITRADING AND INSIDER TRANSACTIONS.—A company described in paragraph (1) shall be treated as a bank holding company for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 and section 22(h) of the Federal Reserve Act and any regulation prescribed under any such section.”.

SEC. 107. AMENDMENT TO ENSURE THAT BANKS ACQUIRED BY OTHER ENTITIES DO NOT BECOME DEPOSIT PRODUCTION OFFICES.

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

(1) by inserting “, the Financial Services Competition Act of 1997,” after “pursuant to this title”; and

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

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

SEC. 108. CLARIFICATION OF APPLICABILITY OF BRANCH CLOSURE REQUIREMENTS IN INTERSTATE BANKING OPERATIONS.

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

Subtitle B—Additional Safeguards

SEC. 111. FIREWALL SAFEGUARDS.

(a) COMPTROLLER OF THE CURRENCY.—

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

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

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

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

(C) Avoid conflicts of interest or other abuses.

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

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

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

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

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

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

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

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

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

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

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

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

(C) Avoid conflicts of interest or other abuses.

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

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

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

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

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

(c) FEDERAL DEPOSIT INSURANCE CORPORATION.—

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

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

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

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

(C) Avoid conflicts of interest or other abuses.

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

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

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

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

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

SEC. 112. CONSUMER PROTECTION.

(a) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

“SEC. 45. CONSUMER PROTECTION REGULATIONS.

“(a) REGULATIONS REQUIRED.—

“(1) IN GENERAL.—Each Federal banking agency shall prescribe and publish in final form, not later than 3 months after the effective date of the Financial Services Competition Act of 1997, consumer protection regulations which—

“(A) apply to retail sales, solicitations, advertising, or offers of any non-deposit product by any insured depository institution or any person who is engaged in such activities at an office of the institution or on behalf of the institution; and

“(B) meet the requirements of this section and provide such additional protections for consumers to whom such sales, solicitations, advertising, or offers are directed as the agency determines to be appropriate.

“(2) APPLICABILITY TO SUBSIDIARIES.—The regulations prescribed pursuant to paragraph (1) shall extend such protections to any subsidiaries of an insured depository institution, as deemed appropriate by the regulators referred to in paragraph (3), where such extension is necessary to ensure the consumer protections provided by this section.

“(3) CONSULTATION AND JOINT REGULATIONS.—The Federal banking agencies shall consult with each other and prescribe joint regulations pursuant to paragraph (1), after consultation with the Securities and Exchange Commission and the National Association of Insurance Commissioners, as appropriate.

“(4) NONDEPOSIT PRODUCT DEFINED.—For purposes of this section, the term ‘nondeposit product’—

“(A) means any investment and insurance product which is not a deposit;

“(B) includes shares issued by a registered investment company; and

“(C) does not include—

“(i) any loan or any other extension of credit by an insured depository institution;

“(ii) any letter of credit;

“(iii) any trust services;

“(iv) any discount; or

“(v) any other instrument or insurance or investment product specifically excluded from the definition of such term by regulations prescribed jointly by the Federal banking agencies, to the extent necessary to carry out the purpose of this Act.

“(b) SALES PRACTICES.—The regulations prescribed pursuant to subsection (a) shall include the following provisions relating to sales practices in connection with the sale of nondeposit products:

“(1) ANTICOERCION RULES.—

“(A) IN GENERAL.—Anticoercion rules prohibiting an insured depository institution from engaging in any practice that would lead a consumer to believe an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970, is conditional upon—

“(i) the purchase of a nondeposit product from the institution or any of its affiliates or subsidiaries; or

“(ii) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, a nondeposit product from an unaffiliated entity.

“(B) APPLICABILITY TO SUBSIDIARIES.—Regulations prescribed under subparagraph (A) shall apply to subsidiaries of insured depository institutions if the regulators determine such application is necessary to prevent coercive activities.

“(2) SUITABILITY OF PRODUCT.—

“(A) IN GENERAL.—Standards to ensure that an investment product sold to a consumer is suitable and any other nondeposit product is appropriate for the consumer based on financial information disclosed by the consumer.

“(B) RULES OF FAIR PRACTICE.—In prescribing the standards under subparagraph (A) with respect to the sale of investments, the Federal banking agencies shall take into account the Rules of Fair Practice of the National Association of Securities Dealers.

“(c) DISCLOSURES AND ADVERTISING.—The regulations prescribed pursuant to subsection (a) shall include the following provisions relating to disclosures and advertising at the time the consumer opens an account for the purchase of any nondeposit product or in connection with the initial purchase of a nondeposit product:

“(1) DISCLOSURES.—

“(A) IN GENERAL.—Requirements that the following disclosures be made orally and in writing before the completion of the initial sale and, in the case of clause (iv), at the time of application for an extension of credit:

“(i) UNINSURED STATUS.—The product is not insured by the Federal Deposit Insurance Corporation, or the United States Government as appropriate.

“(ii) INSURANCE PRODUCT.—In the case of an insurance product, the product is not guaranteed by an insured depository institution.

“(iii) INVESTMENT RISK.—In the case of an investment product, there is an investment risk associated with the product, including possible loss of principal.

“(iv) COERCION.—The approval of an extension of credit may not be conditioned on—

“(I) the purchase of a nondeposit product from the institution in which the application for credit is pending or any of its affiliates or subsidiaries; or

“(II) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, a nondeposit product from an unaffiliated entity.

“(B) MAKING DISCLOSURE READILY UNDERSTANDABLE.—Regulations prescribed under subparagraph (A) shall encourage the use of disclosure that is conspicuous, simple, direct, and readily understandable such as the following:

“(i) ‘NOT FDIC-INSURED’.

“(ii) ‘NOT GUARANTEED BY THE BANK’.

“(iii) ‘MAY GO DOWN IN VALUE’.

“(C) ADJUSTMENTS FOR ALTERNATIVE METHODS OF PURCHASE.—In prescribing the requirements under subparagraphs (A) and (D), necessary adjustments shall be made for purchase in person, by telephone or by electronic media to provide for the most appropriate and complete form of disclosure and acknowledgements.

“(D) CONSUMER ACKNOWLEDGEMENT.—

“(i) IN GENERAL.—A requirement that an insured depository institution shall require any person selling a nondeposit product at any office of, or on behalf of, the institution to obtain, at the time a consumer receives the disclosures required under subsection (c)(1) or at the time of the initial purchase by the consumer of such product, a separate statement, signed and dated by the consumer, which contains the declaration that the purchaser has received the disclosure required under this subsection with respect to such product.

“(ii) APPLICATION TO SUBSIDIARIES.—If the regulations require subsidiaries of insured depository institutions to make the disclosures under this section, the regulations shall require that these subsidiaries obtain the consumer acknowledgement provided for in this subparagraph.

“(2) PROHIBITION ON MISREPRESENTATIONS.—

“(A) INSURANCE.—A prohibition on any practice, or any advertising, at any office of, or on behalf of, the insured depository institution, or any subsidiary as appropriate, which could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to—

“(i) the uninsured nature of any nondeposit insurance product sold, or offered for sale by the institution or any subsidiary of the institution; or

“(ii) the investment risk associated with any such product.

“(B) SECURITIES.—With regard to securities, a prohibition on any practice, or any advertising, at any office of the insured depository institution, or any subsidiary as appropriate, which could violate section 10(b) of the Securities Exchange Act of 1934.

“(d) SEPARATION OF BANKING AND NONBANKING ACTIVITIES.—

“(1) REGULATIONS REQUIRED.—The regulations prescribed pursuant to subsection (a) shall include such provisions as the Federal banking agencies consider appropriate to ensure that the routine acceptance of deposits is kept, to the extent practicable, physically segregated from nondeposit product activity.

“(2) MINIMUM REQUIREMENTS.—Regulations prescribed pursuant to paragraph (1) shall include, at a minimum, the following requirements:

“(A) SEPARATE SETTING.—A clear delineation of the setting in which, and the circumstances under which, transactions involving nondeposit products

may be effected to ensure that such activity is conducted in a location physically segregated from the area where retail deposits are routinely accepted.

“(B) CERTAIN PERSONS PROHIBITED FROM SELLING NONDEPOSIT PRODUCTS.—Standards prohibiting any person accepting deposits from the public in an area where deposits are routinely taken in an insured depository institution from selling or offering to sell, or offering an opinion or investment advice on, any nondeposit product.

“(C) REFERRALS.—The regulations shall include standards which permit any such person to refer a customer who seeks to purchase, or seeks an opinion or investment advice on, any nondeposit product to a qualified person who sells or provides opinions or investment advice on such product, only if the person making the referral receives no more than a one-time nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

“(D) QUALIFICATION REQUIREMENTS AND TRAINING.—Standards prohibiting any insured depository institution from permitting any person to sell or offer for sale, or provide an opinion or investment advice about, any nondeposit product in any part of any office of the institution, or on behalf of the institution, unless such person—

“(i) is registered with a self-regulatory organization or the Securities and Exchange Commission, as appropriate, as a broker or dealer, as a representative of a broker or dealer, or as an investment adviser; or

“(ii) meets qualification and training requirements which the Federal banking agencies jointly determine are equivalent to the training and qualification requirements applicable to a person who is registered with a self-regulatory organization or the Commission as a broker or dealer, as a representative of a broker or dealer, or as an investment adviser, as the case may be; or

“(iii) in the case of insurance sales, is appropriately qualified.

“(E) COMPENSATION PROGRAMS.—Standards to ensure that compensation programs are not structured in such a way as to provide incentives for the sales of nondeposit products that are not suitable or appropriate for the consumer.

“(e) CONSUMER GRIEVANCE PROCESS.—The Federal banking agencies shall jointly establish a consumer complaint mechanism, for receiving and addressing expeditiously meritorious consumer complaints alleging a violation of regulations issued under the section, which shall—

“(1) establish a group within each regulatory agency to receive such complaints;

“(2) develop procedures for investigating such complaints;

“(3) develop procedures for informing consumers of rights they may have in connection with such complaints; and

“(4) develop procedures for addressing concerns raised by such complaints, as appropriate.

“(f) NO EFFECT ON OTHER AUTHORITY.—

“(1) IN GENERAL.—No provision of this section shall be construed as granting, limiting, or otherwise affecting—

“(A) any authority of the Securities and Exchange Commission, any self-regulatory organization, the Municipal Securities Rulemaking Board, or the Secretary of the Treasury under any Federal securities law;

“(B) any authority of any State insurance commissioner or other State authority under any State insurance law; or

“(C) the applicability of any Federal securities law or any State securities or insurance law, or any regulation prescribed by the Commission, any self-regulatory organization, the Municipal Securities Rulemaking Board, the Secretary of the Treasury, or any State insurance commissioner or other State authority pursuant to any such law, to any person.

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

“(A) FEDERAL SECURITIES LAW.—The term ‘Federal securities law’ has the meaning given to the term ‘securities laws’ in section 3(a)(47) of the Securities Exchange Act of 1934.

“(B) SELF-REGULATORY ORGANIZATION.—The term ‘self-regulatory organization’ has the meaning given to such term in section 3(a)(26) of the Securities Exchange Act of 1934.”.

(b) SAFEGUARDS APPLICABLE TO BROKERS AND DEALERS THAT ARE, OR ARE AFFILIATED WITH, INSURED DEPOSITORY INSTITUTIONS.—

(1) **IN GENERAL.**—The Securities and Exchange Commission, in consultation with the appropriate Federal banking agencies, shall carry out the purposes of this section by prescribing rules regarding sales of securities by—

(A) any insured depository institution registered as a broker under the Securities Exchange Act of 1934; or

(B) any registered broker or dealer that is a subsidiary or affiliate of an insured depository institution.

(2) **SCOPE OF REGULATIONS.**—Regulations prescribed under paragraph (1) shall, at a minimum, establish requirements with respect to—

(A) disclosures of information concerning coverage under the Securities Investor Protection Act of 1970 and the Federal Deposit Insurance Act; and

(B) disclosures of the financial interest of the depository institution or any securities subsidiary or securities affiliate with respect to referrals or transactions.

(3) **MAKING DISCLOSURE READILY UNDERSTANDABLE.**—

(A) **WRITTEN DISCLOSURE.**—Regulations prescribed under this subsection shall encourage the use of disclosure that is simple, direct, and readily understandable, such as the following:

(i) “NOT FDIC-INSURED OR SIPC-INSURED”.

(ii) “NOT GUARANTEED BY THE BANK”.

(iii) “MAY GO DOWN IN VALUE”.

(B) **ORAL DISCLOSURE.**—Regulations prescribed under this subsection shall encourage the use of oral disclosure as a supplement to written disclosure.

(c) **AUTHORITY OF NATIONAL COUNCIL ON FINANCIAL SERVICES.**—To carry out the purposes of this section, the National Council on Financial Services may—

(1) prescribe regulations under section 45 of the Federal Deposit Insurance Act that are more stringent than those prescribed by the appropriate Federal banking agencies; and

(2) prescribe regulations under subsection (b) that are more stringent than those prescribed by the Securities and Exchange Commission.

(d) **BIENNIAL REVIEW OF REGULATIONS.**—Beginning on June 30, 2001, the National Council on Financial Services shall biennially review the regulations prescribed under this section to determine whether they adequately carry out the purposes of this section.

(e) **DEFINITIONS.**—For purposes of this section, the terms “appropriate Federal banking agency” and “insured depository institution” have the same meanings as in section 3 of the Federal Deposit Insurance Act.

SEC. 113. OBLIGATIONS OF SUBSIDIARIES AND AFFILIATES CANNOT BE EXTENDED TO INSURED DEPOSITORY INSTITUTIONS.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 45 (as added by section 112(a) of this subtitle) the following new section:

“SEC. 46. OBLIGATIONS OF SUBSIDIARIES AND AFFILIATES CANNOT BE EXTENDED TO INSURED DEPOSITORY INSTITUTIONS.

“(a) **IN GENERAL.**—Notwithstanding any other law (including any law relating to insurance), no obligation of an affiliate or subsidiary of an insured depository institution arising more than 270 days after the date of enactment of the Financial Services Competition Act of 1997 may be charged against such insured depository institution by reason of any ruling, determination, or judgment disregarding the separate corporate identity or limited liability of the insured depository institution or the affiliate or subsidiary.

“(b) **MAINTENANCE OF SEPARATE CORPORATE IDENTITY AND SEPARATE LEGAL STATUS.**—

“(1) **IN GENERAL.**—The appropriate Federal banking agency shall take steps, including conducting the review required by paragraph (2), to assure that each insured depository institution observes the separate corporate identity and separate legal status of each of the institutions’ subsidiaries and affiliates.

“(2) **EXAMINATIONS.**—Each appropriate Federal banking agency, when examining an insured depository institution, shall review whether the institution is observing the separate corporate identity and separate legal status of the institution’s subsidiaries and affiliates.

“(c) **MISREPRESENTATIONS REGARDING DEPOSITORY INSTITUTION LIABILITY PROHIBITED.**—

“(1) **IN GENERAL.**—No institution-affiliated party of an insured depository institution or institution-affiliated party of a subsidiary or affiliate of an insured

depository institution shall fraudulently represent that the institution is or will be liable for any obligation of a subsidiary or other affiliate of the institution.

“(2) CRIMINAL PENALTY.—Whoever violates paragraph (1) shall be fined not more than \$100,000, imprisoned for not more than 1 year, or both.

“(3) INSTITUTION-AFFILIATED PARTY DEFINED.—For purposes of this subsection, the term ‘institution-affiliated party’ with respect to a subsidiary or affiliate has the same meaning as in section 3 except references to an insured depository institution shall be deemed to be references to a subsidiary or affiliate of an insured depository institution.

“(d) RULE OF CONSTRUCTION.—This section shall not be construed as—

“(1) excusing an insured depository institution from—

“(A) any liability that it has expressly and lawfully assumed; or

“(B) any liability to which it would be otherwise subject for engaging or participating in any violation of law or any breach of contract;

“(2) limiting the authority of the Corporation under section 5(e);

“(3) permitting any obligation to be charged against an insured depository institution that would not otherwise be charged against the institution; or

“(4) prohibiting joint or cooperative marketing, information sharing, or the purchase or sale of services among affiliates.”.

Subtitle C—National Council on Financial Services

SEC. 121. ESTABLISHMENT AND OPERATION OF THE COUNCIL.

(a) ESTABLISHMENT AND PURPOSES.—As of the date of enactment of this Act, there is established a National Council on Financial Services (hereafter in this subtitle referred to as the “Council”), which, among other functions specified in this Act, shall seek generally to improve the efficiency and competitiveness of the United States financial services system by increasing coordination among regulators of financial services providers and monitoring innovations in the delivery of financial services for the benefit of the United States economy and consumers.

(b) MEMBERSHIP.—The Council shall consist of the following members:

(1) The Secretary of the Treasury.

(2) The Chairman of the Board of Governors of the Federal Reserve System.

(3) The Chairperson of the Federal Deposit Insurance Corporation.

(4) The Comptroller of the Currency.

(5) The Chairman of the Securities and Exchange Commission.

(6) The Chairman of the Commodity Futures Trading Commission.

(7) 1 individual with current or prior experience in securities regulation at the State level who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 3 years.

(8) 2 individuals with current or prior experience in insurance regulation at the State level who shall be appointed by the President (after soliciting the views of the National Association of Insurance Commissioners with regard to any such appointment), by and with the advice and consent of the Senate, for a term of 3 years.

(9) 1 individual with current or prior experience in State banking supervision who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 3 years.

(c) CHAIRPERSON.—The Secretary of the Treasury shall be the Chairperson of the Council.

(d) VICE CHAIRPERSON.—The Chairman of the Board of Governors of the Federal Reserve System shall be the Vice-Chairperson of the Council.

(e) COMPENSATION.—

(1) AGENCY MEMBERS.—Each member of the Council specified in paragraphs (1) through (6) of subsection (b) (hereafter in this section referred to as “agency members”) shall serve without additional compensation.

(2) INDIVIDUAL MEMBER.—The members of the Council described in paragraph (7), (8), or (9) of subsection (b) shall serve without compensation, but shall be entitled, per diem, to reasonable expenses directly related to duties carried out as a member of the Council.

(f) EXPENSES OF THE COUNCIL.—

(1) AGENCY MEMBER EXPENSES.—The agency of each agency member of the Council shall be responsible for expenses associated with the agency member’s participation in the functions of the Council.

(2) OTHER EXPENSES.—Any other expenses of the Council, including expenses described in subsection (e)(2), shall be shared pro rata among the agencies of the agency members.

(g) ACTION BY THE COUNCIL.—

(1) QUORUM.—A majority of members of the Council shall constitute a quorum.

(2) FINAL ACTION BY THE COUNCIL.—On matters determined by the Council to require an affirmative vote to constitute final action by the Council, such vote shall require a majority of a quorum of Council members.

(3) DIRECT VOTING.—Members of the Council shall not vote through any designee.

SEC. 122. FUNCTIONS OF THE COUNCIL.

(a) IN GENERAL.—In addition to the authority conferred on the Council by other provisions of this Act, the Council shall have the authority specified in this section.

(b) AUTHORITY TO ISSUE REGULATIONS.—

(1) CALCULATION OF GROSS REVENUES TEST.—Before the end of the 1-year period beginning on the date of enactment of this Act, the Council shall issue final regulations prescribing the method for calculating compliance with the gross revenues test for purposes of section 6(a)(2) of the Bank Holding Company Act of 1956.

(2) RESOLUTION OF DISPUTES INVOLVING THE DEFINITION OF INSURANCE.—The Council shall determine whether an activity or product is an insurance activity or product or a banking activity or product as provided in section 5136(b)(2) of the Revised Statutes of the United States.

(3) DEFINITION OF FINANCIAL ACTIVITY AND ACTIVITY RELATED TO A FINANCIAL ACTIVITY.—The Council may issue regulations or orders finding an activity to be financial or related to a financial activity, or nonfinancial or not related to a financial activity, for purposes of section 6(a)(3) of the Bank Holding Company Act of 1956 or section 5136A of the Revised Statutes.

(4) ADDITIONAL SAFEGUARDS.—The Council may, by regulation or order, impose restrictions or requirements on relationships or transactions involving a depository institution and any affiliate or subsidiary of any such institution engaged in any activity that is not permissible for a national bank to engage in directly, if the Council finds that such restrictions or requirements will promote safety and soundness in the financial services system or will enhance consumer protection.

(c) ENFORCEMENT OF COUNCIL ACTIONS.—Actions taken by the Council shall be binding on the agencies represented on the Council and enforced by the agency responsible for supervising an entity to which an action of the Council applies.

(d) PRIVACY STUDY.—The members of the National Council on Financial Services, or the designees of any such members, in consultation with the Federal Trade Commission, shall—

(1) report to the Congress before the end of the 1-year period beginning on the date of the enactment of this Act on the implications of broader affiliations between companies and the increasing use of technology in the provision of financial services for the ability of consumers to control and safeguard the use of their financial information; and

(2) make recommendations for appropriate legislative or administrative action, if necessary, to better safeguard consumer privacy.

SEC. 123. ADVISORY COUNCIL ON COMMUNITY REVITALIZATION.

(a) ESTABLISHMENT AND PURPOSES.—Upon the enactment of this Act, the Council shall establish an advisory council to be known as the Advisory Council on Community Revitalization (hereafter in this section referred to as the “Advisory Council”) to examine the impact of new insurance and securities activities of qualifying bank holding companies and to make recommendations and reports to the Congress and the Council in accordance with this section.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Advisory Council shall consist of 10 members as follows:

(A) 6 members, 1 appointed by each agency member (as defined in section 121(e)(1)) from among officers and employees of the department, agency or independent establishment of which such member is the head.

(B) 1 member appointed by the Secretary of Commerce from among individuals who, by virtue of their education, training, or experience, are well-qualified to represent the views of the insurance industry on the Advisory Council.

(C) 1 member appointed by the Chairman of the Securities and Exchange Commission from among individuals who, by virtue of their education, training, or experience, are well-qualified to represent the views of the securities industry on the Advisory Council.

(D) 2 members appointed by the Secretary of the Treasury from among representatives of well-established, nationally recognized consumer organizations.

(2) CHAIRPERSON.—The member appointed by the Secretary of the Treasury under paragraph (1)(A) shall serve as the chairperson of the Advisory Council.

(3) COMPENSATION.—

(A) AGENCY MEMBERS.—Each member of the Advisory Council who is appointed under paragraph (1)(A) shall serve without additional compensation.

(B) INDIVIDUAL MEMBER.—Each member of the Advisory Council who is appointed under subparagraph (B), (C), or (D) of paragraph (1) shall serve without compensation, but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(4) TERM.—Each member shall be appointed for the life of the Advisory Council.

(5) VACANCY.—A vacancy in the Advisory Council shall be filled in the manner in which the original appointment was made.

(6) MEETINGS.—The Advisory Council shall meet, not less frequently than quarterly, subject to the call of the chairperson or a majority of the members.

(7) QUORUM.—A majority of the members appointed under paragraph (1)(A) and a majority of the members appointed under subparagraphs (B), (C), and (D) of paragraph (1) shall constitute a quorum for purposes of agreeing to the contents of any report submitted under this section but a lesser number may meet to conduct routine business.

(c) RECOMMENDATIONS AND REPORTS.—

(1) RECOMMENDATIONS FOR MEETING CREDIT AND INSURANCE NEEDS.—Before the end of the 1-year period beginning on the date of the enactment of this Act, the Advisory Council shall submit recommendations to the Congress and the Council for enhancing insurance and securities activities of qualifying bank holding companies to meet the credit and insurance needs of all citizens and communities, including underserved communities and populations.

(2) PERIODIC REPORTS ON IMPACT OF ACT FOR LIMITED PERIOD.—Before the end of the 18-month period beginning on the date of the enactment of this Act and annually thereafter for a 5-year period, the Advisory Council shall submit a report to the Congress and the Council on the impact this Act (and the amendments made by this Act to other provisions of law) on the capital and credit needs of all citizens and communities, including underserved communities and populations.

(d) EXPENSES AND ADMINISTRATIVE SUPPORT.—

(1) EXPENSES.—The expenses of the Advisory Council shall be paid by the Council in the manner described in section 121(f)(2), except that, for purposes of this paragraph, the Commodity Futures Trading Commission shall not be included in the distribution of expenses among member agencies under such section.

(2) ADMINISTRATIVE SUPPORT.—The agencies represented by members appointed under subsection (b)(1)(A) shall provide to the Advisory Council the administrative support services necessary for the Advisory Council to carry out its responsibilities under this section.

(e) FEDERAL ADVISORY COMMITTEE ACT DOES NOT APPLY.—The Federal Advisory Committee Act shall not apply with respect to the Advisory Council.

Subtitle D—Bank Holding Company Supervision

SEC. 131. STREAMLINING BANK HOLDING COMPANY SUPERVISION.

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

“(c) REPORTS AND EXAMINATIONS.—

“(1) REPORTS.—

“(A) IN GENERAL.—The Board from time to time may require any bank holding company to submit reports, under oath or otherwise, to enable the

Board to determine compliance with the provisions of this Act and regulations and orders issued thereunder.

“(B) USE OF EXISTING REPORTS.—

“(i) IN GENERAL.—The Board shall not require any report pursuant to subparagraph (A) if information sufficient for the Board to make the determinations required under subparagraph (A) is reasonably available from any other source.

“(ii) USE.—The Board shall, as far as possible, use the reports of examination or comparable reports prepared by any Federal or State regulatory agency, or any self-regulatory organization for purposes of subparagraph (A).

“(iii) AVAILABILITY.—Each Federal and State regulatory agency and self-regulatory organization referred to in clause (ii) shall make the reports referred to in such clause available to the Board upon request.

“(C) EXEMPTIONS FROM REPORTING REQUIREMENTS.—

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

“(ii) CRITERIA FOR EXEMPTION.—In granting an exemption under clause (i), the Board shall consider, among other factors—

“(I) whether information of the type required under this paragraph is available from a supervisory agency (as defined in section 1101(7) of the Right to Financial Privacy Act of 1978), the Commodity Futures Trading Commission, or a foreign regulatory body of a similar type;

“(II) the primary business of the company;

“(III) the nature and extent of domestic or foreign regulation of the activities of such company; and

“(IV) the absolute and relative size within the company of the subsidiary depository institutions of the company.

“(2) EXAMINATIONS.—

“(A) EXAMINATION AUTHORITY.—The Board may make examinations of each bank holding company and each subsidiary thereof, the cost of which shall be assessed against, and made payable by such holding company.

“(B) LIMITATIONS ON EXAMINATION AUTHORITY FOR BANK HOLDING COMPANIES AND NONBANK SUBSIDIARIES.—The Board may make examinations of each bank holding company and each nonbank subsidiary (other than a subsidiary of a depository institution) in order to—

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

“(ii) inform the Board of—

“(I) the financial and operational risks within the holding company system that may pose a threat to the safety and soundness of any subsidiary depository institution of such holding company; and

“(II) the systems of the holding company; and

“(iii) monitor compliance with the provisions of this Act and those governing transactions and relationships between any subsidiary depository institution and such subsidiaries.

“(C) RESTRICTED FOCUS OF EXAMINATIONS.—The Board shall, to the fullest extent possible, limit the focus and scope of any examination of a bank holding company to—

“(i) the bank holding company; and

“(ii) any nonbank subsidiary of the holding company (other than a subsidiary of a depository institution) that, because of—

“(I) the size, condition, or activities of the subsidiary;

“(II) the nature or size of transactions between such subsidiary and any depository institution which is also a subsidiary of such holding company; or

“(III) the centralization of functions within the holding company system,

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

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

“(E) DEFERENCE TO OTHER EXAMINATIONS.—The Board shall, to the fullest extent possible, use the reports of examination made of—

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

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

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

“(3) NOTICE TO BANKING AGENCIES OF FINANCIAL AND OPERATIONAL CONCERNS.—Any agency represented on the National Council on Financial Services or any State supervisory authority shall notify the Board and the appropriate Federal banking agency or State bank supervisor of significant financial or operational risks to any depository institution resulting from the activities of any affiliate of a depository institution.

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

“(A) IN GENERAL.—In the case of any bank holding company which is not significantly engaged in nonbanking activities, the Board, in consultation with the appropriate Federal banking agency, may designate the appropriate Federal banking agency of the lead insured depository institution subsidiary of such holding company as the appropriate Federal banking agency for the bank holding company.

“(B) AUTHORITY TRANSFERRED.—An agency designated by the Board under subparagraph (A) shall have the same authority as the Board under this Act to—

“(i) examine and require reports from the bank holding company and any affiliate of such company (other than a bank) under section 5;

“(ii) approve or disapprove applications or transactions under section 3, 6, or 11;

“(iii) take actions and impose penalties under subsections (e) and (f) of section 5 and section 8; and

“(iv) take actions regarding the holding company, any affiliate of the holding company (other than a bank), or any institution-affiliated party of such company or affiliate under the Federal Deposit Insurance Act and any other statute which the Board may designate.

“(C) AGENCY ORDERS.—Section 9 (of this Act) and section 105 of the Bank Holding Company Act Amendments of 1970 shall apply to orders issued by an agency designated under subparagraph (A) in the same manner such sections apply to orders issued by the Board.

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

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

“(B) the relevant State insurance authorities with regard to all interpretations of, and the enforcement of, applicable State insurance laws relating to the activities, conduct, and operations of insurance companies and insurance agents.”.

SEC. 132. ADMINISTRATION OF THE BANK HOLDING COMPANY ACT OF 1956.

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

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

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

“(A) order”; and

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

“(B) order the bank holding company, after due notice and opportunity for hearing, and after consultation with the bank’s primary supervisor, which shall

be the Comptroller of the Currency in the case of a national bank, and the Federal Deposit Insurance Corporation and the appropriate State supervisor in the case of an insured nonmember bank, to terminate (within 120 days or such longer period as the Board may direct) the ownership or control of any such bank by such company.

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

SEC. 133. BANK HOLDING COMPANY CAPITAL.

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

“(g) [Reserved]

“(h) CAPITAL ADEQUACY GUIDELINES.—

“(1) CAPITAL ADEQUACY PROVISIONS.—The Board may adopt capital adequacy rules or guidelines for bank holding companies.

“(2) METHODS OF CALCULATION.—In developing rules or guidelines under paragraph (1)—

“(A) FOCUS ON DOUBLE LEVERAGE.—The Board shall address the use by bank holding companies of debt and other liabilities to fund capital investments in subsidiary depository institutions.

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

“(C) NO CAPITAL REQUIREMENT ON REGULATED ENTITIES.—The Board shall not, by rule, regulation, guideline, order, or otherwise, impose any capital adequacy provision on a nondepository institution subsidiary that is in compliance with applicable capital requirements of another Federal or State regulatory authority.

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

“(i) the capital requirements made applicable to any nondepository institution subsidiary by another Federal or State regulatory authority; and

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

“(E) CONSULTATION WITH OTHER SUPERVISORS.—The Board shall consult with the appropriate Federal or State regulatory authority in developing capital adequacy guidelines for bank holding companies that are predominantly engaged, either directly or through nondepository institution subsidiaries, in activities that are supervised by that authority.

“(F) APPROPRIATE DIFFERENTIATION OF HOLDING COMPANIES.—The Board may differentiate between different classes or categories of bank holding companies, in particular between bank holding companies that are predominantly engaged in owning and operating insured depository institutions, bank holding companies which do not own or control insured depository institutions, and bank holding companies which are predominantly engaged in activities that are supervised by another Federal or State regulatory authority.

“(G) INTERNAL RISK MANAGEMENT MODELS.—The Board may incorporate internal risk management models into its capital adequacy guidelines or rules.”.

SEC. 134. AUTHORITY OF STATE INSURANCE REGULATOR.

Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended by inserting after subsection (h) (as added by section 133 of this subtitle) the following new subsection:

“(i) AUTHORITY OF STATE INSURANCE REGULATOR.—

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

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

“(i) a bank holding company which is an insurance company; or

“(ii) an affiliate of the insured depository institution which is an insurance company; and

“(B) the State insurance authority for the insurance company determines in writing sent to the insurance company and the Board that the insurance company shall not provide such funds or assets because such action would have a material adverse effect on the financial condition of the insurance company.

“(2) DIVESTITURE IN LIEU OF OTHER ACTION.—If the Board receives a notice described in paragraph (1)(B) from a State insurance authority with regard to a bank holding company referred to in such paragraph, the Board may order the bank holding company to divest the insured depository institution within 180 days of receiving notice from the State insurance authority or such longer period as the Board determines consistent with the safe and sound operation of the insured depository institution.

“(3) CONDITIONS BEFORE DIVESTITURE.—During the period beginning on the date an order to divest is issued by the Board under paragraph (2) to a bank holding company and ending on the date the divestiture is completed, the Board may impose any conditions or restrictions on the holding company’s ownership or operation of the insured depository institution, including restricting or prohibiting transactions between the insured depository institution and any affiliate of the institution, as are appropriate under the circumstances.”.

Subtitle E—Subsidiaries of Insured Depository Institutions

SEC. 141. SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED TO ENGAGE IN FINANCIAL ACTIVITIES.

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

(1) by redesignating section 5136A as section 5136C; and

(2) by inserting after section 5136 (12 U.S.C. 24) the following new section:

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

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

“(1) IN GENERAL.—A subsidiary of a national bank may engage in an activity that is not permissible for a national bank to engage in directly, but only if—

“(A) the activity is a financial activity (as defined in paragraph (4));

“(B) the national bank is well capitalized, well managed, and achieved a rating of ‘satisfactory record of meeting community credit needs’, or better, at the most recent examination of the bank;

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

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

“(2) NO EFFECT ON EDGE ACT OR AGREEMENT CORPORATIONS.—Paragraph (1) shall not apply with respect to any subsidiary which is a corporation organized under section 25A of the Federal Reserve Act or a corporation operating under section 25 of such Act.

“(3) OTHER SUBSIDIARIES PROHIBITED.—A national bank may not control any subsidiary other than a subsidiary—

“(A) which engages solely in activities that are permissible for a national bank to engage in directly or are authorized under paragraph (1); or

“(B) which a national bank may control pursuant to section 25 or 25A of the Federal Reserve Act, the Bank Service Company Act, or any other Act that expressly by its terms authorizes national banks to control subsidiaries.

“(4) FINANCIAL ACTIVITY DEFINED.—For purposes of this section and subject to paragraph (5), the term ‘financial activity’ means any 1 or more of the following:

“(A) Receiving money subject to a deposit or other repayment obligation.

“(B) Lending, exchanging, transferring, investing, or safeguarding money or other financial assets.

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

“(D) Acting as agent or broker in the placement of annuities contracts or contracts insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death.

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

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

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

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

“(I) Engaging in any activity that was, by regulation or order, permissible for a bank holding company pursuant to section 4(c)(8) of the Bank Holding Company Act of 1956 (as in effect on the day before the date of enactment of the Financial Services Competition Act of 1997).

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

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

“(ii) the Board of Governors of the Federal Reserve System determined, under regulations issued pursuant to section 4(c)(13) of the Bank Holding Company Act of 1956 (as in effect on the day before the date of enactment of the Financial Services Competition Act of 1997) to be usual in connection with the transaction of banking or other financial operations abroad;

“(K) Owning shares of a company to the extent permissible under section 4(c)(7) of the Bank Holding Company Act of 1956 (as in effect on the day before the date of enactment of the Financial Services Competition Act of 1997).

“(L) Engaging in any activity that the National Council on Financial Services determines by regulation or order is the functional equivalent of any activity described in 1 or more of subparagraphs (A) through (K).

“(M) Engaging in any activity that the National Council on Financial Services determines by regulation or order to be financial, or related to a financial activity, having taken into account—

“(i) the purposes of this title and the Financial Services Competition Act of 1997;

“(ii) changes or reasonably expected changes in the market in which bank subsidiaries compete;

“(iii) changes or reasonable expected changes in the technology delivering financial services; and

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

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

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

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

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

“(A) FINANCIAL SUBSIDIARY.—The term ‘financial subsidiary’ means a company which—

“(i) is a subsidiary of a national bank (other than a corporation organized under section 25A of the Federal Reserve Act or a corporation operating under section 25 of such Act); and

“(ii) is engaged in a financial activity pursuant to paragraph (1) that is not a permissible activity for a national bank to engage in directly.

“(B) SUBSIDIARY.—The term ‘subsidiary’ has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956.

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

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

“(i) in the case of a bank that has been examined, unless otherwise determined in writing by the Comptroller, the achievement of—

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

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

or

“(ii) in the case of any national bank that has not been examined, the existence and use of managerial resources that the Comptroller determines are satisfactory.

“(6) INSURANCE UNDERWRITING, MERCHANT BANKING, AND DIRECT INVESTMENT.—Except as provided in section 5136(b)(1)(B) of the Revised Statutes of the United States, no subsidiary of a national bank (other than a corporation organized under section 25A of the Federal Reserve Act or a corporation operating under section 25 of such Act) may underwrite noncredit-related insurance, engage in real estate investment or development activities (except to the extent a national bank is specifically authorized by statute to engage in any such activity directly), or engage in merchant banking (as described in section 6(a)(3)(G) of the Bank Holding Company Act of 1956).

“(7) LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSITORY INSTITUTIONS.—Any depository institution which becomes affiliated with a national bank during the 12-month period preceding the submission of an application to acquire a financial subsidiary and any depository institution which becomes so affiliated after the approval of such application may be excluded for purposes of paragraph (1)(C) during the 12-month period beginning on the date of such acquisition if—

“(A) the national bank has submitted an affirmative plan to the Comptroller of the Currency to take such action as may be necessary in order for such institution to achieve a ‘satisfactory record of meeting community credit needs’, or better, during the most recent examination of the institution; and

“(B) the plan has been accepted by the Comptroller.

“(b) CAPITAL DEDUCTION REQUIRED.—

“(1) IN GENERAL.—In determining compliance with applicable capital standards—

“(A) the amount of a national bank’s equity investment in a financial subsidiary shall be deducted from the national bank’s assets and tangible equity; and

“(B) the financial subsidiary’s assets and liabilities shall not be consolidated with those of the national bank.

“(2) REGULATIONS REQUIRED.—The Comptroller shall prescribe regulations implementing this subsection.

“(c) SAFEGUARDS FOR THE BANK.—A national bank that establishes or maintains a financial subsidiary shall assure that—

“(1) the bank’s procedures for identifying and managing financial and operational risks within the bank and financial subsidiaries of the bank adequately protect the bank from such risks;

“(2) the bank has, for the protection of the bank, reasonable policies and procedures to preserve the separate corporate identity and limited liability of the bank and subsidiaries of the bank; and

“(3) the bank complies with this section.

“(d) NATIONAL BANKS WHICH DO NOT COMPLY WITH REQUIREMENTS OF THIS SECTION.—

“(1) IN GENERAL.—If the Comptroller determines that a national bank which controls a financial subsidiary, or a depository institution affiliate of such national bank, does not continue to meet the requirements of subsection (a), the Comptroller shall give notice to the bank to that effect, describing the conditions giving rise to the notice.

“(2) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—

“(A) CONTENT OF AGREEMENT.—Within 45 days of the receipt by a depository institution of a notice given under paragraph (1) (or such additional period as the Comptroller may permit), the depository institution failing to meet the requirements of subsection (a) shall execute an agreement with the appropriate Federal banking agency for such institution to correct the conditions described in the notice.

“(B) COMPTROLLER MAY IMPOSE LIMITATIONS.—Until the conditions giving rise to the notice are corrected, the Comptroller may impose such limitations on the conduct of the business of the national bank or subsidiary of such bank as the Comptroller determines to be appropriate under the circumstances.

“(3) FAILURE TO CORRECT.—If the conditions described in the notice are not corrected within 180 days after the bank receives the notice, the Comptroller may require, under such terms and conditions as may be imposed by the Comptroller and subject to such extensions of time as may be granted in the discretion of the Comptroller—

(A) the national bank to divest control of each subsidiary engaged in an activity that is not permissible for the bank to engage in directly; or

“(B) each subsidiary of the national bank to cease any activity that is not permissible for the bank to engage in directly.”.

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

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

“5136A. Financial subsidiaries of national banks.”.

SEC. 142. ACTIVITIES OF SUBSIDIARIES OF INSURED STATE BANKS.

Section 24(d) of the Federal Deposit Insurance Act (12 U.S.C. 1831a(d)) is amended—

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

“(3) CONDITIONS ON CERTAIN ACTIVITIES.—

“(A) IN GENERAL.—Subject to the approval of the appropriate Federal banking agency, a subsidiary of a State bank may engage in an activity in which a subsidiary of a national bank may engage as principal pursuant to subsection (a)(1) of section 5136A of the Revised Statutes of the United States but only if the State bank meets the same requirements which are applicable to national banks under subparagraphs (B) and (C) of such subsection and subsections (b) and (c) of such section.

“(B) APPLICATION OF SECTION 5136A OF REVISED STATUTES.—For purposes of applying section 5136A of the Revised Statutes of the United States with regard to the activities of a subsidiary of a State bank, all references in such section to the Comptroller of the Currency, or regulations and orders of the Comptroller, shall be deemed to be references to the appropriate Federal banking agency with respect to such State bank, and regulations and orders of such agency.

“(4) STATE BANKS WHICH FAIL TO COMPLY WITH PARAGRAPH (3) CONDITIONS.—

“(A) IN GENERAL.—If the appropriate Federal banking agency determines that a State bank that controls a subsidiary which is engaged as principal in financial activities pursuant to paragraph (3) does not meet the requirements of subparagraph (A) of such paragraph, the appropriate Federal banking agency shall give notice to the bank to that effect, describing the conditions giving rise to the notice.

“(A) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—

“(i) CONTENT OF AGREEMENT.—Within 45 days of the receipt by a bank of a notice given under paragraph (1) (or such additional period as the appropriate Federal banking agency for such bank may permit), the bank failing to meet the requirements of paragraph (3)(A) shall execute an agreement with the appropriate Federal banking agency for such bank to correct the conditions described in the notice.

“(B) AGENCY MAY IMPOSE LIMITATIONS.—Until the conditions giving rise to the notice are corrected, the appropriate Federal banking agency for the State bank may impose such limitations on the conduct of the business of the bank or a subsidiary of the bank as the agency determines to be appropriate under the circumstances.

“(C) FAILURE TO CORRECT.—If the conditions described in the notice are not corrected within 180 days after the bank receives the notice, the appropriate Federal banking agency for the State may require, under such terms and conditions as may be imposed by such agency and subject to such extensions of time as may be granted in the discretion of the agency—

“(i) the bank to divest control of each subsidiary engaged in an activity as principal that is not permissible for the bank to engage in directly; or

“(ii) each subsidiary of the bank to cease any activity as principal that is not permissible for the bank to engage in directly.”.

SEC. 143. RULES APPLICABLE TO FINANCIAL SUBSIDIARIES.

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

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

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

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

“(1) FINANCIAL SUBSIDIARY DEFINED.—For purposes of this section and section 23B, the term ‘financial subsidiary’ means a company which—

“(A) is a subsidiary of a bank (other than a corporation organized under section 25A of the Federal Reserve Act or a corporation operating under section 25 of such Act); and

“(B) is engaged in a financial activity (as defined in section 5136A(a)(4)) that is not a permissible activity for a national bank to engage in directly.

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

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

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

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

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

“(B) CERTAIN AFFILIATES EXCLUDED.—For purposes of subparagraph (A) and notwithstanding paragraph (4), the term ‘affiliate’ shall not include a bank, or a subsidiary of a bank, which is engaged exclusively in activities permissible for a national bank to engage in directly.

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

(b) TREATMENT OF FINANCIAL SUBSIDIARIES UNDER OTHER PROVISIONS OF LAW.—

(1) BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.—Section 106(a) of the Bank Holding Company Act Amendments of 1970 is amended by adding at the end the following new sentence: “For purposes of this section, a financial subsidiary (as defined in section 5136A(a)(5)(A) of the Revised Statutes of the United States or referenced in the 20th undesignated paragraph of section 9 of the Federal Reserve Act or section 24(d)(3)(A) of the Federal Deposit Insurance Act) shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank.”; and

(2) FEDERAL RESERVE ACT.—The 20th undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 335) is amended by adding at the end the following new sentence: “To the extent permitted under State law, a State member bank may acquire or establish and retain a financial subsidiary (as defined in section 5136A(a)(3)(A) of the Revised Statutes of the United States, except that all references in that section to the Comptroller of the Currency, the Comptroller, or regulations or orders of the Comptroller shall be deemed to be references to the Board or regulations or orders of the Board.”.

Subtitle F—Direct Activities of Banks

SEC. 151. POWERS OF NATIONAL BANKS.

(a) NATIONAL BANK INSURANCE ACTIVITIES.—Section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) is amended—

(1) by striking “Upon duly making and filing articles of association” and inserting “(a) IN GENERAL.—Upon duly making and filing articles of association”; and

(2) by adding at the end of the following new subsections:

“(b) SCOPE OF PRINCIPAL ACTIVITIES.—

“(1) EXISTING PRODUCTS.—

“(A) IN GENERAL.—Subject to subparagraph (B), a national bank may not provide insurance in a State as principal.

“(B) EXCEPTION.—Except for title insurance and annuity contracts as described in paragraph (3)(A), subparagraph (A) shall not apply to—

“(i) insurance that national banks or subsidiaries of national banks had authority to provide as principal pursuant to subsection (a) as of January 1, 1997; or

“(ii) a product that was regulated as insurance as of January 1, 1997, by the appropriate insurance regulatory authority of the State in which the product is to be provided but ceases to be so regulated after the date of enactment of the Financial Services Competition Act of 1997.

“(2) NEW PRODUCTS.—

“(A) IN GENERAL.—This paragraph shall apply with regard to any product which—

“(i) is not described in paragraph (1); and

“(ii) the Comptroller of the Currency has determined a national bank may provide as principal.

“(B) PETITION FOR DEFINITION OF OTHER PRODUCTS.—

“(i) IN GENERAL.—Any State insurance supervisory agency may petition the National Council of Financial Services (hereafter in this paragraph referred to as the ‘Council’) objecting to a determination of the Comptroller of the Currency referred to in subparagraph (A)(ii) and requesting a determination under 122(b)(2) of the Financial Services Competition Act of 1997 whether a product described in subparagraph (A) constitutes an insurance product or a banking product.

“(ii) STATEMENTS AND ARGUMENTS.—A petition submitted under clause (i) shall include a concise statement of the questions presented for review, a concise statement of any facts material to the consideration of the questions, and a statement of the arguments of the petitioner on the merits.

“(iii) STATUTE OF LIMITATION.—No petition may be filed with the Council under clause (i) after the end of the 2-year period beginning on the date on which the first public notice is made of the determination by the Comptroller to which the petition relates.

“(iv) FILING WITH COMPTROLLER OF THE CURRENCY.—A copy of any petition filed with the Council under clause (i) shall be filed with the Comptroller of the Currency at the same time as such filing.

“(C) EXPEDITED REVIEW OF PETITION BY FEDERAL RESERVE BOARD.—

“(i) REFERRAL TO BOARD.—Upon receipt of a petition filed with the Council under subparagraph (B)(i), the Council shall refer the petition, together with the statements and arguments accompanying the petition, to the Board of Governors of the Federal Reserve System for review.

“(ii) REVIEW.—The Board shall review the material referred pursuant to clause (i) to determine whether the petition raises a substantial question for review, taking into account the nature of the product and the history of its regulation, and report the findings and conclusions of the Board in connection with such review to the Council before the end of the 15-day period beginning on the date of the referral.

“(iii) DISMISSAL UPON FINDING OF LACK OF A SUBSTANTIAL QUESTION.—If the Board reports to the Council that the petition failed to raise a substantial question for review of the decision of the Comptroller of the Currency on the merits, the Council shall dismiss the petition and the determination of the Comptroller of the Currency shall constitute final agency action, subject to judicial review. The Council shall promptly notify the Comptroller and any affected party of any such dismissal.

“(iv) DETERMINATION BY COUNCIL UPON FINDING OF A SUBSTANTIAL QUESTION.—If the Board reports to the Council that the petition raises a substantial question for review of the decision of the Comptroller of the Currency on the merits, the Council shall proceed to consider such petition under section 122(b)(2) of the Financial Services Competition Act of 1997 and in accordance with the subsequent subparagraphs of this paragraph.

“(D) PARTICIPATION OF COMPTROLLER OF THE CURRENCY AND ANY AFFECTED PARTY.—

“(i) RESPONSE.—Unless notified by the Council of the dismissal of the petition under subparagraph (C)(iii), the Comptroller of the Currency and any affected party supporting the Comptroller may file, before the end of the 60-day period beginning on the date of the filing of any petition with the Council under subparagraph (B)(i), a response to such petition with the Council.

“(ii) PARTICIPATION IN HEARING.—The Comptroller of the Currency or any affected party may participate, as a party, in any hearing under subparagraph (E).

“(E) HEARING.—

“(i) REQUEST.—The State insurance supervisory agency, the Comptroller of the Currency, or any affected party may request a hearing by the Council on any petition filed with the Council in accordance with subparagraph (B) which was not dismissed under subparagraph (C)(iii).

“(ii) NOTICE AND SELECTION OF HEARING OFFICER.—If a hearing is requested pursuant to clause (i), the Council shall promptly—

“(I) notify the State insurance supervisory agency, the Comptroller of the Currency, or any affected party of such request and the time and place for such hearing; and

“(II) select a hearing officer from among administrative law judges who are employed by agencies that are not represented on the Council.

“(iii) TIME.—Any hearing under this subparagraph shall commence before the end of the 60-day period beginning on the date a request for such hearing is filed with the Council under clause (i) and shall be conducted and concluded expeditiously.

“(iv) HEARING ON A RECORD.—In any hearing under this subparagraph, all issues shall be determined on a record in accordance with section 554 of title 5, United States Code.

“(v) RECOMMENDED OPINION.—Upon the conclusion of any hearing under this subparagraph, the administrative law judge shall promptly submit a recommended opinion on all issues considered in such hearing to the Council.

“(F) FINAL DECISION BY COUNCIL.—

“(i) DETERMINATION AFTER HEARING.—If a hearing was requested under this paragraph, the Council shall, before the end of the 60-day period beginning on the date the recommended opinion of the administrative law judge is filed with the Council, make a final determination regarding the matter on the basis of the record of the hearing.

“(ii) DETERMINATION IF NO HEARING IS REQUESTED.—If a hearing was not requested with regard to a petition filed with the Council under subparagraph (B)(i), the Council shall, before the end of the 60-day period beginning on the date by which the Council received such petition and any response to such petition pursuant to subparagraph (D)(i), make a final determination regarding the matter.

“(G) APPEAL OF FINAL DECISION.—

“(i) IN GENERAL.—Any State insurance supervisory agency which filed a petition under subparagraph (B)(i), the Comptroller of the Currency (if the Comptroller filed a response to such petition or participated as a party in a hearing with regard to such petition), or an affected party (if the party filed a response to the petition or participated as a party in a hearing with regard to the petition) may obtain judicial review of the final decision of the Council with regard to such petition by the United States court of appeals for the circuit in which the State insurance supervisory agency is located or the United States Circuit Court of Appeals for the District of Columbia Circuit, in accordance with section 706 of title 5, United States Code, and title 28 of such Code, by filing a notice of appeal in such court within 10 days after the date of the final determination of the Council.

“(ii) NOTICE TO COUNCIL AND OTHER PARTIES.—Any party who petitions for judicial review of any final decision of the Council under this paragraph shall simultaneously send a copy of such petition to the Council and the Comptroller of the Currency, the State insurance supervisory agency, and any affected party, as the case may be, by registered or certified mail.

“(iii) SUBMISSION OF RECORD.—The Council shall promptly certify and file in the appropriate court of appeal the record on which a final decision was based.

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

“(A) INSURANCE.—The term ‘insurance’ shall include any product regulated as insurance as of January 1, 1997, in accordance with the relevant State insurance law in the State in which the product is to be provided, any new form of such product that is developed after January 1, 1997, and any

annuity contract the income on which is tax deferred under section 72 of the Internal Revenue Code of 1986.

“(B) AFFECTED PARTY.—The term ‘affected party’ means any party that sought or otherwise was a party to the determination that is the subject of the petition filed with the Council under paragraph (2)(B)(i).

“(4) AUTHORITY.—

“(A) IN GENERAL.—For purposes of this subsection, national banks had authority to provide a product in any State as of January 1, 1997, if on or before such date—

“(i) the Comptroller of the Currency had determined, in writing, that national banks may provide the product; or

“(ii) national banks were providing the product.

“(B) EXCEPTION.—Notwithstanding subparagraph (A), national banks did not have authority to provide a product in a State as of January 1, 1997, if on or before such date a court of relevant jurisdiction for such State had, by final judgment, overturned a determination of the Comptroller of the Currency that national banks may provide such product.”

(b) AUTHORITY TO UNDERWRITE CERTAIN MUNICIPAL BONDS.—The paragraph designated the Seventh of section 5136(a) of the Revised Statutes of the United States (12 U.S.C. 24(7)) (as amended by subsection (a) of this section) is amended by adding at the end the following new sentence: “In addition to the provisions in this paragraph for dealing in, underwriting or purchasing securities, the limitations and restrictions contained in this paragraph as to dealing in, underwriting, and purchasing investment securities for the national bank’s own account shall not apply to obligations (including limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of section 142(b)(1) of the Internal Revenue Code of 1986) issued by or on behalf of any state or political subdivision of a state, including any municipal corporate instrumentality of 1 or more states, or any public agency or authority of any state or political subdivision of a state, if the national banking association is well capitalized (as defined in section 38 of the Federal Deposit Insurance Act).”

(c) AUTHORITY TO SELL AND UNDERWRITE TITLE INSURANCE.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act or any other law, no national bank, and no subsidiary of a national bank, may engage in any activity involving the underwriting or sale of title insurance other than title insurance sales activities in which such national bank or subsidiary was actively and lawfully engaged before the date of the enactment of this Act.

(2) PROHIBITION ON BANKING ACTIVITIES BY TITLE INSURANCE UNDERWRITER.—No company engaged in the provision of title insurance may own a subsidiary engaged in banking.

SEC. 152. BANKING PRODUCTS DEFINED.

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

“(t) BANKING PRODUCTS DEFINITION.—

“(1) DEFINITION.—The term ‘banking product’, as used in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934, means—

“(A) a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank;

“(B) a banker’s acceptance;

“(C) a letter of credit issued by a bank;

“(D) a debit account at a bank arising from a credit card or similar arrangement;

“(E) a loan or loan participation issued in the ordinary course of bank business, including any debt security issued in connection with sovereign debt restructuring which a bank purchases and sells pursuant to such bank’s lending authority;

“(F) a qualified financial contract (as defined in or determined pursuant to section 11(e)(8)(D)(i)), except that such term does not include—

“(i) any securities contract (as defined in section 11(e)(8)(D)(ii)) that is based on or directly relates to a security that section 5136 of the Revised Statutes of the United States does not expressly authorize a national bank to underwrite or deal in, unless the appropriate Federal banking agency determines that such securities contract is appropriate for a bank to underwrite or deal in, taking into account other qualified financial contracts which a bank is permitted to underwrite or deal in; and

“(ii) any agreement, contract, or transaction that the Corporation determines (in a regulation prescribed after the date of the enactment of the Financial Services Competition Act of 1997) to be a qualified financial contract, unless the appropriate Federal banking agency determines that such agreement, contract, or transaction shall be treated as a qualified financial contract for purposes of this subsection;

“(G) notwithstanding subparagraph (F), swap agreements (as defined in or pursuant to section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act) including credit swaps and equity swaps, unless the appropriate Federal banking agency determines that credit swaps and equity swaps shall not be included in the definition of such term; and

“(H) any other product that is available in the course of a banking business if the Board of Governors of the Federal Reserve System, after consultation with the Securities and Exchange Commission, determines by order or regulation—

“(i) that the product is more appropriately regulated as a banking product; and

“(ii) that regulation of the product as a banking product is consistent with the maintenance of fair and orderly markets and the protection of investors.

“(2) SECURITIZATION.—Paragraph (1) does not authorize any agency to exempt from the requirements of paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934 securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations.

“(3) EXEMPTION LIMITED.—Exemption of a particular product as a banking product pursuant to this subsection shall not be construed as finding or implying that such product is or is not a security for any purpose other than defining the term ‘banking product’ in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934.”.

SEC. 153. REPEAL OF STOCK LOAN LIMIT IN FEDERAL RESERVE ACT.

Section 11 of the Federal Reserve Act (12 U.S.C. 248) is amended by striking subsection (m).

Subtitle G—Noninsured Depository Institutions

SEC. 161. WHOLESALE FINANCIAL INSTITUTIONS.

(a) NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.—

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

“SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.

“(a) AUTHORIZATION OF THE COMPTROLLER REQUIRED.—A national bank may apply to the Comptroller, on such forms and in accordance with such regulations as the Comptroller may prescribe, for permission to operate as a national wholesale financial institution.

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

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

(2) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136A (as added by section 141(b) of this title) the following new item:

“5136B. National wholesale financial institutions.”.

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

“SEC. 9B. STATE WHOLESALE FINANCIAL INSTITUTIONS.

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

“(1) APPLICATION REQUIRED.—

“(A) IN GENERAL.—Any State bank may apply to the Board of Governors of the Federal Reserve System to become a wholesale financial institution and as a wholesale financial institution, to subscribe to the stock of the Federal reserve bank organized within the district where the applying bank is located.

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

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

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

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

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

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

“(B) all references to the appropriate Federal banking agency or to the Corporation in that section shall be deemed to be references to the Board.

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

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

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

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

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

“(1) LIMITATIONS ON DEPOSITS.—

“(A) MINIMUM AMOUNT.—

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

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

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

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

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

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

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

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

“(B) MINIMUM TIER 1 CAPITAL RATIO.—The minimum ratio of tier 1 capital to total risk-weighted assets of wholesale financial institutions shall be not less than the level required for a State member insured bank to be well capitalized unless the Board determines otherwise, consistent with safety and soundness.

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

“(A) limitations on transactions with affiliates to prevent—

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

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

“(B) special clearing balance requirements;

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

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

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

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

“(D) any additional requirements that the Board determines to be appropriate or necessary to assure compliance with the Community Reinvestment Act of 1977.

“(4) EXEMPTIONS FOR WHOLESALE FINANCIAL INSTITUTIONS.—The Board may, by regulation or order, exempt any wholesale financial institution from any provision applicable to a member bank that is not a wholesale financial institution (other than the provisions of this section), if the Board finds that such exemption is not inconsistent with—

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

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

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

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

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

“(d) CONSERVATORSHIP AUTHORITY.—

“(1) IN GENERAL.—The Board may appoint a conservator to take possession and control of a wholesale financial institution to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator for a national bank under section 203 of the Bank Conservation Act, and the conservator shall exercise the same powers, functions, and duties, subject to the same limitations, as are provided under such Act for conservators of national banks.

“(2) BOARD AUTHORITY.—The Board shall have the same authority with respect to any conservator appointed under paragraph (1) and the wholesale financial institution for which such conservator has been appointed as the Comptroller of the Currency has under the Bank Conservation Act with respect to

a conservator appointed under such Act and a national bank for which the conservator has been appointed.

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

(c) TECHNICAL AND CONFORMING AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.—

(1) DEFINITION OF BANK.—Section 2(c)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(1)) is amended by inserting after subparagraph (B) the following new subparagraph:

“(C) A wholesale financial institution chartered under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act the deposits of which are not insured by the Federal Deposit Insurance Corporation.”.

(2) EXCEPTION TO INSURED BANK REQUIREMENT.—Section 3(e) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(e)) is amended by striking “Every bank” and inserting “Except with regard to a wholesale financial institution described in section 2(c)(1)(C), every bank”.

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

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

(A) by striking paragraph (1); and

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

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

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

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

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

“(A) to the Corporation and the Board of Governors of the Federal Reserve System not less than 6 months before the effective date of such termination; and

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

“(2) either—

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

“(B) the Corporation and the Board of Governors of the Federal Reserve System approve the termination of the bank’s insured status and the bank pays an exit fee in accordance with subsection (e).

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

“(1) an insured savings association;

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

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

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

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

“(e) EXIT FEES.—

“(1) IN GENERAL.—Any bank that voluntarily terminates such bank’s status as an insured depository institution under this section shall pay an exit fee in an amount that the Corporation determines is sufficient to account for the institution’s pro rata share of the amount (if any) which would be required to restore

the relevant deposit insurance fund to the fund's designated reserve ratio as of the date the bank provides a written notice under subsection (a)(1).

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

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

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

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

“(g) ADVERTISEMENTS.—

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

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

“(h) NOTICE REQUIREMENTS.—

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

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

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

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

(3) DEFINITION.—Section 19(b)(1)(A)(i) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)) is amended—

(A) by striking “Act or any bank” and inserting “Act, any bank”; and

(B) by inserting “, or any wholesale financial institution as defined in section 9B” before the semicolon at the end.

(e) REPORTS ON DISCOUNTS AND ADVANCES TO WHOLESALE FINANCIAL INSTITUTIONS.—Section 10B of the Federal Reserve Act (12 U.S.C. 347(b)) is amended by adding at the end the following new subsection:

“(c) REPORTS ON DISCOUNTS AND ADVANCES TO WHOLESALE FINANCIAL INSTITUTIONS.—

“(1) IN GENERAL.—The Board shall submit a report to the Congress at the end of any year in which any wholesale financial institution has obtained a discount, advance, or other extension of credit from a Federal reserve bank.

“(2) CONTENTS.—Any report submitted under paragraph (1) shall explain the circumstances and need for any discount, advance, or other extension of credit to a wholesale financial institution during the period covered by the report, including the type and amount of credit extended and the amount of credit remaining outstanding as of the date of the report.”

SEC. 162. HOLDING COMPANY CONTROL OF UNINSURED DEPOSITORY INSTITUTIONS.

(a) IN GENERAL.—Section 6 of the Bank Holding Company Act of 1956 (as added by section 103 of this title) is amended by inserting after subsection (k) (as added by section 106 of this title) the following new subsection:

“(l) CONTROL OF UNINSURED DEPOSITORY INSTITUTIONS.—

“(1) SCOPE OF APPLICATION.—This subsection shall apply to bank holding companies which control only wholesale financial institutions and control no insured depository institution (other than an institution described in subparagraph (C) or (G) of section 2(c)(2)).

“(2) FINDINGS AND PURPOSES.—

“(A) FINDINGS.—The Congress finds as follows:

“(i) Some investment banking, insurance, and other financial companies invest in nonfinancial companies—

“(I) as an incident to their core business; or

“(II) in recognition of an unusual investment opportunity.

“(ii) Such ownership, which would not otherwise be permitted under this Act if the investment banking, insurance, or other financial company were a bank holding company—

“(I) is in most cases small in relation to the overall size of the company, generally no more than 5 percent of the total consolidated revenue of such company’s revenues and, in the case of a foreign bank, such ownership in the United States is generally no more than 5 percent of the total consolidated revenue of such foreign bank in the United States; and

“(II) in no way detracts from the financial focus of the company’s planning, operations, resource allocation, and risk management.

“(iii) Investments of this type should not disqualify an investment banking, insurance, or other financial company from an affiliation with an uninsured depository institution.

“(B) PURPOSE.—It is the purpose of this subsection to provide the flexibility necessary to accommodate limited investments in nonfinancial firms that wish to control an uninsured depository institution (and do not otherwise control any insured depository institution) while maintaining the separation of banking and commerce intended by this Act.

“(3) LIMITED INVESTMENTS ALLOWED BY FINANCIAL COMPANIES CONTROLLING ONLY UNSURED DEPOSITORY INSTITUTIONS.—Consistent with the purposes of this subsection, the Board shall, by regulation or order, allow bank holding companies to control the shares of nonfinancial companies so long as—

“(A) the nonfinancial firm is sufficiently small such that the financial nature of the bank holding company is unaffected by the control of such shares;

“(B) the bank holding company does not control any depository institution (other than a wholesale financial institution or an institution described in subparagraph (C) or (G) of section 2(c)(2)); and

“(C) the purposes of this Act, including the separation of banking and commerce and the preservation of the safety and soundness of depository institutions, are fulfilled.

“(4) PROVISIONS APPLICABLE TO HOLDING COMPANIES WITH INVESTMENTS UNDER THIS SUBSECTION.—

“(A) CROSS MARKETING RESTRICTIONS.—A wholesale financial institution or other depository institution controlled by a bank holding company which also controls a company pursuant to this subsection shall not—

“(i) offer or market, directly or through any arrangement, any product or service of an affiliate whose shares are owned or controlled by the bank holding company pursuant to this subsection; or

“(ii) permit any product or service of such wholesale financial institution or other institution to be offered or marketed, directly or through any arrangement, by or through any such affiliate.

“(B) USE OF COMMON NAME.—A bank holding company shall not permit a wholesale financial institution or other depository institution subsidiary to adopt a name which is the same as or similar to, or a variation of, the name or title of an affiliate engaged in activities pursuant to this subsection.

“(C) COMMODITIES.—

“(i) IN GENERAL.—A bank holding company which controls a company pursuant to this subsection and was predominately engaged as of January 1, 1995, in securities activities in the United States (or any successor to any such company) may engage in, or directly or indirectly own or control shares of a company engaged in, activities related to the trading, sale, or investment in commodities and underlying physical properties that were not permissible for bank holding companies to conduct in the United States as of January 1, 1995, if such bank holding company, or any subsidiary of such holding company, was engaged di-

rectly, indirectly, or through any such company in any of such activities as of January 1, 1995, in the United States.

“(ii) LIMITATION.—Notwithstanding any other provision of this subsection, the aggregate investment by a bank holding company in activities under this subparagraph (other than those otherwise permitted for all bank holding companies under this Act) shall not at any time exceed 5 percent of the total consolidated assets of such bank holding company.

“(iii) SUCCESSOR DEFINED.—For purposes of clause (i), the term ‘successor’ means, with respect to any bank holding company described in clause (i), any company that merges with, or acquires control of, such bank holding company.

“(D) QUALIFIED INVESTOR IN A BANK HOLDING COMPANY WHICH CONTROLS A COMPANY UNDER THIS SUBSECTION.—

“(i) IN GENERAL.—Notwithstanding any other provision of Federal or State law, a qualified investor—

“(I) shall not be, or be deemed to be, a bank holding company or any similar organization; and

“(II) shall not be deemed to control or be affiliated with any such company or organization or any subsidiary of any such company or organization (other than for purposes of section 23A and 23B of the Federal Reserve Act),

by virtue of the investor’s ownership or control of shares of a bank holding company which controls a company pursuant to this subsection.

“(ii) QUALIFIED INVESTOR DEFINED.—For purposes of this subparagraph, the term ‘qualified investor’ means any United States company (including a parent company and all subsidiaries of which the parent company holds at least 80 percent of the total voting equity securities) which since February 27, 1995, has directly or indirectly owned or controlled shares of capital stock representing at least 10 percent, and not more than 45 percent, of the outstanding voting shares or voting power of a company that—

“(I) becomes a bank holding company which controls a company pursuant to this subsection or a subsidiary of any such bank holding company; and

“(II) before the company became a bank holding company which controls a company pursuant to this subsection, or a subsidiary of any such bank holding company, had more than 50 percent of the company’s assets employed directly or indirectly in securities activities.

“(iii) CROSS-MARKETING AND COMMON NAME.—A wholesale financial institution or other uninsured depository institution which is controlled by a bank holding company which controls a company pursuant to this subsection shall not—

“(I) offer or market products or services of a qualified investor in the bank holding company of which the wholesale financial institution is an affiliate;

“(II) permit the products or services of such wholesale financial institution or uninsured depository institution to be offered or marketed in connection with products or services of such qualified investor; or

“(III) adopt a name which is the same as or similar to, or a variation of, the name or title of such qualified investor.

“(iv) EXAMINATION AND REPORTING.—Notwithstanding any other provision of law, the Board may conduct examinations of, or require reports from, a qualified investor only to the extent that the Board reasonably determines that such examinations or reports are necessary—

“(I) to ensure compliance with this subparagraph; or

“(II) to the extent that the qualified investor is an affiliate of a wholesale financial institution for purposes of section 23A of the Federal Reserve Act, to ensure compliance with restrictions imposed by law or regulation on transactions between the qualified investor and such wholesale financial institution.

“(5) NO DEPOSIT INSURANCE FUND LIABILITY.—No Federal deposit insurance funds may be used in connection with the failure of, or any proposed assistance to, a wholesale financial institution or other uninsured depository institution controlled by a bank holding company which controls a company pursuant to this subsection.

“(6) QUALIFICATION OF FOREIGN BANK AS BANK HOLDING COMPANY WITH INVESTMENTS PURSUANT TO THIS SUBSECTION.—

“(A) IN GENERAL.—Any foreign bank that operates a branch, agency or commercial lending company in the United States (and any company that owns or controls such foreign bank), including a foreign bank that does not own or control a wholesale financial institution, may request a determination from the Board that such bank or company be treated as a bank holding company which controls a company pursuant to this subsection.

“(B) CONDITIONS FOR TREATMENT AS A BANK HOLDING COMPANY SUBJECT TO THIS SUBSECTION.—A foreign bank and a company that owns or controls a foreign bank may not be treated, under this paragraph, as a bank holding company which controls a company pursuant to this subsection, unless the bank and company meet and continue to meet the following criteria:

“(i) NO INSURED DEPOSITS.—No deposits which are held directly by a foreign bank or through an affiliate are insured under the Federal Deposit Insurance Act.

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

“(iii) TRANSACTIONS WITH AFFILIATES.—Transactions between a branch, agency, or commercial lending company subsidiary of the foreign bank in the United States, and any affiliate or company in which the foreign bank (or any company that owns or controls such foreign bank) has invested in accordance with this subsection, shall comply with the provisions of sections 23A and 23B of the Federal Reserve Act in the same manner and to the same extent as such transactions would be required to comply with such sections if the bank were a member bank.

“(C) TREATMENT AS A WHOLESALE FINANCIAL INSTITUTION.—

“(i) IN GENERAL.—Any foreign bank which is, or is affiliated with a company which is, treated as a bank holding company which controls a company pursuant to this subsection shall be treated as a wholesale financial institution for purposes of subparagraphs (A) and (B) of paragraph (3) and section 111 of the Financial Services Competition Act of 1997, except that the Board may adopt such modifications, conditions, or exemptions as the Board deems appropriate, giving due regard to the principle of national treatment and equality of competitive opportunity.

“(ii) APPLICABILITY OF COMMUNITY REINVESTMENT ACT OF 1977.—The branches in the United States of any foreign bank that is, or is affiliated with a company which is, treated as a bank holding company which controls a company pursuant to this subsection shall be subject to section 9B(b)(6) of the Federal Reserve Act as if the foreign bank were a wholesale financial institution under such section. The Board and the Comptroller of the Currency shall apply the provisions of sections 803(2), 804, and 807(1) of the Community Reinvestment Act of 1977 to branches of foreign banks which receive only such deposits as are permissible for receipt by a corporation organized under section 25A of the Federal Reserve Act, in the same manner and to the same extent such sections apply to such a corporation.

“(D) NONAPPLICABILITY OF OTHER EXEMPTION.—Any foreign bank or company which is treated as a bank holding company which controls a company pursuant to this subsection shall not be eligible for any exemption described in section 2(h).

“(E) SUPERVISION ASSESSMENT.—The Board shall assess the extent to which any foreign bank which is, or is affiliated with a company which is, treated as a bank holding company which controls a company pursuant to this subsection is subject to supervision by authorities in the home country of such foreign bank.

“(F) AUTHORITY TO IMPOSE ADDITIONAL RESTRICTIONS AND REQUIREMENTS.—The Board may impose additional requirements on any foreign bank which is, or is affiliated with a company which is, treated as a bank holding company which controls a company pursuant to this subsection that are determined to be appropriate or necessary to protect taxpayers and the financial system from risks associated with access to the payments system and availability of discounts, advances, and other extensions of credit from

a Federal reserve bank, giving due regard to the principles of national treatment and equality of competitive opportunity.”.

Subtitle H—Federal Home Loan Bank System

SEC. 171. FEDERAL HOME LOAN BANKS.

The 1st sentence of section 3 of the Federal Home Loan Bank Act (12 U.S.C. 1423) is amended—

- (1) by striking “the continental United States” and all that follows through “eight”; and
- (2) by inserting “the States into not less than 1” before “nor”.

SEC. 172. MEMBERSHIP AND COLLATERAL.

(a) Subsection (f) of section 5 of the Home Owners’ Loan Act (12 U.S.C. 1464) is amended to read as follows:

“(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—A Federal savings association may become a member, of the Federal Home Loan Bank System, and shall qualify for such membership in the manner provided by the Federal Home Loan Bank Act, beginning January 1, 1999.”.

(b) Section 10(a)(5) of the Federal Home Loan Bank Act (12 U.S.C. 1430(a)(5)) is amended—

- (1) in the 2d sentence, by striking “and the Board”; and
- (2) in the 3d sentence, by striking “Board” and inserting “Bank”.

(c) Section 10(a) of the Federal Home Loan Bank Act (12 U.S.C. 1430(a)) is amended—

- (1) in the 2d sentence, by striking “All long-term advances” and inserting “Except as provided in the succeeding sentence, all long-term advances”;

(2) by inserting after the 2d sentence, the following sentence: “Notwithstanding the preceding sentence, long-term advances may be made to FDIC-insured members which have less than \$500,000,000 in total assets for the purpose of funding small businesses, agriculture, rural development, or low-income community development (as defined by the Board).”; and

(3) by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following new paragraph:

“(5) In the case of any FDIC-insured member which has total assets of less than \$500,000,000, secured loans for small business, agriculture, rural development, or low-income community development, or securities representing a whole interest in such secured loans.”.

(d) Section 4(a) of the Federal Home Loan Bank Act (12 U.S.C. 1424(a)) is amended by adding at the end the following new paragraph:

“(3) ELIGIBILITY REQUIREMENTS FOR COMMUNITY FINANCIAL INSTITUTIONS.—The requirements of paragraph (2) (other than subparagraph (B) of such paragraph) shall not apply to any FDIC-insured depository institution which has total assets of less than \$500,000,000.

(e) Section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended by striking the 1st of the 2 subsections designated as subsection (e) (relating to qualified thrift lender status).

SEC. 172A. THE OFFICE OF FINANCE.

The Federal Home Loan Bank Act (12 U.S.C. 1421) is amended by inserting after section 4 the following new section:

“SEC. 5. THE OFFICE OF FINANCE.

“(a) OPERATION.—The Federal home loan banks shall operate jointly an office of finance (hereafter in this section referred to as the ‘Office’) to issue the notes, bonds, and debentures of the Federal home loan banks in accordance with this Act.

“(b) POWERS.—Subject to the other provisions of this Act and such safety and soundness regulations as the Finance Board may prescribe, the Office shall be authorized by the Federal home loan banks to act as the agent of such banks to issue Federal home loan bank notes, bonds and debentures pursuant to section 11 of this Act on behalf of the banks.

“(c) CENTRAL BOARD OF DIRECTORS.—

“(1) ESTABLISHMENT.—The Federal home loan banks shall establish a central board of directors of the Office to administer the affairs of the Office in accordance with the provisions of this Act.

“(2) COMPOSITION OF BOARD.—Each Federal home loan bank shall annually select 1 individual who, as of the time of the election, is an officer or director of such bank to serve as a member of the central board of directors of the Office.
“(d) STATUS.—Except to the extent expressly provided in this Act, the Office shall be treated as a Federal home loan bank for purposes of any law.”.

SEC. 172B. MANAGEMENT OF BANKS.

(a) Subsections (a) and (b) of section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427(a) and (b)) are amended to read as follows:

“(a) The management of each Federal home loan bank shall be vested in a board of 15 directors, 9 of whom shall be elected by the members in accordance with this section, 6 of whom shall be appointed by the Board referred to in section 2A, and all of whom shall be citizens of the United States and bona fide residents of the district in which such bank is located. At least 2 of the Federal home loan bank directors who are appointed by the Board shall be representatives chosen from organizations with more than a 2-year history of representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections. No Federal home loan bank director who is appointed pursuant to this subsection may, during such bank director’s term of office, serve as an officer of any Federal home loan bank or a director or officer of any member of a bank, or hold shares, or any other financial interest in, any member of a bank.

“(b) The elective directors shall be divided into three classes, designated as classes A, B, and C, as nearly equal in number as possible. Each directorship shall be filled by a person who is an officer or director of a member located in that bank’s district. Each class shall represent members of similar asset size, and the Board shall, to the maximum extent possible, seek to achieve geographic diversity. The Finance Board shall establish the minimum and maximum asset size for each class. Any member shall be entitled to nominate and elect eligible persons for its class of directorship; such offices shall be filled from such nominees by a plurality of the votes which members of each class may cast for nominees in their corresponding class of directors in an election held for the purpose of filling such offices. Each member shall be permitted to cast one vote for each share of Federal home loan bank stock owned by that member. No person who is an officer or director of a member that fails to meet any applicable capital requirement is eligible to hold the office of Federal Home Loan Bank director. As used in this subsection, the term “member” means a member of a Federal home loan bank which was a member of such Bank as of a record date established by the Bank.”.

(b) Section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427) is amended—

(1) by striking subsections (c) and (h); and

(2) by redesignating subsections (d), (e), (f), (g), (i), (j), and (k) as subsections (c), (d), (e), (f), (g), (h), and (i), respectively.

(c) Subsection (c) of section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427(d)) (as so redesignated by subsection (b) of this section) is amended by striking the 1st and 2d sentences and inserting the following 2 new sentences: “The term of each elective directorship and each appointive directorship shall be 3 years. No director serving for 3 consecutive terms, nor any other officer, director or that member or any affiliated depository institution, shall be eligible for another term earlier than 3 years after the expiration of the last expiring of said 3-year terms. 3 elected directors of different classes as specified by the Finance Board shall be elected by ballot annually.”.

(d) Subsection (d) of section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427(e)) (as so redesignated by subsection (b) of this section) is amended to read as follows:

“(d) TRANSITION PROVISION.—In the 1st election after the date of the enactment of the Financial Services Competition Act of 1997, 3 directors shall be elected in each of the 3 classes of elective directorship. The Finance Board may, in the 1st election after such date of enactment, designate the terms of each elected director in each class, not to exceed 3 years, to assure that, in each subsequent election, 3 directors from different classes of elective directorships are elected each year.”.

(e) Subsection (g) of section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427(i)) (as so redesignated by subsection (b) of this section) is amended by striking “subject to the approval of the board”.

SEC. 173. ADVANCES TO NONMEMBER BORROWERS.

Section 10b of the Federal Home Loan Bank Act (12 U.S.C. 1430b) is amended—

(1) in subsection (a), by striking “(a) IN GENERAL.—”;

(2) by striking the 4th sentence of subsection (a), and inserting “Notwithstanding the preceding sentence, if an advance is made for the purpose of facilitating mortgage lending that benefits individuals and families that meet the in-

come requirements set forth in section 142(d) or 143(f) of the Internal Revenue Code of 1986, the advance may be collateralized as provided in section 10(a) of this Act.”; and

(3) by striking subsection (b).

SEC. 174. POWERS AND DUTIES OF BANKS.

(a) Subsection (a) of section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431(a)) is amended—

(1) by inserting “through the Office of Finance” after “to issue”;

(2) by striking “Board” after “upon such terms and conditions as the” and inserting “board of directors of the bank”.

(b) Subsection (b) of section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431(b)) is amended to read as follows:

“(b) ISSUANCE OF FEDERAL HOME LOAN BANK CONSOLIDATED BONDS.—

“(1) IN GENERAL.— The Office of Finance may issue consolidated Federal home loan bank bonds and other consolidated obligations on behalf of the banks.

“(2) JOINT AND SEVERAL OBLIGATION; TERMS AND CONDITIONS.—Consolidated obligations issued by the Office of Finance under paragraph (1) shall—

“(A) be the joint and several obligations of all the Federal home loan banks; and

“(B) shall be issued upon such terms and conditions as shall be established by the Office of Finance subject to such rules and regulations as the Finance Board may prescribe.”.

(c) Section 11(f) of the Federal Home Loan Bank Act (12 U.S.C. 1430(f) (as designated before the redesignation by subsection (e) of this section) is amended by striking both commas immediately following “permit” and inserting “or”.

(d) Subsection (i) of section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431(i)) is amended by striking the 2d undesignated paragraph.

(e) Section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsections (d) through (k) as subsections (c) through (j), respectively.

SEC. 174A. MERGERS AND CONSOLIDATIONS OF FEDERAL HOME LOAN BANKS.

Section 26 of the Federal Home Loan Bank Act (12 U.S.C. 1446) is amended by designating the current paragraph as “(a)” and adding the following new sections:

“(b) Nothing in this section shall preclude voluntary mergers, combinations or consolidation by or among the Federal home loan banks pursuant to such regulations as the Finance Board may prescribe.

“(c) NUMBER OF ELECTED DIRECTORS OF RESULTING BANK.— Subject to section 7 of this Act, any bank resulting from a merger, combination, or consolidation pursuant to this section may have a number of elected directors equal to or less than the total number of elected directors of all the banks which participated in such transaction (as determined immediately before such transaction).

“(d) NUMBER OF APPOINTED DIRECTORS OF RESULTING BANK.—The number of appointed directors of any bank resulting from a merger, combination, or consolidation pursuant to this section shall be a number that is three less than the number of elected directors.

“(e) ADJUSTMENT OF DISTRICT BOUNDARIES.—After consummation of any merger, combination, or consolidation of 2 or more Federal home loan banks, the Finance Board shall adjust the districts established in section 3 of this Act to reflect such merger, combination, or consolidation.”.

SEC. 174B. TECHNICAL AMENDMENTS.

(a) REPEAL OF SECTIONS 22A AND 27.—The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by striking sections 22A (12 U.S.C. 1442a) and 27 (12 U.S.C. 1447).

(b) SECTION 12.—

(1) Section 12(a) of the Federal Home Loan Bank Act (12 U.S.C. 1432(a)) is amended—

(A) by striking “subject to the approval of the Board” immediately following “transaction of its business”; and

(B) by striking “and, by its Board of directors, to prescribe, amend, and repeal by-laws, rules, and regulations governing the manner in which its affairs may be administered; and the powers granted to it by law may be exercised and enjoyed subject to the approval of the Board. The president of a Federal Home Loan Bank may also be a member of the Board of directors thereof, but no other officer, employee, attorney, or agent of such

bank,” and inserting “and, by the board of directors of the bank, to prescribe, amend, and repeal by-laws governing the manner in which its affairs may be administered, consistent with applicable statute and regulation, as administered by the Finance Board. No officer, employee, attorney, or agent of a Federal home loan bank”.

(2) Section 12 of the Federal Home Loan Bank Act (12 U.S.C. 1432) is amended by inserting after subsection (b) the following new subsection:

“(c) PROHIBITION ON EXCESSIVE COMPENSATION.—

“(1) IN GENERAL.—The Finance Board shall prohibit the Federal home loan banks from providing compensation to any officer, director, or employee that is not reasonable and comparable with the compensation for employment in other similar businesses involving similar duties and responsibilities. However, the Finance Board may not prescribe or set a specific level or range of compensation for any officer, director, or employee.

“(2) REGULATIONS.—The Finance Board, by regulation, may provide for the requirements of paragraph (1) to be phased-in over a period not to exceed 3 years.

“(3) EXCEPTION FOR EXISTING CONTRACTS.—Paragraph (1) shall not apply to any contract entered into before June 1, 1997.”

(c) POWERS AND DUTIES OF FEDERAL HOUSING FINANCE BOARD.—

(1) Subsection (a)(1) of section 2B of the Federal Home Loan Bank Act (12 U.S.C. 1422b(a)(1)) is amended by striking the period at the end of the sentence and inserting “; and to have the same powers, rights, and duties to enforce this Act with respect to the Federal home loan banks and the senior officers and directors of such banks as the Office of Federal Housing Enterprise Oversight has over the Federal housing enterprises and the senior officers and directors of such enterprises under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.”

(2) Subsection (b) of section 2B of the Federal Home Loan Bank Act (12 U.S.C. 1422b(b)) is amended—

(A) by striking “(1) BOARD STAFF.—”;

(B) by striking “function to any employee, administrative unit” and inserting “function to any employee or administrative unit”;

(C) by striking the 2d sentence in paragraph (1); and

(D) by striking paragraph (2).

(3) Section 111 of Public Law 93–495 (12 U.S.C. 250) is amended by striking “Federal Home Loan Bank Board” and inserting “Federal Housing Finance Board”.

(d) ELIGIBILITY TO SECURE ADVANCES.—

(1) SECTION 9.—Section 9 of the Federal Home Loan Bank Act (12 U.S.C. 1429) is amended—

(A) in the second sentence, by striking “with the approval of the Board”;

and

(B) in the third sentence, by striking “, subject to the approval of the Board.”

(2) SECTION 10.—

(A) Subsection (a) of section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430(a)) is amended in paragraph (3), by striking “Deposits” and inserting “Cash or deposits”.

(B) Subsection (c) of section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430(c)) is amended—

(i) in the 1st sentence by striking “Board” and inserting “Federal home loan bank”; and

(ii) by striking the 2d sentence.

(C) Subsection (d) of section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430(d)) is amended—

(i) in the 1st sentence, by striking “and the approval of the Board”;

(ii) in the last sentence, by striking “Subject to the approval of the Board, any” and inserting “Any”.

(D) Section 10(j) of the Federal Home Loan Bank Act (12 U.S.C. 1430(j)) is amended—

(i) in the 1st sentence of paragraph (1) by striking “to subsidize the interest rate on advances” and inserting “to provide subsidies, including subsidized interest rates on advances”;

(ii) in paragraphs (2), (3), (4), (5), (9), (11), and (12) by striking “advances” and “subsidized advances” each place such terms appear and inserting “subsidies, including subsidized advances”;

(iii) in paragraph (1), by inserting “(A)” before the 1st sentence, and inserting the following at the end of the paragraph:

“(B) Subject to such regulations as the Finance Board may prescribe, the board of directors of each Federal home loan bank may approve or disapprove requests from members for Affordable Housing Program subsidies, and may not delegate such authority.”;

(iv) in paragraph (2), by striking subparagraph (B) and inserting the following new subparagraph:

“(B) finance the purchase, construction or rehabilitation of rental housing if, for a period of at least 15 years, either 20 percent or more of the units in such housing are occupied by and affordable for households whose income is 50 percent or less of area median income (as determined by the Secretary of Housing and Urban Development, and as adjusted for family size); or 40 percent or more of the units in such housing are occupied by and affordable for households whose income is 60 percent or less of area median income (as determined by the Secretary of Housing and Urban Development, and as adjusted for family size).”;

(v) in paragraph (5)—

(I) by striking the colon after “Affordable Housing Program”;

(II) by striking subparagraphs (A) and (B); and

(III) by striking “(C) In 1995, and subsequent years.”;

(vi) in paragraph (11)—

(I) by inserting “, pursuant to a nomination process that is as broad and as participatory as possible, and giving consideration to the size of the District and the diversity of low- and moderate-income housing needs and activities within the District,” after “Advisory Council of 7 to 15 persons”;

(II) by inserting “a diverse range of” before “community and non-profit organizations”; and

(III) by inserting after the 1st sentence, the following new sentence: “Representatives of no one group shall constitute an undue proportion of the membership of the Advisory Council.”; and

(vii) in paragraph (13), by striking subparagraph (D) and inserting the following new subparagraph:

“(D) AFFORDABLE.—For purposes of paragraph (2)(B), the term “affordable” means that the rent with respect to a unit shall not exceed 30 percent of the income limitation under paragraph (2)(B) applicable to occupants of such unit.”.

(e) SECTION 16.—Subsection (a) of section 16 of the Federal Home Loan Bank Act (12 U.S.C. 1436) is amended in the 3d sentence by striking “net earnings” and inserting “previously retained earnings or current net earnings”; by striking “, and then only with the approval of the Federal Housing Finance Board”; and by striking the 4th sentence.

(f) SECTION 18.—Subsection (b) of section 18 of the Federal Home Loan Bank Act (12 U.S.C. 1438) is amended by striking paragraph (4).

(g) SECTION 11.—Section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431) is amended by inserting after subsection (j) (as so redesignated by section 174(e) of this subtitle) the following subsection:

“(k) PROHIBITION ON OTHER ACTIVITIES.—

“(1) A Federal home loan bank may not engage in any activity other than the activities authorized under this Act and activities incidental to such authorized activities.

“(2) All activities specified in paragraph (1) are subject to Finance Board approval.”.

SEC. 175. DEFINITIONS.

Paragraph (3) of section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422(3)) is amended to read as follows:

“(3) The term “State” in addition to the states of the United States, includes the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.”

SEC. 176. RESOLUTION FUNDING CORPORATION

(a) IN GENERAL.—Section 21B(f)(2)(C) of the Federal Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(C)) is amended to read as follows:

“(C) PAYMENTS BY FEDERAL HOME LOAN BANKS.—To the extent the amounts available pursuant to subparagraphs (A) and (B) are insufficient to cover the amount of interest payments, each Federal home loan bank shall pay to the Funding Corporation each calendar year 20.75 percent of the net earnings of such bank (after deducting expenses relating to subsection (j) of section 10 and operating expenses).”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 1999.

SEC. 177. CAPITAL STRUCTURE OF THE FEDERAL HOME LOAN BANKS.

(a) IN GENERAL.—Section 6 of the Federal Home Loan Bank Act (12 U.S.C. 1426) is amended to read as follows:

“SEC. 6. CAPITAL STRUCTURE OF FEDERAL HOME LOAN BANKS.

“(a) CAPITAL STRUCTURE PLAN.—On or before January 1, 1999, the board of directors of each Federal home loan bank shall submit for Finance Board approval a plan establishing and implementing a capital structure for such bank which—

“(1) the board of directors determines is the best suited for the condition and operation of the bank and the interests of the shareholders of the bank;

“(2) meets the requirements of subsection (b); and

“(3) meets the minimum capital standards and requirements established under subsection (c) and any regulations prescribed by the Finance Board pursuant to such subsection.

“(b) CONTENTS OF PLAN.—The capital structure plan of each Federal home loan bank shall meet the following requirements:

“(1) STOCK PURCHASE REQUIREMENTS.—

“(A) IN GENERAL.—Each capital structure plan of a Federal home loan bank shall require the shareholders of the bank to maintain an investment in the stock of the bank in amount not less than—

“(i) a minimum percentage of the total assets of the shareholder; and

“(ii) a minimum percentage of the outstanding advances from the bank to the shareholder.

“(B) MINIMUM PERCENTAGE LEVELS.—The minimum percentages established pursuant to subparagraph (A) shall be set at levels sufficient to meet the bank’s minimum capital requirements established by the Finance Board under subsection (c).

“(C) MAXIMUM ASSET BASED CAPITAL REQUIREMENT.—The asset-based capital requirement applicable to any shareholder of a Federal home loan bank in any year shall not exceed the lesser of—

“(i) 0.6 percent of a shareholder’s total assets at the close of the preceding year; or

“(ii) \$300,000,000.

“(D) MAXIMUM ADVANCE-BASED REQUIREMENT.—The advance-based capital requirement applicable to any shareholder of a Federal home loan bank shall not exceed 6 percent of the total outstanding advances from the bank to the shareholder.

“(E) MINIMUM STOCK PURCHASE REQUIREMENT AUTHORIZED.—A capital structure plan may establish a minimum dollar amount of stock of a Federal home loan bank in which a shareholder shall be required to invest.

“(2) ADJUSTMENTS TO STOCK PURCHASE REQUIREMENTS.—The capital structure plan adopted by each Federal home loan bank shall impose a continuing obligation on the board of directors of the bank to review and adjust as necessary member stock purchase requirements in order to ensure that the bank remains in compliance with applicable minimum capital levels established by the Finance Board.

“(3) TRANSITION RULE FOR STOCK PURCHASE REQUIREMENTS.—

“(A) IN GENERAL.—A capital structure plan may allow shareholders who were members of a Federal home loan bank on the date of the enactment of the Financial Services Competition Act of 1997 to come into compliance with the asset-based stock purchase requirement established under paragraph (1) during a transition period established under the plan of not more than 3 years, if such requirement exceeds the asset-based stock purchase requirement in effect on such date of enactment.

“(B) INTERIM PURCHASE REQUIREMENTS.—A capital structure plan may establish interim asset-based stock purchase requirements applicable to members referred to in subparagraph (A) during a transition period established under subparagraph (A).

“(4) CLASSES OF STOCK.—

“(A) IN GENERAL.—Each capital structure plan shall afford each shareholder of a Federal home loan bank the option of meeting the shareholder’s stock purchase requirements through the purchase of any combination of Class A or Class B stock.

“(B) CLASS A STOCK.—Class A stock shall be stock of a Federal home loan bank that shall be redeemed in cash and at par by the bank no later than

12 months following submission of a written notice by a shareholder of the shareholder's intention to divest all shares of stock in the bank.

“(C) CLASS B STOCK.—Class B stock shall be stock of a Federal home loan bank that shall be redeemed in cash and at par by the bank no later than 5 years following submission of a written notice by a shareholder of the shareholder's intention to divest all shares of stock in the bank.

“(D) RIGHTS REQUIREMENT.—The Class B stock of a Federal home loan bank may receive a dividend premium over that paid on Class A stock, and may have preferential voting rights in the election of Federal home loan bank directors.

“(E) LOWER STOCK PURCHASE REQUIREMENTS FOR CLASS B STOCK.—A capital structure plan may provide for lower stock purchase requirements with respect to those shareholder's that elect to purchase Class B stock in a manner that is consistent with meeting the bank's own minimum capital requirements as established by the Finance Board.

“(F) NO OTHER CLASSES OF STOCK PERMITTED.—No class of stock other than the Class A and Class B stock described in subparagraphs (B) and (C) may be issued by a Federal home loan bank.

“(5) LIMITED TRANSFERABILITY OF STOCK.—Each capital structure plan shall provide that any equity securities issued by the bank shall be available only to, held only by, and tradable only among shareholders of the bank.

“(c) CAPITAL STANDARDS.—

“(1) IN GENERAL.—The Finance Board shall prescribe, by regulation, uniform capital standards applicable to each Federal home loan bank which shall include—

“(A) a leverage limit in accordance with paragraph (2); and

“(B) a risk-based capital requirement in accordance with paragraph (3).

“(2) MINIMUM LEVERAGE LIMIT.—The leverage limit established by the Finance Board shall require each Federal home loan bank to maintain total capital in an amount not less than 5 percent of the total assets of the bank. In determining compliance with the minimum leverage ratio, the amount of retained earnings and the paid-in value of Class B stock, if any, shall be multiplied by 1.5 and such higher amount shall be deemed to be capital for purposes of meeting the 5 percent minimum leverage ratio.

“(3) RISK-BASED CAPITAL STANDARD.—The risk-based capital requirement shall be composed of the following components:

“(A) Capital sufficient to meet the credit risk to which a Federal home loan bank is subject, based on an amount which is not less than the amount of tier 1, risk-based capital required by regulations prescribed, or guidelines issued under section 38 of the Federal Deposit Insurance Act for a well capitalized insured depository institution.

“(B) Capital sufficient to meet the interest rate risk to which a Federal home loan bank is subject, based on an interest rate stress test applied by the Finance Board that rigorously tests for changes in interest rates, rate volatility, and changes in the shape of the yield curve.

“(d) REDEMPTION OF CAPITAL.—

“(1) IN GENERAL.—Any shareholder of a Federal home loan bank shall have the right to withdraw the shareholder's membership from a Federal home loan bank and to redeem the shareholder's stock in accordance with the redemption rights associated with the class of stock the shareholder holds, if—

“(A) such shareholder has filed a written notice of an intention to redeem all such shares; and

“(B) the shareholder has no outstanding advances from any Federal home loan bank at the time of such redemption.

“(2) PARTIAL REDEMPTION.—A shareholder who files notice of intention to redeem all shares of stock in a Federal home loan bank may redeem not more than 1/2 of all such shares, in cash and at par, 6 months before the date by which the bank is required to redeem such stock pursuant to subparagraph (B) or (C) of subsection (b)(4).

“(3) DIVESTITURE.—The board of directors of any Federal home loan bank may, after a hearing, order the divestiture by any shareholder of all ownership interests of such shareholder in the bank, if—

“(A) in the opinion of the board of directors, such shareholder has failed to comply with a provision of this Act or any regulation prescribed under this Act; or

“(B) the shareholder has been determined to be insolvent, or otherwise subject to the appointment of a conservator, receiver, or other legal custo-

dian, by a State or Federal authority with regulatory and supervisory responsibility for such shareholder.

“(4) RETIREMENT OF EXCESS STOCK.—Any shareholder may—

“(A) retire shares of Class A stock or, at the option of the shareholder, shares of Class B stock, or any combination of Class A and Class B stock, that are excess to the minimum stock purchase requirements applicable to the shareholder; and

“(B) receive from the Federal home loan bank a prompt payment in cash equal to the par value of such stock.

“(5) IMPAIRMENT OF CAPITAL.—If the Finance Board or the board of directors of a Federal home loan bank determines that the paid-in capital of the bank is, or is likely to be, impaired as a result of losses in or depreciation of the assets of the bank, the Federal home loan bank shall withhold that portion of the amount due any shareholder with respect to any redemption or retirement of any class of stock which bears the same ratio to the total of such amount as the amount of the impaired capital bears to the total amount of capital allocable to such class of stock.

“(6) POLICIES.—Subject to the requirements of this section, the board of directors of each Federal home loan bank shall promptly establish policies, consistent with this Act, governing the capital stock of such bank and other provisions of this section.”

SEC. 178. INVESTMENTS.

Subsection (j) of section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431) (as so redesignated by section 174(e) of this subtitle) is amended to read as follows:

“(j) INVESTMENTS.—Each bank shall reduce its investments to those necessary for liquidity purposes, for safe and sound operation of the banks, or for housing finance, as administered by the Finance Board.”

SEC. 179. FEDERAL HOUSING FINANCE BOARD.

Section 2A(b)(1) of the Federal Home Loan Bank Act (12 U.S.C. 1422(b)(1)) is amended—

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

(2) by inserting before subparagraph (B) (as so redesignated by paragraph (1) of this section) the following new subparagraph:

“(A) The Secretary of the Treasury (or the Secretary of the Treasury’s designee), who shall serve without additional compensation.”; and

(3) in subparagraph (C) (as so redesignated by paragraph (1) of this section) by striking “Four” and inserting “3”.

Subtitle I—Streamlining Antitrust Review of Bank Acquisitions and Mergers

SEC. 181. AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.

(a) AMENDMENTS TO SECTION 3 TO REQUIRE FILING OF APPLICATION COPIES WITH ATTORNEY GENERAL.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended—

(1) in subsection (b) by inserting after paragraph (2) the following new paragraph:

“(3) REQUIREMENT TO FILE INFORMATION WITH ATTORNEY GENERAL.—Any applicant seeking prior approval of the Board to engage in an acquisition transaction under this section must file simultaneously with the Attorney General copies of any documents regarding the proposed transaction required by the Board.”; and

(2) in subsection (c)—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively.

(b) AMENDMENTS TO SECTION 11 TO MODIFY JUSTICE DEPARTMENT NOTIFICATION AND POST-APPROVAL WAITING PERIOD FOR SECTION 3 TRANSACTIONS.—Section 11 of the Bank Holding Company Act of 1956 (12 U.S.C. 1849) is amended—

(1) in subsection (b)(1)—

(A) by striking “, if the Board has not received any adverse comment from the Attorney General of the United States relating to competitive factors,”;

(B) by striking “as may be prescribed by the Board with the concurrence of the Attorney General, but in no event less than 15 calendar days after

the date of approval.” and inserting “as may be prescribed by the Attorney General.”; and

- (C) by striking the 3d to last sentence and the penultimate sentence; and
- (2) by striking subsections (c) and (e) and redesignating subsections (d) and (f) as subsections (c) and (d), respectively.

SEC. 182. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT TO VEST IN THE ATTORNEY GENERAL SOLE RESPONSIBILITY FOR ANTITRUST REVIEW OF DEPOSITORY INSTITUTION MERGERS.

Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended—

(1) in paragraph (3)(C) by striking “during a period at least as long as the period allowed for furnishing reports under paragraph (4) of this subsection”;

(2) by striking paragraph (4) and inserting the following new paragraph:

“(4) **FACTORS TO BE CONSIDERED.**—In determining whether to approve a transaction, the responsible agency shall in every case take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.”;

(3) by striking paragraph (5) and inserting the following new paragraph:

“(5) **NOTICE TO ATTORNEY GENERAL.**—The responsible agency shall immediately notify the Attorney General of any approval by it pursuant to this subsection of a proposed merger transaction. If the responsible agency has found that it must act immediately in order to prevent the probable failure of one of the banks involved, the transaction may be consummated immediately upon approval by the agency. If the responsible agency has notified the other Federal banking agencies referred to in this section of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within 10 days, the transaction may not be consummated before the 5th calendar day after the date of approval of the responsible agency. In all other cases, the transaction may not be consummated before the 30th calendar day after the date of approval by the agency, or such shorter period of time as may be prescribed by the Attorney General.”;

(4) by striking paragraph (6) and redesignating paragraphs (7) through (11) as paragraphs (6) through (10), respectively;

(5) in subparagraph (A) of paragraph (6) (as so redesignated by paragraph (4) of this section)—

(A) by striking “(5)” and inserting “(4)”; and

(B) by striking “(6)” and inserting “(5)”; and

(C) by striking “In any such action, the court shall review de novo the issues presented.”;

(6) in paragraph (6) (as so redesignated by paragraph (4) of this section)—

(A) by striking subparagraphs (B) and (D); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(7) in paragraph (8) (as so redesignated by paragraph (4) of this section)—

(A) by inserting “and” after the semicolon at the end of subparagraph (A);

(B) by striking subparagraph (B); and

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

(8) by inserting after paragraph (10) (as so redesignated by paragraph (4) of this section) the following new paragraph:

“(11) **REQUIREMENT TO FILE INFORMATION WITH ATTORNEY GENERAL.**—Any applicant seeking prior written approval of the responsible Federal banking agency to engage in a merger transaction under this subsection shall file simultaneously with the Attorney General copies of any documents regarding the proposed transaction required by the Federal banking agency.”.

SEC. 183. INFORMATION FILED BY DEPOSITORY INSTITUTIONS; INTERAGENCY DATA SHARING.

(a) **FORMAT OF NOTICE.**—

(1) **IN GENERAL.**—Notice of any proposed transaction for which approval is required under section 3 of the Bank Holding Company Act of 1956 or section 18(c) of the Federal Deposit Insurance Act shall be in a format designated and required by the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) and shall contain a section on the likely competitive effects of the proposed transaction.

(2) **DESIGNATION BY AGENCY.**—The appropriate Federal banking agency, with the concurrence of the Attorney General, shall designate and require the form and content of the competitive effects section.

(3) **NOTICE OF SUSPENSION.**—Upon notification by the Attorney General that the competitive effects section of an application is incomplete, the appropriate

Federal banking agency shall notify the applicant that the agency will suspend processing of the application until the Attorney General notifies the agency that the application is complete.

(4) EMERGENCY ACTION.—This provision shall not affect the appropriate Federal banking agency's authority to act immediately—

(A) to prevent the probable failure of 1 of the banks involved; or

(B) to reduce or eliminate a post approval waiting period in case of an emergency requiring expeditious action.

(5) EXEMPTION FOR CERTAIN FILINGS.—With the concurrence of the Attorney General, the appropriate Federal banking agency may exempt classes of persons, acquisitions, or transactions that are not likely to violate the antitrust laws from the requirement that applicants file a competitive effects section.

(b) INTERAGENCY DATA SHARING REQUIREMENT.—

(1) IN GENERAL.—To the extent not prohibited by other law, the Federal banking agencies shall make available to the Attorney General any data in their possession that the Attorney General deems necessary for antitrust reviews of transactions requiring approval under section 3 of the Bank Holding Company Act of 1956 or section 18(c) of the Federal Deposit Insurance Act.

(2) CONTINUATION OF DATA COLLECTION AND ANALYSIS.—The Federal banking agencies shall continue to provide market analysis, deposit share information, and other relevant information for determining market competition as needed by the Attorney General in the same manner such agencies provided analysis and information under section 18(c) of the Federal Deposit Insurance Act and 3(c) of the Bank Holding Company Act of 1956 (as such sections were in effect on the day before the date of the enactment of this Act) and shall continue to collect information necessary or useful for such analysis.

SEC. 184. ANNUAL GAO REPORT.

(a) IN GENERAL.—By the end of the 1-year period beginning on the date of the enactment of this Act and annually thereafter the Comptroller General of the United States shall submit a report to the Congress on market concentration in the financial services industry.

(b) ANALYSIS.—Each report submitted under subsection (a) shall contain an analysis of—

(1) the positive and negative effects of affiliations between various types of financial companies, and of acquisitions pursuant to this Act and the amendments made by this Act to other provisions of law, including any positive or negative effects on registered securities brokers and dealers which have been purchased by depository institutions or depository institution holding companies;

(2) the changes in business practices and the effects of any such changes on the availability of venture capital and the availability of capital and credit for small businesses; and

(3) the acquisition patterns among depository institutions, depository institution holding companies, securities firms, and insurance companies including acquisitions among the largest 20 percent of firms and acquisitions within a limited geographical area.

SEC. 185. APPLICABILITY OF ANTITRUST LAWS.

No provision of this subtitle shall be construed as affecting—

(1) the applicability of antitrust laws (as defined in section 11(d) of the Bank Holding Company Act of 1956; as so redesignated pursuant to this subtitle); or

(2) the applicability, if any, of any State law which is similar to the antitrust laws.

SEC. 186. EFFECTIVE DATE.

This subtitle shall become effective 6 months after the date of enactment of this Act.

Subtitle J—Redomestication of Mutual Insurers

SEC. 191. REDOMESTICATION OF MUTUAL INSURERS.

(a) REDOMESTICATION.—A mutual insurer organized under the laws of any State may transfer its domicile to a transferee domicile as a step in a reorganization in which, pursuant to the laws of the transferee domicile, the mutual insurer becomes a stock insurer (whether as a direct or indirect subsidiary of a mutual holding company or otherwise).

(b) **RESULTING DOMICILE.**—Upon complying with the applicable law of the transferee domicile governing transfers of domicile and completion of a transfer pursuant to this section, the mutual insurer shall cease to be a domestic insurer in the transferor domicile and, as a continuation of its corporate existence, shall be a domestic insurer of the transferee domicile.

(c) **LICENSES PRESERVED.**—The certificate of authority, agents' appointments and licenses, rates, approvals and other items that a licensed State allows and that are in existence immediately prior to the date that a redomesticating insurer transfers its domicile pursuant to this subtitle shall continue in full force and effect upon transfer, if the insurer remains duly qualified to transact the business of insurance in such licensed State.

(d) **EFFECTIVENESS OF OUTSTANDING POLICIES AND CONTRACTS.**—

(1) **IN GENERAL.**—All outstanding insurance policies and annuities contracts of a redomesticating insurer shall remain in full force and effect and need not be endorsed as to the new domicile of the insurer, unless so ordered by the State insurance regulator of a licensed State, and then only in the case of outstanding policies and contracts whose owners reside in such licensed State.

(2) **FORMS.**—

(A) Applicable State law may require a redomesticating insurer to file new policy forms with the State insurance regulator of a licensed State on or before the effective date of the transfer.

(B) Notwithstanding subparagraph (A), a redomesticating insurer may use existing policy forms with appropriate endorsements to reflect the new domicile of the redomesticating insurer until the new policy forms are approved for use by the State insurance regulator of such licensed State.

(e) **NOTICE.**—A redomesticating insurer shall give notice of the proposed transfer to the State insurance regulator of each licensed State and shall file promptly any resulting amendments to corporate documents required to be filed by a foreign licensed mutual insurer with the insurance regulator of each such licensed State.

(f) **RULE OF CONSTRUCTION.**—No provision of this subtitle shall be construed so as to preempt any provision of a State law relating to the establishment of a mutual insurance holding company which protects the rights of policy holders.

SEC. 192. EFFECT ON STATE LAWS RESTRICTING REDOMESTICATION.

(a) **IN GENERAL.**—Unless otherwise permitted by this subtitle, State laws that conflict with the purposes and intent of this subtitle are preempted, including but not limited to—

(1) any law that has the purpose or effect of impeding the activities of, taking any action against, or applying any provision of law or regulation to, any insurer or an affiliate of such insurer because that insurer or any affiliate plans to redomesticate or has redomesticated pursuant to this subtitle;

(2) any law that has the purpose or effect of impeding the activities of, taking action against, or applying any provision of law or regulation to, any insured or any insurance licensee or other intermediary because such person or entity has procured insurance from or placed insurance with any insurer or affiliate of such insurer that plans to redomesticate or has redomesticated pursuant to this subtitle;

(3) any law that has the purpose or effect of terminating, because of the redomestication of a mutual insurer pursuant to this subtitle, any certificate of authority, agent appointment or license, rate approval or other approval, of any State insurance regulator or other State authority in existence immediately prior to the redomestication in any State other than the transferee domicile.

(b) **DIFFERENTIAL TREATMENT PROHIBITED.**—No State law, regulation, interpretation, or functional equivalent thereof, may treat a redomesticating or redomesticated insurer or any affiliate thereof any differently than an insurer operating in that State that is not a redomesticating or redomesticated insurer.

(c) **LAWS PROHIBITING OPERATIONS.**—If any licensed State fails to issue, delays the issuance of, or seeks to revoke an original or renewal certificate of authority of a redomesticated insurer immediately following redomestication, except on grounds and in a manner consistent with its past practices regarding the issuance of certificates of authority to foreign insurers that are not redomesticating, then the redomesticating insurer shall be exempt from any State law of the licensed State to the extent that such State law or the operation of such State law would make unlawful, or regulate, directly or indirectly, the operation of the redomesticated insurer, except that such licensed State may require the redomesticated insurer to—

(1) comply with the unfair claim settlement practices law of the licensed State;

(2) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on licensed insurers or policyholders under the laws of the licensed State;

(3) register with and designate the State insurance regulator as its agent solely for the purpose of receiving service of legal documents or process;

(4) submit to an examination by the State insurance regulator in any licensed state in which the redomesticated insurer is doing business to determine the insurer's financial condition, if—

(A) the State insurance regulator of the transferee domicile has not begun and has refused to initiate an examination of the redomesticated insurer; and

(B) any such examination is coordinated to avoid unjustified duplication and repetition;

(5) comply with a lawful order issued in—

(A) a delinquency proceeding commenced by the State insurance regulator of any licensed State if there has been a judicial finding of financial impairment under paragraph (7); or

(B) a voluntary dissolution proceeding;

(6) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the licensed State seeks an injunction regarding the conduct described in this paragraph, such injunction must be obtained from a court of competent jurisdiction as provided in subsection (d);

(7) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance regulator alleging that the redomesticating insurer is in hazardous financial condition or is financially impaired;

(8) participate in any insurance insolvency guaranty association on the same basis as any other insurer licensed in the licensed State; and

(9) require a person acting, or offering to act, as an insurance licensee for a redomesticated insurer in the licensed State to obtain a license from that State, except that such State may not impose any qualification or requirement that discriminates against a nonresident insurance licensee.

(d) JUDICIAL REVIEW.—The appropriate United States district court shall have exclusive jurisdiction over litigation arising under this section involving any redomesticating or redomesticated insurer.

(e) SEVERABILITY.—If any provision of this section, or the application thereof to any person or circumstances, is held invalid, the remainder of the section, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 193. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) COURT OF COMPETENT JURISDICTION.—The term “court of competent jurisdiction” means a court authorized pursuant to section 192(d) to adjudicate litigation arising under this subtitle.

(2) DOMICILE.—The term “domicile” means the State in which an insurer is incorporated, chartered, or organized.

(3) INSURANCE LICENSEE.—The term “insurance licensee” means any person holding a license under State law to act as insurance agent, subagent, broker, or consultant.

(4) INSTITUTION.—The term “institution” means a corporation, joint stock company, limited liability company, limited liability partnership, association, trust, partnership, or any similar entity.

(5) LICENSED STATE.—The term “licensed State” means any State, Puerto Rico, or the U.S. Virgin Islands in which the redomesticating insurer has a certificate of authority in effect immediately prior to the redomestication.

(6) MUTUAL INSURER.—The term “mutual insurer” means a mutual insurer organized under the laws of any State.

(7) PERSON.—The term “person” means an individual, institution, government or governmental agency, State or political subdivision of a State, public corporation, board, association, estate, trustee, or fiduciary, or other similar entity.

(8) REDOMESTICATED INSURER.—The term “redomesticated insurer” means a mutual insurer that has redomesticated pursuant to this subtitle.

(9) REDOMESTICATING INSURER.—The term “redomesticating insurer” means a mutual insurer that is redomesticating pursuant to this subtitle.

(10) REDOMESTICATION OR TRANSFER.—The terms “redomestication” and “transfer” mean the transfer of the domicile of a mutual insurer from one State to another State pursuant to this subtitle.

(11) STATE INSURANCE REGULATOR.—The term “State insurance regulator” means the principal insurance regulatory authority of a State or of Puerto Rico, or the United States Virgin Islands.

(12) STATE LAW.—The term “State law” means the statutes of any State or of Puerto Rico, or the U.S. Virgin Islands and any regulation, order, or requirement prescribed pursuant to any such statute.

(13) TRANSFEREE DOMICILE.—The term “transferee domicile” means the State to which a mutual insurer is redomesticating pursuant to this subtitle.

(14) TRANSFEROR DOMICILE.—The term “transferor domicile” means the State from which a mutual insurer is redomesticating pursuant to this subtitle.

SEC. 194. EFFECTIVE DATE.

This subtitle shall become effective on the date of enactment of this Act.

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

SEC. 195. APPLYING THE PRINCIPLES OF NATIONAL TREATMENT AND EQUALITY OF COMPETITIVE OPPORTUNITY TO FOREIGN BANKS AND FOREIGN FINANCIAL INSTITUTIONS.

The purpose of this subtitle is to apply the reforms of this Act to foreign banks and other foreign financial institutions in a manner consistent with the principles of national treatment and equality of competitive opportunity, without disadvantaging either foreign or domestic banks or other financial institutions in relation to each other.

SEC. 196. APPLYING THE PRINCIPLES OF NATIONAL TREATMENT AND EQUALITY OF COMPETITIVE OPPORTUNITY TO FOREIGN BANKS THAT ARE QUALIFYING BANK HOLDING COMPANIES.

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

“(3) TERMINATION OF GRANDFATHERED RIGHTS.—

“(A) IN GENERAL.—If any foreign bank or foreign company files a declaration under section 6(a)(1)(F) of the Bank Holding Company Act of 1956 or receives a determination from the Board under section 6(l)(6) of such Act, any authority conferred by this subsection on any foreign bank or company to engage in any financial activity (as defined in section 6(a)(3) of such Act) shall terminate immediately.

“(B) RESTRICTIONS AND REQUIREMENTS AUTHORIZED.—If a foreign bank or company that engages, directly or through an affiliate pursuant to paragraph (1), in a financial activity (as defined in section 6(a)(3) of the Bank Holding Company Act of 1956) has not filed a declaration with the Board of its status as a qualifying bank holding company under section 6(a) of the Bank Holding Company Act of 1956 by the end of the second year after the date of enactment of the Financial Services Competition Act of 1997, the Board, giving due regard to the principle of national treatment and equality of competitive opportunity, may impose such restrictions and requirements on the conduct of such activities by such foreign bank or company as are comparable to those imposed on a qualifying bank holding company organized under the laws of the United States, including a requirement to conduct such activities in compliance with the safeguards of section 6 of the Bank Holding Company Act of 1956 and any additional safeguards imposed by the National Council on Financial Services.”.

SEC. 197. APPLYING THE PRINCIPLES OF NATIONAL TREATMENT AND EQUALITY OF COMPETITIVE OPPORTUNITY TO FOREIGN BANKS AND FOREIGN FINANCIAL INSTITUTIONS THAT ARE WHOLESALE FINANCIAL INSTITUTIONS.

Section 8A of the Federal Deposit Insurance Act (as added by section 161 of this Act) is amended by adding at the end the following new subsection:

“(i) VOLUNTARY TERMINATION OF DEPOSIT INSURANCE.—The provisions on voluntary termination of insurance in this section apply to an insured branch of a foreign bank (including a Federal branch) in the same manner and to the same extent as they apply to an insured State bank or a national bank.”.

Subtitle L—Effective Date of Title

SEC. 199. EFFECTIVE DATE.

Except with regard to any subtitle or other provision of this title for which a specific effective date is provided, this title and the amendments made by this title shall take effect at the end of the 270-day period beginning on the date of the enactment of this Act.

TITLE II—FUNCTIONAL REGULATION

Subtitle A—Brokers and Dealers

SEC. 201. DEFINITION OF BROKER.

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

“(4) BROKER.—

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

“(B) EXCLUSION OF BANKS.—The term ‘broker’ does not include a bank unless such bank—

“(i) publicly solicits the business of effecting securities transactions for the account of others; or

“(ii) is compensated for such business by the payment of commissions or similar remuneration based on effecting transactions in securities (other than fees calculated as a percentage of assets under management) in excess of the bank’s incremental costs directly attributable to effecting such transactions (hereafter referred to as ‘incentive compensation’).

“(C) EXEMPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a broker because the bank engages in any of the following activities under the conditions described:

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

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

“(II) the broker or dealer performs brokerage services in an area that is clearly marked and, unless made impossible by space or personnel considerations, physically separate from the routine deposit-taking activities of the bank;

“(III) any materials used by the bank to advertise or promote generally the availability of brokerage services under the contractual or other arrangement clearly indicate that the brokerage services are being provided by the broker or dealer and not by the bank;

“(IV) any materials used by the bank to advertise or promote generally the availability of brokerage services under the contractual or other arrangement are in compliance with the Federal securities laws before distribution;

“(V) bank employees perform only clerical or ministerial functions in connection with brokerage transactions, including scheduling appointments with the associated persons of a broker or dealer and, on behalf of a broker or dealer, transmitting orders or handling customers funds or securities, except that bank employees who are not so qualified may describe in general terms investment vehicles under the contractual or other arrangement and accept customer orders on behalf of the broker or dealer if such employees have received training that is substantially equivalent to the training required for personnel qualified to sell securities pursuant to the requirements of a self-regulatory organization;

“(VI) bank employees do not directly receive incentive compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to

the requirements of a self-regulatory organization (as so defined) except that the bank employees may receive nominal cash and noncash compensation for customer referrals if the cash compensation is a one-time fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction;

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

“(VIII) the broker or dealer informs each customer that the brokerage services are provided by the broker or dealer and not by the bank and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not insured by the Federal Deposit Insurance Corporation.

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

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

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

“(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in exempted securities, commercial paper, bankers acceptances, commercial bills, qualified Canadian government obligations as defined in section 5136 of the Revised Statutes, obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969, obligations of the North American Development Bank, and obligations of any local public agency (as defined in section 110(h) of the Housing Act of 1949) or any public housing agency (as defined in the United States Housing Act of 1937) that are expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in.

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

“(v) SWEEP ACCOUNTS.—The bank effects transactions as part of a program for the investment or reinvestment of bank deposit funds into any no-load, open-end management investment company registered under the Investment Company Act of 1940 that holds itself out as a money market fund.

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

“(vii) PRIVATE SECURITIES OFFERINGS.—The bank—

“(I) effects sales as part of a primary offering of securities by an issuer, not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations issued thereunder; and

“(II) effects such sales exclusively to an accredited investor, as defined in section 2 of the Securities Act of 1933.

“(viii) DE MINIMUS EXEMPTION.—If the bank does not have a subsidiary or affiliate registered as a broker or dealer under section 15, the bank effects, other than in transactions referred to in clauses (i) through (vii), not more than—

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

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

“(ix) SAFEKEEPING AND CUSTODY SERVICES.—The bank, as part of customary banking activities—

“(I) provides safekeeping or custody services with respect to securities, including the exercise of warrants or other rights on behalf of customers;

“(II) clears or settles transactions in securities;

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

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

“(x) CONTRACTS OF INSURANCE.—The bank effects transactions in contracts of insurance.

“(xi) BANKING PRODUCTS.—The bank effects transactions in banking products, as defined in section 18 of the Federal Deposit Insurance Act.

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

“(i) was, immediately prior to the enactment of the Financial Services Competition Act of 1997, subject to section 15(e); and

“(ii) is subject to such restrictions and requirements as the Commission considers appropriate.”.

SEC. 202. DEFINITION OF DEALER.

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

“(5) DEALER.—

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

“(B) EXCEPTION FOR PERSON NOT ENGAGED IN THE BUSINESS OF DEALING.—The term ‘dealer’ does not include a person that buys or sells securities for such person’s own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

“(C) EXEMPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a dealer because the bank engages in any of the following activities under the conditions described:

“(i) The bank buys and sells commercial paper, bankers acceptances, exempted securities, qualified Canadian Government obligations as defined in section 5136 of the Revised Statutes, obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969, obligations of the North American Development Bank, and obligations of any local public agency (as defined in section 110(h) of the Housing Act of 1949) or any public housing agency (as defined in the United States Housing Act of 1937) that are expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in.

“(ii) The bank buys and sells securities for investment purposes for the bank or for accounts for which the bank acts as a trustee or fiduciary.

“(iii) The bank effects transactions in contracts of insurance.

“(iv) The bank offers or sells, solely to any accredited investor (as defined in section 2 of the Securities Act of 1933) securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations originated or purchased by the bank or any affiliate of the bank.

“(v) The bank buys and sells banking products, as defined in section 18 of the Federal Deposit Insurance Act.”.

SEC. 203. BANK BROKER AND DEALER ACTIVITIES.

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

“(h) EXEMPTION FROM DEFINITION OF BROKER OR DEALER.—With respect to the employees of a bank that engages in the offer and sale of securities to the retail public, such employees shall be subject to the same rules and regulations of a self-regulatory organization applicable under authority of section 15A to employees of securities and other nonbank firms.”.

SEC. 204. APPLICATION OF THIS TITLE TO BANKS REGISTERED AS BROKERS OR DEALERS.

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

“(i) APPLICATION OF THIS TITLE TO BANKS REGISTERED AS BROKERS OR DEALERS.—

“(1) NONDISCRIMINATION.—In administering and enforcing this title with respect to banks that are registered brokers or dealers, the Commission shall not treat banks more restrictively than any other entities that are registered as brokers or dealers pursuant to this section.

“(2) CAPITAL REQUIREMENTS.—

“(A) WELL-CAPITALIZED BANKS.—Capital requirements for brokers or dealers shall not apply to a bank that is well-capitalized (as defined in section 38 of the Federal Deposit Insurance Act) and determined by the appropriate Federal banking agency (as defined in section 3 of such Act), if the bank’s brokerage and dealer activities requiring registration do not represent the predominant portion of the gross revenues of the bank.

“(B) OTHER BANKS.—The Commission, in consultation with the appropriate Federal regulatory agencies for banks, shall provide appropriate transitional relief to banks that are registered brokers or dealers, and that cease to be well-capitalized but are adequately capitalized (as defined in section 38 of the Federal Deposit Insurance Act). Such rules shall take account of the purposes of this section and the extent to which bank capital requirements further those purposes.

“(3) SCOPE OF APPLICATION.—The regulation, under this Act, of any bank registered under this Act as a broker or dealer shall apply only with respect to activities of the bank for which the bank is required under this Act to be registered as a broker or dealer.”.

SEC. 205. EXCLUSION FROM SIPC MEMBERSHIP OF BANKS REGISTERED AS BROKERS OR DEALERS.

Section 3(a)(2)(A) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ccc(a)(2)(A)) is amended—

- (1) in clause (i), by striking “and” after the semicolon;
- (2) in clause (ii), by striking the period at the end and inserting “; and”; and
- (3) by adding at the end the following new clause:

“(iii) banks.”.

SEC. 206. EFFECTIVE DATE.

This subtitle shall take effect at the end of the 270-day period beginning on the date of the enactment of this Act.

Subtitle B—Bank Investment Company Activities

SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY AFFILIATED BANK.

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

- (1) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;
- (2) by striking “(f) Every registered” and inserting the following:

“(f) CUSTODY OF SECURITIES.—

“(1) Every registered”;

(3) by redesignating the 2d, 3d, 4th, and 5th sentences of such subsection as paragraphs (2) through (5), respectively, and indenting the left margin of such paragraphs appropriately; and

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

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

(b) UNIT INVESTMENT TRUSTS.—Section 26(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–6(a)(1)) is amended by inserting before the semicolon at the end the following: “, except that, if the trustee or custodian described in this subsection is an affiliated person of such underwriter or depositor, the Commission may adopt rules and regulations or issue orders, consistent with the protection of inves-

tors, prescribing the conditions under which such trustee or custodian may serve, after consulting in writing with the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act)".

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

- (1) in paragraph (1), by striking "or" at the end;
- (2) in paragraph (2), by striking the period at the end and inserting "; or";
- and
- (3) by inserting after paragraph (2) the following:
" (3) as custodian."

SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COMPANY.

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

"Notwithstanding any provision of this section, it shall be unlawful for any affiliated person of a registered investment company or any affiliated person of such a person to loan money to such investment company in contravention of such rules, regulations, or orders as the Commission may prescribe in the public interest and consistent with the protection of investors."

SEC. 213. INDEPENDENT DIRECTORS.

(a) IN GENERAL.—Section 2(a)(19)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)(A)) is amended—

- (1) by striking clause (v) and inserting the following new clause:

"(v) any person (other than a registered investment company) that, at any time during the preceding 6 months, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

"(I) the investment company,

"(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services, or

"(III) any account over which the investment company's investment adviser has brokerage placement discretion, or any affiliated person of such a person,";

- (2) by redesignating clause (vi) as clause (vii); and

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

"(vi) any person (other than a registered investment company) that, at any time during the preceding 6 months, has loaned money to—

"(I) the investment company,

"(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services, or

"(III) any account for which the investment company's investment adviser has borrowing authority, or any affiliated person of such a person, or".

(b) CONFORMING AMENDMENT.—Section 2(a)(19)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)(B)) is amended—

- (1) by striking clause (v) and inserting the following new clause:

"(v) any person (other than a registered investment company) that, at any time during the preceding 6 months, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

"(I) any investment company for which the investment adviser or principal underwriter serves as such,

"(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such, or

"(III) any account over which the investment adviser has brokerage placement discretion, or any affiliated person of such a person,";

- (2) by redesignating clause (vi) as clause (vii); and

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

"(vi) any person (other than a registered investment company) that, at any time during the preceding 6 months, has loaned money to—

“(I) any investment company for which the investment adviser or principal underwriter serves as such,

“(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such, or

“(III) any account for which the investment adviser has borrowing authority,

or any affiliated person of such a person, or”.

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

(d) EFFECTIVE DATE.—The provisions of subsection (a) of this section shall take effect at the end of the 1-year period beginning on the date of enactment of this subtitle.

SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.

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

“(a) MISREPRESENTATION OF GUARANTEES.—

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

“(A) has been guaranteed, sponsored, recommended, or approved by the United States, or any agency, instrumentality or officer of the United States;

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

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

“(2) DISCLOSURES.—Any person issuing or selling the securities of a registered investment company shall prominently disclose that the investment company or any security issued by the investment company—

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

“(B) is not guaranteed by an affiliated insured depository institution; and

“(C) is not otherwise an obligation of any bank or insured depository institution,

in accordance with such rules, regulations, or orders as the Commission may prescribe as reasonably necessary or appropriate in the public interest for the protection of investors, after consulting in writing with the appropriate Federal banking agencies.

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

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

“(d) It shall be unlawful for any registered investment company to adopt as part of the name or title of such company, or of any securities of which it is the issuer, any word or words that the Commission finds are materially deceptive or misleading. The Commission may adopt such rules or regulations or issue such orders as are necessary or appropriate to prevent the use of deceptive or misleading names or titles by investment companies.”.

SEC. 215. DEFINITION OF BROKER UNDER THE INVESTMENT COMPANY ACT OF 1940.

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

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

SEC. 216. DEFINITION OF DEALER UNDER THE INVESTMENT COMPANY ACT OF 1940.

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

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

SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINITION OF INVESTMENT ADVISER FOR BANKS THAT ADVISE INVESTMENT COMPANIES.

(a) **INVESTMENT ADVISER.**—Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is amended in subparagraph (A), by striking “investment company” and inserting “investment holding company, except that the term ‘investment adviser’ includes any bank or bank holding company to the extent that such bank or bank holding company acts as an investment adviser to a registered investment company, or if, in the case of a bank, such services are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser”.

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

“(26) The term ‘separately identifiable department or division’ of a bank means a unit—

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

“(B) for which all of the records relating to its investment adviser activities are separately maintained in or extractable from such unit’s own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement of this Act or the Investment Company Act of 1940 and rules and regulations promulgated under this Act or the Investment Company Act of 1940.”.

SEC. 218. DEFINITION OF BROKER UNDER THE INVESTMENT ADVISERS ACT OF 1940.

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

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

SEC. 219. DEFINITION OF DEALER UNDER THE INVESTMENT ADVISERS ACT OF 1940.

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

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

SEC. 220. INTERAGENCY CONSULTATION.

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

“SEC. 210A. CONSULTATION.

“(a) **EXAMINATION RESULTS AND OTHER INFORMATION.**—

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

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

“(b) **EFFECT ON OTHER AUTHORITY.**—Nothing herein shall limit in any respect the authority of the appropriate Federal banking agency with respect to such bank holding company, bank, or department or division under any provision of law.

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

SEC. 221. TREATMENT OF BANK COMMON TRUST FUNDS.

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

mon trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian” and inserting “or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term ‘investment company’ under section 3(c)(3) of the Investment Company Act of 1940”.

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

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

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

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

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

“(i) advertised; or

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

“(C) fees and expenses charged by such fund are not in contravention of fiduciary principles established under applicable Federal or State law”.

SEC. 222. INVESTMENT ADVISERS PROHIBITED FROM HAVING CONTROLLING INTEREST IN REGISTERED INVESTMENT COMPANY.

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

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

“(1) IN GENERAL.—If any investment adviser to a registered investment company, or an affiliated person of that investment adviser, holds a controlling interest in that registered investment company in a trustee or fiduciary capacity, such person shall—

“(A) if it holds the shares in a trustee or fiduciary capacity with respect to any employee benefit plan subject to the Employee Retirement Income Security Act of 1974, transfer the power to vote the shares of the investment company through to another person acting in a fiduciary capacity with respect to the plan who is not an affiliated person of that investment adviser or any affiliated person thereof; or

“(B) if it holds the shares in a trustee or fiduciary capacity with respect to any other person or entity other than an employee benefit plan subject to the Employee Retirement Income Security Act of 1974—

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

“(I) the beneficial owners of the shares;

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

“(III) any person authorized to receive statements and information with respect to the trust who is not an affiliated person of that investment adviser or any affiliated person thereof;

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

“(iii) vote the shares of the investment company as otherwise permitted under such rules, regulations, or orders as the Commission may prescribe for the protection of investors.

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

“(3) SAFE HARBOR.—No investment adviser to a registered investment company or any affiliated person of such investment adviser shall be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law solely by reason of acting in accordance with clause (i), (ii), or (iii) of paragraph (1)(B).

“(4) CHURCH PLAN EXEMPTION.—Paragraph (1) shall not apply to any investment adviser to a registered investment company, or an affiliated person of that investment adviser, holding shares in such a capacity, if such investment adviser or such affiliated person is an organization described in section 414(e)(3)(A) of the Internal Revenue Code of 1986.”.

SEC. 223. CONFORMING CHANGE IN DEFINITION.

Section 2(a)(5) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(5)) is amended by striking “(A) a banking institution organized under the laws of the United States” and inserting “(A) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or a branch or agency of a foreign bank (as such terms are defined in section 1(b) of the International Banking Act of 1978)”.

SEC. 224. EFFECTIVE DATE.

This subtitle shall take effect 90 days after the date of the enactment of this Act.

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

SEC. 301. SHORT TITLE; DEFINITIONS.

(a) SHORT TITLE.—This title may be cited as the “Thrift Charter Transition Act of 1997”.

(b) DEFINITIONS.—Unless otherwise defined in this Act, the terms “bank holding company”, “depository institution”, “Federal savings association”, “insured depository institution”, “savings association”, “State bank”, and “State savings association” (as used in the uncodified provisions of this Act) have the same meanings as in section 3 of the Federal Deposit Insurance Act, as in effect on the day before the date of enactment of this Act.

Subtitle A—Facilitating Conversion of Savings Associations to Banks

SEC. 311. CONVERSION TO STATE OR NATIONAL BANKS.

(a) AUTOMATIC CONVERSION OF FEDERAL SAVINGS ASSOCIATIONS TO NATIONAL BANKS.—

(1) IN GENERAL.—Effective 2 years after the date of enactment of this Act, each Federal savings association then in existence shall be converted to a national bank by operation of law.

(2) PRESERVATION OF RIGHTS, POWERS, AND PRIVILEGES.—Unless otherwise provided in this Act, a Federal savings association that is converted to a State bank or a national bank under this section shall continue to have all of the rights, powers, privileges, and immunities that such bank had as a Federal savings association on the day before the date of the conversion to a bank.

(3) RETENTION OF “FEDERAL” IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.—Section 2 of the Act entitled “An Act to enable national banking associations to increase their capital stock and to change their names or locations.” and approved May 1, 1886 (12 U.S.C. 30) is amended by adding at the end the following new subsection:

“(d) RETENTION OF ‘FEDERAL’ IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.—

“(1) IN GENERAL.—Notwithstanding subsection (a) or any other provision of law, any depository institution the charter of which is converted from that of a Federal savings association to a national bank or a State bank after the date of the enactment of the Financial Services Competition Act of 1997 may retain the term ‘Federal’ in the name of such institution so long as such depository institution remains an insured depository institution.

“(2) DEFINITIONS.—For purposes of this subsection, the terms ‘depository institution’, ‘insured depository institution’, ‘national bank’, and ‘State bank’ have the same meanings given to such terms in section 3 of the Federal Deposit Insurance Act.”.

(b) EARLIER CONVERSIONS TO NATIONAL BANK.—The following paragraphs shall apply during the 22-month period beginning 60 days after the date of enactment of this Act:

(1) ACCELERATED CONVERSION OF FEDERAL SAVINGS ASSOCIATIONS.—Any Federal savings association may file with the Comptroller of the Currency a notice of its election to accelerate its conversion to a national bank to a specified date that is not earlier than 30 days after the date on which the notice is filed, and the association shall be converted to a national bank on the date specified in the notice.

(2) STREAMLINED CONVERSION OF STATE SAVINGS ASSOCIATIONS.—Any State savings association may (to the extent consistent with State law) convert to a national bank by filing with the Comptroller of the Currency a notice of its election to convert on a specified date that is not earlier than 30 days after the date on which the notice is filed, and the association shall be converted to a national bank on the date specified in the notice.

(c) CONVERSION TO MUTUAL NATIONAL BANK.—A savings association that is operating in mutual form on the date it is converted to a national bank under this section shall be converted to a mutual national bank as defined in section 5133A of the Revised Statutes of the United States.

(d) OTHER AUTHORITY NOT AFFECTED.—The authority to convert to a national bank under this section shall be in addition to any other authority of a savings association to convert to a national bank, State bank, or State savings association.

(e) EFFECTIVE DATE.—This section shall take effect 60 days after the date of enactment of this Act.

SEC. 312. MUTUAL NATIONAL BANKS AND FEDERAL MUTUAL BANK HOLDING COMPANIES AUTHORIZED.

(a) IN GENERAL.—Chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5133 the following new sections:

“SEC. 5133A. MUTUAL NATIONAL BANKS.

“(a) IN GENERAL.—The Comptroller of the Currency may charter national banking associations as mutual national banks, either de novo or through the conversion of an insured depository institution, in accordance with this section and such regulations as the Comptroller may prescribe.

“(b) APPLICABLE LAW.—Unless otherwise provided by this section or by the Comptroller of the Currency because of the mutual form of the institution, a mutual national bank—

“(1) shall be subject to the same laws, requirements, duties, and obligations that apply to a national banking association operating in stock form;

“(2) shall have the same powers and privileges as, and may engage in the same activities subject to the same restrictions and limitations that apply to, a national banking association operating in stock form; and

“(3) shall be supervised and examined by the Comptroller in the same manner and to the same extent as a national banking association operating in stock form.

“(c) CONVERSIONS.—Subject to any requirements imposed by the Comptroller—

“(1) a mutual national bank may convert to, or acquire and retain all or substantially all of the assets and liabilities of, a national banking association operating in stock form; and

“(2) a national banking association operating in stock form may convert to a mutual national bank.

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

“(1) INSURED DEPOSITORY INSTITUTION.—The term ‘insured depository institution’ has the same meaning as in section 3 of the Federal Deposit Insurance Act.

“(2) MUTUAL NATIONAL BANK.—The term ‘mutual national bank’ means a national banking association that operates in mutual form and is chartered by the Comptroller under this section.

“(e) CONFORMING REFERENCES.—Unless otherwise provided by the Comptroller—

“(1) any reference in any Federal law to a national bank, including a reference to the term ‘national banking association’, ‘member bank’, ‘national bank’, ‘national association’, ‘bank’, ‘insured bank’, ‘insured depository institution’, or ‘depository institution’, shall be deemed to refer also to a ‘mutual national bank’;

“(2) any reference in any Federal law to the term ‘shareholder’, ‘shareholders’, ‘stockholder’, or ‘stockholders’ of a national bank shall be deemed to refer also to any member or members of a mutual national bank;

“(3) any reference in any Federal law to the term ‘board of directors’, ‘director’, or ‘directors’ of a national bank shall be deemed to refer also to the board of trustees, trustee, or trustees, respectively, of a mutual national bank; and

“(4) any terms in Federal law that may apply only to a national bank operating in stock form, including the terms ‘stock’, ‘shares’, ‘shares of stock’, ‘capital stock’, ‘common stock’, ‘stock certificate’, ‘stock certificates’, ‘certificate representing shares of stock’, ‘stock dividend’, ‘transferable stock’, ‘each class of stock’, ‘cumulate such shares’, ‘par value’, ‘preferred stock’, ‘body corporate’, ‘corporation’, ‘corporate powers’, ‘incorporated’, ‘articles of association’, and ‘corporate existence’, shall not apply to a mutual national bank, unless the Comptroller determines that the context requires otherwise.

“SEC. 5133B. FEDERAL MUTUAL BANK HOLDING COMPANIES.

“(a) REORGANIZATION OF MUTUAL NATIONAL BANK AS A HOLDING COMPANY.—

“(1) IN GENERAL.—Subject to approval under the Bank Holding Company Act of 1956, a mutual national bank may reorganize so as to become a Federal mutual bank holding company by submitting a reorganization plan to the Comptroller of the Currency for the Comptroller’s approval.

“(2) PLAN APPROVAL.—Upon the approval of the reorganization plan by the Comptroller of the Currency and the issuance of the appropriate charters—

“(A) the substantial part of the mutual national bank’s assets and liabilities, including all of the bank’s insured liabilities, shall be transferred to a national banking association, the stock of which is owned (except as otherwise provided by this section) by the mutual national bank; and

“(B) the mutual national bank shall become a Federal mutual bank holding company.

“(b) DIRECTORS AND CERTAIN ACCOUNT HOLDERS’ APPROVAL OF PLAN REQUIRED.—This subsection does not authorize a reorganization unless—

“(1) a majority of the mutual national bank’s board of directors has approved the plan providing for such reorganization; and

“(2) in the case of a mutual national bank in which holders of accounts and obligors exercise voting rights, a majority of such individuals has approved the plan at a meeting held at the call of the directors under the procedures prescribed by the bank’s charter and bylaws.

“(c) RETENTION OF CAPITAL.—In connection with a transaction described in subsection (a), a mutual national bank may, subject to the Comptroller’s approval, retain capital at the holding company level to the extent that the capital retained at the holding company level exceeds the amount of capital required for the national banking association chartered as a part of a transaction described in subsection (a) to meet all relevant capital standards established by the Comptroller for national banking associations.

“(d) OWNERSHIP.—

“(1) IN GENERAL.—Persons having ownership rights in the mutual national bank under Federal or State law shall have the same ownership rights with respect to the Federal mutual bank holding company.

“(2) HOLDERS OF CERTAIN ACCOUNTS.—Holders of savings, demand, or other accounts in the following institutions shall have the same ownership rights with respect to the Federal mutual bank holding company as persons described in paragraph (1):

“(A) A national bank chartered as part of a transaction described in subsection (a).

“(B) A mutual bank acquired through the merger of the mutual bank into a national bank subsidiary of the holding company or an interim national bank subsidiary of the holding company.

“(e) REGULATION.—A Federal mutual bank holding company shall be—

“(1) chartered by the Comptroller of the Currency and shall be subject to such regulations as the Comptroller shall prescribe; and

“(2) regulated under the Bank Holding Company Act of 1956 on the same terms and subject to the same limitations as any other company that controls a bank.

“(f) CAPITAL IMPROVEMENT.—

“(1) PLEDGE OF STOCK OF NATIONAL BANK SUBSIDIARY.—This section shall not prohibit a Federal mutual bank holding company from pledging all or a portion of the stock of a national banking association chartered as part of a transaction described in subsection (a) to raise capital for such bank.

“(2) ISSUANCE OF NONVOTING SHARES.—This section shall not prohibit a national banking association chartered as part of a transaction described in subsection (a) from issuing any nonvoting shares, or less than 50 percent of the vot-

ing shares of such bank, to any person other than the Federal mutual bank holding company.

“(g) **INSOLVENCY AND LIQUIDATION.**—

“(1) **IN GENERAL.**—Notwithstanding any other provision of law, the Comptroller of the Currency may file a petition under chapter 7 of title 11, United States Code, with respect to a Federal mutual bank holding company upon—

“(A) the default of any national bank—

“(i) the stock of which is owned by the Federal mutual bank holding company; and

“(ii) that was chartered in a transaction described in subsection (a);

or

“(B) a foreclosure on a pledge by the Federal mutual bank holding company described in subsection (f)(1).

“(2) **DISTRIBUTION OF NET PROCEEDS.**—Except as provided in paragraph (3), the net proceeds of any liquidation of any Federal mutual bank holding company under paragraph (1) shall be transferred to persons who hold ownership interests in such Federal mutual bank holding company.

“(3) **RECOVERY BY FDIC.**—If the Federal Deposit Insurance Corporation incurs a loss as a result of the default of any insured bank subsidiary of a Federal mutual bank holding company that is liquidated under paragraph (1), the Federal Deposit Insurance Corporation shall succeed to the ownership interests of the depositors of the bank in the Federal mutual bank holding company, to the extent of the Federal Deposit Insurance Corporation’s loss.

“(h) **DEFINITIONS.**—

“(1) **FEDERAL MUTUAL BANK HOLDING COMPANY.**—The term ‘Federal mutual bank holding company’ means a corporation chartered under this section.

“(2) **DEFAULT.**—With respect to a national bank, the term ‘default’ means an adjudication or other official determination by any court of competent jurisdiction, the Comptroller, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for the national bank.”

(b) **TECHNICAL AMENDMENT.**—The table of sections for chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq) is amended by inserting after the item relating to section 5133 the following new items:

“5133A. Mutual national banks.

“5133B. Federal mutual bank holding companies.”.

(c) **APPROPRIATE FEDERAL BANKING AGENCY FOR FEDERAL MUTUAL BANK HOLDING COMPANIES.**—Section 3(q)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)(1)) is amended to read as follows:

“(1) The Comptroller of the Currency in the case of—

“(A) any national banking association, any District bank, or any Federal branch or agency of a foreign bank; and

“(B) supervisory or regulatory proceedings arising from the authority given to the Comptroller under section 5133B of the Revised Statutes of the United States.”.

(d) **MUTUAL HOLDING COMPANY CONVERSION.**—

(1) **IN GENERAL.**—Any mutual holding company may convert to a Federal mutual bank holding company by filing with the Comptroller of the Currency a notice of its election to convert on a specified date that is not earlier than 30 days after the date on which the notice is filed, and the mutual holding company shall be converted to a Federal mutual holding company charter on the date specified in the notice.

(2) **AUTOMATIC CONVERSION.**—On the date 2 years after the date of enactment of this Act, each mutual holding company shall become a Federal mutual bank holding company by operation of law.

(3) **DEFINITIONS.**—For purposes of this subsection, the following definitions shall apply:

(A) **FEDERAL MUTUAL BANK HOLDING COMPANY.**—The term “Federal mutual bank holding company” has the same meaning as in section 5133B of the Revised Statutes of the United States (as added by this section).

(B) **MUTUAL HOLDING COMPANY.**—The term “mutual holding company” has the same meaning as in section 10(o)(10)(A) of the Home Owners’ Loan Act as in effect on the day before the date of enactment of this Act.

(e) **LIMITATION ON FEDERAL REGULATION OF MUTUAL STATE BANKS.**—Except as otherwise provided in Federal law, the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation may not adopt or enforce any regulation which contravenes the corporation governance rules prescribed by State law or regulation for mutual State banks unless the

Comptroller, Board, or Corporation finds that such Federal regulation is necessary to assure the safety and soundness of such State banks.

(f) EFFECTIVE DATE.—This section shall take effect 60 days after the date of enactment of this Act.

SEC. 313. GRANDFATHERED ACTIVITIES OF SAVINGS ASSOCIATIONS.

(a) SAVINGS ASSOCIATIONS THAT CONVERT TO NATIONAL BANKS.—Except as provided in subsection (b), any Federal savings association that converted to a national bank under section 311 may continue to engage in any activity, including the holding of any asset, in which it was lawfully engaged prior to conversion pursuant to section 311.

(b) INVESTMENTS NOT AUTHORIZED FOR NATIONAL BANKS TO HOLD DIRECTLY.—

(1) IN GENERAL.—Notwithstanding section 5136 of the Revised Statutes of the United States or any other provision of law, a national bank resulting from the conversion of a savings association to a national bank under section 311 may retain an equity investment that is not permissible for a national bank to hold directly only if the bank complies with section 5(t)(5) of the Home Owners' Loan Act (as in effect on the day before the date of the enactment of the Thrift Charter Transition Act of 1997) to the same extent as if the institution were a savings association subject to the Home Owners' Loan Act.

(2) REGULATIONS OF EXISTING ACTIVITIES.—Investments held by a national bank resulting from the conversion of a savings association referred to in paragraph (1) held on the date of the enactment of the Thrift Charter Transition Act of 1997 shall be subject to the same regulations and supervision as if the institution were a savings association subject to the Home Owners' Loan Act as in effect on the day before the date of the enactment of the Thrift Charter Transition Act of 1997.

(3) INVESTMENTS ACQUIRED AFTER ENACTMENT.—For investments acquired after the date of enactment of the Thrift Charter Transition Act of 1997 but before the conversion of a savings association to a national bank under section 311, such national bank—

(A) may, if a subsidiary of the bank is engaged in an activity that is not permissible for a national bank to engage in directly, retain an equity investment in the subsidiary only if the bank and the subsidiary comply with section 5136A of the Revised Statutes of the United States; and

(B) shall, in determining compliance with applicable capital standards, deduct from the bank's assets and tangible equity capital the amount of any equity investment (other than investment subject to subparagraph (A)) that is not a permissible investment for a national bank to hold directly.

(c) PERMISSIBLE ACTIVITIES OF STATE SAVINGS ASSOCIATIONS THAT CONVERT TO STATE BANKS.—For purposes of section 24 of the Federal Deposit Insurance Act, a State savings association that converts to a State bank may, to the extent permitted by applicable State law, continue to engage (in the same manner) in any activity, including the holding of any asset, permitted under section 28 of the Federal Deposit Insurance Act (as in effect on the day before the date of enactment of this Act) in which the savings association was lawfully engaged on the day before the date of enactment of this Act.

(d) TRANSITION PROVISION.—Notwithstanding any other provision of this Act, in the case of any insured savings association described in this section securities offerings and other financing transactions completed by such an institution on or before the date of its conversion pursuant to section 311 shall continue to be governed by the capital and accounting rules of the Office of Thrift Supervision as in effect on the date that such institution converts to a bank or becomes treated as a State bank.

SEC. 314. BRANCHES OF FORMER SAVINGS ASSOCIATIONS.

(a) BRANCHES.—

(1) EXISTING BRANCHES RETAINED.—Notwithstanding any other provision of law, any depository institution that qualifies under paragraph (2), and any successor to such an institution, may continue, after the depository institution becomes a bank, to operate any branch or agency that the institution operated as a branch or agency, or was in the process of establishing as a branch or agency, respectively, as of the date of enactment of the Thrift Charter Transition Act of 1997.

(2) DEPOSITORY INSTITUTION DEFINED.—A depository institution qualifies under this paragraph for purposes of paragraph (1) if it—

(A)(i) is a savings association on the date of enactment of the Thrift Charter Transition Act of 1997; or

(ii) has filed an application to become a savings association by the date of enactment of the Thrift Charter Transition Act of 1997; and

(B) on or before the date 2 years after the date of enactment of this Act, becomes a State or national bank.

(b) BRANCHING RIGHTS OBTAINED IN ASSISTED ACQUISITIONS.—Notwithstanding any other provision of law, if a depository institution has branching rights under a contract entered into with the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation or pursuant to a resolution of the Federal Home Loan Bank Board or action of the Office of Thrift Supervision or Resolution Trust Corporation as part of a transaction in which the depository institution acquired or merged with a failed or failing savings association (prior to 1992), the depository institution may continue to branch in a manner consistent with that contract, resolution, or action.

(c) BRANCHING RIGHTS OF STATE CHARTERED INSTITUTIONS NOT AFFECTED.—Except as provided in subsection (b), applicable State law and Federal law shall govern the authority of a savings association that converts to a State savings association charter or a State bank charter to continue to operate any branch or agency that the institution operated prior to conversion and the future branching rights of the converted institution.

(d) INTRASTATE BRANCHES.—Any branch operated under subsection (a)(1) in a State other than the depository institution's home State may acquire, establish or operate additional branches in the host State to the same extent as permitted for a national bank with its main office located in the host State.

SEC. 315. PROGRAMS FOR PROMOTING HOUSING FINANCE.

Section 22 of the Federal Deposit Insurance Act (12 U.S.C. 1830) is amended by—

(1) striking “It is not” and inserting “(a) IN GENERAL.—It is not”; and

(2) adding at the end the following new subsection:

“(b) PROGRAMS FOR PROMOTING HOUSING FINANCE.—

“(1) FINDINGS.—The Congress finds that it is in the national interest to protect and promote housing finance in the process of converting savings associations to banks and eliminating the separate Federal regulation of savings associations.

“(2) PROGRAMS REQUIRED.—In furtherance of paragraph (1), each appropriate Federal banking agency shall—

“(A) develop and implement a program designed to—

“(i) facilitate the conversion of savings associations to banks and the treatment of State savings associations as State banks; and

“(ii) promote housing finance by assuring that insured depository institutions may, at their own election, specialize in acquisition, development, residential mortgage finance, and residential mortgage and housing production lending; and

“(B) develop guidelines and procedures for assuring that insured depository institutions are not subject to supervisory criticism or sanction for prudently concentrating in acquisition, development, residential mortgage finance, and residential mortgage and housing production lending.”.

SEC. 316. SAVINGS AND LOAN HOLDING COMPANIES.

Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended by inserting after subsection (f) (as so redesignated by section 102(b)(2) of this Act) the following new subsection:

“(g) SAVINGS AND LOAN HOLDING COMPANY POWERS GRANDFATHERED.—

“(1) IN GENERAL.—A company that qualifies under paragraph (2) may—

“(A) maintain or enter into any nonbank affiliation that the company was permitted pursuant to section 10 of the Home Owners' Loan Act to maintain or enter into prior to becoming a bank holding company pursuant to paragraph (2)(C); and

“(B) engage in any activity, including holding any asset, in which the company or any affiliate described in subparagraph (A) was permitted pursuant to section 10 of the Home Owners' Loan Act to engage prior to becoming a bank holding company pursuant to paragraph (2)(C).

“(2) QUALIFIED GRANDFATHERED COMPANIES.—

“(A) GRANDFATHERED COMPANIES DEFINED.—A company qualifies under this paragraph for purposes of paragraph (1) if—

“(i) as of the date of enactment of the Thrift Charter Transition Act of 1997, the company—

“(I) was a savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act, as in effect on that date); or

- “(II) had filed an application to become a savings and loan holding company; and
- “(ii) the company—
- “(I) becomes a bank holding company by operation of law; or
- “(II) was exempt from section 4 (as in effect on the date of enactment of the Thrift Charter Transition Act of 1997) under an order issued by the Board under section 4(d) (as in effect on the date of enactment of the Thrift Charter Transition Act of 1997).
- “(B) HOLDING COMPANIES WITH IDENTICAL SHAREHOLDERS.—A company also qualifies under this paragraph for purposes of paragraph (1) if the company—
- “(i) is formed by a company qualified under subparagraph (A); and
- “(ii) the shareholders of such company are identical to the shareholders of the company referred to in (i).
- “(C) OPERATION OF LAW DEFINED.—For purposes of this subsection, a savings and loan holding company becomes a bank holding company by operation of law if a savings association controlled by the company is converted to a bank or is treated as a bank under an amendment made by the Thrift Charter Transition Act of 1997.
- “(3) REQUIREMENTS TO RETAIN GRANDFATHERED POWERS.—
- “(A) IN GENERAL.—Paragraph (1) shall cease to apply to a company if the company does not comply with this paragraph.
- “(B) ACQUISITION OF BANKS .—
- “(i) IN GENERAL.—The company may not acquire (by any form of business combination) control of a bank after the date of enactment of the Thrift Charter Transition Act of 1997.
- “(ii) EXCEPTIONS TO PROHIBITION.—Clause (i) shall not apply to the acquisition of—
- “(I) a bank, during the period ending on the date 2 years after the date of enactment of the Thrift Charter Transition Act of 1997, if the acquisition results from the conversion of a savings association or the treatment of a savings association as a bank under amendments made by the Thrift Charter Transition Act of 1997;
- “(II) a bank, if the assets of such bank are merged with an insured depository institution which was controlled by such company before the date of enactment of the Thrift Charter Transition Act of 1997, and if the resulting institution continues to comply with the requirements of Section 10(m) of the Home Owners’ Loan Act as in effect on the day prior to enactment of the Thrift Charter Transition Act of 1997;
- “(III) shares held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);
- “(IV) shares held by any person as a bona fide fiduciary solely for the benefit of employees of either the company or any subsidiary of the company and the beneficiaries of those employees;
- “(V) an entity described in section 2(c)(2);
- “(VI) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;
- “(VII) shares held in an account solely for trading purposes;
- “(VIII) shares over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;
- “(IX) shares or assets acquired in securing or collecting a debt previously contracted in good faith, during the 2-year period beginning on the date of such acquisition or for such additional time (not exceeding 3 years) as the Board may permit if the Board determines that such an extension will not be detrimental to the public interest;
- “(X) a bank from the Federal Deposit Insurance Corporation, in any capacity; and
- “(XI) a bank in an acquisition in which the bank has been found to be in danger of default by the appropriate Federal or State authority.
- “(C) The company may not control a savings association or a national bank resulting from the conversion of a savings association to a national bank pursuant to section 311 if such savings association or national bank fails to comply with the requirements of section 5(c)(2) and section 10(m) of the Home Owners’ Loan Act as in effect on the day before the date of the enactment of the Thrift Charter Transition Act of 1997.

“(4) GRANDFATHERED POWERS NONTRANSFERABLE.—

“(A) IN GENERAL.—Paragraph (1) shall not apply with respect to any company if after the date of the enactment of the Thrift Charter Transition Act of 1997—

“(i) any company (other than a company qualified under paragraph (2)) not under common control with such company as of that date acquires, directly, or indirectly, control of the company; or

“(ii) the company is the subject of any merger, consolidation, or other type of business combination as a result of which a company (other than a company qualified under paragraph (2)) not under common control with such company acquires, directly or indirectly, control of such company.

“(B) ANTI-EVASION.—The appropriate Federal banking agency may issue interpretations, regulations, or orders that it deems necessary to administer and carry out the purpose, and prevent evasions, of this paragraph, including determining that (notwithstanding the form of a transaction) the transaction would in substance effect a change in control.

“(5) SAVINGS AND LOAN HOLDING COMPANIES THAT BECOME BANK HOLDING COMPANIES.—

“(A) EXCLUSION FROM APPLICATION REQUIREMENT.—A company that qualifies under subparagraph (B) shall not be required to obtain the approval of the Board under subsection (a) to become a bank holding company if such company becomes a bank holding company after the date of enactment of the Thrift Charter Transition Act of 1997 as a result of the conversion of a savings association subsidiary to a bank or by virtue of the treatment of a savings association subsidiary as a bank under an amendment made by this Act.

“(B) COMPANIES EXCLUDED FROM APPLICATION REQUIREMENT.—A company qualifies for purposes of subparagraph (A) if the company, as of the date of the enactment of the Thrift Charter Transition Act of 1997, was a savings and loan holding company (as defined in section 10(a) of the Home Owners’ Loan Act as in effect on that date) or has filed an application to become a savings and loan holding company.

“(C) SUPERVISION AND REGULATION OF COMPANIES THAT WERE PREVIOUSLY SAVINGS AND LOAN HOLDING COMPANIES.—

“(i) IN GENERAL.—Any company that qualifies under paragraph (2) and complies with paragraph (3) and was registered and regulated under section 10 of the Home Owners’ Loan Act on the day before becoming a bank holding company described in paragraphs (2) and (3) shall continue to be regulated, for a period of 3 years after becoming such holding company, under the terms of section 10 of the Home Owners’ Loan Act in the same manner and to the same extent and subject to the same requirements as by the Office of Thrift Supervision before the date of the enactment of the Thrift Charter Transition Act of 1997.

“(ii) HOLDING COMPANY CAPITAL EXCEPTION.—With regard to holding company capital, any company that qualifies under paragraph (2) and complies with paragraph (3) and was registered and regulated under section 10 of the Home Owners’ Loan Act before June 19, 1997, or had an application pending to do so on such date, shall continue to be regulated under the terms of section 10 of the Home Owners’ Loan Act in the same manner and to the same extent and subject to the same requirements as by the Office of Thrift Supervision before the date of the enactment of the Thrift Charter Transition Act of 1997.

“(iii) SUBMISSIONS TO REGULATORS.—A company shall provide for a period of 3 years after becoming a bank holding company described in paragraphs (2) and (3) the appropriate Federal banking agency with—

“(I) notice of acquisition of any company not controlled or affiliated on the date of enactment of the Thrift Charter Transition Act of 1997 that is engaged in nonbanking activities within 15 days after completion of any such transaction; and

“(II) copies of such quarterly and annual reports as it is otherwise required to file with any other governmental agency.

“(iv) REPORTING REQUIREMENTS.—The appropriate Federal banking agency may adopt, for a period of 3 years after a company becomes a bank holding company described in paragraphs (2) and (3), reporting requirements substantially similar to and no more burdensome than required by the Office of Thrift Supervision as of January 1, 1997.

“(v) REGULATORY AUTHORITY.—The appropriate Federal banking agency shall, for a period of 3 years after a company becomes a bank holding company described in paragraphs (2) and (3)—

“(I) have the same authority to examine a company or any subsidiary or affiliate thereof only to the same extent as the Office of Thrift Supervision had as of January 1, 1997; and

“(II) conduct only the same type of examination and with the same frequency as the Office of Thrift Supervision prior to January 1, 1997, unless required to prevent an unsafe or unsound activity or course of conduct of the savings institution converted to a bank pursuant to the Thrift Charter Transition Act of 1997.”.

SEC. 317. TREATMENT OF REFERENCES IN ADJUSTABLE RATE MORTGAGES.

(a) TREATMENT OF REFERENCES IN ADJUSTABLE RATE MORTGAGES ISSUED BEFORE FIRREA.—For purposes of section 402(e) of Financial Institutions Reform, Recovery, and Enactment Act of 1989 (12 U.S.C. 1437 note), any reference in such section to—

(1) the Director of the Office of Thrift Supervision shall be deemed to be a reference to the Secretary of the Treasury; and

(2) a Savings Association Insurance Fund member shall be deemed to be a reference to an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act).

(b) TREATMENT OF REFERENCES IN ADJUSTABLE RATE MORTGAGES INSTRUMENTS ISSUED AFTER FIRREA.—

(1) IN GENERAL.—For purposes of adjustable rate mortgage instruments that are in effect as of the date of enactment of this Act, any reference in the instrument to the Director of the Office of Thrift Supervision or Savings Association Insurance Fund members shall be treated as a reference to the Secretary of the Treasury or insured depository institutions (as defined in section 3 of the Federal Deposit Insurance Act), as appropriate.

(2) SUBSTITUTION FOR INDEXES.—If any index used to calculate the applicable interest rate on any adjustable rate mortgage instrument is no longer calculated and made available as a direct or indirect result of the enactment of this title, any index—

(A) made available by the Secretary of the Treasury; or

(B) determined by the Secretary of the Treasury, pursuant to paragraph

(4), to be substantially similar to the index which is no longer calculated or made available,

may be substituted by the holder of any such adjustable rate mortgage instrument upon notice to the borrower.

(3) AGENCY ACTION REQUIRED TO PROVIDE CONTINUED AVAILABILITY OF INDEXES.—Promptly after the enactment of this subsection, the Secretary of the Treasury, the Chairperson of the Federal Deposit Insurance Corporation, and the Comptroller of the Currency shall take such action as may be necessary to assure that the indexes prepared by the Director of the Office of Thrift Supervision immediately before the enactment of this subsection and used to calculate the interest rate on adjustable rate mortgage instruments continue to be available.

(4) REQUIREMENTS RELATING TO SUBSTITUTE INDEXES.—If any agency can no longer make available an index pursuant to paragraph (3), an index that is substantially similar to such index may be substituted for such index for purposes of paragraph (2) if the Secretary of the Treasury determines, after notice and opportunity for comment, that—

(A) the new index is based upon data substantially similar to that of the original index; and

(B) the substitution of the new index will result in an interest rate substantially similar to the rate in effect at the time the original index became unavailable.

SEC. 318. COST OF FUNDS INDEXES.

(a) COST OF FUNDS INDEX DEFINED.—The term “cost of funds indexed” means any index that is published by a Federal home loan bank and is based, in whole or in part, upon the cost of funds of such bank’s members.

(b) CALCULATIONS BASED ON TYPE OF CHARTER AND INSURANCE FUND MEMBERSHIP OF MEMBERS.— If any cost of funds index includes data based on charter type, insurance fund membership, or other similar characteristics of members of a Federal home loan bank, such index shall be calculated after the date of the enactment of this Act using data only from insured depository institutions which were bank members and whose data was included in such index on or before such date of enactment.

(c) ACQUISITION OF DATA.—

(1) IN GENERAL.—Each insured depository institution the data from which is required to compile a cost of funds index in accordance with subsection (b) shall provide to the Federal home loan bank which maintains the index such information as may be necessary, and in such form as may be appropriate, for the bank to calculate and publish the index.

(2) ENFORCEMENT BY BANKING AGENCIES.—Each appropriate Federal banking agency shall take such action as may be necessary to ensure that insured depository institutions which are required to provide information to any Federal home loan bank under paragraph (1) furnish such information on a timely basis and in the form required by the bank.

(3) TREATMENT OF INSTITUTIONS.—Notwithstanding any other provision of law, an insured depository institution which furnishes information to a Federal home loan bank pursuant to this section for use in compiling a cost of funds index shall not be deemed to control, directly, or indirectly, such index.

(d) CERTAIN DATA EXCLUDED.—Notwithstanding subsections (b) and (c), no cost of funds index shall include any data from any insured depository institution which results from the merger, consolidation, or other combination of a member of a Federal home loan bank with a nonmember of any such bank if—

(1) the total assets of the nonmember exceed the total assets of the bank member at the time of such merger, consolidation, or other combination; or

(2) in the case of a merger, consolidation, or other merger in which a member of a Federal home loan bank is the resulting insured depository institution, combined ratio of the average amount of single-family loan balances to average total assets of all insured depository institutions involved in such merger, consolidation, or other combination for the 12-months period ending on the date of such transaction is less than 70 percent.

(e) OTHER DEFINITIONS.—For purposes of this section, the terms “appropriate Federal banking agency” and “insured depository institution” shall have the same meanings as in section 3 of the Federal Deposit Insurance Act.

Subtitle B—Ending Separate Federal Regulation of Savings Associations and Savings and Loan Holding Companies

SEC. 321. STATE SAVINGS ASSOCIATIONS TREATED AS STATE BANKS UNDER FEDERAL BANKING LAW.

(a) AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.—Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended—

(1) by striking paragraph (2) of subsection (a) and inserting the following new paragraph:

“(2) STATE BANK.—

“(A) IN GENERAL.—The term ‘State bank’ means any bank, banking association, trust company, savings bank, industrial bank (or similar depository institution which the Board of Directors finds to be operating in substantially the same manner as an industrial bank), building and loan association, savings and loan association, homestead association, cooperative bank, or other banking institution—

“(i) which is engaged in the business of receiving deposits, other than trust funds (as defined in this section); and

“(ii) which—

“(I) is incorporated under the laws of any State;

“(II) is organized and operating according to the laws of the State in which such institution is chartered or organized; or

“(III) is operating under the Code of Law for the District of Columbia (except a national bank).

“(B) CERTAIN INSURED BANKS INCLUDED.—The term ‘State bank’ includes any cooperative bank or other unincorporated bank the deposits of which were insured by the Corporation on the day before the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

“(C) CERTAIN UNINSURED BANKS EXCLUDED.—The term ‘State bank’ shall not include any cooperative bank or other unincorporated bank the deposits of which were not insured by the Corporation on the day before the date

- of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.”; and
- (2) in subsection (q), by—
- (A) inserting “and” after the semicolon at the end of paragraph (2);
 - (B) striking “, and” at the end of paragraph (3) and inserting a period; and
 - (C) striking paragraph (4).

(b) AMENDMENT TO THE BANK HOLDING COMPANY ACT OF 1956.—Section 2(a)(5) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(5)) is amended by striking subparagraph (E).

(c) AMENDMENTS TO THE FEDERAL RESERVE ACT.—Section 1 of the Federal Reserve Act (12 U.S.C. 221) is amended by inserting “(as defined in section 3 of the Federal Deposit Insurance Act)” after “State bank” each place such term appears.

(d) EFFECTIVE DATE.—This section shall take effect 2 years after the date of the enactment of this Act.

SEC. 322. POWERS OF FEDERAL SAVINGS ASSOCIATIONS ACCORDED TO NATIONAL BANKS.

(a) ADDITIONAL POWERS FOR NATIONAL BANKS TO ACCOMMODATE FEDERAL SAVINGS ASSOCIATION CONVERSIONS.—Subsection (a) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) (as so designated by section 151(a) of this Act) is amended by adding at the end the following new paragraph:

“(12) To exercise all the powers and privileges authorized by the Director of the Office of Thrift Supervision for a Federal savings association on the day before the date of enactment of the Financial Services Competition Act of 1997, subject to the requirements otherwise applicable to national banks, including sections 5136A and 5155, except this paragraph shall not confer on a national bank the power granted to a Federal savings association under section 5(c)(4)(B) of the Home Owners’ Loan Act to invest in a corporation engaged in real estate development and the power granted to a Federal savings association under section 5(c)(4)(B) of the Home Owners’ Loan Act to invest in a corporation may be exercised by a national bank only if the investment is made in a corporation that is a subsidiary of the bank.”.

(b) EFFECTIVE DATE.—This section shall take effect 2 years after the date of the enactment of this Act.

SEC. 323. HOME OWNERS’ LOAN ACT REPEALED.

Effective 2 years after the date of enactment of this Act, the Home Owners’ Loan Act (12 U.S.C. 1461–1468c) is repealed.

SEC. 324. CONFORMING AMENDMENT REFLECTING ELIMINATION OF THE FEDERAL THRIFT CHARTER AND THE SEPARATE SYSTEM OF THRIFT REGULATION.

Section 2704(c) of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 is amended to read as follows:

“(c) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the earlier of—

“(1) January 1, 2000; or

“(2) the end of the 2-year period beginning on the date of the enactment of the Thrift Charter Transition Act of 1997.”.

SEC. 325. CONFORMING AMENDMENTS TO THE FEDERAL HOME LOAN BANK ACT.

(a) AMENDMENT TO SECTION 2.—Section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422) is amended by striking paragraph (9) and redesignating paragraphs (10) through (12) as paragraphs (9) through (11), respectively.

(b) AMENDMENTS TO SECTION 10.—Subsection (h) of section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended to read as follows:

“(h) [Repealed]”.

(c) AMENDMENTS TO SECTION 11.—Section 11(d)(2)(C) of the Federal Home Loan Bank Act (12 U.S.C. 1431(e)(2)(C)) (as so redesignated by section 174(e) of this Act) is amended by—

(1) striking “, and with respect to the collection and settlement (including payment by the payor institution) of items payable by Federal savings and loan associations and Federal mutual savings banks,”; and

(2) striking “, associations, or banks”.

(d) AMENDMENT TO SECTION 18.—Section 18(c) of the Federal Home Loan Bank Act (12 U.S.C. 1438(c)) is repealed.

(e) AMENDMENT TO SECTION 22.—Section 22(a) of the Federal Home Loan Bank Act (12 U.S.C. 1442(a)) is amended by striking “, and the Director of the Office of Thrift Supervision” each place such appears and inserting “and” before “the Chairperson of the National Credit Union Administration”.

(f) AMENDMENT TO SECTION 24.—Section 24 of the Federal Home Loan Bank Act (12 U.S.C. 1444) is repealed.

(g) EFFECTIVE DATE.—This section shall become effective 2 years after the date of enactment of this Act.

SEC. 326. AMENDMENTS TO TITLE 11, UNITED STATES CODE.

(a) DEFINITION OF FEDERAL MUTUAL BANK HOLDING COMPANY.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (21B) the following new paragraph:

“(21C) ‘Federal mutual bank holding company’ has the same meaning as in section 5133B(h)(1) of the Revised Statutes of the United States.”.

(b) CONSERVATOR OR RECEIVER MAY PETITION.—Section 303(b) of title 11, United States Code, is amended—

(1) in paragraph (3)(B) by striking “or” at the end;

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

(3) by adding at the end the following:

“(5) in a proceeding concerning a Federal mutual bank holding company, the Comptroller of the Currency.”

(c) EFFECT OF INVOLUNTARY PETITION BY COMPTROLLER.—

(1) EXEMPTION FROM INDEMNIFICATION.—Section 303(e) of title 11, United States Code, is amended by inserting “, other than a petitioner specified in subsection (b)(5),” after “petitioners under this section”.

(2) RESTRICTION ON OPERATION PENDING COURT ORDER OF RELIEF.—Section 303(f) of title 11, United States Code, is amended by inserting “or a petition was filed by a petitioner specified in subsection (b)(5)” after “otherwise”.

(3) INTERIM TRUSTEE TO BE APPOINTED.—Section 303(g) of title 11, United States Code, is amended by inserting after the 1st sentence the following new sentence: “Upon the filing of a petition by a petitioner specified in subsection (b)(5), and without requiring notice or hearing, the United States Trustee shall appoint an interim trustee from a list submitted by the Comptroller of the Currency of 5 disinterested persons that are qualified and willing to serve.”

Subtitle C—Combining OTS and OCC

SEC. 331. PROHIBITION OF MERGER OR CONSOLIDATION REPEALED.

Section 321 of title 31, United States Code, is amended by striking subsection (e).

SEC. 332. SECRETARY OF THE TREASURY REQUIRED TO FORMULATE PLANS FOR COMBINING OFFICE OF THRIFT SUPERVISION WITH OFFICE OF THE COMPTROLLER OF THE CURRENCY.

Not later than 9 months after the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Director of the Office of Thrift Supervision and the Comptroller of the Currency, shall formulate a plan for consolidating the Office of Thrift Supervision with the Office of the Comptroller of the Currency by the end of the 2-year period beginning on the date of enactment of this Act. The Director of the Office of Thrift Supervision and the Comptroller of the Currency shall implement that plan, notwithstanding any other provision of Federal banking laws.

SEC. 333. OFFICE OF THRIFT SUPERVISION AND POSITION OF DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION ABOLISHED.

Effective 2 years after the date of enactment of this Act, the Office of Thrift Supervision and the position of Director of the Office of Thrift Supervision are abolished.

SEC. 334. RECONFIGURATION OF BOARD OF DIRECTORS OF FDIC AS A RESULT OF REMOVAL OF DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.

(a) IN GENERAL.—Section 2(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1812(a)(1)) is amended to read as follows:

“(1) IN GENERAL.—The management of the Corporation shall be vested in a Board of Directors consisting of 5 members—

“(A) 1 of whom shall be the Comptroller of the Currency; and

“(B) 4 of whom shall be appointed by the President, and with the advice and consent of the Senate, from among individuals who are citizens of the United States, 1 of whom shall have State bank supervisory experience.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 2(d)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1812(d)(2)) is amended—

(A) by striking “or the office of Director of the Office of Thrift Supervision”;

(B) by striking “or such Director”;

(C) by striking “or the acting Director of the Office of Thrift Supervision, as the case may be”; and

(D) by striking “or Director”.

(2) Section 2(f)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1812(f)(2)) is amended by striking “or of the Office of Thrift Supervision”.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect at the end of the 2-year period beginning on the date of the enactment of this Act.

SEC. 335. CONTINUATION PROVISIONS.

(a) CONTINUATION OF ORDERS, RESOLUTIONS, DETERMINATIONS AND REGULATIONS.—All orders, resolutions, determinations and regulations of the Office of Thrift Supervision that have been issued, made, prescribed or allowed to become effective by the Office of Thrift Supervision (including orders, resolutions, determinations and regulations that relate to the conduct of conservatorship and receiverships), or by a court of competent jurisdiction, and are in effect on the day before the date of enactment, shall continue in effect according to the terms of such orders, resolutions, determinations, and regulations and shall be enforceable by or against the appropriate successor agency until modified, terminated, set aside or superseded in accordance with applicable law by the appropriate successor agency or by a court of competent jurisdiction or by operation of law.

(b) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Office of Thrift Supervision shall abate because of the enactment of this Act, except that the appropriate successor agency to the Office of Thrift Supervision shall be substituted for the Office of Thrift Supervision as a party to any such action or proceeding.

(c) CONTINUATION OF AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States, and any successor to such agency, department, or instrumentality, that was providing supporting services to the Office of Thrift Supervision shall—

(1) continue to provide such services, on a reimbursable basis or as otherwise agreed before the date of enactment, to the Office of Thrift Supervision; and

(2) consult with the Office of Thrift Supervision to coordinate and facilitate a prompt and reasonable completion or termination of such services.

(d) TRANSFER OF PROPERTY.—Not later than two years of the date of enactment, all property of the Office of Thrift Supervision shall be transferred to the Office of the Comptroller of the Currency, or another appropriate successor agency, in accordance with the division of responsibilities and activities effected by this Act. For purposes of this subsection, the term “property” includes, but is not limited to, all interests in real property and all personal property, including financial assets, computer hardware and software, furniture, fixtures, books, accounts, records, reports of examination, work papers and correspondence related to such reports of examination, and any information, materials, property, and assets not specifically listed. The Secretary of the Treasury shall resolve any disagreement between successor agencies.

Subtitle D—Technical and Conforming Amendments to the Depository Institution Statutes

SEC. 341. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.

(a) AMENDMENT TO SECTION 1.—Section 1(a) of the Federal Deposit Insurance Act (12 U.S.C. 1811(a)) is amended by striking “and savings associations”.

(b) AMENDMENTS TO SECTION 3.—Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended—

(1) in subsection (b)—

(A) by striking subparagraph (A) of paragraph (1);

(B) by striking “and the Director of the Office of Thrift Supervision jointly determine” in paragraph (1)(C) and inserting “determines”;

(C) by redesignating subparagraphs (B) and (C) of paragraph (1) (as amended by subparagraph (B) of this paragraph) as subparagraphs (A) and (B), respectively;

(D) by striking paragraph (2); and

(E) by redesignating paragraph (3) as paragraph (2);

(2) in subsection (1)(5)—

- (A) by striking “or savings association” each place such term appears; and
- (B) by striking “Director of the Office of Thrift Supervision”; and
- (3) in subsection (z), by striking “the Director of the Office of Thrift Supervision.”
- (c) AMENDMENT TO SECTION 4.—Section 4(a) of the Federal Deposit Insurance Act (12 U.S.C. 1814(a)) is amended—
 - (1) by striking “(1) BANKS.—”; and
 - (2) by striking paragraph (2).
- (d) AMENDMENTS TO SECTION 7.—Section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817) is amended—
 - (1) in subsection (a)(2)(A), by striking “the Director of the Office of Thrift Supervision.”;
 - (2) in subsection (a)(2)(B)—
 - (A) by inserting “and” after “Comptroller of the Currency.”; and
 - (B) by striking “and the Director of the Office of Thrift Supervision”;
 - (3) in subsection (a)(3)—
 - (A) by inserting “and” after “Comptroller of the Currency.”; and
 - (B) by striking “, and the Director of the Office of Thrift Supervision”;
 - (4) in subsection (a)(7), by striking “the Director of the Office of Thrift Supervision.”; and
 - (5) by striking subsection (n).
- (e) AMENDMENTS TO SECTION 8.—Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended—
 - (1) in paragraph (7) (as so redesignated by section 161(d)(1) of this Act) of subsection (a)—
 - (A) by striking subparagraph (B); and
 - (B) by redesignating subparagraphs (C) through (H) as subparagraphs (B) through (G), respectively;
 - (2) in subsection (b)—
 - (A) by striking paragraph (9); and
 - (B) by redesignating paragraph (10) as paragraph (9);
 - (3) in subsection (o), by striking the last sentence; and
 - (4) in subsection (w)(3)(A), by striking “and the Office of Thrift Supervision, where appropriate”.
- (f) AMENDMENT TO SECTION 10.—Section 10(c) of the Federal Deposit Insurance Act (12 U.S.C. 1820(c)) is amended by striking “savings association.”.
- (g) AMENDMENTS TO SECTION 11.—Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended—
 - (1) in subsection (c)—
 - (A) by striking paragraph (6); and
 - (B) by redesignating paragraphs (7) through (13) as paragraphs (6) through (12), respectively;
 - (2) in subsection (d)(2)(F), by striking “receiver—” and all that follows through “(ii) with” and inserting “receiver with”;
 - (3) in subsection (d)(17)(A), by striking “or the Director of the Office of Thrift Supervision”; and
 - (4) in subsection (d)(18)(B), by striking “or the Director of the Office of Thrift Supervision”.
- (h) AMENDMENT TO SECTION 13.—Section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) is amended by striking subsection (k).
- (i) AMENDMENTS TO SECTION 18.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended—
 - (1) in subsection (c)(2)—
 - (A) by inserting “and” after the semicolon at the end of subparagraph (B);
 - (B) in subparagraph (C), by striking “(except a District bank or a savings bank supervised by the Director of the Office of Thrift Supervision); and” and inserting “(except a District bank).”; and
 - (C) by striking subparagraph (D);
 - (2) in subsection (g)(1), by striking “and the Director of the Office of Thrift Supervision”;
 - (3) in subsection (i)(2)—
 - (A) by inserting “and” after the semicolon at the end of subparagraph (B);
 - (B) by striking “; and” in subparagraph (C) and inserting a period; and
 - (C) by striking subparagraph (D); and
 - (4) by striking subsection (m).
- (j) AMENDMENTS TO SECTION 22.—Section 22 of the Federal Deposit Insurance Act (12 U.S.C. 1830) is amended—

(1) by striking “or State savings associations and in favor of national or member banks or Federal savings associations, respectively” and inserting “and in favor of national or member banks”; and

(2) by striking “and savings associations”.

(k) AMENDMENT TO SECTION 28.—Section 28 of the Federal Deposit Insurance Act (12 U.S.C. 1831e) is repealed.

(l) AMENDMENT TO SECTION 33.—Section 33(e) of the Federal Deposit Insurance Act (12 U.S.C. 1831j(e)) is amended by striking “, and the Director of the Office of Thrift Supervision” and inserting “and” before “the Comptroller of the Currency”.

(m) AMENDMENT TO SECTION 38.—Section 38(o) of the Federal Deposit Insurance Act (12 U.S.C. 1831o(o)) is repealed.

SEC. 342. AMENDMENT TO THE BANK HOLDING COMPANY ACT OF 1956.

Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended by striking subsections (i) and (j) and inserting the following new subsections:

“(i) [Repealed]

“(ii) [Repealed]”.

SEC. 343. AMENDMENTS TO THE FEDERAL RESERVE ACT.

(a) AMENDMENTS TO SECTION 11.—Section 11(a)(2)(B) of the Federal Reserve Act (12 U.S.C. 248(a)(2)(B)) is amended—

(1) by inserting “and” after the comma at the end of clause (ii);

(2) by striking clause (iii); and

(3) by redesignating clause (iv) as clause (iii).

(b) AMENDMENTS TO SECTION 19.—Section 19(b) of the Federal Reserve Act (12 U.S.C. 461(b)) is amended—

(1) in paragraph (1)(A)—

(A) by inserting “and” after the semicolon at the end of clause (v);

(B) by striking clause (vi); and

(C) by redesignating clause (vii) as clause (vi); and

(2) by striking “the Director of the Office of Thrift Supervision,” each place it appears.

SEC. 344. AMENDMENTS TO ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982.

Section 804(a) of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3803) is amended—

(1) in paragraph (1)—

(A) by inserting “(as such term is defined in section 3 of the Federal Deposit Insurance Act) and all other housing creditors” after “with respect to banks”; and

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

(2) by deleting “, and” at the end of paragraph (2) and inserting a period; and

(3) by striking paragraph (3).

SEC. 345. AMENDMENTS TO THE BANK PROTECTION ACT OF 1968.

Section 2 of the Bank Protection Act of 1968 (12 U.S.C. 1881) is amended—

(1) by striking the comma at the end of paragraph (2) and inserting “, and”;

(2) by striking “, and” at the end of paragraph (3) and inserting a period; and

(3) by striking paragraph (4).

SEC. 346. AMENDMENTS TO THE COMMUNITY REINVESTMENT ACT OF 1977.

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

(1) in paragraph (1)—

(A) by inserting “and” after the semicolon at the end of subparagraph (B); and

(B) by striking “, and” in subparagraph (C) and inserting a period;

(2) by striking the first paragraph (2); and

(3) in paragraph (3)(A), by striking “or Federal savings and loan association”.

SEC. 347. AMENDMENTS TO THE DEPOSITORY INSTITUTIONS DEREGULATION AND MONETARY CONTROL ACT OF 1980.

Section 208(a) of the Depository Institutions Deregulation and Monetary Control Act of 1980 (12 U.S.C. 3507(a)) is amended—

(1) by striking “, and” at the end of paragraph (1)(C) and inserting a period; and

(2) by striking paragraph (2).

SEC. 348. AMENDMENTS TO THE DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT.

(a) AMENDMENT TO SECTION 202.—Section 202(2) of the Depository Institution Management Interlocks Act (12 U.S.C. 3201(2)) is amended by inserting “or” before

“a company which would be” and striking “, or a savings and loan holding company” and all that follows through “Housing Act”.

(b) AMENDMENT TO SECTION 205.—Section 205 of the Depository Institution Management Interlocks Act (12 U.S.C. 3204) is amended—

(1) in the portion of paragraph (8)(A) which precedes clause (i), by striking “diversified savings” and all that follows through “with respect to” and inserting “company which is, or has filed an application to become, a depository institution holding company and which satisfies the consolidated net worth and consolidated net earnings requirements for a diversified savings and loan holding company (as set forth in section 10(1)(F) of the Home Owners’ Loan Act, as such section is in effect and interpreted on such date, which shall be applicable for purposes of this paragraph without regard to the fact that a depository institution subsidiary of such holding company has ceased to be a savings association after January 1, 1997) with respect to”; and

(2) by striking paragraph (9).

(c) AMENDMENTS TO SECTION 207.—Section 207 of the Depository Institution Management Interlocks Act (12 U.S.C. 3206) is amended—

(1) by striking paragraph (4); and

(2) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(d) AMENDMENT TO SECTION 209.—Section 209 of the Depository Institution Management Interlocks Act (12 U.S.C. 3207) is amended—

(1) by inserting “and” after the comma at the end of paragraph (3);

(2) by striking paragraph (4); and

(3) by redesignating paragraph (5) as paragraph (4).

SEC. 349. AMENDMENT TO THE ECONOMIC GROWTH AND REGULATORY PAPERWORK REDUCTION ACT OF 1996.

Section 2227 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Public Law 104–208) is amended by striking “the Director of the Office of Thrift Supervision.”.

SEC. 350. AMENDMENT TO THE EMERGENCY HOME FINANCE ACT OF 1970.

Section 305(b) of the Emergency Home Finance Act of 1970 (12 U.S.C. 1454(b)) is amended by striking “any Federal savings and loan association.”.

SEC. 351. AMENDMENTS TO THE EXPEDITED FUNDS AVAILABILITY ACT.

Section 610(a) of the Expedited Funds Availability Act (12 U.S.C. 4009(a)) is amended—

(1) by inserting “and” after the semicolon at the end of paragraph (1)(C);

(2) by striking paragraph (2); and

(3) by redesignating paragraph (3) as paragraph (2).

SEC. 352. AMENDMENTS TO THE FEDERAL CREDIT UNION ACT.

(a) AMENDMENT TO SECTION 107.—Section 107(7)(D) of the Federal Credit Union Act (12 U.S.C. 1757(7)(D)) is amended by striking “the Federal Savings and Loan Insurance Corporation or”.

(b) AMENDMENT TO SECTION 206.—Section 206(g)(7)(A)(ii) of the Federal Credit Union Act (12 U.S.C. 1786(g)(7)(A)(ii)) is amended by striking “, or as a savings association under section 8(b)(8) of such Act”.

SEC. 353. AMENDMENTS TO THE FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978.

(a) AMENDMENT TO SECTION 1003(1).—Section 1003(1) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3302(1)) is amended by striking “the Office of Thrift Supervision.”.

(b) AMENDMENT TO SECTION 1004.—Section 1004(a) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3303(a)) is amended—

(1) by inserting “and” after the comma at the end of paragraph (3);

(2) by striking paragraph (4); and

(3) by redesignating paragraph (5) as paragraph (4).

SEC. 354. AMENDMENTS TO THE FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989.

(a) AMENDMENT TO SECTION 1121.—Section 1121(6) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(6)) is amended by striking “the Office of Thrift Supervision.”.

(b) AMENDMENT TO SECTION 1206.—Section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b) is amended by strik-

ing “and the Office of Thrift Supervision,” and inserting “and” before “the Farm Credit Administration”.

(c) AMENDMENT TO SECTION 1216.—Section 1216 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833e) is amended—

- (1) in subsection (a), by striking paragraph (2) and redesignating paragraphs (3) through (6) as paragraphs (2) through (5), respectively; and
- (2) in subsection (c), by striking “the Director of the Office of Thrift Supervision,”.

SEC. 355. AMENDMENTS TO THE HOME MORTGAGE DISCLOSURE ACT OF 1975.

(a) AMENDMENTS TO SECTION 304.—Section 304(h) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(h)) is amended—

- (1) by striking paragraph (2);
- (2) in paragraph (5), by striking “(4)” and inserting “(3)”; and
- (3) by redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively.

(b) AMENDMENTS TO SECTION 305.—Section 305(b) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2804(b)) is amended—

- (1) by striking paragraph (2); and
- (2) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(c) AMENDMENTS TO SECTION 306.—Section 306(b) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2805(b)) is amended by striking “shall be enforced under—” and all that follows through “Federal Deposit Insurance Corporation” and inserting “under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the case of national banks, by the Comptroller of the Currency”.

SEC. 356. AMENDMENTS TO THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992.

(a) AMENDMENT TO SECTION 1315.—Section 1315(b) of the Housing and Community Development Act of 1992 (12 U.S.C. 4515(b)) is amended by striking “, and the Office of Thrift Supervision” and inserting “and” before “the Federal Deposit Insurance Corporation”.

(b) AMENDMENT TO SECTION 1317(c).—Section 1317(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 4517(c)) is amended by striking “, or the Director of the Office of Thrift Supervision” and inserting “or” before “the Federal Deposit Insurance Corporation”.

SEC. 357. AMENDMENT TO THE INTERNATIONAL BANKING ACT OF 1978.

Section 15 of the International Banking Act of 1978 (12 U.S.C. 3109) is amended by striking “Federal Deposit Insurance Corporation, and Director of the Office of Thrift Supervision” each place that it appears and inserting “and Federal Deposit Insurance Corporation”.

SEC. 358. AMENDMENTS TO THE NATIONAL HOUSING ACT.

(a) AMENDMENTS TO SECTION 203.—The 1st of the 2 subsections designated as subsection (s) of section 203 of the National Housing Act (12 U.S.C. 1709(s)) is amended—

- (1) by inserting “and” after the semicolon at the end of paragraph (6);
- (2) in paragraph (7)—
 - (A) by inserting “(as defined in section 3 of the Federal Deposit Insurance Act)” after “State bank”; and
 - (B) striking “, and” and inserting a period; and
- (3) by striking paragraph (8).

(b) AMENDMENT TO SECTION 502.—Section 502 of the National Housing Act (12 U.S.C. 1701c(c)) is amended by striking “and the Director of the Office of Thrift Supervision, respectively”.

SEC. 359. AMENDMENT TO PUBLIC LAW 93-495.

Section 202(a)(12) of Public Law 93-495 (12 U.S.C. 2402(a)(12)) is amended by striking “thrift, or other business entities, including one representative each of commercial banks, mutual savings banks, savings and loan associations,” and inserting “or other business entities, including 3 representatives from different types of insured depository institutions (as defined in section 3 of the Federal Deposit Insurance Act) and 1 representative each of”.

SEC. 360. AMENDMENT TO THE REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974.

The first sentence of section 4(a) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2603(a)) is amended—

- (1) by striking the comma after “Affairs”;

- (2) by inserting “and” before “the Federal Deposit Insurance Corporation”; and
 (3) by striking “, and the Director of the Office of Thrift Supervision”.

SEC. 361. AMENDMENT TO THE REVISED STATUTES OF THE UNITED STATES.

Section 324 of the Revised Statutes of the United States (12 U.S.C. 1) is amended by striking “The Comptroller of the Currency shall have the same authority over matters within the jurisdiction of the Comptroller as the Director of the Office of Thrift Supervision has over matters within the Director’s jurisdiction under section 3(b)(3) of the Home Owners’ Loan Act” and inserting “The Secretary of the Treasury may not intervene in any matter or proceeding before the Comptroller of the Currency (including agency enforcement actions) unless otherwise specifically provided by law”.

SEC. 362. AMENDMENTS TO THE RIEGLE COMMUNITY DEVELOPMENT AND REGULATORY IMPROVEMENT ACT OF 1994.

(a) AMENDMENT TO SECTION 307.—Section 307(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4805(a)) is amended by striking “savings association financial reports.”

(b) AMENDMENT TO SECTION 117.—Section 117(e) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4716(e)) is amended by striking “the Director of the Office of Thrift Supervision.”

SEC. 363. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.

Section 1101 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401) is amended—

- (1) in paragraph (6)—
 (A) by inserting “and” after the semicolon at the end of subparagraph (A),
 ;
 (B) by striking “; and” at the end of subparagraph (B) and inserting a period; and
 (C) by striking subparagraph (C); and
 (2) in paragraph (7)—
 (A) by striking subparagraph (B); and
 (B) by redesignating subparagraphs (C) through (H) as subparagraphs (B) through (G), respectively.

SEC. 364. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.

Section 270(a)(1) of the Truth in Savings Act (12 U.S.C. 4309(a)(1)) is amended—

- (1) by inserting “and” after the semicolon at the end of subparagraph (A);
 (2) in subparagraph (B)—
 (A) by striking “or (iii)” and inserting “(iii) or (v)”; and
 (B) by striking “; and” and inserting a period; and
 (3) by striking subparagraph (C).

SEC. 365. EFFECTIVE DATE.

This subtitle shall become effective 2 years after the date of enactment of this Act.

Subtitle E—Technical and Conforming Amendments to Other Statutes

SEC. 371. AMENDMENTS TO THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985.

(a) AMENDMENT TO SECTION 250.—Section 250(c)(19) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c)(19)) is amended by striking “the Office of Thrift Supervision.”

(b) AMENDMENT TO SECTION 256.—Section 256(h)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 906(h)(4)) is amended—

- (1) by striking subparagraphs (C) and (D); and
 (2) by redesignating subparagraphs (E) through (I) as subparagraphs (C) through (G), respectively.

SEC. 372. AMENDMENTS TO THE CONSUMER CREDIT PROTECTION ACT.

(a) AMENDMENTS TO SECTION 108.—Section 108(a) of the Consumer Credit Protection Act (15 U.S.C. 1607(a)) is amended—

- (1) in paragraph (1)(C), by inserting “(as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813))” before “insured by”;
 (2) by striking paragraph (2); and

- (3) by redesignating paragraphs (3) through (6) as paragraphs (2) through (5), respectively.
- (b) AMENDMENTS TO SECTION 621.—Section 621(b) of the Consumer Credit Protection Act (15 U.S.C. 1681s(b)) is amended—
- (1) in paragraph (1)(C), by inserting “(as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813))” before “insured by”;
 - (2) by striking paragraph (2); and
 - (3) by redesignating paragraphs (3) through (6) as paragraphs (2) through (5), respectively.
- (c) AMENDMENTS TO SECTION 704.—Section 704(a) of the Consumer Credit Protection Act (15 U.S.C. 1691c(a)) is amended—
- (1) in paragraph (1)(C), by inserting “(as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813))” before “insured by”;
 - (2) by striking paragraph (2); and
 - (3) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8), respectively.
- (d) AMENDMENTS TO SECTION 814.—Section 814(b) of the Consumer Credit Protection Act (15 U.S.C. 1692l(b)) is amended—
- (1) in paragraph (1)(C), by inserting “(as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813))” before “insured by”;
 - (2) by striking paragraph (2); and
 - (3) by redesignating paragraphs (3) through (6) as paragraphs (2) through (5), respectively.
- (e) AMENDMENTS TO SECTION 917.—Section 917(a) of the Consumer Credit Protection Act (15 U.S.C. 1693o(a)) is amended—
- (1) in paragraph (1)(C), by inserting “(as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813))” before “insured by”;
 - (2) by striking paragraph (2); and
 - (3) by redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively.

SEC. 373. AMENDMENTS TO THE FLOOD DISASTER PROTECTION ACT OF 1973.

- (a) AMENDMENT TO SECTION 3.—Section 3(a)(5) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4003(a)(5)) is amended by striking “the Office of Thrift Supervision,”.
- (b) AMENDMENT TO SECTION 1370.—Section 1370(a)(9) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4121(a)(9)) is amended by striking “the Office of Thrift Supervision,”.

SEC. 374. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.

- (a) AMENDMENTS TO SECTION 3.—Section 3(a)(34)(G) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)(G)) is amended—
- (1) in clause (iii)—
 - (A) by inserting “(as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813))” before “insured by”; and
 - (B) by striking “or a Federal savings bank”;
 - (2) by striking clause (iv) and redesignating clause (v) as clause (iv); and
 - (3) by striking “, and the term ‘District of Columbia savings and loan association’ means any association subject to examination and supervision by the Office of Thrift Supervision under section 8 of Home Owners’ Loan Act of 1933”.
- (b) AMENDMENT TO SECTION 15C.—Section 15C(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5(g)(1)) is amended by striking “the Director of the Office of Thrift Supervision,”.

SEC. 375. AMENDMENTS TO TITLE 5, UNITED STATES CODE.

- (a) AMENDMENT TO SECTION 3132.—Section 3132(a)(1)(D) of title 5, United States Code, is amended by striking “the Office of Thrift Supervision,”.
- (b) AMENDMENT TO SECTION 5314.—Section 5314 of title 5, United States Code, is amended by striking “Director of the Office of Thrift Supervision”.

SEC. 376. AMENDMENTS TO TITLE 18, UNITED STATES CODE.

- (a) AMENDMENT TO SECTION 212.—Section 212 of title 18, United States Code, is amended by striking “, by the Office of Thrift Supervision”.
- (b) AMENDMENT TO SECTION 1006.—Section 1006 of title 18, United States Code, is amended by striking “, Office of Thrift Supervision”.
- (c) AMENDMENT TO SECTION 1014.—Section 1014 of title 18, United States Code, is amended by striking “, the Office of Thrift Supervision”.
- (d) AMENDMENT TO SECTION 1032.—Section 1032 of title 18, United States Code, is amended by striking “or the Director of the Office of Thrift Supervision”.

SEC. 377. AMENDMENT TO TITLE 31, UNITED STATES CODE.

Section 714(a) of title 31, United States Code, is amended by striking “, and the Office of Thrift Supervision” and inserting “and” before “the Office of the Comptroller”.

SEC. 378. EFFECTIVE DATE.

This subtitle shall take effect at the end of the 2-year period beginning on the date of the enactment of this Act.

TITLE IV—UNIFORM MULTISTATE LICENSING OF STATE-LICENSED INSURANCE AGENTS AND BROKERS

SEC. 401. STATE FLEXIBILITY IN MULTISTATE LICENSING REFORMS.

(a) **IN GENERAL.**—The provisions of this title shall take effect if, and only if, by the end of the 3-year period beginning on the date of the enactment of this Act, a majority of the States have not enacted uniform laws and regulations governing the licensure of individuals and entities authorized to sell and solicit the purchase of insurance within the State.

(b) **UNIFORMITY REQUIRED.**—States shall be deemed to have established the uniformity necessary to satisfy subsection (a) if they—

(1) establish uniform criteria regarding the integrity, personal qualifications, education, training, and experience, of licensed insurance producers, including the qualification and training of sales personnel in ascertaining the appropriateness of a particular insurance product for a prospective customer;

(2) establish uniform continuing education requirements for licensed insurance producers;

(3) establish uniform ethics course requirements for licensed insurance producers in conjunction with the continuing education requirements under paragraph (2);

(4) establish uniform criteria to ensure that an insurance product, including any annuity contract, sold to a consumer is suitable and appropriate for the consumer based on financial information disclosed by the consumer; and

(5) do not impose any requirement upon any licensed insurance producer that has the effect of limiting or conditioning that producer’s activities because of its residence or place of operations.

(c) **DETERMINATION.**—At the end of the 3-year period beginning on the date of the enactment of this Act, the National Association of Insurance Commissioners shall determine, in consultation with the insurance commissioners or chief insurance regulatory officials of the States, whether the uniformity required by subsections (a) and (b) has been achieved.

(d) **CONTINUED APPLICATION.**—If at any time after the end of the 3-year period referred to in subsection (c), the uniformity required by subsections (a) and (b) no longer exists, the provisions of this title shall take effect.

SEC. 402. NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS.

(a) **ESTABLISHMENT.**—There is established a body corporate to be known as the “National Association of Registered Agents and Brokers” (hereafter in this title referred to as the “Association”).

(b) **STATUS.**—The Association shall—

(1) be a nonprofit corporation;

(2) have succession until dissolved by an Act of Congress;

(3) not be an agency or establishment of the United States Government; and

(4) except as otherwise provided in this Act, be subject to, and have all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29–1001 et seq.).

SEC. 403. PURPOSE.

The purpose of the Association shall be to provide a mechanism through which uniform licensing, continuing education, and other insurance producer sales qualification requirements and conditions can be adopted and applied on a multistate basis, while preserving the right of States to license, supervise, and discipline insurance producers and to prescribe and enforce laws and regulations with regard to insurance-related consumer protection and unfair trade practices.

SEC. 404. RELATIONSHIP TO THE FEDERAL GOVERNMENT.

(a) **IN GENERAL.**—The Association shall be subject to the supervision and oversight of the National Financial Services Council (hereafter in this title referred to as the “Council”).

(b) **RECEIPTS AND DISBURSEMENTS OF ASSOCIATION NOT INCLUDED IN BUDGET.**—Section 406 of the Congressional Budget Act of 1974 (2 U.S.C. 655) is amended by adding at the end the following new subsection:

“(c) Notwithstanding any other provision of law, the receipts and disbursements of the National Association of Registered Agents and Brokers shall not be included for the purposes of—

“(1) the budget of the United States Government as submitted by the President;

“(2) the congressional budget and the Congressional Budget and Impoundment Control Act of 1974; or

“(3) the Balanced Budget and Emergency Deficit Control Act of 1985.”.

(c) **FUNDS NOT AVAILABLE TO THE UNITED STATES GOVERNMENT.**—The United States Government may not borrow or pledge funds held by or due to the Association.

SEC. 405. MEMBERSHIP.

(a) **IN GENERAL.**—Any State-licensed producer shall be eligible for membership in the Association.

(b) **AUTHORITY TO ESTABLISH MEMBERSHIP CRITERIA.**—The Association shall have the authority to establish membership criteria that—

(1) bear a reasonable relationship to the purposes for which the Association was established; and

(2) do not unfairly limit the access of smaller agencies to the Association membership.

(c) **ESTABLISHMENT OF CLASSES AND CATEGORIES.**—

(1) **CLASSES OF MEMBERSHIP.**—The Association may establish separate classes of membership, with separate criteria, if the Association reasonably determines that performance of different duties requires different levels of education, training, or experience.

(2) **CATEGORIES.**—The Association may establish separate categories of membership for individuals and for other persons.

(d) **MEMBERSHIP CRITERIA.**—

(1) **IN GENERAL.**—The Association may establish membership criteria to establish the integrity, personal qualifications, education, training, and experience of members, and any criteria reasonably incidental to any such criteria.

(2) **STANDARD.**—In establishing criteria under paragraph (1), the Association shall be guided by the highest levels set by the States with regard to their comparable licensing laws.

(e) **EFFECT OF MEMBERSHIP.**—Membership in the Association shall operate as licensure in each State in which the member of the Association pays the licensing fee set by such State, subject to section 415.

(f) **ANNUAL RENEWAL.**—Membership in the Association shall be renewed on an annual basis and shall be subject to reasonable continuing education requirements.

(g) **SUSPENSION AND REVOCATION.**—The Association may—

(1) inspect and examine the members of the Association to determine compliance with the criteria for membership established by the Association; and

(2) suspend or revoke membership upon showing that—

(A) applicable membership criteria are no longer being met; or

(B) a member has been subject to disciplinary proceedings under the jurisdiction of a State insurance regulator, and the Association concludes that retention of membership in the Association would not be in the public interest.

(h) **OFFICE OF CONSUMER COMPLAINTS.**—The Association shall establish and publicize an office with a toll-free telephone number that shall—

(1) receive and investigate complaints from both consumers and State insurance regulators related to members of the Association; and

(2) take any disciplinary actions the Association considers appropriate to the extent that any such action is not inconsistent with State law.

SEC. 406. CORPORATE POWERS.

The Association shall have the following powers:

(1) To sue and be sued, in the corporate name of the Association and through its own counsel in any Federal court of competent jurisdiction.

(2) To adopt, alter, and use a corporate seal, which shall be judicially noticed.

(3) To adopt, amend, and repeal, by the Board of Directors of the Association, such bylaws and rules as may be necessary or appropriate to carry out the purposes of this title, including bylaws relating to—

(A) the conduct of business; and

(B) the indemnity of the directors, officers, and employees of the Association for liabilities and expenses actually and reasonably incurred by any such person in connection with the defense or settlement of an action or suit if such person acted in good faith and in a manner reasonably believed to be consistent with the purposes of this title.

(4) To adopt, amend, and repeal, by the Board of Directors of the Association, such rules as may be necessary or appropriate to carry out the purposes of this title, including rules relating to—

(A) the definition of terms used in this title, other than those terms for which a definition is provided in this title;

(B) the procedures for payment of the assessments imposed by the Association; and

(C) the exercise of all other rights and powers granted to the Association by this title.

(5) To conduct the business of the Association (including the carrying on of operations and the maintenance of offices) and to exercise all other rights and powers granted to the Association by this title in any State or other jurisdiction without regard to any qualification, licensing, or other statutory requirement in such State or other jurisdiction.

(6) To lease, purchase, accept gifts or donations or otherwise acquire, to own, hold, improve, use, or otherwise deal in or with, and to sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of any property, real, personal or mixed, or any interest in any such property, wherever situated.

(7) To elect or appoint such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, to fix their salaries, require bonds for them, and fix the penalty thereof.

(8) To enter into contracts, to execute instruments, to incur liabilities, and to do any and all other acts and things as may be necessary or incidental to the conduct of the business of the Association and the exercise of all other rights and powers granted to the Association by this title.

(9) To suspend or revoke the membership in the Association of any member in the manner provided in this title.

(10) To impose and collect assessments, in the manner and to the extent provided under this title, upon the members of the Association to cover the administrative expenses of the Association in a manner that does not unfairly discriminate against smaller insurance producers.

(11) To submit advice and recommendations to the Congress, the courts, the National Association of Insurance Commissioners, State insurance regulators, and the Council on matters pertaining to the regulation and practices of insurance producers.

SEC. 407. BOARD OF DIRECTORS.

(a) ESTABLISHMENT.—The management of the Association shall be vested in a board of directors.

(b) POWERS.—

(1) IN GENERAL.—The board of directors shall be vested with all powers necessary for the management and administration of the affairs of the Association and the promotion of the purposes of the Association as authorized by this title.

(2) SPECIFIED IN BY-LAWS.—The authority of the board of directors shall be specified in the bylaws of the Association.

(c) COMPOSITION.—

(1) MEMBERS.—The Board shall be composed of 7 members appointed by the Chairperson of the Council from a list of candidates recommended to the Chairperson by the National Association of Insurance Commissioners.

(2) REPRESENTATION OF COMMISSIONERS.—At least 50 percent of the members of the board of directors shall be composed of members of the National Association of Insurance Commissioners.

(d) TERMS.—

(1) IN GENERAL.—The term of each director shall, after the initial appointment of the members of the board of directors, be for 3 years, with $\frac{1}{3}$ of the directors to be appointed each year.

(2) NO TERM LIMITS.—Directors may be appointed to serve for any number of terms.

(e) VACANCIES.—A vacancy in the Board shall be filled in the same manner as the original appointment.

(f) COMPENSATION.—All matters relating to compensation of directors shall be as provided in the bylaws of the Association.

SEC. 408. OFFICERS.

(a) IN GENERAL.—The officers of the Association shall consist of a chairperson and a vice chairperson of the board of directors and a president, secretary, and treasurer of the Association and may include 1 or more vice presidents and such other officers and assistant officers as may be deemed necessary.

(b) MANNER OF SELECTION.—

(1) DESCRIBED IN BYLAWS.—Each officer of the board of directors and the Association shall be elected or appointed at such time and in such manner and for such terms not exceeding 3 years as may be prescribed in the bylaws of the Association.

(2) DEFAULT PROVISION.—In the absence of any provision in the bylaws of the Association for the election or appointment of the officers of the board of directors and the Association, all officers shall be elected or appointed annually by the board of directors.

(3) CRITERIA FOR CHAIRPERSON.—Only individuals who are members of the National Association of Insurance Commissioners shall be eligible to serve as the chairperson of the board of directors.

SEC. 409. MEETINGS OF BOARD OF DIRECTORS.

The board of directors shall meet at the call of the chairperson, or as otherwise provided by the bylaws of the Association.

SEC. 410. BYLAWS, RULES, AND DISCIPLINARY ACTION.

(a) ADOPTION AND AMENDMENT OF BYLAWS.—

(1) COPY REQUIRED TO BE FILED WITH COUNCIL.—The board of directors of the Association shall file with the Council a copy of the proposed bylaws and any proposed amendment to the bylaws, accompanied by a concise general statement of the basis and purpose of such proposal.

(2) EFFECTIVE DATE.—Except as provided in paragraph (3), any proposed bylaw or proposed amendment shall take effect—

(A) 30 days after the date of the filing of a copy with the Council;

(B) upon such later date as the Association may designate; or

(C) such earlier date as the Council may determine.

(3) DISAPPROVAL BY THE COUNCIL.—Notwithstanding paragraph (2), a proposed bylaw or amendment shall not take effect if—

(A) the Council disapproves such proposal as being contrary to the public interest or contrary to the purposes of this title and provides notice to the Association setting forth the reasons for such disapproval; or

(B) the Council finds that such proposal involves a matter of such significant public interest that public comment should be obtained, in which case it may, after notifying the Association in writing of such finding, require that the procedures set forth in subsection (b) be followed with respect to such proposal, in the same manner as if such proposed bylaw change were a proposed rule change within the meaning of such paragraph.

(b) ADOPTION AND AMENDMENT OF RULES.—

(1) FILING PROPOSED REGULATIONS WITH COUNCIL.—

(A) IN GENERAL.—The board of directors of the Association shall file with the Council a copy of any proposed rule or any proposed amendment to a rule of the Association which shall be accompanied by a concise general statement of the basis and purpose of such proposal.

(B) PUBLICATION OF NOTICE.—The Council shall, upon the filing of any proposal, publish notice thereof, together with the terms of substance of such proposal or a description of the subjects and issues involved.

(C) OPPORTUNITY FOR COMMENT.—The Council shall give interested persons an opportunity to submit written views and arguments with respect to such proposal.

(D) OTHER REGULATIONS INEFFECTIVE.—No proposed rule or amendment shall take effect unless approved by the Council or otherwise permitted in accordance with this paragraph.

(2) INITIAL CONSIDERATION BY COUNCIL.—Within 35 days after the date of publication of notice of filing of a proposal, or before the end of such longer period not to exceed 90 days as the Council may designate after such date if the Council finds such longer period to be appropriate and publishes the reasons for so finding, or as to which the Association consents, the Council shall—

- (A) by order approve such proposed rule or amendment; or
 - (B) institute proceedings to determine whether such proposed rule or amendment should be modified or disapproved.
- (3) COUNCIL PROCEEDINGS.—
- (A) IN GENERAL.—Proceedings instituted by the Council with respect to a proposed rule or amendment pursuant to paragraph (2) shall—
 - (i) include notice of the grounds for disapproval under consideration;
 - (ii) provide opportunity for hearing; and
 - (iii) be concluded within 180 days after the date of publication of notice of the filing of such proposed rule or amendment.
 - (B) DISPOSITION OF PROPOSAL.—At the conclusion of any proceeding under subparagraph (A), the Council shall, by order, approve or disapprove the proposed rule or amendment.
 - (C) EXTENSION OF TIME FOR CONSIDERATION.—The Council may extend the time for concluding any proceeding under subparagraph (A) for—
 - (i) not more than 60 days if the Council finds good cause for such extension and publishes the reasons for so finding; or
 - (ii) for such longer period as to which the Association consents.
- (4) STANDARDS FOR REVIEW.—
- (A) GROUNDS FOR APPROVAL.—The Council shall approve a proposed rule or amendment if the Council finds that the rule or amendment is in the public interest and is consistent with the purposes of this Act.
 - (B) GROUNDS FOR DISAPPROVAL.—The Council shall disapprove a proposed rule or amendment if the Council finds that the proposed rule or amendment does not meet the standards for approval in subparagraph (A).
 - (C) EFFECT OF APPROVAL.—Any proposed rule or amendment approved by the Council under this subsection shall have the force and effect of a regulation prescribed by the Council under subtitle C of title I of this Act.
 - (D) APPROVAL BEFORE END OF NOTICE PERIOD.—The Council shall not approve any proposed rule change before the end of the 30-day period beginning on the date of publication of notice in accordance with paragraph (1)(B) unless the Council finds good cause for so doing and publishes the reasons for so finding.
- (5) ALTERNATE PROCEDURE.—
- (A) IN GENERAL.—Notwithstanding any provision of this subsection other than subparagraph (B), a proposed rule or amendment may take effect—
 - (i) upon the date of filing with the Council, if such proposed rule or amendment is designated by the Association as relating solely to matters which the Council, consistent with the public interest and the purposes of this subsection, determines by rule do not require the procedures set forth in this paragraph; or
 - (ii) upon such date as the Council shall for good cause determine.
 - (B) FILING AFTER EFFECTIVE DATE.—Any proposed rule or amendment which takes effect under subparagraph (A)(ii) before the proposed rule or amendment is filed with the Council shall be filed promptly with the Council after the effective date of the rule or amendment and reviewed in accordance with paragraph (2).
 - (C) ABROGATION BY COUNCIL.—
 - (i) IN GENERAL.—At any time within 60 days after the date of filing of any proposed rule or amendment under subparagraph (A)(i) or (B)(ii), the Council may summarily abrogate such rule or amendment and require that the rule or amendment be refiled and reviewed in accordance with this paragraph, if the Council finds that such action is necessary or appropriate in the public interest, for the protection of insurance producers or policyholders, or otherwise in furtherance of the purposes of this title.
 - (ii) EFFECT OF RECONSIDERATION BY COUNCIL.—Any action of the Council pursuant to clause (i) shall—
 - (I) not affect the validity or force of a rule change during the period such rule or amendment was in effect;
 - (II) not be subject to judicial review; and
 - (III) not be considered to be final agency action.
- (c) ACTION REQUIRED BY THE COUNCIL.—The Council may, in accordance with such regulations as the Council determines to be necessary or appropriate to the public interest or to carry out the purposes of this title, require the Association to adopt, amend, or repeal any bylaw or regulation of the Association, whenever adopted.

(d) **LEGAL EFFECT OF BYLAWS AND RULES.**—The bylaws and rules adopted pursuant to this section shall be subject to judicial review in the same manner as the regulations of the Council.

(e) **DISCIPLINARY ACTION BY THE ASSOCIATION.**—

(1) **SPECIFICATION OF CHARGES.**—In any proceeding to determine whether membership shall be denied, suspended, revoked, and not renewed (hereafter in this section referred to as a “disciplinary action”), the Association shall bring specific charges, notify such member of such charges and give the member an opportunity to defend against the charges, and keep a record.

(2) **SUPPORTING STATEMENT.**—A determination to take disciplinary action shall be supported by a statement setting forth—

(A) any act or practice in which such member has been found to have been engaged;

(B) the specific provision of this title, the rules or regulations under this title, or the rules of the Association which any such act or practice is deemed to violate; and

(C) the sanction imposed and the reason for such sanction.

(f) **COUNCIL REVIEW OF DISCIPLINARY ACTION.**—

(1) **NOTICE TO COUNCIL.**—If the Association orders any disciplinary action, the Association shall promptly notify the Council of such action.

(2) **REVIEW BY COUNCIL.**—Any disciplinary action taken by the Association shall be subject to review by the Council—

(A) on the Council’s own motion; or

(B) upon application by any person aggrieved by such action if such application is filed with the Council not more than 30 days after the later of—

(i) the date the notice by the Association was filed with the Council pursuant to paragraph (1); or

(ii) the date the notice of the disciplinary action was received by such aggrieved person.

(3) **EFFECT OF REVIEW.**—The filing of an application to the Council for review of a disciplinary action, or the institution of review by the Council on the Council’s own motion, shall not operate as a stay of disciplinary action unless the Council otherwise orders.

(4) **SCOPE OF REVIEW.**—

(A) **IN GENERAL.**—In any proceeding to review such action, after notice and the opportunity for hearing, the Council shall—

(i) determine whether the action should be taken;

(ii) affirm, modify, or rescind the disciplinary sanction; or

(iii) remand the case to the Association for further proceedings.

(B) **DISMISSAL OF REVIEW.**—The Council may dismiss a proceeding to review disciplinary action if the Council finds that—

(i) the specific grounds on which the action is based exist in fact;

(ii) the action is in accordance with applicable rules and regulations;

and

(iii) such rules and regulations are, and were, applied in a manner consistent with the purposes of this Act.

SEC. 411. BORROWING AUTHORITY.

(a) **IN GENERAL.**—

(1) **APPROVAL OF BOARD OF DIRECTORS.**—The Association shall have the authority to borrow as necessary and upon prior approval of the board of directors.

(2) **TERMS AND CONDITIONS.**—Any borrowing by the Association shall be made upon such terms and conditions as the board of directors determines, except that any funds so borrowed shall be repaid out of the assessments as collected.

(3) **PLEDGE OF FUTURE ASSESSMENTS.**—To secure the payment of principal and interest on any borrowing by the Association, the board of directors may pledge future assessments.

(b) **NONLIABILITY OF FEDERAL GOVERNMENT.**—No provision of this title may be construed as—

(1) obligating the United States Government, directly or indirectly, to provide any funds to any person or entity to honor, reimburse, or otherwise guarantee any obligation or liability of the Association; or

(2) implying that any obligations or securities of the Association are backed by the full faith and credit of the United States.

SEC. 412. ASSESSMENTS.

(a) **INSURANCE PRODUCERS SUBJECT TO ASSESSMENT.**—Each insurance producer that is a member of the Association shall be subject to assessments for the costs

of considering the application by producer, on acceptance as a member, and annually thereafter.

(b) AMOUNTS DETERMINED BY ASSOCIATION.—The amount of any assessment under subsection (a) shall be set by the Association by rule and shall cover the costs of operation of the Association.

SEC. 413. FUNCTIONS OF THE COUNCIL.

(a) ADMINISTRATIVE PROCEDURE.—Determinations of the Council, for purposes of making rules pursuant to section 410, shall be made after appropriate notice and opportunity for a hearing and for submission of views of interested persons, in accordance with section 553 of title 5, United States Code.

(b) EXAMINATIONS AND REPORTS.—

(1) The Council may make such examinations and inspections of the Association and require the Association to furnish it with such reports and records or copies thereof as the Council may consider necessary or appropriate in the public interest or to effectuate the purposes of this title.

(2) As soon as practicable after the close of each fiscal year, the Association shall submit to the Council a written report relative to the conduct of its business, and the exercise of the other rights and powers granted by this title, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year. The financial statements so included shall be examined by an independent accountant in the same manner as for the financial reports of federally certified insurers under this Act, and shall be accompanied by the report thereon by such accountant. The Council shall transmit such report to the President and the Congress with such comment thereon as the Council determines to be appropriate.

(c) DELEGATION OF POWERS.—

(1) IN GENERAL.—The Council may delegate the responsibility for exercising any of the powers under subsection (b) or section 410(f) to any member agency of the Council.

(2) OVERSIGHT OF COUNCIL.—The Council shall have, at all times—

(A) the responsibility to supervise and regulate the exercise of any authority delegated under paragraph (1); and

(B) the final responsibility for the proper exercise of any such authority.

SEC. 414. LIABILITY OF THE ASSOCIATION AND THE DIRECTORS, OFFICERS, AND EMPLOYEES OF THE ASSOCIATION.

(a) IN GENERAL.—The Association shall not be deemed to be an insurer or insurance producer within the meaning of any State law, rule, regulation, or order regulating or taxing insurers, insurance producers, or other entities engaged in the business of insurance, including provisions imposing premium taxes, regulating insurer solvency or financial condition, establishing guaranty funds and levying assessments, or requiring claims settlement practices. The Association additionally shall be exempt from all taxes, assessments, or other levies imposed by any State, municipal, county, or local government.

(b) LIABILITY OF THE ASSOCIATION, ITS DIRECTORS, OFFICERS, AND EMPLOYEES.—Neither the Association nor any of its directors, officers, or employees shall have any liability to any person for any action taken or omitted in good faith under or in connection with any matter subject to this title.

SEC. 415. RELATIONSHIP TO STATE LAW.

(a) PREEMPTION OF STATE LAWS.—State laws, regulations, provisions, or actions purporting to regulate insurance producers shall be preempted in the following instances:

(1) No State shall impede the activities of, take any action against, or apply any provision of law or regulation to, any insurance producer because that insurance producer or any affiliate plans to become, has applied to become, or is, a member of the Association.

(2) No State shall impose any requirement upon a member of the Association that has the effect of limiting or conditioning that member's activities because of its residence or place of operations including, but not limited to, any requirement that a licensed insurance producer be a resident of a particular State, any requirement that it comply with the conditions of a countersignature law, or any requirement that it pay a different licensing fee based on its residency.

(3) No State shall impose any licensing, integrity, personal qualification, education, training, experience, or continuing education requirement upon a mem-

ber of the Association that is different from the criteria for membership in the Association or renewal of such membership.

(4) No State shall implement the procedures of such State's system of licensing or renewing the licenses of insurance producers in a manner different from authority of the Association under section 405.

(b) SAVINGS PROVISION.—Except as provided in subsection (a), no provision of this section shall be construed as altering or affecting the continuing effectiveness of any law, regulation, provision, or action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections.

(c) PREEMPTION AUTHORITY.—If it is unclear whether State laws or regulations fall into the categories enumerated in subsection (a), the Council shall have the authority, by regulation, to define those State laws and regulations that have been preempted by this Act. The Council shall also have the authority to issue, after the opportunity for a hearing on the record, an order that stays the effect of any State law or regulation which is preempted until the Council can complete the issuance of a regulation defining such preemption.

SEC. 416. COORDINATION WITH OTHER REGULATORS.

(a) COORDINATION WITH STATE INSURANCE REGULATORS.—The Association shall have the authority to—

(1) issue uniform insurance producer applications and renewal applications that may be used to apply for the issuance or removal of State licenses, while preserving the ability of each State to impose such conditions on the issuance or renewal of a license as are consistent with section 415;

(2) establish a central clearinghouse through which the members of the Association may apply for the issuance or renewal of licenses in multiple States; and

(3) establish or utilize a national database for the collection of regulatory information concerning the activities of insurance producers.

(b) COORDINATION WITH THE NATIONAL ASSOCIATION OF SECURITIES DEALERS.—The Association shall coordinate with the National Association of Securities Dealers in order to ease any administrative burdens that fall on persons that are members of both associations, consistent with the purposes of this title and the Federal securities laws.

SEC. 417. JUDICIAL REVIEW.

(a) JURISDICTION.—The appropriate United States district court shall have exclusive jurisdiction over litigation involving the Association, including disputes between the Association and its members that arise under this title. Suits brought in State court involving the Association shall be deemed to have arisen under Federal law and therefore be subject to jurisdiction in the appropriate United States district court.

(b) EXHAUSTION OF REMEDIES.—An aggrieved person must exhaust the administrative remedies before the Association before it may seek judicial review of the Association decision.

SEC. 418. DEFINITIONS.

For purposes of this title, the following definitions shall apply:

(1) INSURANCE.—The term “insurance” means any product defined or regulated as insurance by the appropriate State insurance regulatory authority.

(2) INSURANCE PRODUCER.—The term “insurance producer” means any insurance agent or broker, surplus lines broker, insurance consultant, limited insurance representative, and any other person that solicits, negotiates, effects, procures, delivers, renews, continues, or binds policies of insurance or offers advice, counsel, opinions, or services related to insurance.

(3) STATE LAW.—The term “State law” includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(4) STATE.—The term “State” includes any State, the District of Columbia, territory of the United States, and any political subdivision, agency, or instrumentality thereof.

PURPOSE AND SUMMARY

The purpose of H.R. of H.R. 10, the Financial Services Competition Act of 1997 (the Act), as reported out of the Committee on Banking and Financial Services with an amendment, is to establish

a comprehensive framework to permit affiliations between commercial banks, securities firms, insurance companies and, subject to certain limitations, other commercial enterprises. In that regard, Title I of the Act modernizes and reforms the laws governing our nation's financial system. The primary objective of allowing such affiliations is to enhance consumer choice in the financial services marketplace, level the playing field among providers of financial services, and increase competition. The Act provides for a number of prudential safeguards designed to avoid risk to the Federal deposit insurance funds, protect the safety and soundness of insured depository institutions and the Federal payments system, and protect consumers. The Act is intended to enhance the ability of financial institutions to meet the capital and credit needs of the communities in which they operate, including underserved communities and populations, as well as to make U.S. financial firms more competitive both domestically and internationally.

In recent years, significant developments have occurred within the financial services industry, including technological advancements and other market innovations, that have replaced traditional bank services with those offered by non-insured financial institutions, such as securities and insurance firms. For example, corporate borrowers are relying less on traditional bank loans for their funding needs and more on securities issued directly in the marketplace. Additionally, Federal bank regulators have taken a piecemeal approach to allowing banks to enter into certain areas of insurance and securities, resulting in numerous court battles to define permissible lines of activities among financial industry groupings. In this regard, the evolution in the financial services marketplace and regulatory interpretations have generated support among various financial industry sectors for enacting a financial modernization bill that creates a level playing field while maintaining the safety and soundness of the U.S. financial system.

TITLE I

Title I of the bill would remove the antiquated and artificial restrictions contained in the Glass-Steagall Act of 1933 and the Bank Holding Company Act of 1956, allowing qualified financial holding companies to control banks, securities firms, insurance companies, and other financial firms. Securities firms, insurance companies, and financial firms would be permitted to own or affiliate with a commercial bank. An important aspect of this new framework is that it would incorporate functional regulation with the Federal Reserve serving as an umbrella regulator to oversee the new financial holding company structure. Securities affiliates would be required to comply with all applicable Federal securities laws, including registration and other requirements applicable to brokers-dealers. The Act would also provide that insurance affiliates be subject to applicable State insurance regulation and supervision. A National Council on Financial Services would be created under the Act to monitor innovations in the financial services industry, coordinate the activities of banking regulators, resolve disputes that may arise between Federal and State regulators, issue regulations or orders which define "financial activities," and impose restrictions or requirements on transactions involving depository institutions,

affiliates and subsidiaries. From the perspective of small community banks, the Act will enable them to offer a full range of financial products thereby enhancing their continued viability.

Title I also includes needed reforms to the Federal Home Loan Bank System (the System). Specifically, Title I would: provide small community banks with greater access to the System for advances related to small business, agriculture, and rural and low-income community development lending; make System membership voluntary; provide a permanent capital structure for the System; convert the System's Resolution Funding Corporation obligation from a stated dollar amount to a fixed percentage of each Federal Home Loan Bank's earnings; and, refocus the System's investment mission.

TITLE II

Title II of the Act amends the securities laws in order to provide functional regulation of bank securities activities. Under the Act, bank affiliates and subsidiaries will continue to be subject to the same regulation as other providers of securities products. In addition, banks engaging in securities activities, with certain exceptions (primarily related to traditional banking activities), are required to register with the Securities and Exchange Commission and are subject to the registration requirements and regulation if they act as investment advisers to registered investment companies under the Investment Adviser Act of 1940.

TITLE III

In reforming the financial services industry, the Committee also sought to achieve uniformity among the charters of insured depository institutions. In that regard, Title III of the Act would require that all Federally-chartered savings associations convert to a national bank or State charter within two years after the date of enactment, and treat State-chartered savings associations as commercial banks for purposes of federal banking law. To facilitate the conversion of Federal savings associations the Act allows institutions to retain their existing investments, affiliations and branches. In addition, the Act would merge the Office of Thrift Supervision (OTS) with the Office of the Comptroller of the Currency (OCC), and merge the Savings Association Insurance Fund (SAIF) and the Bank Insurance Fund (BIF).

TITLE IV

Finally, the Act creates a self regulatory organization, the National Association of Registered Agents and Brokers (NARAB), with the responsibility of establishing uniform licensing requirements for insurance agents and brokers who operate on a multistate level. The NARAB board would consist of state insurance regulators and other individuals from the insurance industry and would be overseen by the National Council on Financial Services.

LEGISLATIVE BACKGROUND AND HEARINGS

During the last ten years, the Committee has made a number of attempts to modernize the nation's banking laws. In 1988, the Sen-

ate passed S. 1886, the “Financial Modernization Act of 1988,” which would have repealed the provisions of the Glass-Steagall Act that prohibit affiliations between commercial banks and investment banks. That same year the House Banking Committee reported out H.R. 5094, the “Depository Institutions Act of 1988.” This legislation never reached the House floor. In 1991, in response to the Bush Administration’s call for financial services reform, the Senate passed S. 534, the “Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991.” On the House side, the Committee voted to favorably report H.R. 6, the “Financial Institutions Safety and Consumer Choice Act of 1991,” which allowed banks to affiliate with securities firms, insurance companies, and commercial entities under a diversified holding company structure. H.R. 6, however, was defeated on the House floor on November 11, 1991 by a vote of 89–324. In 1995, the Committee reported out H.R. 1062, the “Financial Services Competitiveness Act of 1995” which allowed banks to affiliate with securities firms and engage in activities that are financial in nature. Later that year, as part of H.R. 1858, the “Financial Institutions Regulatory Relief Act of 1995,” the Committee approved an amendment to the Bank Holding Company Act allowing banks to affiliate with insurance companies. Neither H.R. 1062 nor the Bank Holding Company Act amendment was considered by the full House in the 104th Congress.

On January 7, 1997, Chairman Leach introduced H.R. 10, the Financial Services Competitiveness Act of 1997, which provides a framework for major bank modernization legislation to increase consumer choice and competition in the nation’s financial services industry. Building on the progress made during Congressional and intra- and inter-industry discussions in the 104th Congress, this bill provides expanded powers for the banking, securities and insurance industries. On January 7, 1997, Congresswoman Marge Roukema reintroduced H.R. 268, the Depository Institution Affiliation and Thrift Charter Conversion Act, which included a new structure for financial services holding companies, permissible affiliations, holding company oversight, securities activities, and the elimination of the savings association charter. On February 11, 1997, Congressman Richard Baker introduced H.R. 669, the Depository Institution Affiliation Act of 1997, which addresses more broadly the issue of mixing banking and commerce and the scope of holding company regulations. Eleven hearings were held at the full Committee and subcommittee levels.

The full Committee held five days of hearings on H.R. 10 and the other legislative proposals to modernize the financial services industry. Testifying before the Committee on May 7, 1997, were James L. Bothwell, Chief Economist, General Accounting Office; William T. McConnell, Chairman and CEO, Park National Corporation and President-elect of American Bankers Association; Bill Sones, President and CEO, State Bank and Trust Company and President of Independent Bankers Association of America; Paul Schosberg, President, America’s Community Bankers; and Lawrence R. Uhlick, Executive Director and General Counsel, Institute of International Bankers.

On May 14, 1997, the following testified before the Committee: Paul Volcker, Chairman, James D. Wolfensohn, Inc.; John G. Heimann, Chairman of Global Financial Institutions, Merrill Lynch & Co., Inc.; Marc E. Lackritz, President, Securities Industry Association; Matthew P. Fink, President, Investment Company Institute; Christine Edwards, Executive Vice President and General Counsel, Dean Witter, Discover Co., on behalf of the Financial Services Council; Jeffrey A. Tasse, Senior Vice President of Government and Legal Affairs, American Financial Services Association; Gary Hughes, Vice President and Chief Counsel of Banking and Securities, American Council of Life Insurance; Craig Berrington, Senior Vice President and General Counsel, American Insurance Association; William V. Irons, Chartered Life Underwriter, Irons & Associates, on behalf of the National Association of Life Underwriters and the Independent Insurance Agents; Robert A. Gleason, Jr., President, Gleason Agency, on behalf of Council of Agents and Brokers; Dan R. Wentzel, Chairman and CEO of North American Title Insurance Company, Inc., on behalf of American Land Title Association; Brent Larsen, Director of Government Affairs, Grinnell Mutual Reinsurance Company, on behalf of the National Association of Mutual Insurance Companies; Michael P. Grace, Agent, Wright & Percy Insurance, on behalf of the National Association of Professional Insurance Agents; and Russell A. Booth, President, National Association of Realtors.

Testifying before the Committee on May 21, 1997, were: Martin Mayer, Guest Scholar, The Brookings Institute; Peter Wallison, Partner of Gibson, Dunn and Crutcher; Allen Fishbein, General Counsel, Center for Community Change; John Taylor, President and CEO, National Community Reinvestment Coalition; and Mary Griffin, Insurance Counsel, Consumers Union.

Testifying before the Committee on May 22, 1997, were: Alan Greenspan, Chairman, Federal Reserve Board; Ricki Helfer, Chairman, Federal Deposit Insurance Corporation; Eugene Ludwig, Comptroller, Office of the Comptroller of the Currency; Nicolas Retsinas, Director, Office of Thrift Supervision; Arthur Levitt, Chairman, Securities and Exchange Commission; G. Edward Leary, Utah Commissioner of Financial Institutions, on behalf of the Conference of State Bank Supervisors; George Nichols, III, Kentucky Commissioner of Insurance, on behalf of the National Association of Insurance Commissioners; Denise Voight Crawford, Texas Commissioner of Securities and President-elect of North American Securities Administrators Association; James L. Pledger, Texas Commissioner of Savings and Loans and Chairman of American Council of State Savings Supervisors; and J. Kenneth Blackwell, Ohio State Treasurer, on behalf of the National Association of State Auditors, Comptrollers and Treasurers.

On June 3, 1997, the Honorable Robert E. Rubin, Secretary, Department of the Treasury along with the Honorable John D. Hawke, Jr., Under Secretary of the Department of the Treasury, testified before the Committee. On this same day, the Department of the Treasury unveiled a proposal on financial modernization before the full committee. The Department also submitted a report to Congress pursuant to section 2709 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 on its legislative rec-

ommendations to merge the thrift charter with the bank charter. The report was to be submitted by March 31, 1997. Generally, the Treasury's proposal would eliminate barriers to affiliations between banks and other financial services firms, and broaden the ability of banking organizations to offer financial products and services. The Treasury Department's proposal provided two alternatives concerning the permissibility of bank holding companies engaging in nonfinancial activities. One alternative would retain the present restrictions on banking and commerce. Under this proposal, the thrift charter would not be abolished. Another alternative would allow a fixed percentage of a company's revenues to come from nonfinancial activities. The Treasury Department made no recommendation on what the appropriate percentage should be. The thrift charter would be merged with the bank charters under this alternative.

The Financial Institutions and Consumer Credit Subcommittee held three days of hearings on financial services modernization.

Testifying before the Subcommittee on February 11, 1997, were: William T. McConnell, Chairman and CEO, Park National Corporation and President-elect of American Bankers Association; Weller Meyer, President and CEO, Acacia Federal Savings Bank, on behalf of America's Community Bankers; Craig Kelly, Senior Vice President, Banc One Corporation, on behalf of the Consumer Bankers Association; Alfred Pollard, Senior Director of Legislative Affairs, Bankers Roundtable; Jeffrey A. Tasse, Senior Vice President of Government and Legal Affairs, American Financial Services Association; Joseph C. Bracewell, Chairman and CEO, Century National Bank, on behalf of the Independent Bankers Association of America; Matthew P. Fink, President, Investment Company Institute; Samuel J. Baptista, President, Financial Services Council; Marc E. Lackritz, President, Securities Industry Association; Roy C. Albertalli, Vice President and Associate General Counsel, Metropolitan Life Insurance Company, on behalf of the American Council of Life Insurance; and James R. Klagholz, Co-owner, C.N. Sterling Associates, Inc., on behalf of the Independent Insurance Agents of America.

Testifying before the Subcommittee on February 13, 1997, were: Alan Greenspan, Chairman, Federal Reserve Board; Eugene Ludwig, Comptroller, Office of the Comptroller of the Currency; Ricki Helfer, Chairman, Federal Deposit Insurance Corporation; Arthur Levitt, Chairman, Securities and Exchange Commission; and Nicolas Retsinas, Interim Director, Office of Thrift Supervision.

On February 25, 1997, the Subcommittee received testimony for the record from Denise Voigt Crawford, Texas Securities Commissioner, President-Elect, North American Securities Administrators Association.

Testifying before the Subcommittee on February 25, 1997, were: Paul Volcker, Chairman, James D. Wolfensohn, Inc.; Edmund Mierzwinski, Consumer Program Director, U.S. PIRG; Mary Griffin, Insurance Counsel, Consumers Union; Allen Fishbein, General Counsel, Center for Community Change; John Taylor, President and CEO, National Community Reinvestment Coalition; Michael Fink, National Association of Home Builders; and James L. Pledger, Chairman, American Council of State Savings Supervisors.

The Capital Markets, Securities and Government Sponsored Enterprises Subcommittee held three days of hearings on financial services modernization.

Testifying before the Subcommittee on March 5, 1997, were: Euguene Ludwig, Comptroller, Office of the Comptroller of the Currency; and Ricki Helfer, Chairman, Federal Deposit Insurance Corporation.

Testifying before the Subcommittee on March 12, 1997, were: The Honorable James A. Leach, Chairman, Committee on Banking and Financial Services; Peter Wallison, Partner of Gibson Dunn & Crutcher and former General Counsel of the Treasury; and Dr. George G. Kaufman, John Smith Professor of Finance and Economics at the College of Business, Loyola University, Chicago, Illinois.

Testifying before the Subcommittee on March 19, 1997, was Alan Greenspan, Chairman, Federal Reserve Board.

COMMITTEE CONSIDERATION AND VOTES

[RULE XI, CLAUSE 2(1)(2)(B)]

On June 17, 1997, the Committee met in open session to mark up financial modernization legislation. The Committee considered as original text for purposes of amendment a Committee Print which incorporated provisions of H.R. 10, H.R. 268, H.R. 669, and Treasury's legislative proposal entitled "The Financial Services Competition Act of 1997." The Committee considered a number of amendments to the print, accepting many of them by voice vote. Roll call votes were taken on the following amendments.

The Committee adopted by recorded vote an amendment offered by Reps. Roukema, Baker, Vento, and LaFalce to permit a bank holding company to affiliate with a nonfinancial company in an amount that is no greater than 15 percent of the bank holding company's domestic gross revenues and prohibits the commercial firm from having more than \$750,000,000 in assets at the time of the affiliation. The amendment passed 35 to 19.

YEAS	NAYS
Mr. McCollum	Mr. Leach
Mrs. Roukema	Mr. Bereuter
Mr. Baker	Mr. Campbell
Mr. Lazio	Mr. Lucas
Mr. Bachus	Mr. Metcalf
Mr. Castle	Mr. Riley
Mr. King	Mr. Gonzalez
Mr. Royce	Mr. Kanjorski
Mr. Ney	Mr. Kennedy
Mr. Ehrlich	Ms. Waters
Mr. Barr	Mr. Sanders
Mr. Fox	Mrs. Maloney
Mrs. Kelly	Mr. Gutierrez
Dr. Paul	Ms. Roybal-Allard
Dr. Weldon	Mr. Barrett
Mr. Ryun	Ms. Velazquez
Mr. Cook	Mr. Watt
Mr. Snowbarger	Mr. Jackson

Mr. Hill	Ms. Carson
Mr. Sessions	
Mr. LaTourette	
Mr. Foley	
Mr. Jones	
Mr. LaFalce	
Mr. Vento	
Mr. Schumer	
Mr. Frank	
Mr. Flake	
Mr. Hinchey	
Mr. Ackerman	
Mr. Bentsen	
Ms. McKinney	
Ms. Kilpatrick	
Mr. Maloney	
Ms. Hooley	

On June 18, 1997, the Committee approved, by recorded vote, an amendment offered by Mr. McCollum to allow commercial firms to control a bank provided that not more than 15% of the firm's gross domestic revenues are derived from the bank and that the bank must be under \$500 million in assets. The amendment passed 25 to 23.

YEAS	NAYS
Mr. McCollum	Mr. Leach
Mr. Baker	Mrs. Roukema
Mr. Bachus	Mr. Bereuter
Mr. King	Mr. Lazio
Mr. Royce	Mr. Campbell
Mr. Ney	Mr. Lucas
Mr. Ehrlich	Mr. Metcalf
Mr. Barr	Mrs. Kelly
Mr. Fox	Mr. Riley
Dr. Paul	Mr. Vento
Dr. Weldon	Mr. Kennedy
Mr. Cook	Ms. Waters
Mr. Snowbarger	Mr. Sanders
Mr. Hill	Mr. Gutierrez
Mr. Sessions	Ms. Roybal-Allard
Mr. LaTourette	Mr. Barrett
Mr. Manzullo	Ms. Velazquez
Mr. Foley	Mr. Watt
Mr. LaFalce	Mr. Hinchey
Mr. Frank	Mr. Bentsen
Mr. Kanjorski	Mr. Jackson
Mr. Flake	Ms. Hooley
Mr. Ackerman	Ms. Carson
Ms. Kilpatrick	
Mr. Maloney	

The Committee also approved, by recorded vote, an amendment offered by Mr. Kennedy requiring qualified bank holding companies to be in compliance with the Fair Housing Act with regard to its insurance activities. The amendment passed 20 to 19.

YEAS	NAYS
Mr. Leach	Mr. McCollum
Mr. Campbell	Mrs. Roukema
Mr. LaTourette	Mr. Bereuter
Mr. LaFalce	Mr. Baker
Mr. Vento	Mr. Castle
Mr. Frank	Mr. Royce
Mr. Kanjorski	Mr. Lucas
Mr. Kennedy	Mr. Metcalf
Mr. Waters	Mr. Ney
Mr. Sanders	Mr. Barr
Mr. Maloney	Mrs. Kelly
Mr. Gutierrez	Dr. Weldon
Ms. Roybal-Allard	Mr. Ryun
Mr. Barrett	Mr. Cook
Mr. Watt	Mr. Snowbarger
Mr. Hinchey	Mr. Riley
Mr. Bentsen	Mr. Sessions
Ms. Kilpatrick	Mr. Manzullo
Mr. Maloney	Mr. Jones
Ms. Hooley	

An amendment offered by Mr. Kennedy to require the National Council on Financial Services to collect information regarding race, gender and ethnicity of bank holding company affiliate sales and underwriting of auto, homeowners and small business insurance policies was defeated by roll call vote of 16 to 18.

YEAS	NAYS
Mr. LaFalce	Mr. Leach
Mr. Vento	Mr. McCollum
Mr. Frank	Mrs. Roukema
Mr. Kennedy	Mr. Bereuter
Mr. Sanders	Mr. Baker
Mrs. Maloney	Mr. Lazio
Mr. Gutierrez	Mr. Bachus
Ms. Roybal-Allard	Mr. Castle
Mr. Barrett	Mr. Campbell
Mr. Watt	Mr. Barr
Mr. Hinchey	Mrs. Kelly
Mr. Bentsen	Dr. Weldon
Ms. Kilpatrick	Mr. Ryun
Mr. Maloney	Mr. Cook
Ms. Hooley	Mr. Snowbarger
Ms. Carson	Mr. Riley
	Mr. LaTourette
	Mr. Manzullo

On June 19, 1997, the Committee approved an amendment by Mr. Bentsen requiring persons selling securities products within a bank to register with the National Association of Securities Dealers and to comply with NASD regulations. This amendment was later substituted by a Watt amendment limiting the applications of the amendment to a bank employees securities sales. The Bentsen amendment passed 18 to 14.

YEAS

Mr. McCollum
 Mr. Baker
 Mr. Lazio
 Mr. Bachus
 Mr. Campbell
 Mr. Ehrlich
 Dr. Weldon
 Mr. Hill
 Mr. Sessions
 Mr. LaFalce
 Mr. Vento
 Mr. Sanders
 Mr. Barrett
 Mr. Watt
 Mr. Bentsen
 Ms. Kilpatrick
 Mr. Maloney
 Ms. Hooley

NAYS

Mr. Leach
 Mrs. Roukema
 Mr. Bereuter
 Mr. Castle
 Mr. Royce
 Mr. Lucas
 Mr. Metcalf
 Mr. Barr
 Mrs. Kelly
 Mr. Ryun
 Mr. Cook
 Mr. LaTourette
 Mr. Manzullo
 Mr. Frank

The Committee approved an amendment offered by Mr. LaFalce to strengthen the consumer protection provisions of the bill with regard to disclosure requirements, prohibition of misrepresentation, anti-coercion, physical segregation of banking from non-banking activities, suitability standards, a consumer complaint mechanism and privacy issues. The amendment passed 33 to 7.

YEAS

Mr. Leach
 Mrs. Roukema
 Mr. Bereuter
 Mr. Lazio
 Mr. King
 Mr. Campbell
 Mr. Metcalf
 Mr. Ney
 Mr. Ehrlich
 Mrs. Kelly
 Mr. Cook
 Mr. Snowbarger
 Mr. Hill
 Mr. LaTourette
 Mr. Manzullo
 Mr. Foley
 Mr. Jones
 Mr. LaFalce
 Mr. Vento
 Mr. Kanjorski
 Mr. Kennedy
 Ms. Waters
 Mrs. Maloney
 Ms. Roybal-Allard
 Mr. Barrett
 Mr. Watt
 Mr. Hinchey

NAYS

Mr. McCollum
 Mr. Baker
 Mr. Royce
 Mr. Barr
 Dr. Paul
 Dr. Weldon
 Mr. Ryun

Mr. Bentsen
 Mr. Jackson
 Ms. Kilpatrick
 Mr. Maloney
 Ms. Hooley
 Ms. Carson

An amendment in the nature of a substitute to Title III (Thrift Charter Conversion) by Reps. McCollum, Roukema, Schumer, and Ehrlich to broaden the grandfathered rights of converted thrifts was adopted by a vote of 42 to 4.

YEAS

Mr. Leach
 Mr. McCollum
 Mrs. Roukema
 Mr. Bereuter
 Mr. Baker
 Mr. Lazio
 Mr. Bachus
 Mr. Castle
 Mr. King
 Mr. Royce
 Mr. Lucas
 Mr. Metcalf
 Mr. Ney
 Mr. Ehrlich
 Mr. Barr
 Mr. Fox
 Mrs. Kelly
 Mr. Ryun
 Mr. Cook
 Mr. Snowbarger
 Mr. Hill
 Mr. Sessions
 Mr. LaTourette
 Mr. Manzullo
 Mr. Foley
 Mr. Jones
 Mr. Gonzalez
 Mr. LaFalce
 Mr. Vento
 Mr. Schumer
 Mr. Kanjorski
 Mr. Kennedy
 Mr. Flake
 Ms. Waters
 Mrs. Maloney
 Mr. Gutierrez
 Ms. Roybal-Allard
 Mr. Watt
 Mr. Bentsen
 Mr. Jackson
 Ms. Kilpatrick
 Ms. Holley

NAYS

Mr. Campbell
 Dr. Paul
 Mr. Barrett
 Mr. Hinchey

An amendment offered by Ms. Waters to extend the Community Reinvestment Act to non-bank subsidiaries was defeated by a vote of 18 to 25.

YEAS	NAYS
Mr. LaFalce	Mr. Leach
Mr. Vento	Mr. McCollum
Mr. Frank	Mrs. Roukema
Mr. Kanjorski	Mr. Bereuter
Mr. Kennedy	Mr. Baker
Ms. Waters	Mr. Lazio
Mr. Sanders	Mr. Bachus
Mr. Gutierrez	Mr. Castle
Ms. Roybal-Allard	Mr. Campbell
Mr. Barrett	Mr. Royce
Ms. Velazquez	Mr. Metcalf
Mr. Watt	Mr. Ehrlich
Mr. Hinchey	Mr. Barr
Mr. Bentsen	Mr. Fox
Mr. Jackson	Mrs. Kelly
Ms. Kilpatrick	Dr. Weldon
Ms. Hooley	Mr. Ryun
Ms. Carson	Mr. Cook
	Mr. Snowbarger
	Mr. Hill
	Mr. Sessions
	Mr. LaTourette
	Mr. Manzullo
	Mr. Foley
	Mr. Jones

An amendment offered by Ms. Waters to require that subsidiary depository institutions and non-bank affiliates of eligible bank holding companies meet community credit and consumer needs was defeated by a vote of 13 to 27 with 1 present.

YEAS	NAYS	PRESENT
Mr. Frank	Mr. Leach	Mr. Vento
Mr. Kanjorski	Mr. McCollum	
Mr. Kennedy	Mrs. Roukema	
Ms. Waters	Mr. Bereuter	
Mr. Sanders	Mr. Baker	
Mr. Gutierrez	Mr. Lazio	
Mr. Barrett	Mr. Castle	
Ms. Velazquez	Mr. King	
Mr. Watt	Mr. Campbell	
Mr. Hinchey	Mr. Royce	
Mr. Jackson	Mr. Lucas	
Ms. Kilpatrick	Mr. Metcalf	
Ms. Carson	Mr. Ney	
	Mr. Barr	
	Mr. Fox	
	Mrs. Kelly	
	Dr. Paul	

YEAS

NAYS

PRESENT

Dr. Weldon
 Mr. Cook
 Mr. Snowbarger
 Mr. Hill
 Mr. Sessions
 Mr. LaTourette
 Mr. Manzullo
 Mr. Bentsen
 Mr. Maloney
 Ms. Hooley

An amendment by Mr. LaFalce to Mr. McCollum's Title III substitute to delete the thrift charter conversion provisions of the bill was defeated by a vote of 23 to 26.

YEAS

NAYS

Mr. King
 Mr. Royce
 Mr. Metcalf
 Mr. Fox
 Dr. Paul
 Mr. Ryun
 Mr. Snowbarger
 Mr. Sessions
 Mr. Jones
 Mr. Gonzalez
 Mr. LaFalce
 Mr. Schumer
 Mr. Kennedy
 Mr. Flake
 Ms. Waters
 Mrs. Maloney
 Mr. Gutierrez
 Ms. Roybal-Allard
 Mr. Hinchey
 Mr. Bentsen
 Mr. Jackson
 Ms. Kilpatrick
 Ms. Carson

Mr. Leach
 Mr. McCollum
 Mrs. Roukema
 Mr. Bereuter
 Mr. Baker
 Mr. Lazio
 Mr. Bachus
 Mr. Castle
 Mr. Campbell
 Mr. Lucas
 Mr. Ney
 Mr. Ehrlich
 Mr. Barr
 Mrs. Kelly
 Dr. Weldon
 Mr. Cook
 Mr. Hill
 Mr. LaTourette
 Mr. Manzullo
 Mr. Foley
 Mr. Vento
 Mr. Kanjorski
 Mr. Barrett
 Mr. Watt
 Mr. Maloney
 Ms. Hooley

A recorded vote also occurred on a motion by Mr. McCollum to table a motion challenging the germaneness ruling of the chair in regards to an amendment offered by Dr. Paul. The motion to table was approved by a vote of 35 to 12.

YEAS

NAYS

Mr. Leach
 Mr. McCollum
 Mrs. Roukema
 Mr. Bereuter
 Mr. Baker

Mr. Royce
 Mr. Ney
 Mr. Barr
 Dr. Paul
 Mr. Ryun

Mr. Lazio	Mr. Cook
Mr. Castle	Mr. Snowbarger
Mr. King	Mr. Hill
Mr. Campbell	Mr. Sessions
Mr. Lucas	Mr. Manzullo
Mr. Metcalf	Mr. Jones
Mr. Ehrlich	Mrs. Maloney
Mr. Fox	
Mrs. Kelly	
Dr. Weldon	
Mr. LaTourette	
Mr. Gonzalez	
Mr. LaFalce	
Mr. Vento	
Mr. Schumer	
Mr. Kanjorski	
Mr. Kennedy	
Mr. Flake	
Ms. Waters	
Mr. Sanders	
Mr. Gutierrez	
Mr. Barrett	
Mr. Watt	
Mr. Hinchey	
Mr. Bentsen	
Mr. Jackson	
Ms. Kilpatrick	
Mr. Maloney	
Ms. Hooley	
Ms. Carson	

On June 20, 1997 the Committee defeated an amendment by Dr. Paul authorizing a study and disclosure of the cost of regulation of the consumer disclosure provisions of the Act was defeated by a vote of 9 to 20.

YEAS	NAYS
Mr. Leach	Mrs. Roukema
Mr. Baker	Mr. Castle
Mr. Ney	Mr. Campbell
Dr. Paul	Mrs. Kelly
Mr. Cook	Mr. LaTourette
Mr. Snowbarger	Mr. Manzullo
Mr. Hill	Mr. LaFalce
Mr. Sessions	Mr. Vento
Mrs. Maloney	Mr. Kanjorski
	Mr. Flake
	Ms. Waters
	Mr. Sanders
	Mr. Barrett
	Mr. Watt
	Mr. Hinchey
	Mr. Bentsen
	Mr. Jackson
	Mr. Maloney

Ms. Hooley
Ms. Carson

An amendment offered by Ms. Waters to ensure that state consumer protection laws are not preempted was defeated by a vote of 25 to 25.

YEAS	NAYS
Mr. Bachus	Mr. Leach
Mr. Campbell	Mr. McCollum
Mr. Snowbarger	Mrs. Roukema
Mr. Gonzalez	Mr. Bereuter
Mr. LaFalce	Mr. Baker
Mr. Frank	Mr. Lazio
Mr. Kanjorski	Mr. Castle
Mr. Kennedy	Mr. King
Mr. Flake	Mr. Royce
Ms. Waters	Mr. Lucas
Mr. Sanders	Mr. Metcalf
Mrs. Maloney	Mr. Ney
Mr. Gutierrez	Mr. Ehrlich
Ms. Roybal-Allard	Mr. Barr
Mr. Barrett	Mrs. Kelly
Ms. Velazquez	Dr. Paul
Mr. Watt	Dr. Weldon
Mr. Hinchey	Mr. Ryun
Mr. Bentsen	Mr. Cook
Mr. Jackson	Mr. Riley
Ms. McKinney	Mr. Hill
Ms. Kilpatrick	Mr. Sessions
Mr. Maloney	Mr. LaTourette
Ms. Hooley	Mr. Manzullo
Ms. Carson	Mr. Jones

The Committee brought up H.R. 10 and struck everything after the enacting clause and inserted in lieu thereof the Committee Print, as amended. The motion passed by voice vote.

The Committee favorably reported H.R. 10 as amended to the full House by a vote of 28 to 26.

YEAS	NAYS
Mr. Leach	Mr. Bereuter
Mr. McCollum	Mr. Campbell
Mrs. Roukema	Mr. Royce
Mr. Baker	Mr. Lucas
Mr. Lazio	Mr. Metcalf
Mr. Bachus	Mr. Ney
Mr. Castle	Mr. Fox
Mr. King	Dr. Paul
Mr. Ehrlich	Mr. Ryun
Mr. Barr	Mr. Riley
Mrs. Kelly	Mr. Hill
Dr. Weldon	Mr. Jones
Mr. Cook	Mr. Gonzalez
Mr. Snowbarger	Mr. Frank
Mr. Sessions	Mr. Kanjorski

Mr. LaTourette	Ms. Waters
Mr. Manzullo	Mr. Sanders
Mr. Foley	Mrs. Maloney
Mr. LaFalce	Mr. Gutierrez
Mr. Vento	Ms. Roybal-Allard
Mr. Schumer	Mr. Barrett
Mr. Kennedy	Ms. Velazquez
Mr. Flake	Mr. Hinchey
Mr. Watt	Mr. Jackson
Mr. Bentsen	Ms. Kilpatrick
Ms. McKinney	Ms. Carson
Mr. Maloney	
Ms. Hooley	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 1(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings and recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(d) of rule of the Rules of the House of Representatives.

CONSTITUTIONAL AUTHORITY

In compliance with clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the constitutional authority for Congress to enact this legislation is derived from the interstate commerce clause (Clause 3, Article I). In addition, the power “to coin money” and “regulate the value thereof” provided for in Clause 5, Article I, has been broadly construed to allow for the Federal regulation of the provision of credit via the financial services industry.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONGRESSIONAL ACCOUNTABILITY ACT

The reporting requirement under section 102(b)(3) of the Congressional Accountability Act (P.L. 104–1) is inapplicable because this legislation does not relate to terms and conditions of employment or access to public services or accommodations.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE AND UNFUNDED
MANDATES ANALYSIS

The CBO cost estimates and unfunded mandates analysis for the bill were not available at the time the report was filed, but will be provided in a subsequent addendum to the report.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; purposes

Section 1 designates the Bill as the “Financial Services Competition Act of 1997” (the Act). Further, the section states that the purposes of the Act are: (1) to ensure continued safety and soundness of depository institutions; (2) to eliminate the legal barriers to affiliations between depository institutions, securities firms, insurance companies, and other financial services providers through a prudential framework; (3) to enhance competition in the financial services industry; (4) to enhance the availability of financial services to all citizens and all geographic areas; (5) to enhance the competitiveness of United States financial service providers internationally; and (6) to ensure compliance by depository institutions with the provisions of the Community Reinvestment Act.

Title I—Powers and Affiliations of Insured Depository Institutions

SUBTITLE A—REMOVING BARRIERS TO AFFILIATIONS BETWEEN INSURED DEPOSITORY INSTITUTIONS AND OTHER FINANCIAL INSTITUTIONS

Section 101. Anti-affiliation provisions of Glass-Steagall Act repealed

Section 101 repeals section 20 and amends section 32 of the Banking Act of 1933. (Sections 16, 20, 21, and 32 of the Banking Act of 1933 are known as the “Glass-Steagall Act.”)

Section 20 currently prohibits any bank that is a member of the Federal Reserve System from affiliating with any company that is “engaged principally in the issue, flotation, underwriting, public sale or distribution” of securities. 12 U.S.C. § 377. The effect of repealing section 20 is to permit affiliations between banks and securities firms regardless of the type or volume of securities activities conducted by the firm. These affiliations can occur either through a nonbank subsidiary of a holding company or through an operating subsidiary of a bank. However, operating subsidiaries may not engage in merchant banking activities.

Section 32 currently prohibits any officer, director, or employee of a company “primarily engaged in the issue, flotation, underwriting, public sale, or distribution” of securities from serving simultaneously as an officer, director, or employee of any member bank, except as allowed by the Board. 12 U.S.C. § 78. Repealing section 32 will permit banks and securities firms to have interlocking officers, directors, and employees.

Section 102. Repeal of activity restrictions of Bank Holding Company Act of 1956

Section 102 repeals subsections (a), (b), (c), (e), (h), (i), and (j) of section 4 of the Bank Holding Company Act of 1956 (BHCA), which generally restrict the activities that a bank holding company can conduct directly or through its nonbank subsidiaries. Section 102 makes a number of other technical and conforming amendments made necessary by the repeal of section 4.

Section 103. Qualifying bank holding companies

Section 103 creates a new section 6 of the BHCA, entitled “Qualifying Bank Holding Companies.” Section 6 establishes the framework for affiliations between banks and securities firms, insurance companies, and other financial entities. The framework adopted in section 6 is significantly different than that currently found in section 4 of the BHCA. Recognizing that banks, securities firms, insurance companies, and other financial services providers are frequently offering the same or functionally similar products and services, section 6 greatly expands permissible affiliations for bank holding companies from the current requirement that affiliations must be “closely related to banking” to those that are “financial in nature.” Section 6 contains a broad list of activities that are deemed by statute to be “financial in nature.” In addition, certain limited affiliations also are permitted with nonfinancial firms. These expanded financial and nonfinancial affiliations are permissible for holding companies that meet the criteria set forth for qualifying bank holding companies. Holding companies that wish to limit their activities to those that are permissible under section 4 of the BHCA as of the date of enactment (other than engaging in underwriting securities that a national bank may not underwrite) may do so without meeting the requirements for being a qualifying bank holding company.

a. Qualifying bank holding companies

As set forth in section 6(a), a qualifying bank holding company must meet the following criteria. All of the holding company’s subsidiary depository institutions must be well capitalized, well managed, have a satisfactory or better rating under the Community Reinvestment Act (CRA) as of the most recent examination of the depository institution, and have a demonstrable record of providing low-cost lifeline bank accounts. In addition, a holding company and any of its affiliates that underwrite or sell annuities or insurance must be in compliance with any applicable consent decree filed in Federal court or any settlement agreement relating to a violation of the Fair Housing Act. This section grants the Board of Governors of the Federal Reserve System (the Board) the authority to exempt, on a case-by-case basis, bank holding companies from meeting the condition relating to the Fair Housing Act.

In order to be a qualifying bank holding company, not less than 85% of the bank holding company’s domestic gross revenues must be derived from activities that are “financial in nature.” Thus, a bank holding company is permitted to engage in nonfinancial activities provided that such activities do not comprise more than 15% of the company’s domestic gross revenues. A qualifying bank

holding company may not become affiliated with a nonfinancial company that has consolidated assets in excess of \$750 million. a subsidiary depository institution of a qualifying bank holding company may not engage in a covered transactions (as defined in section 23A of the Federal Reserve Act) with any affiliate engaged in nonfinancial activities.

A bank holding company that meets the requirements set forth above must file a declaration with the Board that it meets the criteria for being a qualifying bank holding company.

b. Financial activities

Section 6(a)(3) contains a list of activities that are deemed to be “financial.” In addition, the National Council on Financial Services (created by section 121 of the Act) may determine that additional activities are “financial activities” or “related to a financial activity” by taking into account the purposes of the Act, changes in the market in which bank holding companies compete, changes in technology for delivering financial services, and whether such activity is necessary to allow bank holding companies and their affiliates to: (1) compete effectively with any company seeking to provide financial services in the U.S.; (2) use any available or emerging technological means including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions; and (3) offer customers any available or emerging technological means for using financial services.

c. Authority to engage in financial activities

Section 6(b) provides that a qualifying bank holding company can engage, directly or through a subsidiary that is not an insured depository institution (or subsidiary thereof), in any activity to the extent permissible under this Act without giving notice to or receiving approval from the Board. However, acquisitions of depository institutions remain subject to the approval requirements under section 3 of the BHCA.

d. Nonqualifying bank holding companies

A bank holding company that is not a qualifying bank holding company may engage, directly or through a subsidiary that is not an insured depository institution (or subsidiary thereof), only in managing and controlling depository institutions and in any activity that was permissible under section 4(c) of the BHCA before the enactment of the Act other than in underwriting securities that a national bank may not underwrite, except as otherwise provided by law.

e. Noncompliance with the criteria for qualifying bank holding companies

Section 6(d) sets out the procedures to be followed if a qualifying bank holding company fails to meet the requirements set out in section 6(a) for such companies. If the Board finds that a qualifying bank holding company is not in compliance with the requirements contained in section 6(a), the Board must provide notice to the company. The company must, within 45 days of receipt of such notice (or such additional period as the Board must permit) execute an

agreement with the Board to comply with the requirements. If a company has not met the conditions within 180 days of receipt of the notice, the Board can require a company to either divest control of any subsidiary depository institution or cease activities (other than through a depository institution or subsidiary thereof) that are broader than the activities that were permissible under section 4(c) of the BHCA. During this period, a bank holding company may continue to engage in financial activities authorized for qualifying bank holding companies unless ordered by the Board to restrict or to cease engaging in such activities.

f. Internal controls

Section 6(c) requires a qualifying bank holding company to have appropriate internal controls to assure that its procedures for identifying financial and operational risks within the company and its subsidiaries that are not insured depository institutions (or subsidiaries thereof) adequately protect the company's subsidiary insured depository institutions from such risks and that it has reasonable policies and procedures to preserve the separate corporate identity and limited liability of the company and its subsidiaries for the protection of the subsidiary insured depository institutions.

g. Grandfather rights

Existing grandfather rights under section 4(c) (9) and (13), and (4)(d) of the BHCA are transferred to section 6 of the BHCA. Moreover, section 103(b) provides a grandfather provision to permit companies to continue to hold shares of an affiliate that the company held pursuant to an exception under section 4 of the BHCA.

h. Limited purpose banks

Sections 6(g) and (h) apply to limited purpose banks. Limited purpose banks are banks that do not accept demand deposits and make commercial loans. Prior to 1987, limited purpose banks were not subject to the BHCA. The Competitive Equality Amendments of 1987 grandfathered the exemption for limited purpose banks in existence at the time. In order to retain their exemption, grandfathered banks are required to comply with certain activities restrictions.

Specifically, limited purpose banks currently are now allowed to engage in any activity in which it was not engaged in as of March 5, 1987. Section 6(g) permits well capitalized and well managed limited purpose banks to engage in any banking activity, but maintains the restriction whereby limited purpose banks are permitted to either accept demand deposits or make commercial loans, but not both. Limited purpose banks that accept demand deposits would continue to be restricted in their ability to engage in making traditional commercial loans, but the section would permit them to issue corporate credit cards (e.g., cards used by business employees for travel and entertainment expenses). This section also amends current law to permit limited purpose banks to cross market affiliate products.

Current law required divestiture of a limited purpose bank that violates the established activities restrictions. Section 6(g) amends current law to permit limited purpose banks to avoid divestiture by

correcting violations within six months upon receiving notice from the Board.

Section 104. Certain State laws preempted

Section 104 prohibits States from preventing or restricting an insured depository institution or wholesale financial institution (as authorized in section 161 of the Act) from being affiliated with any entity as authorized by the Act or any other provision of law or from engaging, directly or indirectly or in conjunction with such affiliate, in any activity authorized by the Act or any provision of law.

Section 105. Mutual bank holding companies authorized

Section 105 amends the BHCA to expand the types of bank holding companies in mutual form to which the BHCA applies. Such mutual bank holding companies will be regulated similarly to other bank holding companies.

Section 106. Companies not engaged in activities financial in nature

Section 106 adds a new section 6(k) to the BHCA which permits a company that is engaged predominantly in nonfinancial activities to control a qualifying bank holding company. Such company that chooses to control a qualifying bank holding company shall not be considered as a bank holding company for the purposes of this Act provided that: (1) the company does not control more than one bank (with certain limited exception), (2) the total consolidated assets of the bank at the time it is acquired by the company do not exceed \$500 million, (3) the bank has been chartered for at least five years prior to the date of acquisition by the company, and (4) the gross revenue of the bank do not exceed 15% of the consolidated domestic gross revenues of the company. The company can only control the bank through a qualifying bank holding company. Therefore, the bank must be a subsidiary of a qualifying bank holding company for so long as the company controls the bank. In addition, the bank is not permitted to engage in covered transactions (as defined in section 23A of the Federal Reserve Act) with any affiliate engaged in nonfinancial activities.

If the Board finds that a company is not in compliance with the provisions of this subsection, the Board may apply the same enforcement authority it is granted under section 103 of the Act with respect to qualifying bank holding companies that are in non-compliance with the established requirements.

Section 107. Amendment to ensure that banks acquired by other entities do not become deposit production offices

Section 107 applies the provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act regarding deposit production offices and out-of-state lending to any interest branch established or acquired under this Act. In addition, this section expands the definition of interstate branch for purposes of the deposit production provisions to include all branches of a bank owned by an out-of-state bank holding company.

Section 108. Clarification of applicability of branch closure requirements in interstate banking operations

Section 108 applies the provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act regarding branch closures by an interstate bank to any branch of a bank that is controlled by an out-of-state bank holding company.

SUBTITLE B—ADDITIONAL SAFEGUARDS

Section 111. Firewall safeguards

Section 111 permits the Office of the Comptroller of the Currency (OCC), the Board, and the Federal Deposit Insurance Corporation (FDIC) to impose restrictions on transactions between a bank and a subsidiary and the Board to impose restrictions on transactions between a bank and an affiliate. Such restrictions may be imposed if the effect would be to avoid significant risk to the safety and soundness of a bank or to the Federal deposit insurance fund. Restrictions also may be imposed for the purpose of enhancing the financial stability of bank holding companies, avoiding conflicts of interest, enhancing the privacy of customers, and promoting the application of national treatment and equality of competitive opportunity between domestic and foreign bank holding companies.

Each agency is required to regularly review the continuing need for any such restrictions that have been imposed.

Section 112. Consumer protection

Section 112 requires the Federal banking agencies to issue joint regulations, within three months after the effective date of the Act, regarding bank retail sales of nondeposit products. The regulations to be issued under section 112 are to apply to retail sales, solicitations, advertising, and offers of nondeposit products by any insured depository institution or any person who is engaged in such activities at an office of the institution. The agencies also are directed to apply the regulations to subsidiaries of insured depository institutions as appropriate. The regulations are required to cover sales practices, including anti-coercion and suitability rules, disclosure and advertising requirements, consumer grievance procedures, and standards for the separation of banking and nonbanking activities. Many of the provisions of this section are based on the Interagency Statement on Retail Sales of Nondeposit Investment Products and as such the agencies should use that Statement as a guideline, where appropriate, in implementing the regulations required by this section.

Nondeposit products are defined to include investment and insurance products that are not deposit products as well as shares of registered investment companies. Specifically excluded from the category of nondeposit products are loans, other extensions of credit, letters of credit, discount and trust services, and other instruments, insurance, or investment products specifically excluded by joint agency rulemaking.

Section 112(b) addresses the anticoercion and suitability rules. This subsection requires the Federal banking agencies to promulgate regulations that address practices which could coerce or mislead consumers regarding the sale of a nondeposit product when

they agree to purchase a credit product from an insured depository. The agencies are directed to adopt rules prohibiting an insured depository institution from engaging in any practices that would lead a consumer to believe that an extension of credit is conditional on the purchase of a nondeposit product from the institution (or its affiliates or subsidiaries), or an agreement by the consumer not to obtain a nondeposit product from an unaffiliated entity, in violation of the anti-tying rules contained in section 106(b) of the Bank Holding Company Act Amendments of 1970. The anticoercion sales practice rules required under section 112(b) are intended to be consistent with section 106(b) and the interpretations thereunder. This section is not intended to prohibit the offering of products and services permitted under section 106(b). Rather, it is intended that the agencies address sales practices that would lead a customer to believe that products are tied in violation of section 106(b).

The Committee believes that depository institutions should take reasonable steps to minimize the possibility of consumer confusion regarding the nondeposit products that they sell. As such, section 112(c) directs the agencies to adopt disclosure and advertising rules which require that banks provide disclosure at the time the consumer opens an account for the purchase of any nondeposit product or in connection with the initial purchase of a nondeposit product. In addition, banks are required to obtain a written acknowledgment, signed and dated by the consumer, that the consumer has received the disclosures. Moreover, given the rapid growth of technology in consumer banking, section 112(c) directs the agencies to make necessary adjustments in the disclosure and acknowledgment requirements for sales made in person, by telephone, or by electronic media in order to provide for the most appropriate and complete form of disclosure and acknowledgment.

Section 112(d) requires that the agencies adopt standards for the separation of banking and nonbanking activities. This subsection requires that the nondeposit product sales area be located in a physically segregated area, to the extent practicable, from the area where retail deposits are routinely taken. The Committee understands that it may be appropriate to use signs or other means to distinguish the nondeposit product area from the area where retail deposits are routinely accepted. The agencies are also required to adopt standards prohibiting any person accepting deposits in a routine deposit taking area from selling, offering to sell, or offering an opinion or advice on, any nondeposit product. In addition, the agencies must adopt regulations pertaining to the receipt by bank employees of a one-time nominal and fixed dollar fee for each customer referral. While this provision allows for referral fees, it does not affect, and is not intended to affect, any provision of the Real Estate Settlement Procedures Act.

Section 112(e) requires the Federal banking agencies to jointly establish a consumer complaint mechanism for expeditiously addressing meritorious consumer complaints by developing procedures for investigating such complaints and for informing consumers of their rights.

While section 112 requires the Federal banking agencies to consult with the Securities and Exchange Commission (SEC) and the National Association of Insurance Commissioners (NAIC), as ap-

appropriate, it does not limit nor affect the authority of the SEC under Federal securities law, the State insurance commissioners under State insurance law, and the applicability of these laws and state securities laws to any person.

Additionally, the section grants the SEC, in consultation with the Federal banking agencies, the authority to prescribe regulations regarding the sale of securities by affiliates of insured depository institutions that are registered brokers or dealers or by insured depository institutions that are registered brokers or dealers. These regulations shall establish disclosure requirements with respect to coverage under the Securities Investor Protection Corporation Act of 1970 and the Federal Deposit Insurance Act and—with respect to any referrals or transactions—disclosure of any financial interest of the depository institution or any securities subsidiary or securities affiliate.

The National Council on Financial Services has authority to prescribe regulations more stringent than those of the Federal banking regulators and those of the SEC. Further, the National Council on Financial Services is required to review biennially regulations under section 112 to determine whether the purposes of the Act are being achieved.

Section 113. Obligations of subsidiaries and affiliates cannot be extended to insured depository institutions

Section 113 prohibits an obligation of an affiliate or subsidiary of an insured depository institution from being charged against the insured depository by reason of any ruling, determination or judgment disregarding the separate corporate identity or limited liability of the affiliate, subsidiary or insured depository institution. The intent of this provision is to protect insured depository institutions from being charged with obligations for which they would not otherwise be liable except for a ruling that would “pierce the corporate veil” of such institutions. Each appropriate Federal banking agency is required to take steps to assure that each insured depository institution observes the separate corporate identity and separate legal status of each of its subsidiaries and affiliates.

This section also makes it a criminal offense for any institution-affiliated party of an insured depository institution, or subsidiary or affiliate of an insured depository institution to fraudulently represent that an insured depository institution is liable for an obligation of its subsidiary or affiliate.

SUBTITLE C—NATIONAL COUNCIL ON FINANCIAL SERVICES

Section 121. Establishment and operation of the Council

Section 121 creates the National Council on Financial Services (the Council) for the general purposes of improving the efficiency and competitiveness of the U.S. financial services system and monitoring innovations in the delivery of financial services for the benefit of the U.S. economy and consumers. There shall be 10 members on the Council: the Secretary of the Treasury (Chairperson of the Council); the Chairman of the Board of Governors of the Federal Reserve System (Vice-Chairperson of the Council); the Chairperson of the Federal Deposit Insurance Corporation; the Comptroller of

the Currency (Comptroller); the Chairperson of the Securities and Exchange Commission; the Chairman of the Commodity Futures Trading Commission; an individual with current or prior experience in securities regulation at the State level who shall be appointed by the President; two individuals with current or prior experience in State insurance regulation who shall be appointed by the President; and one individual with current or prior experience in State banking supervision who shall be appointed by the President. With respect to the two individuals representing the insurance industry, the President is required to solicit the views of the NAIC before making the appointments.

Members of the Council shall serve without compensation. The non-Federal government members appointed based on their state experience will be reimbursed for reasonable expenses. Each agency represented on the Council bears the expenses associated with participation in the Council. Any other expenses of the Council (including those of the individual member) are to be shared pro rata among the Federal agencies represented on the Council.

A majority of the members of the Council constitutes a quorum and an affirmative vote of the Council requires a vote of the majority of a quorum. Council members cannot vote through designees.

Section 122. Functions of the Council

Section 122 grants the Council the authority to issue regulations prescribing the method for calculating the gross revenues test mandated by section 6(a)(2) of the BHCA and to determine whether an activity or product is insurance or banking for purposes of the limitations on insurance underwriting by national banks provided for in section 141. In addition, the Council may (1) issue regulations or orders finding whether an activity is financial or related to a financial activity or non-financial or not related to a financial activity, and (2) impose additional safeguards on relationships or transactions involving an insured depository institution and its affiliates and subsidiaries engaged in activities that are not permissible for a national bank to engage in directly, if the Council finds that such restrictions will promote safety and soundness or will enhance consumer protections. Further, the section provides that the Council's actions shall be binding on its members' agencies and enforced by the respective agency. With respect to the Council's authority to determine an activity as financial or non-financial in nature, the intent of the Act is that the Council will take into consideration emerging areas in the industry, such as information technology, that could facilitate synergies in the holding company and its affiliates.

Finally, section 122 directs the Council, in consultation with the Federal Trade Commission to report to Congress, within one year, on the implications of broader affiliations between companies and the increasing use of technology in the provision of financial services on the ability of consumers to control and safeguard the use of their financial information. The Council also is directed to make legislative recommendations if necessary to better safeguard consumer privacy.

Section 123. Advisory Council on Community Revitalization

Section 123 requires the Council to establish the Advisory Council on Community Revitalization (the Advisory Council) to examine the impact of new insurance and securities activities of qualifying bank holding companies and to make recommendations and reports to the Congress and the Council. Members of the Advisory Council shall include a person appointed by each of the six agency members of the Council, one person appointed by the Secretary of Commerce to represent the views of the insurance industry, one person appointed by the Chairman of the Securities and Exchange Commission to represent the securities industry, and two people appointed by the Secretary of Treasury from among representatives of well-established, nationally recognized consumer organizations. The Advisory Council has two enumerated responsibilities: first, the Advisory Council is required to submit, within one year, recommendations to Congress and the Council on ways to enhance insurance and securities activities of qualifying bank holding companies to meet the credit and insurance needs of all citizens and communities, including underserved communities and populations; and second, the Advisory Council is required to submit annually a report for a five-year period to the Congress and the Council on the impact of the Act on the capital and credit needs of all citizens.

Each member of the Advisory Council shall serve without compensation, except that the individual members shall receive expenses in the same manner as the individual members of the Council. The Advisory Council's expenses shall be paid by the Council.

SUBTITLE D—BANK HOLDING COMPANY SUPERVISION

Section 131. Streamlining bank holding company supervision

Section 131 amends the reporting and examination requirements currently applicable to bank holding companies under section 5(c) of the BHCA. As under current law, the Board may require any bank holding company to submit reports that will enable the Board to determine compliance with the BHCA and regulations or orders issued thereunder. But the Board may not require such reports if information sufficient to make the required determinations is reasonably available from any other source. The Board shall, to the fullest extent possible, use the examination reports prepared by any Federal or State regulatory agency or any self-regulatory organization for purposes of making the required determinations. No other provision of this Act is intended to limit the Board's authority to require reports for the purpose of determining compliance with the provisions of this Act.

The Board may exempt any company or class of companies from the reporting requirements. In granting an exemption, the Board must consider whether the type of information required is available from other specified sources, the primary business of the company to be exempted, the nature and extent of domestic or foreign regulation of such company's activities, and the absolute and relative size within the company of any subsidiary insured depository institution.

Section 131 focuses the Board's examination authority on the holding company and its affiliates that may pose a material risk to

the reporting institution affiliate. As such, the Board may examine a bank holding company and its nonbank subsidiaries (other than subsidiaries of insured depository institutions) to inform the Board of: (1) the nature of the operations and the financial conditions of the holding company and such subsidiaries; (2) the financial and operational risks within the holding company system that may pose a threat to the safety and soundness of any subsidiary insured depository institution; (3) the systems of the holding company; and (4) compliance with the BHCA and laws governing transactions between a depository institution and its affiliates. The Board must, to the fullest extent possible, limit the focus and scope of any holding company examination to the holding company itself and any nonbank subsidiary (other than a subsidiary of a depository institution) that for specified reasons could have a materially adverse effect on a subsidiary depository institution of the company. The Board must, to the fullest extent possible, use reports or examinations made by other agencies, including bank examination reports.

This section requires any agency represented on the Council and any State supervisory authority to notify the Board and the appropriate Federal banking agency or State bank supervisor of any significant financial or operational risks to any depository institution resulting from the activities of an affiliate. It also provides that the Board shall defer to the SEC regarding all interpretations and enforcement of applicable Federal securities laws relating to the activities of registered brokers, dealers, investment advisers and investment companies. Further, the Board shall defer to the relevant state insurance authorities regarding all interpretations and enforcement of applicable state insurance laws relating to the activities of insurance companies and agents.

For bank holding companies not significantly involved in non-banking activities, the Board may designate the appropriate Federal banking agency for the bank holding company's lead depository institution as the appropriate Federal banking agency for the bank holding company as well.

The standards established in section 131 for the supervision of holding companies are consistent with standards adopted internationally and by some major trading partners of the U.S. For example, in 1992, the Basle Supervisors Committee adopted Minimum Standards for Consolidated Supervision (Standards) of international banks and banking groups in recognition of the fact that banking groups are increasingly complex organizations that pose particular supervisory challenges. The Standards state that home country supervisory authorities should receive consolidated financial and prudential information on the group's global operations and have the ability to test the reliability of the information through on-site examination or other means. Similarly, the European Union has established rules concerning the supervision of conglomerates that own banks. Moreover, if a commercial company owns a bank or financial holding company, the commercial company is also subject to information and inspection requirements.

Section 132. Administration of the Bank Holding Company Act of 1956

Section 5(a) of the BHCA is amended to provide that a declaration filed under section 6 by a company seeking to be a qualifying bank holding company satisfies the bank holding company registration requirement but not any requirement to file an application to acquire a bank under section 3. The divestiture provisions of section 5(e) are amended to allow a bank holding company to make a choice between divesting a nonbanking subsidiary and divesting an insured depository institution.

Section 133. Bank Holding Company Capital

Section 133 addresses capital standards for bank holding companies. The bank holding capital standards applied today were developed for companies whose activities focused on managing and controlling insured banks and on activities "closely-related" to banking. Given the breadth of the new financial affiliations permitted by this Act, section 133 was designed to ensure that the Board has sufficient flexibility to deal with a wide variety of holding companies under its jurisdiction, including holding companies that may not control an insured depository subsidiary. It is expected that the Board would reexamine its current holding company capital guidelines to include approaches that focus on excessive use of double leverage by holding companies to fund investments in stock of its subsidiaries and on situations that pose a threat to the safety and soundness of depository institution subsidiaries. It is also expected that the Board will take full and appropriate account of the different classes of holding companies that may exist, such as those that do not control insured depository institutions or are predominantly engaged in activities other than controlling insured banks. The Board also must take account of capital maintained by regulated nondepository subsidiaries in accordance with the capital requirements of another supervisory authority and of capital maintained by unregulated nondepository subsidiaries in accordance with industry norms.

In establishing capital adequacy guidelines or requirements, it is expected that the Board will make every effort to ensure equality of competitive opportunity and take account of the international competitive position of United States financial institutions. In addition, as it currently does, the Board should take steps to ensure that capital adequacy requirements or guidelines do not unnecessarily impair the transfer of small institutions. The Board should further take into account that certain holding companies predominantly engaged in nonbanking financial activities have been organized in non-corporate structures, and should treat as common equity such interests as limited company memberships and partnership interests where such interests are accepted in the marketplace as equity available to absorb losses.

Section 133 does not, nor is it intended to, alter current law to authorize the Board to set capital standards for banks. Under this Act, the Board is authorized to set capital for holding companies (and, of course, state member banks which it directly regulates). Section 133 contains a provision that prohibits the Board from imposing capital requirements on nondepository holding company

subsidiaries such as broker-dealers and insurance companies. Such subsidiaries are already subject to regulatory capital or solvency requirements. This provision only relates to nondepository subsidiaries of holding companies and to no other subsidiaries, by implication or otherwise.

Section 134. Authority of State insurance regulator

Section 134 limits the Board's ability to require that an insurance company provide funds to an affiliated bank if the State insurance authority determines in writing to the insurance company and the Board that the insurance company cannot provide such funds because it would have a materially adverse impact on the financial condition of the insurance company. However, the section allows the Board to require the bank holding company to divest the bank within 180 days of receiving such notice from the State insurance authority.

SUBTITLE E—SUBSIDIARIES OF INSURED DEPOSITORY INSTITUTIONS

Section 141. Subsidiaries of national banks authorized to engage in financial activities

Section 141 permits a domestic subsidiary (financial subsidiary) of a national bank to engage in an activity that is not permissible for a national bank to conduct directly if the activity is a "financial activity" (as defined in the section). In order to engage in these expanded activities, the national bank and all of its depository institution affiliates must be well capitalized and well managed and have achieved a "satisfactory" or better rating under CRA during the bank's most recent examination. This section also prohibits a subsidiary of a national bank from engaging in insurance underwriting, merchant banking, and real estate investment or development activities. This section also defines the types of subsidiaries a national bank may have. A national bank only own: (1) a subsidiary engaged in activities that the bank can engage in directly; (2) a financial subsidiary engaged in activities in activities under this section; or (3) a subsidiary pursuant to the Edge Act, the Bank Service Company Act, or other acts that expressly authorize national banks to control a subsidiary.

In calculating the national bank's compliance with applicable capital standards, all of the bank's equity investment in a financial subsidiary (i.e., a subsidiary engaged in financial activities that are not permissible for a national bank to engage in directly) must be deducted from the bank's assets and tangible equity capital, and the financial subsidiary's assets and liabilities are not consolidated with those of the bank.

If the Comptroller determines that a national bank that controls a financial subsidiary is not well capitalized nor well managed, the Comptroller must notify the bank and may impose terms and conditions as the Comptroller deems appropriate. The bank must, within 45 days, execute an agreement with the Comptroller to correct the problem. If the bank fail to correct the problem within 180 days, the Comptroller may require the bank to divest control of each subsidiary engaged in activities not permissible for the na-

tional bank to engage in directly or may require each subsidiary to cease such activities.

Section 142. Activities of subsidiaries of insured State banks

Under section 142, a subsidiary of State bank may engage in an activity as principal in which a financial subsidiary of a national bank may engage in as principal, if the bank is well capitalized, well managed and has achieved a “satisfactory” or better rating under CRA as a result of its most recent examination. All of the bank’s equity investment in the subsidiary must be deducted from the bank’s assets and tangible equity capital for purposes of determining compliance with applicable capital standards and the subsidiary assets and liabilities cannot be consolidated with those of the bank.

If the appropriate Federal banking agency determines that a state bank that controls a subsidiary engaged in activities that are not permissible for a national bank subsidiary to engage in a principal is not well capitalized nor well managed or has not achieved a “satisfactory” or better rating under CRA, the appropriate Federal banking agency is required to notify the bank to that effect. The bank is required to execute an agreement with the FDIC to correct, within 45 days of receiving the notice, the conditions described in the notice. If the conditions described in the notice are not corrected within 180 days of receiving the notice, the appropriate Federal banking agencies may require the bank to divest control of each subsidiary that is engaged in an activity that is not permissible for the bank to engage in directly or each subsidiary to cease any activity that is not permissible for the bank to engage in directly.

Section 143. Rules applicable to financial subsidiaries

Section 143 applies Sections 23A and 23B of the Federal Reserve Act to transactions between the bank and the financial subsidiary with certain exceptions relating to equity investments. Financial subsidiaries do not include a corporation organized under section 25A of the Federal Reserve Act or a corporation operating under section 25 of such Act.

SUBTITLE F—DIRECT ACTIVITIES OF BANKS

Section 151. Powers of national banks

Section 151(a) clarifies that national banks may not underwrite an insurance product which was regulated under State law as insurance as of January 1, 1997. However, national banks and their subsidiaries may continue to provide and underwrite such products if either national banks or their subsidiaries either were offering the products or the Comptroller had authorized the products in writing before January 1, 1997. For example, products such as letters of credits that national banks were offering on January 1, 1997, would be protected. In addition, with respect to title insurance, the section provides that national banks and their subsidiaries may not engage in the sale or underwriting of title insurance and any company engaging in title insurance may not own a bank subsidiary, other than the sales activities in which the national

banks and subsidiaries were actively and lawfully engaged in before the enactment of the Act.

With respect to emerging new products which the Comptroller has determined to be permissible for national banks, the section allows the State insurance supervisory agency to petition the Council to review the Comptroller's determination. The State insurance supervisory agency has two years from the date on which the first public notice is made of the determination by the Comptroller to file the petition with the Council.

In addition to any authority currently provided by 12 U.S.C. 24(7), section 151(b) authorizes national banks to underwrite municipal revenue bonds if the national bank is well capitalized.

Section 152. Banking products defined

Section 152 defines "banking product" for purposes of determining whether a bank has to register as a broker-dealer under the Securities Exchange Act of 1934 (the Exchange Act). Under the amendments made to the Exchange Act in sections 201 and 202, banks that offer or sell banking products do not have to register as broker-dealers. A banking product includes: (1) deposit account, savings account, certificate of deposit or other deposit instrument issued by a bank; (2) banker's acceptances; (3) letter of credit issued by a bank; (4) a debit account at a bank arising from a credit card or other similar arrangement; (5) a loan or loan participation issued in the ordinary course of bank business; (6) a qualified financial contract; (7) swap agreements, including credit swaps and equity swaps (unless the appropriate Federal banking agency determines that credit swaps and equity swaps should not be included); and (8) any other products that are available in the course of a banking business, as determined by the Board, after consultation with the SEC.

Section 153. Repeal of stock loan limit in Federal Reserve Act

Section 153 repeals the restriction in section 11(m) of the Federal Reserve Act on loans by Federal Reserve member banks secured by stock or bond collateral. Limitations on loans to one borrower imposed pursuant to other statutory authority are not affected.

SUBTITLE G—NONINSURED DEPOSITORY INSTITUTIONS

Section 161. Wholesale financial institutions

Section 161 authorizes the establishment of wholesale financial institutions (WFIs). A WFI can be either a national bank or a State member bank. A national bank is required to apply to the Comptroller for permission to operate as a WFI in accordance with regulations issued by the Comptroller for permission to operate as a WFI in accordance with regulations issued by the Comptroller. The approval of the Board is required for a State bank to operate as a WFI.

Section 161(b) amends the Federal Reserve Act by adding a new section 9B which requires WFIs to become members of the Federal Reserve System. Section 9B provides that WFIs will be subject to the Federal Reserve Act to the same extent and in the same manner as a State member insured bank, except that a WFI may only

terminate membership on the terms and conditions set by the Board and with prior written approval from the Board.

Section 9B also contains special capital requirements applicable to wholesale financial institutions including the requirement that the Board adopt capital requirements that are sufficiently higher than the capital levels applicable to State member insured banks to take into account that wholesale financial institutions accept uninsured deposits and to provide for the safe and sound operation of such institutions without undue risk to creditors or other persons, including Federal Reserve Banks, engaged in transactions with the institution. It is expected that wholesale financial institutions should generally meet the requirements for well capitalized insured banks. The Board may adjust capital standards for WFIs consistent with safety and soundness concerns and international risk-based capital standards taking into account global competitiveness to permit WFIs to effectively compete in markets, such as the government securities market.

Section 9B also provides that WFIs will be subject to the prompt corrective action provisions contained in section 38 of the FDIA with certain changes to reflect the status of WFIs as uninsured institutions. In addition, WFIs will be subject to the enforcement provisions contained in the FDIA and the Bank Merger Act as if they were state member insured banks. WFIs will also be considered banking institutions for purposes of the International Lending Supervision Act. Further, WFIs shall comply with the requirements of CRA.

A WFI is subject to limitations on the deposits it may receive. Subject to regulations issued by the Board, a WFI may not receive initial deposits of \$100,000 or less other than on an incidental and occasional basis. Deposits of that amount received on a incidental basis may not represent more than 5% of the institution's total deposits. In addition, deposits of a WFI may not be insured by the FDIC.

In order to permit existing insured banks to become WFIs, section 161(d) adds a new section 8A to the FDIA. Section 8A permits a State-chartered or national bank to terminate its status as an insured institution after providing 6 months prior notice. An insured bank may terminate its insurance if the deposit insurance fund of which the bank is a member has met or exceeds its designated reserve ratio and the bank pays an exit fee to the FDIC, or the bank receives regulatory approval and pays the appropriate exit fee.

Section 161(e) requires the Board to submit a detailed report to the Congress at the end of any year in which a WFI borrows funds from the Board.

Section 162. Holding company control of uninsured depository institutions

Section 162 provides that a holding company that owns a WFI, but does not own any insured depository institutions, would be allowed greater flexibility for nonfinancial investments.

Under this section, WFIs that have nonfinancial affiliates are subject to cross-marketing restrictions and are prohibited from adopting a name that is the same as or similar to an affiliate engaging in nonfinancial activities.

SUBTITLE H—FEDERAL HOME LOAN BANK SYSTEM

Section 171. Federal home loan banks

Section 171 amends the Federal Home Loan Bank Act (FHLBA) to allow the Federal Housing Finance Board (Finance Board) to divide the states into not less than one and not more than twelve districts.

Section 172. Membership and collateral

Section 172 amends the Home Owners Loan Act (HOLA) to allow Federal savings associations to become voluntary members in the Federal Home Loan Bank System (System) after January 1, 1999, as prescribed under the FHLBA. In addition, title III of the Act repeals HOLA two years after enactment of the Act, thereby repealing the mandate that Federal savings associations be members of the System. The section exempts FDIC-insured institutions under \$500 million in assets from the eligibility requirement that at least 10% of their total assets be in residential mortgage loans. The section also repeals a section of the FHLBA that distinguishes between qualified thrift lender (QTL) and non-QTL members as to their ability to obtain advances and the capital required to support such advances. In addition, the section allows FDIC-insured institutions under \$500 million in assets to (1) use advances for the purpose of funding small business, agriculture, rural development, and low-income community development; and (2) use secured loans for small business, agriculture, rural development, and low-income community development as collateral for Federal Home Loan Bank advances.

Section 172A. The Office of Finance

Section 172A makes the Office of Finance (Office) a joint office of the Federal Home Loan Banks (Banks). The Office shall also have the authority to issue notes, bonds, and debentures of the Banks. Further, the section provides that the Office shall be treated as a Bank for purposes of any law, except otherwise expressly provided in the Act.

Section 172B. Management of banks

Section 172B changes the management of each Bank from 14 to 15 directors, consisting of 9 elected members and 6 appointed members. This provision provides more elective representation and avoids the possibility of tie votes. Also, this section limits the terms for both elected and appointed officials to three three-year terms with a three-year waiting period thereafter. Moreover, the section divides elected directors into three classes according to size of financial institutions and geographical locations.

Section 173. Advances to nonmember borrowers

Section 173 amends the FHLBA to facilitate advances to non-member borrowers such as state housing finance agencies.

Section 174. Powers and duties of banks

Section 174 transfers the authority to determine the terms and conditions for Banks' debt securities, other than consolidated obli-

gations, from the Finance Board to the Banks. Also, the section transfers authority to issue consolidated Banks' obligations from the Finance Board to the Office.

Section 174A. Mergers and consolidations of Federal home loan banks

Section 174A allows for voluntary mergers between Banks and specifies the number of elected and appointed directors that must result from the process. The section also provides for an adjustment of district boundaries after a merger or consolidation takes place.

Section 174B. Technical amendments

Section 174B makes technical amendments. First, the section states that a Bank may not engage in any activity other than the activities already authorized under this Act, and that the Finance Board must approve all such activities. Second, the section strikes certain provisions regarding informal review of supervisory decisions, as well as the provision requiring the Banks to establish a "Housing Opportunity Hotline" program. Third, the section directs the Finance Board to prohibit the Banks from providing compensation to any executive officer of a Bank that is not reasonable and comparable with the compensation for employment in other similar institutions involving similar duties. With respect to compensation, it is intended that the Finance Board considers the Federal Reserve Banks as a point of reference. Fourth, the section adds the Finance Board to the existing list of independent Federal financial supervisory agencies which are exempt from having testimony, legislative recommendations, or comments on legislation to the Congress reviewed and approved by any other officer or agency of the United States. Finally, the section grants the Finance Board similar enforcement authorities that the Office of Federal Housing Enterprise Oversight possesses over the federal housing government-sponsored enterprises (GSE's).

Further, the section adds a new section 11(k) to the FHLBA in order to emphasize the limited nature of the incidental powers available to the Banks which continue to be limited to those specified by section 11(a) and 11(e)(2)(A).

Section 175. Definitions

Section 175 adds American Samoa and the Commonwealth of the Northern Mariana Islands to the definition of the term "State."

Section 176. Resolution Funding Corporation

Section 176 modifies the shortfall allocation provision under the FHLBA to require that each Bank shall pay to the Resolution Funding Corporation (REFCORP) each calendar year 20.75% of its earnings (after deducting affordable housing program and operating expenses).

Section 177. Capital structure of the Federal Home Loan Banks

Section 177 requires all Banks to submit capital plans for approval to the Finance Board. These plans must meet a number of criteria, including the following: First, each plan must set a mini-

imum leverage limit for each Bank at 5%, which could be reduced to as low as 3.5%, depending upon the mix of shareholders stocks; Second, the plans must set up two classes of stock, one which can be redeemed in one year or less, and the other (permanent capital) can be redeemed in five years, with the permanent capital having a 50% greater weight; Third, the plans must authorize preferential dividends and voting rights for the permanent class of stock; Fourth, each plan must require members to have an advanced-based capital requirements (as determined by the Bank) of up to 6% of either advances; Fifth, the plans must require members to have an asset-based capital requirement, as determined by the Bank, not to exceed 0.6% of assets, or \$300 million, whichever is less; Sixth, the plans have to set a minimum risk-based capital ratio of 10%; and, Seventh, the plans must establish an interest rate risk capital standard for a Bank based on a stress test similar to those tests applied to other GSE and depository institutions.

Section 178. Investments

Section 178 requires the Banks to reduce the level of their investments in assets that are not necessary to achieve the Banks' fundamental purpose of making credit available to their members and, through their members, to the public.

Section 179. Federal Housing Finance Board

Section 179 adds the Secretary of the Treasury, or the Secretary's designee, to be a member of the Finance Board and limits the number of citizens appointed to three.

SUBTITLE I—STREAMLINING ANTITRUSTING REVIEW OF BANK
ACQUISITIONS AND MERGERS

Section 181. Amendments to the Bank Holding Company Act of 1956

Section 181 requires a copy of an application and other materials submitted to the Board under section 3 of the BHCA to be filed by the applicant with the Justice Department. It removes "competitive factors" from the list of factors for the Board to consider when reviewing a proposed acquisition to merger under section 3. The Board will continue to consider the financial and managerial resources of the companies and banks involved in the transaction as well as the convenience and needs of the community to be served. However, the Justice Department will have the sole responsibility for reviewing the transaction for competitive effects under the anti-trust laws.

Section 181 retains the requirement of notification by the Board to the Justice Department of approval of acquisitions and mergers. While the 30-day post-approval waiting period is also retained, the Justice Department is given authority to prescribe a shorter waiting period. The automatic stay and immunity provisions remain in place. Section 181 also deletes the provisions requiring a court to (1) conduct a de novo review of the issues presented, and (2) to apply the same standards applied by the Board in approving a transaction if any acquisition, merger or consolidation is challenged on competitive grounds. The same standards that apply under the

antitrust laws will now apply to transactions approved under section 3 of the BHCA. In addition, the statutory authority of the Board and the appropriate State bank authority to appear in cases where the Justice Department challenges a bank acquisition or merger is eliminated.

Section 182. Amendments to the Federal Deposit Insurance Act to Vest in the Attorney General Sole Responsibility for Antitrust Review of Depository Institution Mergers

Section 182 removes the authority of the Federal banking agencies to review competitive factors from the approval process contained in the Bank Merger Act. The Federal banking agencies will continue to consider the financial and managerial resources of the institutions involved in the transaction as well as the convenience and needs of the community to be served. The Justice Department will have the sole responsibility for reviewing the competitive effects of the transaction under the antitrust laws. As in the proposed amendments to the BHCA, section 182 leaves in place the 30-day post approval waiting period for proposed mergers but allows the Justice Department to prescribe a shorter period. The Federal banking agencies can permit immediate consummation upon a determination that such action is necessary to prevent a probable bank failure. The automatic stay and immunity provisions are maintained.

Section 182 also deletes the provisions of the Bank Merger Act requiring a court to (1) conduct a de novo review of the issues presented, and (2) apply the same standards the appropriate Federal banking agency applied in approving a transaction if any acquisition, merger or consolidation is challenged under the antitrust laws. In addition, the statutory authority of the appropriate Federal banking agency and the appropriate State bank authority to appear in cases where the Justice Department challenges a bank acquisition or merger is eliminated. Applicants are required to file copies of any application materials submitted to an appropriate Federal banking agency with the Justice Department.

Section 183. Information filed by depository institutions; inter-agency data sharing

Section 183 requires notices of a transaction under section 3 of the BHCA or section 18(c) of the FDIA to be on an application form designated by the appropriate Federal banking agency. The application form must include a competitive effects section developed with the concurrence of the Attorney General. If the Attorney General notifies the appropriate Federal banking agency that the competitive effects section is incomplete, the applicant will be notified that the transaction is suspended until the Attorney General deems the application complete. This provision does not affect the appropriate Federal banking agency's authority to act immediately to prevent the probable failure of one of the banks involved or to reduce or eliminate a post approval waiting period in emergency situations. The section allows the appropriate Federal banking agency, with the Attorney General's concurrence, to exempt classes of transactions that are unlikely to violate the antitrust laws from

the above requirements. Section 183 requires, where permissible under law, interagency data sharing.

Section 184. Annual GAO report

Section 184 requires the Comptroller General to submit an annual report to Congress that analyzes: (1) the effects of affiliations between various types of financial companies and of acquisitions pursuant to this Act; (2) the effects of any changes in business practices on the availability of venture capital and the availability of capital and credit for small businesses; and (3) the acquisition patterns of banks, bank holding companies, securities firms, and insurance companies, including acquisitions among the largest 20% of firms and acquisitions within a limited geographical area.

Section 185. Applicability of antitrust laws

Section 185 affirms the applicability of State antitrust laws.

Section 186. Effective date

The effective date for the subtitle is six months after the date of enactment of the Act.

SUBTITLE J—REDOMESTICATION OF MUTUAL INSURERS

Section 191. Redomestication of mutual insurers

Section 191 permits a mutual insurer organized under the laws of any State to transfer its domicile as a step in a reorganization plan in which the mutual insurer becomes a stock insurer, whether as a direct or indirect subsidiary of a mutual holding company. The mutual insurer must comply with the applicable law of the transferee's domicile. Upon completion of the transfer, the mutual insurer ceases to be a domestic insurer in the transferor domicile and becomes a domestic insurer of the transferee domicile. All licenses granted by the transferor state in existence immediately prior to the transfer remain in effect following the transfer, provided the insurer remains duly qualified to transact the business of insurance in such licensed State. All outstanding insurance policies and annuities contracts of a redomesticated insurer will remain in full force and effect and need not be endorsed as to the new domicile of the insurer, except that a State insurance regulator of a licensed State may require the outstanding policies and contracts of owners that reside in the licensed State to be endorsed.

State law may require a redomesticating insurer to file new policy forms with the State insurance regulator of a licensed State on or before the effective date of the transfer. A redomesticating insurer must notify the State insurance regulator of any State in which the redomesticating insurer has a certificate of authority in effect of the proposed transfer and promptly file any resulting amendments to corporate documents required to be filed by a foreign licensed mutual insurer with the insurance regulator of each licensed State.

Furthermore, the section provides that nothing in this subtitle shall be construed to preempt any provision of a State law relating to the establishment of a mutual insurance holding company which protects the rights of policyholders.

Section 192. Effect on State laws restricting redomestication

Section 192 preempts State laws that conflict with the purposes and intent of subtitle J. State laws, regulations, interpretations or functional equivalents thereof, that treat a redomesticating or redomesticated insurer or any affiliate differently than an insurer operating in that State that is not a redomesticating or redomesticated insurer, are prohibited. If any licensed State fails to issue, delays the issuance of, or seeks to revoke an original or renewal certificate of authority of a redomesticated insurer immediately following redomestication, except on grounds and in a manner consistent with its past practices regarding the issuance of certificates of authority to foreign insurers that are not redomesticating, then the redomesticating insurer is exempt from the State laws of the licensed State affecting the operation of the redomesticated insurer. Despite the foregoing exemption from State law, the licensed State may require the redomesticated insurer to comply with the unfair claim settlement practices laws of the State, pay applicable premiums and other taxes levied on licensed insurers or policyholders, register with and designate the State insurance regulator as its agent for service of process, submit to an examination by the State insurance regulator to determine the insurer's financial condition in certain circumstances, comply with State fraud and deceptive practices laws, comply with court injunctions, participate in any insurance insolvency guaranty association, and require a person acting as an agent or as an insurance licensee for a redomesticated insurer to obtain a license from that State.

Litigation arising under this section involving any redomestication or redomesticated insurer must be brought in the appropriate United States district court. If any provision of this section or application of a provision to any person or circumstance is held invalid, the remainder of the section or application of such provision remains in effect.

Section 193. Definitions

Section 193 defines the following terms for purposes of subtitle J: "court of competent jurisdiction," "domicile," "insurance licensee," "institution," "licensed State," "mutual life insurer," "person," "redomesticated insurer," "redomesticating insurer," "redomestication or transfer," "State insurance regulator," "State law," "transferee domicile," and "transferor domicile".

Section 194. Effective date

The effective date of subtitle J is the date of enactment of the Act.

SUBTITLE K—APPLYING THE PRINCIPLES OF NATIONAL TREATMENT AND EQUALITY OF COMPETITIVE OPPORTUNITY TO FOREIGN BANKS AND FOREIGN FINANCIAL INSTITUTIONS

Section 195. Applying the principles of national treatment and equality of competitive opportunity to foreign banks and foreign financial institutions

Section 195 states the purpose of this subtitle which is to apply the reforms of this Act to foreign banks and other foreign financial

institutions in a manner consistent with the principles of national treatment and equality of competitive opportunity, without disadvantaging either foreign or domestic banks or other financial institutions in relation to each other.

Section 196. Applying the principles of national treatment and equality of competitive opportunity to foreign banks that are qualifying bank holding companies

Section 196 amends section 8(c) of the International Banking Act of 1978 (IBA) by adding a new paragraph (3) to permit termination of the financial grandfathering authority granted by the IBA and other statutes to foreign banks to engage in certain financial companies. This grandfathering was necessary because of current law restrictions. With the repeal of these restrictions, foreign banks with grandfathered affiliates would be permitted to retain these grandfathered companies on the same terms that domestic banking organizations are permitted to establish.

The legislation provides that foreign banks should no longer be entitled to grandfathered rights after the bank has filed a declaration under section 6(a) of the BHCA or receives a Board determination under section 6(1)(6) of BHCA. In order to provide both competitive equality between domestic and foreign banks and fairness to the foreign banks that have relied for many years on their grandfathering rights, the foreign bank is granted two years in which to have an application approved under section 6. Failing such approval within this time period, the Board may impose restrictions and requirements comparable to those on a qualified bank holding company, including those to conduct activities in compliance with the safeguards of section 6 of the BHCA and any additional safeguards imposed by the Council.

Section 197. Applying the principles of national treatment and equality of competitive opportunity to foreign banks and foreign financial institutions that are wholesale financial institutions

Section 197 amends section 8A of the FDIA by adding a new subsection (h) which allows an insured branch of a foreign bank to voluntarily terminate its deposit insurance under the same conditions and extent as insured State and national banks. This section is needed so that foreign banks that want to convert to WFI's would be able to convert to non-insured institutions.

Second, section 197 amends section 7(d)(5) of the IBA to allow the Board and the Comptroller the ability, by joint regulation, to impose additional restrictions and requirements on foreign banks that are deemed to be WFI's. These restrictions and requirements are to be appropriate and necessary to protect taxpayers and the financial system from risks associated with access to the payments system and availability of discounts, advances, and other extensions of credit from a Federal Reserve bank. In imposing any restrictions under this section, the Board must give due regard to the principles of national treatment and equality of competitive opportunity.

SUBTITLE L—EFFECTIVE DATE OF THE TITLE

Section 199. Effective date

Section 199 establishes the effective date for this title at 270 days after the date of enactment, unless a subtitle or provision provides a specific effective date.

Title II—Functional Regulation

SUBTITLE A—BANK BROKERS AND DEALERS

Section 201. Definition of broker

Section 3(a)(4) of the Exchange Act currently excludes banks from its definition of “broker.” 15 U.S.C. § 78(a)(4). As a result, banks that directly conduct brokerage activities are exempt from the registration as brokers under the Exchange Act. Section 201 amends the Exchange Act’s definition of “broker” to include banks subject to certain exemptions.

The exemptions are provided to ensure that banking products offered as agent do not trigger broker-dealer regulation. For example, private placements, trust activities, U.S. government securities transactions, and qualified financial contracts are exempt. Networking arrangements and an exclusion for *de minimis* transactions are provided to avoid eliminating small banks as beneficial providers of investment products in underserved communities.

Specifically, a bank is not a “broker” and subject to regulation by the SEC if it engages in third party arrangements, providing that the bank complies with certain requirements to separate its activities from that of a broker, to provide disclosure to customers, and to limit incentive compensation. In addition, a bank is not a “broker” if it engages in trust activities currently permissible for national banks or State banks unless the bank publicly solicits brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities, or if it receives incentive compensation for brokerage activities. A bank is not a “broker” if it effects transactions for an affiliate. A bank is also not a “broker” if it effects transactions in banking products, as defined in section 18 of FDIA, contracts of insurance, or exempted securities, commercial paper, banker’s acceptances, commercial bills, and other types of securities that section 5136 of the Revised Statutes expressly authorizes for national bank to underwrite or deal in. A bank likewise is not a “broker” if it effects transactions as part of an employ and shareholder benefit plan, a sweep account into registered money market mutual funds or a private securities offering. Furthermore, the exemption also extends to safekeeping, custody clearing and settlement and securities lending and *de minimis* securities transactions (defined to mean, in any calendar year, no more than 800 transactions in marketable securities and 200 transactions in other securities).

Section 202. Definition of dealer

A bank that engages in the business of buying and selling securities for its own account will be considered a “dealer” for purposes of section 3(a)(5) of the Exchange Act, unless the bank’s activities

fall within the exceptions of the Act. A bank is not a dealer if it buys and sells securities for investment purposes for the bank or for accounts for which the bank acts as a trustee or fiduciary. A bank is not a dealer if it offers or sells asset-backed securities solely to accredited investors. Likewise, a bank is not a dealer if it buys and sells contracts of insurance or if it buys and sells banking products, as defined in section 18 of the FDIA. The section also provides that a bank is not a dealer if it buys and sells commercial paper, banker's acceptances, exempted securities, and other securities that section 5136 of the Revised Statutes expressly authorizes for a national bank or underwrite or deal in.

Section 203. Bank broker and dealer activities

Section 203 amends the Exchange Act to require employees of a bank that engage in the retail sale of securities to be subject to the same rules and regulations applicable to employees of securities and other nonbank firms. This amendment, offered by Mr. Watt, was adopted as a substitute to an amendment offered by Mr. Bentsen. The Bentsen amendment would have required a bank to register with the National Association of Securities Dealers (NASD) and become fully subject to NASD regulation and examination if a bank employee engaged in the sale of virtually any security, including U.S. government and municipal securities. Since banks have long been permitted to engage in such "bank eligible" securities activities, and since virtually every bank in the United States engages in some form of these activities, the effect of the Bentsen amendment would have been to subject nearly every bank to full NASD regulation, examination, and supervision.

The Watt amendment clarified that the Committee did not intend to require an entire bank to become subject to full NASD regulation whenever a bank employee sold securities to anyone. Instead, the Committee intended to limit its focus to (1) a bank employee's securities sales activities, not the entire bank's activities; and (2) sales of securities to the retail public, not sales to institutional or sophisticated investors.

Accordingly, the section provides that a bank employee's retail sales of securities are subject to the same type of NASD rules and regulations as employees of securities and other nonbank firms. But the section does not authorize the SEC to require banks to register with the NASD or become subject to full NASD regulation, such as inspection of a bank's books and records.

Section 204. Application of this title to banks registered as brokers or dealers

Section 204 adds a subsection to section 15 of the Exchange Act which provides that banks that register as a broker will not be treated more restrictively than other entities that are registered as brokers or dealers. This section also provides that the net capital requirements for brokers or dealers do not apply to a bank that is well-capitalized, as defined by the appropriate Federal banking agency for the bank, provided that the bank's brokerage and dealer activities that would otherwise require a bank to be registered as a broker-dealer do not represent the predominant portion of the bank's activities, measured by gross revenues. In addition, this sec-

tion provides that regulation of a bank that registers as a broker must be limited to only these activities which require the bank to register. The section also provides that the SEC, in consultation with the appropriate Federal bank agencies, shall provide appropriate transitional relief to banks that are registered brokers or dealers and that cease to be well-capitalized but are adequately capitalized.

Section 205. Exclusion from SIPC membership of banks registered as brokers or dealers

Section 205 amends section 3(a)(2)(A) of the Securities Investor Protection Act of 1970 to provide that a bank registered as a broker or dealer under the Exchange Act is not required to be a member of the Securities Investor Protection Corporation (SIPC). SIPC insurance would apply to such activities in a bank subsidiary.

Section 206. Effective date

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

SUBTITLE B—BANK INVESTMENT COMPANY ACTIVITIES

Section 211. Custody of investment company assets by affiliated bank

Section 211(a) amends section 17(f) of the Investment Company Act (15 U.S.C. § 80a–17(f)) to clarify and strengthen the SEC’s authority to adopt regulations governing how banks may serve as custodians of affiliated management investment companies. A registered investment company is permitted to place its assets with a bank that is an affiliated person, promoter, organizer, sponsor, or principal underwriter for such a company only in accordance with regulations or orders that the SEC may adopt after written consultation with the appropriate Federal banking agency.

Section 26(a) of the Investment Company Act currently prohibits a principal underwriter or depositor of a unit investment trust from selling securities issued by the trust unless the trust, by appropriate agreement, designates as trustee a bank meeting certain qualifications. 15 U.S.C. § 80a–26(a)(1). Section 211(b) amends section 26(a)(1) to allow a unit investment trust to designate an affiliated bank as trustee only in accordance with regulations or orders that the SEC may adopt after written consultation with the appropriate Federal banking agency.

This section also amends section 36(a) of the Investment Company Act to permit the SEC to bring a civil action alleging breach of fiduciary duty involving personal misconduct against a person who acts as custodian for a registered investment company. The SEC may already bring such actions against persons acting as investment advisers, officers, directors, or depositors of an investment company and against principal underwriters of an open-end company or unit investment trust.

Banks currently engaged in custodial activities may continue to do so until the SEC adopts rules. At that time, banks will have to conform such activities to the SEC’s rules.

Section 212. Lending to an affiliated investment company

Section 18(f) of the Investment Company Act currently limits the ability of a registered open-end investment company (mutual fund) to issue a class of “senior security” and to borrow from a bank. 15 U.S.C. § 80a-18(f). Section 212 adds a new section 18(l) to make it unlawful for any affiliated person of a registered investment company or any affiliated person of such a person from making a loan (including both open-end and closed-end funds) to an investment company in contravention of rules promulgated by the SEC.

Section 213. Independent directors

Section 2(a)(19)(A)(v) of the Investment Company Act currently defines “interested person” of an investment company to include any registered broker or dealer and any affiliated person of such broker or dealer. 15 U.S.C. § 80a-(a)(19)(A)(v). Section 213 amends section 2(a)(19)(A)(v) to include in the definition of “interested person” as any person or any affiliate of a person who during the preceding six-month period has executed any portfolio transactions for, engaged in any principal transactions with, or loaned money to the mutual fund. A conforming amendment is also made to section 2(a)(19)(B) of the Investment Company Act to make similar changes in the definition of “interested persons.”

Section 10(c) of the Investment Company Act currently prohibits a registered investment company from having a majority of its board of directors consist of individuals who are officers, directors, or employees of any one bank. 15 U.S.C. § 80a-10(c). Section 213(c) amends section 10(c) to extend this prohibition to any one bank and its subsidiaries, any one bank holding company and its affiliates and subsidiaries.

Section 214. Additional SEC disclosure authority

Section 214 amends section 35(a) of the Investment Company Act to prohibit a registered investment company or a person selling any security issued by a registered investment company from: representing or implying that the company or its security is guaranteed, sponsored, recommended or approved by the United States or its agencies or instrumentalities; being insured by the FDIC; or, being guaranteed by or otherwise an obligation of any depository institution. Such a person is required to disclose that the security is not insured by the FDIC, is not guaranteed by an affiliated depository institution, and is not otherwise an obligation of such a bank or institution. This provision is similar to the requirement placed on securities affiliates under section 10(f)(6) of the BHCA.

This section is designed to address the potential for investor confusion concerning the applicability of Federal deposit insurance to mutual funds affiliated with banks. It is expected that the SEC will not adopt rules where the potential for such confusion does not exist.

Section 35(d) of the Investment Company Act currently prohibits a registered investment company from adopting as part of its name any words that the SEC determines to be deceptive or misleading. Section 214(b) amends section 35 to give the SEC rulemaking authority.

Section 215. Definition of broker under the Investment Company Act of 1940

Section 215 amends the definition of “broker” in section 2(a)(6) of the Investment Company Act to reflect section 201’s amended definition of that term in the Exchange Act. The amended definition continues to exclude any person, including a bank, that would be deemed a “broker” solely because such a person is an underwriter for one or more investment companies.

Section 216. Definition of dealer under the Investment Company Act of 1940

Section 216 similarly amends the definition of “dealer” in section 2(a)(11) of the Investment Company Act to reflect section 202’s amended definition of that term in the Exchange Act. The amended definition continues to exclude insurance companies and investment companies.

Section 217. Removal of the exclusion from the definition of investment adviser for banks that advise investment companies

Section 202(a)(11) of the Investment Advisers Act currently excludes a bank or a bank holding company that serves as an investment adviser to a registered investment company from the Act’s definition of “investment adviser.” 15 U.S.C. § 80b–2(a)(11). Section 217(a) amends section 202(a)(11) to remove this exclusion. A bank may establish a separate subsidiary or affiliate in order to register as an investment adviser. A bank is also permitted to establish a “separately identifiable department or division” to act as an investment adviser, in which case only the department or division and not the bank or bank holding company would be required to register. The SEC would have the same regulatory authority over such a bank department or division as it has over other investment advisers.

Section 217(b) amends section 202(a) to add a definition of “separately identifiable department or division” of a bank.

Section 218. Definition of broker under the Investment Advisers Act of 1940

Section 218 amends the definition of “broker” in section 202(a)(3) of the Investment Advisers Act (15 U.S.C. § 80b–s(a)(3)) to reflect section 201’s amended definition of that term in the Securities Exchange Act. The amended definition continues to exclude any person, including a bank, that would be deemed a “broker” solely because such a person is an underwriter for one or more investment companies.

Section 219. Definition of dealer under the Investment Advisers Act of 1940

Section 219 similarly amends the definition of “dealer” in section 2(a)(7) of the Investment Adviser Act (15 U.S.C. § 80b–2(a)(7)) to reflect section 202’s amended definition of that term in the Securities Exchange Act. The amended definition continues to exclude insurance companies and investment companies.

Section 220. Interagency consultation

Section 220 adds a new section 210A to the Investment Advisers Act which requires the appropriate Federal banking agency to share with the SEC the results of any examination, reports, records or other information with respect to the investment advisory activities of any registered bank holding company, bank, or department or division of a bank to the extent necessary for the SEC to carry out its responsibilities under the Investment Advisers Act of 1940. Similarly, the SEC must provide all such information to the appropriate Federal banking agency to permit that agency to carry out its statutory responsibilities.

Section 221. Treatment of bank common trust funds

Section 3(c)(3) of the Investment Company Act currently exempts bank common trust funds from the definition of investment companies under the Investment Company Act. 15 U.S.C. § 80b-3(c)(3). In order to qualify for the exemption, common trust funds must be maintained by a bank exclusively for the collective investment and reinvestment of monies contributed thereto by the bank as trustee, executor, administrator, or guardian. Section 221(c) amends section 3(c)(3) to clarify that the common trust fund exemption is only available for a fund that is employed by a bank solely as an aid to the administration of trusts, estates or other accounts maintained for a fiduciary purpose. Shares in the fund may not be advertised or offered for sale to the public except in connection with the ordinary advertising of the bank's fiduciary services. In addition, the fees charged by the fund must not be in contravention of fiduciary principles established under applicable Federal or State law.

Section 3(a)(2) of the Securities Exchange Act currently exempts any interest or participation in a bank common trust fund from the Securities Exchange Act. 15 U.S.C. § 78c(a)(2). Section 221(a) amends section 3(a)(2) to provide that the common trust fund must be excluded from the amended definition of "investment company" under section 3(c)(3) of the Investment Company Act. Similarly, section 3(a)(12)(A)(iii) of the Securities Exchange Act currently includes any interest or participation in a bank account trust fund in the definition of "exempted security" under the Securities Exchange Act. Id. § 78c(a)(12)(A)(iii). Section 221(b) amends section 3(a)(12)(A)(iii) to require that the common trust fund must be excluded from the amended definition of "investment company" under section 3(c)(3).

Section 222. Investment advisers prohibited from having controlling interest in registered investment company

Section 222 amends section 15 of the Investment Company Act to add a new subsection (g) which permits an investment adviser of an investment company, or an affiliated person of the adviser, that holds shares of the investment company in a trustee or fiduciary capacity to own a controlling interest in that investment company if certain conditions are met.

Subsection (g) is intended to address certain conflicts that may arise when an investment adviser to a mutual fund also holds voting control over the fund through shares held in a trustee or fidu-

ciary capacity. To ensure that the investment adviser does not use its fiduciary authority to further its own interests, such as perpetuating its status as an investment adviser, paragraph (g) would require that, in those situations where the investment adviser holds a controlling interest in the mutual fund, voting authority is to be transferred to another unaffiliated person; and that shares held in a fiduciary capacity be voted pro rata to those shares held in a non-fiduciary capacity, or alternatively, in some other manner permitted by SEC rules or regulations. Because, under well-established principles of fiduciary law, a fiduciary has an obligation to vote the shares in the best interests of its fiduciary clients and without regard to the fiduciary's own needs, transferring the power to vote to another might be deemed to be an improper delegation or abdication of the fiduciary's responsibilities. Similar concerns are presented by voting fiduciary shares pro rata.

Consequently, subsection (g)(1)(A) provides that for employee benefit plans subject to the Employee Retirement Income Security Act of 1974 (ERISA) the investment adviser fiduciary should transfer the power to vote the shares of the mutual fund to another person acting in a fiduciary capacity with respect to that plan. In this way, the investment adviser fiduciary will merely transfer the power to vote to another fiduciary, such as the plan administrator or plan sponsor, who will exercise voting authority in accordance with ERISA requirements. Transferring the power to vote is neither an improper delegation of voting authority nor an improper exercise of voting responsibilities by the investment adviser fiduciary in violation of ERISA.

Subsection (g)(1)(B) provides that for all non-ERISA plans and other fiduciary accounts an investment adviser fiduciary may transfer the power to vote in accordance with the requirements of clause (i), vote the shares pro rata in accordance with clause (ii), or, in accordance with clause (iii), vote the shares in accordance with SEC rules and regulations. In any event, a safe harbor is provided by subparagraph (g)(3) stating that an investment adviser fiduciary will not be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law solely by reason of having acted in accordance with the requirements of clauses (i), (ii), or (iii). An investment adviser fiduciary can, thus, be assured that if it complies with this paragraph or SEC rules and regulations promulgated thereunder, it will not later be found liable for breach of its fiduciary duties.

As a result of the fact that fiduciary customers have adequate protection under applicable State and Federal fiduciary precedent, subsection (g) will not apply in those situations where shares of the advised mutual fund consist solely of assets held in a trustee or fiduciary capacity. Instead, the protections offered by subsection (g) are only meant to protect those investors who are not fiduciary customers of the bank and are minority holders of the advised mutual fund. Consequently, subparagraph (2) makes this point clear by providing an exemption to the requirement to transfer the vote or vote the shares pro rata in those situations where the shares of the advised mutual fund consist solely of assets held in a trustee or fiduciary capacity,

Finally, church pension boards are primarily responsible for holding and investing the assets of their respective denominational employee benefit plans and programs. However, in some cases these pension boards may also hold and invest other church assets (such as church agency funds or church endowments). These other church assets could be held in other than a trustee or fiduciary capacity. The exemption provided in paragraph (2) of the Act is only available if the assets of the registered investment company in question consists solely of assets held in a trustee or other fiduciary capacity. The special rule provided in paragraph (4) of the Act would permit a church pension board which may register its investment funds and which may hold some assets in other than a trustee of fiduciary capacity to nonetheless be entitled to the exemption.

Section 223. Conforming changes in definition

Section 223 amends the definition of “bank” in section 2(a)(5) of the Investment Company Act by replacing the reference to “a banking institution organized under the laws of the United States” with a reference to “a depository institution” as defined in the FDIA.

Section 224. Effective date

This subtitle shall become effective 90 days after the date of enactment of this Act.

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

Section 301. Short title; definitions

Section 301 designates title III as the “Thrift Charter Transition Act of 1997.” It also specifies that, unless otherwise defined, the terms “bank holding company,” “depository institution,” “Federal savings association,” “insured depository institution,” “savings association,” “State bank,” and “State savings association”—as used in the uncodified provisions of the Act—have the same meanings as in section 3 of the Federal Deposit Insurance Act.

SUBTITLE A—FACILITATING CONVERSIONS OF SAVINGS ASSOCIATIONS
TO BANKS

Section 311. Conversion to State or national banks

Under section 311, all Federal savings associations in existence two years after the date of enactment will, by operation of law, become national banks at that time. A Federal savings association can accelerate its conversion to a national bank by filing a notice with the Comptroller of the Currency. The notice must specify a date for the association’s conversion, and that date must be at least 30 days after the date the notice is filed. The Federal savings association will become a national bank on the date specified.

A State savings association can become a national bank during the two year period beginning on the date of enactment by filing a notice with the Comptroller. Like the notice filed by a Federal savings association, the State association’s notice must contain a specified date for its conversion. The date must be at least 30 days after the date the notice is filed, and the association will become a national bank on the date specified.

Any mutual savings association becoming a national bank under this section will become a mutual national bank. The conversion authority provided by this section does not effect any other authority or a savings association to become a national bank, State bank, or State savings association.

Finally, a Federal savings association that has its charter converted to a national bank charter or a State depository institution charter, is permitted to retain the word "Federal" in its name. The provision would apply to institutions whether the charter is converted voluntarily or by operation of law. In order to maintain its Federal nexus, such institution must remain a member of the FDIC.

Section 312. Mutual national banks and Federal mutual bank holding companies authorized

This section authorizes the Comptroller to charter national banking associations as mutual national banks, either de novo or through conversions. Unless otherwise provided by this section or by the Comptroller, a mutual national bank will be subject to the same laws and requirements and will have the same powers and privileges as a national banking association operating in stock form. The Comptroller must supervise and examine mutual national banks in the same manner and to the same extent as stock national banks. Subject to conditions imposed by the Comptroller, a mutual national bank may become a stock national bank, and a stock national bank may become a mutual national bank.

This section also authorizes the Comptroller to charter Federal mutual bank holding companies. Subject to approval under the BHCA, a mutual national bank may reorganize into a Federal mutual bank holding company. The reorganization plan requires the Comptroller's approval. The plan also requires approval by a majority of the mutual national bank's board of directors. If account holders and obligors have voting rights in the mutual national bank, the plan also requires approval by a majority of such individuals. In addition, the section also governs when capital can be retained at the holding company level, the ownership rights in the holding company, and the liquidation of Federal mutual bank holding companies. The BHCA applies to Federal mutual bank holding companies.

A mutual savings and loan holding company may become a Federal mutual bank holding company by filing a notice with the Comptroller specifying the date for its conversion. A mutual savings and loan holding company in existence two years after the date of enactment automatically becomes a Federal mutual bank holding company.

Section 313. Grandfathered activities of savings associations

Section 313 permits a national bank that results from the conversion of a savings association under section 311 to continue to engage in any activity, including holding assets, in which it was lawfully engaged on the day before the date of enactment.

These grandfather rights are subject to several safeguards. During the two-year period following the date of enactment, the national bank must comply with section 5(t)(5) of the Home Owners'

Loan Act to the same extent as if the bank was still a savings association. After the two-year period, the national bank may retain an equity investment in a subsidiary that is engaged in an activity impermissible for a national bank to engage in directly only if the converted institution and the subsidiary comply with section 5136A of the Revised Statutes (added by section 141).

Section 314. Branches of former savings associations

Section 314 authorizes a savings association that becomes a national bank to retain branches and agencies that it operated on the day before the date of enactment. Further branching by savings associations that become national banks will be governed by the same laws that apply to all national banks. Savings associations that become State banks will be subject to applicable State and Federal branching laws. This section also protects branching rights obtained in assisted acquisitions.

Section 315. Programs for promoting housing finance

Section 315 requires each appropriate Federal banking agency to establish a program designed to facilitate the conversion of savings associations to banks, and the treatment of State savings associations as banks, and to assure that insured depository institutions may specialize in residential mortgage lending. The agencies also must develop guidelines and procedures for assuring that insured depository institutions are not subject to supervisory criticism or sanction for prudently concentrating in residential mortgage lending.

Section 316. Savings and loan holding companies

Section 316 grandfathers the powers of certain savings and loan holding companies. A company's powers are grandfathered if the company is a savings and loan holding company as of the date of enactment or had on file an application to become a savings & loan holding company, and becomes a bank holding company because a savings association subsidiary becomes a bank or is treated as a bank under an amendment made by this Act. Also grandfathered are savings and loan holding companies that, as of the date of enactment, were exempt under section 4(d) of the BHCA.

To retain its grandfather rights, a savings and loan holding company may not acquire control of a bank. One exception to this prohibition is that a holding company may acquire a bank if the bank is merged with an existing depository institution. A savings and loan holding company's grandfathered rights cannot be transferred. A grandfathered company cannot engage in any activity or enter into any affiliation that was not authorized for the company as a savings and loan holding company on the date of enactment.

A savings and loan holding company that becomes a bank holding company only because its subsidiary savings association becomes a bank or is treated as a bank under amendments made by this Act, need not file an application under the BHCA. Moreover, the grandfathered savings and loan holding company is only subject to holding company capital requirements to the same extent such capital requirements were imposed under section 10 of the HOLA by the Office of Thrift Supervision (OTS).

Sections 317 and 318. Treatment of references in adjustable rate mortgages and cost of funds indexes, respectively

These sections provide alternative formulas for determining cost of funds indexes used for adjustable interest rate mortgages. These new formulas are needed because current ones include data based on charter type, insurance fund membership, or characteristics of members of Federal Home Loan Banks which are changed under the Act.

SUBTITLE B—ENDING SEPARATE FEDERAL REGULATION OF SAVINGS ASSOCIATIONS AND SAVINGS AND LOAN HOLDING COMPANIES

Section 321. State savings associations treated as State banks under Federal banking law

Section 321 amends the definition of “State bank” under the Federal Deposit Insurance Act to include State chartered savings associations. It also amends the exceptions to the definition of “bank holding company” in the BHCA. It repeals the exemption for companies that own or control a State-chartered bank or trust company that is wholly owned by thrift institutions or savings banks. It also amends the Federal Reserve Act’s definition of “State bank” to incorporate the definition of a State bank in section 3 of the FDIA. These amendments become effective two years after the date of enactment.

Section 322. Powers of Federal savings associations accorded to national banks

Section 322 expands the powers of national banks so that they generally include the activities authorized by the Director of the Office of Thrift Supervision for a Federal savings association on the day before the date of enactment. These expanded powers are subject to the requirements otherwise applicable to national banks, such as the Comptroller’s safety and soundness requirements and the requirements applicable to financial subsidiaries under section 5136A of the Revised Statutes.

Section 323. Home Owners’ Loan Act repealed

Section 323 repeals the Home Owners’ Loan Act effective two years after the date of enactment.

Section 324. Conforming amendment reflecting elimination of the Federal Thrift Charter and the separate system of thrift regulation

Section 324 makes the merger of the Bank Insurance Fund and the Savings Association Insurance Fund effective two years after the date of enactment or January 1, 2000, whichever is earlier.

Section 325. Conforming amendments to the Federal Home Loan Bank Act

Section 325 makes a series of conforming amendments to the FHLBA. The amendments to the FHLBA become effective two years after the date of enactment.

Section 326. Amendments to Title 11, United States Code

Section 326 provides that a Federal mutual holding company will be treated under Federal bankruptcy law in a similar manner to a bank holding company that owns a national bank. It would also provide Federal mutual bank holding companies with the same conservatorship, receivership, indemnification and trustee appointment rights given to other institutions.

SUBTITLE C—COMBINING OTS AND OCC

Section 331. Prohibition of merger or consolidation repealed

Effective on the date of enactment of the Act, section 331 repeals the prohibition against the Secretary of the Treasury merging or consolidating functions of the Office of Thrift Supervision and the Office of the Comptroller of the Currency. With this repeal, the Secretary may combine functions or otherwise reorganize those offices as appropriate to manage their responsibilities and resources, consistent with other provisions of law.

Section 332. Secretary of Treasury required to formulate plans for combining Office of Thrift Supervision with Office of the Comptroller of the Currency

Section 232 requires the Secretary of Treasury, no later than nine months after the enactment of the Act, to develop a plan for merging the OTS with the OCC, and requires the OTS and OCC to carry out the plan. This authority is necessary to ensure that examination resources are appropriately allocated to maintain the safety and soundness of regulated institutions and that personnel and administrative matters are resolved in a coordinated manner.

Section 333. Office of Thrift Supervision and position of Director of Office of Thrift Supervision abolished

Section 333, effective two years after the date of enactment of the Act, abolishes the Office of Thrift Supervision and the position of Director of Office of Thrift Supervision.

Section 334. Reconfiguration of Board of Directors of FDIC as a result of removal of Director of Office of Thrift Supervision

Section 334 makes conforming changes in the Board of Directors of the FDIC to reflect the abolition of the OTS. It provides that the management of the Corporation will be vested in a five-member Board comprised of the OCC, and four Presidential appointees that are confirmed by the Senate. One of these four appointees shall have had state bank supervisory experience.

Section 335. Continuation provisions

Section 335 continues all the orders, regulations and other regulatory actions of the OTS through the conversion period; ensures that the merge does not unintentionally effect the rights of parties in litigation; permits the continuation, if needed, of arrangements between the OTS and other agencies until those arrangements can be concluded in an orderly fashion; and transfers OTS property to the OCC or another appropriate successor agency.

SUBTITLE D—TECHNICAL AND CONFORMING AMENDMENTS TO THE
DEPOSITORY INSTITUTION STATUTES

Subtitle D contains technical and conforming amendments to statutes governing depository institutions. These amendments become effective two years after the date of enactment.

SUBTITLE E—TECHNICAL AND CONFORMING AMENDMENTS TO OTHER
STATUTES

Subtitle E contains technical and conforming amendments to statutes other than those governing depository institutions. These amendments made by this subtitle become effective two years after the date of enactment of the Act.

Title IV—Uniform Multistate Licensing of State-Licensed
Insurance Agents and Brokers

Section 401. State Flexibility in multistate licensing reforms

Section 401 provides that there shall be a system of uniform licensing, continuing education and other insurance producer sales qualification requirements, if, three years after the enactment of the Act, states have not enacted such uniform laws and regulations to be applied on a multi-state basis. The section requires the NAIC, in consultation with State insurance commissioners or chief insurance regulatory officials to achieve uniformity of (1) criteria regarding the integrity, personal qualifications, education, training, and experience of licensed insurance producers; (2) continuing education requirements for licensed producers; and (3) other requirements so that there is not a effect of limiting or conditioning a producer's activities because of its residence or place of operations.

Section 402. National Association of Registered Agents and Brokers

Section 402 establishes a nonprofit corporation known as the National Association of Registered Agents and Brokers (the Association) which shall not be an agency or extension of the U.S. Government.

Section 403. Purpose

Section 403 states that the Association's purpose is to provide a mechanism by which the multi-state services of State-licensed insurance producers may be more efficiently provided to policyholders while preserving States' rights to promulgate and enforce insurance-related consumer protection and unfair trade practices laws and regulations.

Section 404. Relationship to the Federal Government

Section 404 requires the Association to be subject to the jurisdiction of the National Council on Financial Services which is established by section 121 of the Act. However, the Association's financial liability and assets shall not be included in the United States budget nor be borrowed or pledged by the United States.

Section 405. Membership

Section 405 allows for state-licensed insurance producers to be eligible for membership in the Association. Membership in the Association shall be on an annual basis and may be subject to continuing education requirements. The section further authorizes the Association to establish membership criteria as to integrity, personal qualifications, education, training, and experience of its members and separate classes of membership, with separate criteria, based on different duties. The section provides that membership may be suspended or revoked by the Association if the applicable criteria are not longer met or if the member has been subjected to disciplinary proceeding in the state. Moreover, the section requires the Association to establish an office with a toll-free telephone number which can be used by consumers and State insurance regulators to file complaints and have disciplinary actions taken as the Association deems appropriate pursuant to State laws.

Section 406. Corporate powers

Section 406 grants the Association the following corporate powers: (1) to sue and be sued; (2) to adopt, after and use a corporate seal; (3) to adopt, amend and repeal by its Board of Directors their bylaws and rules relating to the conduct of their business and the indemnity of its directors, officers, and employees for liabilities and expenses incurred in connection with the defense or settlement of an action or suit; (4) to adopt, amend, repeal by its Board of Directors their bylaws and rules relating to the terms used in this title, the procedures for payment of the Association's assessments and the exercise of all other rights and powers under this title; (5) to conduct its business and to exercise all other rights and powers granted herein; (6) to lease, purchase, accept gifts or donation, acquire, own, improve, sell, convey, mortgage or otherwise dispose of any property or interest therein; (7) to elect or appoint officers, attorneys, employees, and agents as may be required; (8) to enter into contracts, to execute instruments, to incur liabilities, and to do such other acts as may be necessary or incidental to the conduct of its business and the exercise of rights and powers granted herein; (9) to suspend or revoke the Association membership; (10) to levy and collect assessments upon its members and to cover the administrative expenses of the Association; and (11) to provide advice and recommendations to Congress, courts, the NAIC, State insurance regulators, and the Council on matters pertaining to the regulation and practices of insurance producers.

Section 407. Board of Directors

Section 407 grants the Board of Directors of the Association with all powers necessary for its management and administration, as prescribed in the bylaws. The Board of Directors, consisting of 7 members, or otherwise determined by the board and approved by the Council, shall be composed of at least 50% of the members of NAIC. Each director may serve an unlimited number of terms each of which shall be three years. One third of the directors shall stand for re-election each year.

Section 408. Officers

Section 408 prescribes that officers of the Association consist of a chairperson, vice-chairperson, president, secretary, treasury, and such other officers and assistant officers as may be deemed necessary. These officers shall be elected or appointed for terms not exceeding 3 years and the Chairperson shall always be a member of the NAIC.

Section 409. Meeting of Board of Directors

Section 409 prescribes that meetings may be called by the chairperson or otherwise provided by the bylaws.

Section 410. Bylaws, Rules and Disciplinary Action

Section 410 prescribes that the Board of Directors shall file the Association's bylaws with the Council which shall take effect 30 days after the date of filing unless the Council disapproves or otherwise provides notice of such disapproval. The section also requires the Board of Directors to file copies of any proposed rule or any proposed amendment to a rule with the Council which shall publish public notice thereof and provide a forum for a hearing. Further, the section grants the Council the authority to approve or disapprove the proposed rules.

Section 411. Borrowing authority

Section 411 grants the Association borrowing authority with prior approval and under the terms and conditions determined by the Board of Directors. However, the section does not require the Federal government to provide funds to any person or to guarantee any obligation of the Association.

Section 412. Assessments

Section 412 holds all insurance producers who are members of the Association subject to the assessment for costs in connection with applications.

Section 413. Functions of the Council

Section 413 requires the Council to give appropriate notice, opportunity for a hearing, and submission of views from interested persons. Further, the section allows the Council to make examinations and inspections of the Association, to request reports and records from the Association, to receive a written report relating to the conduct of its business, and the exercise of its rights and powers. In addition, the Council may delegate its authority to provide notice, and to conduct hearings, examinations, and inspections to one of its member agencies. However, at all times, the Council retains the ability to supervise and approve the manner in which these powers are exercised.

Section 414. Liability of the Association and the directors, officers, and employees of the association

Section 414 provides that the Association is not deemed to be an insurer or insurance producer under State law, rule or regulation. Also, the section exempts the Association from all taxes, assessments or other levies imposed by any State, municipal, county, or

local government. Further, the section excludes the Association and its directors, others, or employees from any liability to any persons for action taken or omitted in good faith.

Section 415. Relationship to State law

Section 415 provides for the preemption of both existing and future State laws that impede the activities of an insurance producer because of membership with the Association, that impose requirements on the Association member's activities because of the residence or place of operations, that impose different membership and renewal requirements on the Association's members, and that implement a system of licensing or renewing the licenses in a manner that is different from the Association's authority. The section grants the Council the authority to make interpretations of State laws that are preempted.

Section 416. Coordination with other regulations

Section 416 grants the Association regulatory authority to prescribe uniform applications, to establish a clearinghouse through which the Association members may apply for licenses, and to establish a national database for the collection of regulatory information concerning the activities of insurance producers. The section also requires the Association to coordinate with the NASD in order to ease any administrative burdens.

Section 417. Judicial review

Section 417 provides the appropriate United States district court with exclusive jurisdiction for judicial review for disputes between the Association and its members.

Section 418. Definitions

Section 418 defines the following terms: "insurance," "insurance producer," "State law," and "State."

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

BANKING ACT OF 1933

* * * * *

[SEC. 20. After one year from the date of the enactment of this Act, no member bank shall be affiliated in any manner described in section 2 (b) hereof with any corporation, association, business trust, or other similar organization engaged principally in the issue, flotation, underwriting, public sale, or distribution at wholesale or retail or through syndicate participation of stocks, bonds, debentures, notes, or other securities: *Provided*, That nothing in this paragraph shall apply to any such organization which shall

have been placed in formal liquidation and which shall transact no business except such as may be incidental to the liquidation of its affairs.

【For every violation of this section the member bank involved shall be subject to a penalty not exceeding \$1,000 per day for each day during which such violation continues. Such penalty may be assessed by the Federal Reserve Board, in its discretion, and, when so assessed, may be collected by the Federal reserve bank by suit or otherwise.

【If any such violation shall continue for six calendar months after the member bank shall have been warned by the Federal Reserve Board to discontinue the same, (a) in the case of a national bank, all the rights, privileges, and franchises granted to it under the National Bank Act may be forfeited in the manner prescribed in section 2 of the Federal Reserve Act, as amended (U.S.C., title 12, secs. 141, 222-225, 281-286, and 502) or, (b) in the case of a State member bank, all of its rights and privileges of membership in the Federal Reserve System may be forfeited in the manner prescribed in section 9 of the Federal Reserve Act, as amended (U.S.C., title 12, secs. 321-332).】

* * * * *

【SEC. 32. No officer, director, or employee of any corporation or unincorporated association, no partner or employee of any partnership, and no individual, primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities, shall serve the same time as an officer, director, or employee of any member bank except in limited classes of cases in which the Board of Governors of the Federal Reserve System may allow such service by general regulations when in the judgment of the said Board it would not unduly influence the investment policies of such member bank or the advice it gives its customers regarding investments.】

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BANK HOLDING COMPANY ACT OF 1956

* * * * *

DEFINITIONS

SEC. 2. (a)(1) * * *

* * * * *

(5) Notwithstanding any other provision of this subsection—

(A) * * *

* * * * *

【(E) No company is a bank holding company by virtue of its ownership or control of any State-chartered bank or trust company which—

【(i) is wholly owned by thrift institutions or savings banks; and

[(ii) is restricted to accepting—

[(I) deposits from thrift institutions or savings banks;

[(II) deposits arising out of the corporate business of the thrift institutions or savings banks that own the bank or trust company; or

[(III) deposits of public moneys.]

* * * * *

(c) BANK DEFINED.—For purposes of this Act—

(1) IN GENERAL.—Except as provided in paragraph (2), the term “bank” means any of the following:

(A) * * *

* * * * *

(C) A wholesale financial institution chartered under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act the deposits of which are not insured by the Federal Deposit Insurance Corporation.

* * * * *

(h)(1) Except as provided by paragraph (2), the application of this Act and of section 23A of the Federal Reserve Act (12 U.S.C. 371), as amended, shall not be affected by the fact that a transaction takes place wholly or partly outside the United States or that a company is organized or operates outside the United States.

(2) [Except as provided in paragraph (3), the prohibitions of section 4 of this Act shall not apply to shares of any company organized under the laws of a foreign country (or to shares held by such company in any company engaged in the same general line of business as the investor company or in a business related to the business of the investor company) that is principally engaged in business outside the United States if such shares are held or acquired by a bank holding company organized under the laws of a foreign country that is principally engaged in the banking business outside the United States.] *A bank holding company organized under the laws of a foreign country which is principally engaged in the banking business outside of the United States may acquire and hold shares of any company organized under the laws of a foreign country (or shares held by such company in any company engaged in the same general line of business as the investor company or in a business related to the business of the investor company) that is principally engaged in business outside the United States.* For the purpose of this subsection, the term “section 2(h)(2) company” means any company whose shares are held pursuant to this paragraph.

* * * * *

[(i) THRIFT INSTITUTION.—For purposes of this Act, the term “thrift institution” means—

[(1) any domestic building and loan or savings and loan association;

[(2) any cooperative bank without capital stock organized and operated for mutual purposes and without profit;

[(3) any Federal savings bank; and

[(4) any State-chartered savings bank the holding company of which is registered pursuant to section 408 of the National Housing Act.

[(j) DEFINITION OF SAVINGS ASSOCIATIONS AND RELATED TERM.—The term “savings association” or “insured institution” means—

[(1) any Federal savings association or Federal savings bank;

[(2) any building and loan association, savings and loan association, homestead association, or cooperative bank if such association or cooperative bank is a member of the Savings Association Insurance Fund; and

[(3) any savings bank or cooperative bank which is deemed by the Director of the Office of Thrift Supervision to be a savings association under section 10(l) of the Home Owners’ Loan Act.]

(i) [Repealed.]
(j) [Repealed.]

* * * * *

(n) INCORPORATED DEFINITIONS.—For purposes of this Act, the terms “insured depository institution”, “*depository institution*”, “appropriate Federal banking agency”, “default”, “in danger of default”, and “State bank supervisor” have the same meanings as in section 3 of the Federal Deposit Insurance Act.

* * * * *

ACQUISITION OF BANK SHARES OR ASSETS

SEC. 3. (a) * * *
(b)(1) * * *

* * * * *

(3) REQUIREMENT TO FILE INFORMATION WITH ATTORNEY GENERAL.—Any applicant seeking prior approval of the Board to engage in an acquisition transaction under this section must file simultaneously with the Attorney General copies of any documents regarding the proposed transaction required by the Board.

(c) FACTORS FOR CONSIDERATION BY BOARD.—

[(1) COMPETITIVE FACTORS.—The Board shall not approve—

[(A) any acquisition or merger or consolidation under this section which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

[(B) any other proposed acquisition or merger or consolidation under this section whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.]

[(2)] (1) BANKING AND COMMUNITY FACTORS.—In every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

[(3)] (2) SUPERVISORY FACTORS.—The Board shall disapprove any application under this section by any company if—

(A) the company fails to provide the Board with adequate assurances that the company will make available to the Board such information on the operations or activities of the company, and any affiliate of the company, as the Board determines to be appropriate to determine and enforce compliance with this Act; or

(B) in the case of an application involving a foreign bank, the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.

[(4)] (3) TREATMENT OF CERTAIN BANK STOCK LOANS.—Notwithstanding any other provision of law, the Board shall not follow any practice or policy in the consideration of any application for the formation of a one-bank holding company if following such practice or policy would result in the rejection of such application solely because the transaction to form such one-bank holding company involves a bank stock loan which is for a period of not more than twenty-five years. The previous sentence shall not be construed to prohibit the Board from rejecting any application solely because the other financial arrangements are considered unsatisfactory. The Board shall consider transactions involving bank stock loans for the formation of a one-bank holding company having a maturity of twelve years or more on a case by case basis and no such transaction shall be approved if the Board believes the safety or soundness of the bank may be jeopardized.

[(5)] (4) MANAGERIAL RESOURCES.—Consideration of the managerial resources of a company or bank under paragraph (2) shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or bank.

* * * * *

(e) [Every bank] *Except with regard to a wholesale financial institution described in section 2(c)(1)(C), every bank* that is a holding company and every bank that is a subsidiary of such company shall become and remain an insured depository institution as such term is defined in section 3 of the Federal Deposit Insurance Act.

[(f) SAVINGS BANK SUBSIDIARIES OF BANK HOLDING COMPANIES.—

[(1) IN GENERAL.—Notwithstanding any other provision of this Act (other than paragraphs (2) and (3)), any qualified savings bank which is a subsidiary of a bank holding company may engage, directly or through a subsidiary, in any activity in which such savings bank may engage (as a State chartered savings bank) pursuant to express, incidental, or implied powers under any statute or regulation, or under any judicial in-

terpretation of any law, of the State in which such savings bank is located.

[(2) INSURANCE ACTIVITIES.—Except as provided in paragraph (3), any insurance activities of any qualified savings bank which is a subsidiary of a bank holding company shall be limited to insurance activities allowed under section 4(c)(8).

[(3) SAVINGS BANK LIFE INSURANCE.—Any qualified savings bank permitted, as of March 5, 1987, to engage in the sale or underwriting of savings bank life insurance may sell or underwrite such insurance after such savings bank is a subsidiary of a bank holding company if—

[(A) the savings bank is located in the State of Connecticut, Massachusetts, or New York;

[(B) such activity is expressly authorized by the law of the State in which such savings bank is located;

[(C) the savings bank retains its character as a savings bank;

[(D) such activity is carried out by the savings bank directly and not by—

[(i) any subsidiary or affiliate of the savings bank;

or

[(ii) the bank holding company which controls such savings bank;

[(E) such activity is carried out by the savings bank in accordance with any residency or employment limitations set forth in the savings bank life insurance statute in effect on March 5, 1987, in the State in which such bank is located; and

[(F) such activity is otherwise carried out in the same manner as savings bank life insurance activity is carried out in the State in which such bank is located by savings banks which are not subsidiaries of any bank holding company registered under this Act.

[(4) SUBSECTION SHALL CEASE TO APPLY UNDER CERTAIN CIRCUMSTANCES.—If any company which is not a savings bank or a savings bank holding company acquires control of a qualified savings bank, such savings bank shall cease to engage in any activity authorized under paragraph (1) or (3) before the end of the 2-year period beginning on the date such company acquires control, unless such activity is otherwise authorized pursuant to this Act.

[(5) SPECIAL ASSET AGGREGATION RULE FOR PURPOSES OF PARAGRAPH (3).—For the sole purpose of determining whether a qualified savings bank may continue to sell and underwrite savings bank life insurance in accordance with this subsection after control of such savings bank is acquired by a bank holding company, the assets of any other bank affiliated with, or under contract to affiliate with, such savings bank as of March 5, 1987, shall be treated as assets of the savings bank in determining whether such bank holding company is a savings bank holding company.]

[(g)] (f) MUTUAL BANK HOLDING COMPANY.—

(1) ESTABLISHMENT.—Notwithstanding any provision of Federal law other than this Act, a savings bank or cooperative

bank operating in mutual form may reorganize so as to form a holding company.

【(2) REGULATION.—A corporation organized as a holding company under this subsection shall be regulated on the same terms and be subject to the same limitations as any other holding company which controls a savings bank.】

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

(g) SAVINGS AND LOAN HOLDING COMPANY POWERS GRANDFATHERED.—

(1) IN GENERAL.—A company that qualifies under paragraph

(2) may—

(A) maintain or enter into any nonbank affiliation that the company was permitted pursuant to section 10 of the Home Owners' Loan Act to maintain or enter into prior to becoming a bank holding company pursuant to paragraph (2)(C); and

(B) engage in any activity, including holding any asset, in which the company or any affiliate described in subparagraph (A) was permitted pursuant to section 10 of the Home Owners' Loan Act to engage prior to becoming a bank holding company pursuant to paragraph (2)(C).

(2) QUALIFIED GRANDFATHERED COMPANIES.—

(A) GRANDFATHERED COMPANIES DEFINED.—A company qualifies under this paragraph for purposes of paragraph (1) if—

(i) as of the date of enactment of the Thrift Charter Transition Act of 1997, the company—

(I) was a savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act, as in effect on that date); or

(II) had filed an application to become a savings and loan holding company; and

(ii) the company—

(I) becomes a bank holding company by operation of law; or

(II) was exempt from section 4 (as in effect on the date of enactment of the Thrift Charter Transition Act of 1997) under an order issued by the Board under section 4(d) (as in effect on the date of enactment of the Thrift Charter Transition Act of 1997).

(B) HOLDING COMPANIES WITH IDENTICAL SHAREHOLDERS.—A company also qualifies under this paragraph for purposes of paragraph (1) if the company—

(i) is formed by a company qualified under subparagraph (A); and

(ii) the shareholders of such company are identical to the shareholders of the company referred to in (i).

(C) OPERATION OF LAW DEFINED.—For purposes of this subsection, a savings and loan holding company becomes a bank holding company by operation of law if a savings association controlled by the company is converted to a bank

or is treated as a bank under an amendment made by the Thrift Charter Transition Act of 1997.

(3) REQUIREMENTS TO RETAIN GRANDFATHERED POWERS.—

(A) IN GENERAL.—Paragraph (1) shall cease to apply to a company if the company does not comply with this paragraph.

(B) ACQUISITION OF BANKS.—

(i) IN GENERAL.—The company may not acquire (by any form of business combination) control of a bank after the date of enactment of the Thrift Charter Transition Act of 1997.

(ii) EXCEPTIONS TO PROHIBITION.—Clause (i) shall not apply to the acquisition of—

(I) a bank, during the period ending on the date 2 years after the date of enactment of the Thrift Charter Transition Act of 1997, if the acquisition results from the conversion of a savings association or the treatment of a savings association as a bank under amendments made by the Thrift Charter Transition Act of 1997;

(II) a bank, if the assets of such bank are merged with an insured depository institution which was controlled by such company before the date of enactment of the Thrift Charter Transition Act of 1997, and if the resulting institution continues to comply with the requirements of Section 10(m) of the Home Owners' Loan Act as in effect on the day prior to enactment of the Thrift Charter Transition Act of 1997;

(III) shares held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);

(IV) shares held by any person as a bona fide fiduciary solely for the benefit of employees of either the company or any subsidiary of the company and the beneficiaries of those employees;

(V) an entity described in section 2(c)(2);

(VI) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(VII) shares held in an account solely for trading purposes;

(VIII) shares over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

(IX) shares or assets acquired in securing or collecting a debt previously contracted in good faith, during the 2-year period beginning on the date of such acquisition or for such additional time (not exceeding 3 years) as the Board may permit if the Board determines that such an extension will not be detrimental to the public interest;

(X) a bank from the Federal Deposit Insurance Corporation, in any capacity; and

(XI) a bank in an acquisition in which the bank has been found to be in danger of default by the appropriate Federal or State authority.

(C) The company may not control a savings association or a national bank resulting from the conversion of a savings association to a national bank pursuant to section 311 if such savings association or national bank fails to comply with the requirements of section 5(c)(2) and section 10(m) of the Home Owners' Loan Act as in effect on the day before the date of the enactment of the Thrift Charter Transition Act of 1997.

(4) GRANDFATHERED POWERS NONTRANSFERABLE.—

(A) IN GENERAL.—Paragraph (1) shall not apply with respect to any company if after the date of the enactment of the Thrift Charter Transition Act of 1997—

(i) any company (other than a company qualified under paragraph (2)) not under common control with such company as of that date acquires, directly, or indirectly, control of the company; or

(ii) the company is the subject of any merger, consolidation, or other type of business combination as a result of which a company (other than a company qualified under paragraph (2)) not under common control with such company acquires, directly or indirectly, control of such company.

(B) ANTI-EVASION.—The appropriate Federal banking agency may issue interpretations, regulations, or orders that it deems necessary to administer and carry out the purpose, and prevent evasions, of this paragraph, including determining that (notwithstanding the form of a transaction) the transaction would in substance effect a change in control.

(5) SAVINGS AND LOAN HOLDING COMPANIES THAT BECOME BANK HOLDING COMPANIES.—

(A) EXCLUSION FROM APPLICATION REQUIREMENT.—A company that qualifies under subparagraph (B) shall not be required to obtain the approval of the Board under subsection (a) to become a bank holding company if it becomes a bank holding company after the date of enactment of the Thrift Charter Transition Act of 1997 as a result of the conversion of a savings association subsidiary to a bank or by virtue of the treatment of a savings association subsidiary as a bank under an amendment made by this Act.

(B) COMPANIES EXCLUDED FROM APPLICATION REQUIREMENT.—A company qualifies for purposes of subparagraph (A) if the company, as of the date of the enactment of the Thrift Charter Transition Act of 1997, was a savings and loan holding company (as defined in section 10(a) of the Home Owners' Loan Act as in effect on that date) or has filed an application to become a savings and loan holding company.

(C) SUPERVISION AND REGULATION OF COMPANIES THAT WERE PREVIOUSLY SAVINGS AND LOAN HOLDING COMPANIES.—

(i) *IN GENERAL.*—Any company that qualifies under paragraph (2) and complies with paragraph (3) and was registered and regulated under section 10 of the Home Owners' Loan Act on the day prior to becoming a bank holding company described in paragraphs (2) and (3) shall continue to be regulated, for a period of 3 years after becoming such holding company, under the terms of section 10 of the Home Owners' Loan Act in the same manner and to the same extent and subject to the same requirements as by the Office of Thrift Supervision before the date of the enactment of the Thrift Charter Transition Act of 1997.

(ii) *HOLDING COMPANY CAPITAL EXCEPTION.*—With regard to holding company capital, any company that qualifies under paragraph (2) and complies with paragraph (3) and was registered and regulated under section 10 of the Home Owners' Loan Act prior to June 19, 1997, or had an application pending to do so on such date, shall continue to be regulated under the terms of section 10 of the Home Owners' Loan Act in the same manner and to the same extent and subject to the same requirements as by the Office of Thrift Supervision before the date of the enactment of the Thrift Charter Transition Act of 1997.

(iii) *SUBMISSIONS TO REGULATORS.*—A company shall provide for a period of 3 years after becoming a bank holding company described in paragraphs (2) and (3) the appropriate Federal banking agency with—

(I) notice of acquisition of any company not controlled or affiliated on the date of enactment of the Thrift Charter Transition Act of 1997 that is engaged in nonbanking activities within 15 days after completion of any such transaction; and

(II) copies of such quarterly and annual reports as it is otherwise required to file with any other governmental agency.

(iv) *REPORTING REQUIREMENTS.*—The appropriate Federal banking agency may adopt, for a period of 3 years after a company becomes a bank holding company described in paragraphs (2) and (3), reporting requirements substantially similar to and no more burdensome than required by the Office of Thrift Supervision as of January 1, 1997.

(v) *REGULATORY AUTHORITY.*—The appropriate Federal banking agency shall for a period of 3 years after a company becomes a bank holding company described in paragraphs (2) and (3)—

(I) have the same authority to examine a company or any subsidiary or affiliate thereof only to the same extent as the Office of Thrift Supervision had as of January 1, 1997; and

(II) conduct only the same type of examination and with the same frequency as the Office of Thrift Supervision prior to January 1, 1997, unless re-

quired to prevent an unsafe or unsound activity or course of conduct of the savings institution converted to a bank pursuant to the Thrift Charter Transition Act of 1997.

【INTERESTS IN NONBANKING ORGANIZATIONS

【SEC. 4. (a) Except as otherwise provided in this Act, no bank holding company shall—

【(1) after the date of enactment of this Act acquire direct or indirect ownership or control of any voting shares of any company which is not a bank, or

【(2) after two years from the date as of which it becomes a bank holding company, or in the case of a company which has been continuously affiliated since May 15, 1955, with a company which was registered under the Investment Company Act of 1940, prior to May 15, 1955, in such a manner as to constitute an affiliated company within the meaning of that Act, after December 31, 1978, or, in the case of any company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on the date of such enactment, after December 31, 1980, retain direct or indirect ownership or control of any voting shares of any company which is not a bank or bank holding company or engage in any activities other than (A) those of banking or of managing or controlling banks and other subsidiaries authorized under this Act or of furnishing services to or performing services for its subsidiaries, and (B) those permitted under paragraph (8) of subsection (c) of this section subject to all the conditions specified in such paragraph or in any order or regulation issued by the Board under such paragraph: *Provided*, That a company covered in 1970 may also engage in those activities in which directly or through a subsidiary (i) it was lawfully engaged on June 30, 1968 (or on a date subsequent to June 30, 1968 in the case of activities carried on as the result of the acquisition by such company or subsidiary, pursuant to a binding written contract entered into on or before June 30, 1968, of another company engaged in such activities at the time of the acquisition), and (ii) it has been continuously engaged since June 30, 1968 (or such subsequent date). The Board by order, after opportunity for hearing, may terminate the authority conferred by the preceding proviso on any company to engage directly or through a subsidiary in any activity otherwise permitted by that proviso if it determines, having due regard to the purposes of this Act, that such action is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices; and in the case of any such company controlling a bank having bank assets in excess of \$60,000,000 on or after the date of enactment of the Bank Holding Company Act Amendments of 1970 the Board shall determine, within two years after such date (or, if later, within two years after the date on which the bank assets first exceed \$60,000,000), whether the authority conferred by the preceding proviso with respect to such company should be terminated as provided in

this sentence. Nothing in this paragraph shall be construed to authorize any bank holding company referred to in the preceding proviso, or any subsidiary thereof, to engage in activities authorized by that proviso through the acquisition, pursuant to a contract entered into after June 30, 1968, of any interest in or the assets of a going concern engaged in such activities. Any company which is authorized to engage in any activity pursuant to the preceding proviso or subsection (d) of this section but, as a result of action of the Board, is required to terminate such activity may (notwithstanding any otherwise applicable time limit prescribed in this paragraph) retain the ownership or control of shares in any company carrying on such activity for a period of ten years from the date on which its authority was so terminated by the Board. Notwithstanding any other provision of this paragraph, if any company that became a bank holding company as a result of the enactment of the Competitive Equality Amendments of 1987 acquired, between March 5, 1987, and the date of the enactment of such Amendments, an institution that became a bank as a result of the enactment of such Amendments, that company shall, upon the enactment of such Amendments, immediately come into compliance with the requirements of this Act.

The Board is authorized, upon application by a bank holding company, to extend the two-year period referred to in paragraph (2) above from time to time as to such bank holding company for not more than one year at a time, if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall in the aggregate exceed three years. Notwithstanding any other provision of this Act, the period ending December 31, 1980, referred to in paragraph (2) above, may be extended by the Board of Governors to December 31, 1984, but only for the divestiture by a bank holding company of real estate or interests in real estate lawfully acquired for investment or development. In making its decision whether to grant such extension, the Board shall consider whether the company has made a good faith effort to divest such interests and whether such extension is necessary to avert substantial loss to the company.

[(b) After two years from the date of enactment of this Act, no certificate evidencing shares of any bank holding company shall bear any statement purporting to represent shares of any other company except a bank or a bank holding company, nor shall the ownership, sale, or transfer of shares of any bank holding company be conditioned in any manner whatsoever upon the ownership, sale, or transfer of shares of any other company except a bank or a bank holding company.

[(c) The prohibitions in this section shall not apply to (i) any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of the Internal Revenue Code of 1954, or to any labor, agricultural, or horticultural organization to which all or substantially all of the assets of such company are hereafter transferred, or (ii) a company covered in 1970 more than 85 per centum of the voting stock of which was collectively owned on June 30, 1968, and continuously thereafter, directly or indi-

rectly, by or for members of the same family, or their spouses, who are lineal descendants of common ancestors; and such prohibitions shall not, with respect to any other bank holding company, apply to—

[(1) shares of any company engaged or to be engaged solely in one or more of the following activities: (A) holding or operating properties used wholly or substantially by any banking subsidiary of such bank holding company in the operations of such banking subsidiary or acquired for such future use; or (B) conducting a safe deposit business; or (C) furnishing services to or performing services for such bank holding company or its banking subsidiaries; or (D) liquidating assets acquired from such bank holding company or its banking subsidiaries or acquired from any other source prior to May 9, 1956, or the date on which such company became a bank holding company, whichever is later;

[(2) shares acquired by a bank holding company or any of its subsidiaries in satisfaction of a debt previously contracted in good faith, but such shares shall be disposed of within a period of two years from the date on which they were acquired, except that the Board is authorized upon application by such bank holding company to extend such period of two years from time to time as to such holding company if, in its judgment, such an extension would not be detrimental to the public interest, and, in the case of a bank holding company which has not disposed of such shares within 5 years after the date on which such shares were acquired, the Board may, upon the application of such company, grant additional exemptions if, in the judgment of the Board, such extension would not be detrimental to the public interest and, either the bank holding company has made a good faith attempt to dispose of such shares during such 5-year period, or the disposal of such shares during such 5-year period would have been detrimental to the company, except that the aggregate duration of such extensions shall not extend beyond 10 years after the date on which such shares were acquired;

[(3) shares acquired by such bank holding company from any of its subsidiaries which subsidiary has been requested to dispose of such shares by any Federal or State authority having statutory power to examine such subsidiary, but such bank holding company shall dispose of such shares within a period of two years from the date on which they were acquired;

[(4) shares held or acquired by a bank in good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in section 2(b) and except as provided in paragraphs (2) and (3) of section 2(g);

[(5) shares which are of the kinds and amounts eligible for investment by national banking associations under the provisions of section 5136 of the Revised Statutes;

[(6) shares of any company which do not include more than 5 per centum of the outstanding voting shares of such company;

[(7) shares of an investment company which is not a bank holding company and which is not engaged in any business

other than investing in securities, which securities do not include more than 5 per centum of the outstanding voting shares of any company;

[(8) shares of any company the activities of which the Board after due notice (and opportunity for hearing in the case of an acquisition of a savings association) has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto, but for purposes of this subsection it is not closely related to banking or managing or controlling banks for a bank holding company to provide insurance as a principal, agent, or broker except (A) where the insurance is limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death, disability, or involuntary unemployment of the debtor; (B) in the case of a finance company which is a subsidiary of a bank holding company, where the insurance is also limited to assuring repayment of the outstanding balance on an extension of credit in the event of loss or damage to any property used as collateral on such extension of credit and, during the period beginning on the date of the enactment of this subparagraph and ending on December 31, 1982, such extension of credit is not more than \$10,000 (\$25,000 in the case of an extension of credit which is made to finance the purchase of a residential manufactured home and which is secured by such residential manufactured home) and for any given year after 1982, such extension of credit is not more than an amount equal to \$10,000 (\$25,000 in the case of an extension of credit which is made to finance the purchase of a residential manufactured home and which is secured by such residential manufactured home) increased by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published monthly by the Bureau of Labor Statistics for the period beginning on January 1, 1982, and ending on December 31 of the year preceding the year in which such extension of credit is made; (C) any insurance agency activity in a place that (i) has a population not exceeding five thousand (as shown by the last preceding decennial census), or (ii) the bank holding company, after notice and opportunity for a hearing, demonstrates has inadequate insurance agency facilities; (D) any insurance agency activity which was engaged in by the bank holding company or any of its subsidiaries on May 1, 1982, or which the Board approved for such company or any of its subsidiaries on or before May 1, 1982, including (i) sales of insurance at new locations of the same bank holding company or the same subsidiary or subsidiaries with respect to which insurance was sold on May 1, 1982, or approved to be sold on or before May 1, 1982, if such new locations are confined to the State in which the principal place of business of the bank holding company is located, any State or States immediately adjacent to such State, and any State or States in which insurance activities were conducted by the bank holding company or any of its subsidiaries on May 1, 1982, or were approved to be conducted by the bank holding company or any of

its subsidiaries on or before May 1, 1982, and (ii) sales of insurance coverages which may become available after May 1, 1982, so long as those coverages insure against the same types of risks as, or are otherwise functionally equivalent to, coverages sold on May 1, 1982, or approved to be sold on or before May 1, 1982 (for purposes of this subparagraph, activities engaged in or approved by the Board on May 1, 1982, shall include activities carried on subsequent to that date as the result of an application to engage in such activities pending on May 1, 1982, and approved subsequent to that date or of the acquisition by such company pursuant to a binding written contract entered into on or before May 1, 1982, of another company engaged in such activities at the time of the acquisition); (E) any insurance activity where the activity is limited solely to supervising on behalf of insurance underwriters the activities of retail insurance agents who sell (i) fidelity insurance and property and casualty insurance on the real and personal property used in the operations of the bank holding company or any of its subsidiaries, and (ii) group insurance that protects the employees of the bank holding company or any of its subsidiaries; (F) any insurance agency activity engaged in by a bank holding company, or any of its subsidiaries, which bank holding company has total assets of \$50,000,000 or less: *Provided, however,* That such a bank holding company and its subsidiaries may not engage in the sale of life insurance or annuities except as provided in subparagraph (A), (B), or (C); or (G) where the activity is performed, or shares of the company involved are owned, directly or indirectly, by a bank holding company which is registered with the Board of Governors of the Federal Reserve System and which, prior to January 1, 1971, was engaged, directly or indirectly, in insurance agency activities as a consequence of approval by the Board prior to January 1, 1971. In determining whether a particular activity is a proper incident to banking or managing or controlling banks the Board shall consider whether its performance by an affiliate of a holding company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. In orders and regulation under this subsection, the Board may differentiate between activities commenced de novo and activities commenced by the acquisition, in whole or in part, of a going concern. Notwithstanding any other provision of this Act, if the Board finds that an emergency exists which requires the Board to act immediately on any application under this subsection involving a thrift institution, and the primary Federal regulator of such institution concurs in such finding, the Board may dispense with the notice and hearing requirement of this subsection and the Board may approve or deny any such application without notice or hearing. If an application is filed under this paragraph in connection with an application to make an acquisition pursuant to section 13(f) of the Federal Deposit Insurance Act, the Board may dispense

with the notice and hearing requirement of this paragraph and the Board may approve or deny the application under this paragraph without notice or hearing. If an application described in the preceding sentence is approved, the Board shall publish in the Federal Register, not later than 7 days after such approval is granted, the order approving the application and a description of the nonbanking activities involved in the acquisition;

[(9) shares held or activities conducted by any company organized under the laws of a foreign country the greater part of whose business is conducted outside the United States, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this Act and would be in the public interest;

[(10) shares lawfully acquired and owned prior to May 9, 1956, by a bank which is a bank holding company, or by any of its wholly owned subsidiaries;

[(11) shares owned directly or indirectly by a company covered in 1970 in a company which does not engage in any activities other than those in which the bank holding company, or its subsidiaries, may engage by virtue of this section, but nothing in this paragraph authorizes any bank holding company, or subsidiary thereof, to acquire any interest in or the assets of any going concern (except pursuant to a binding written contract entered into before June 30, 1968, or pursuant to another provision of this Act) other than one which was a subsidiary on June 30, 1968;

[(12) shares retained or acquired, or activities engaged in, by any company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on the date of such enactment, or by any subsidiary thereof, if such company—

[(A) within the applicable time limits prescribed in subsection (a)(2) of this section (i) ceases to be a bank holding company, or (ii) ceases to retain direct or indirect ownership or control of those shares and to engage in those activities not authorized under this section; and

[(B) complies with such other conditions as the Board may by regulation or order prescribe;

[(13) shares of, or activities conducted by, any company which does no business in the United States except as an incident to its international or foreign business, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this Act and would be in the public interest; or

[(14) shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a bank holding company has not been disapproved by the Board pursuant to this paragraph, except that such investments, whether direct or indirect, in such shares

shall not exceed 5 per centum of the bank holding company's consolidated capital and surplus.

[(A)(i) No bank holding company shall invest in an export trading company under this paragraph unless the Board has been given sixty days' prior written notice of such proposed investment and within such period has not issued a notice disapproving the proposed investment or extending for up to another thirty days the period during which such disapproval may be issued.

[(ii) The period for disapproval may be extended for such additional thirty-day period only if the Board determines that a bank holding company proposing to invest in an export trading company has not furnished all the information required to be submitted or that in the Board's judgment any material information submitted is substantially inaccurate.

[(iii) The notice required to be filed by a bank holding company shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

[(iv) The Board may disapprove any proposed investment only if—

[(I) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition, or conflicts of interest;

[(II) the Board finds that such investment would affect the financial or managerial resources of a bank holding company to an extent which is likely to have a materially adverse effect on the safety and soundness of any subsidiary bank of such bank holding company, or

[(III) the bank holding company fails to furnish the information required under clause (iii).

[(v) LEVERAGE.—The Board may not disapprove any proposed investment solely on the basis of the anticipated or proposed asset-to-equity ratio of the export trading company with respect to which such investment is proposed, unless the anticipated or proposed annual average asset-to-equity ratio is greater than 20-to-1.

[(vi) Within three days after a decision to disapprove an investment, the Board shall notify the bank holding company in writing of the disapproval and shall provide a written statement of the basis for the disapproval.

[(vii) A proposed investment may be made prior to the expiration of the disapproval period if the Board issues written notice of its intent not to disapprove the investment.

[(B)(i) The total amount of extensions of credit by a bank holding company which invests in an export trading company, when combined with all such extensions of credit by all the subsidiaries of such bank holding company, to an export trading company shall not exceed at any one time 10 per centum of the bank holding company's consoli-

dated capital and surplus. For purposes of the preceding sentence, an extension of credit shall not be deemed to include any amount invested by a bank holding company in the shares of an export trading company.

[(ii) No provision of any other Federal law in effect on October 1, 1982, relating specifically to collateral requirements shall apply with respect to any such extension of credit.

[(iii) No bank holding company or subsidiary of such company which invests in an export trading company may extend credit to such export trading company or to customers of such export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

[(C) For purposes of this paragraph, an export trading company—

[(i) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that any bank holding company which invests in such export trading company may do so under applicable Federal and State banking laws and regulations; and

[(ii) may not engage in agricultural production activities or in manufacturing, except for such incidental product modification including repackaging, reassembling or extracting byproducts, as is necessary to enable United States goods or services to conform with requirements of a foreign country and to facilitate their sale in foreign countries.

[(D) A bank holding company which invests in an export trading company may be required, by the Board, to terminate its investment or may be made subject to such limitations or conditions as may be imposed by the Board, if the Board determines that the export trading company has taken positions in commodities or commodity contracts, in securities, or in foreign exchange, other than as may be necessary in the course of the export trading company's business operations.

[(E) Notwithstanding any other provision of law, an Edge Act corporation, organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611–631), which is a subsidiary of a bank holding company, or an agreement corporation, operating subject to section 25 of the Federal Reserve Act (12 U.S.C. 601–604(a)), which is a subsidiary of a bank holding company, may invest directly and indirectly in the aggregate up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of a corporation not engaged in banking) in the voting stock of other evidences of ownership in one or more export trading companies.

[(i) the term “export trading company” means a company which does business under the laws of the United States or any State, which is exclusively engaged in activities related to international trade, and which is organized and operated principally for purposes of exporting goods or services produced in the United States or for purposes of facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services.

[(II) shares held by any person as a bona fide fiduciary solely for the benefit of employees of either the company described in paragraph (1) or any subsidiary of that company and the beneficiaries of those employees;

[(III) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

[(IV) shares held in an account solely for trading purposes;

[(V) shares over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

[(VI) loans or other accounts receivable acquired in the normal course of business;

[(VII) shares or assets acquired in securing or collecting a debt previously contracted in good faith, during the 2-year period beginning on the date of such acquisition or for such additional time (not exceeding 3 years) as the Board may permit if the Board determines that such an extension will not be detrimental to the public interest;

[(VIII) shares or assets of a savings association described in paragraph (10) or (12) of this subsection;

[(IX) shares of a savings association held by any insurance company, as defined in section 2(a)(17) of the Investment Company Act of 1940, except as provided in paragraph (11); and

[(X) shares issued in a qualified stock insurance under section 10(q) of the Home Owners’ Loan Act;

except that the aggregate amount of shares held under this clause (other than under subclauses (I), (II), (III), (IV), (V), and (VIII)) may not exceed 15 percent of all outstanding shares or of the voting power of a savings association; or

[(B) any bank subsidiary of such company fails to comply with the restrictions contained in paragraph (3)(B).

[(3) LIMITATION ON BANKS CONTROLLED BY PARAGRAPH (1) COMPANIES.—

[(A) FINDINGS.—The Congress finds that banks controlled by companies referred to in paragraph (1) may, because of relationships with affiliates, be involved in con-

flicts of interest, concentration of resources, or other effects adverse to bank safety and soundness, and may also be able to compete unfairly against banks controlled by bank holding companies by combining banking services with financial services not permissible for bank holding companies. The purpose of this paragraph is to minimize any such potential adverse effects or inequities by temporarily restricting the activities of banks controlled by companies referred to in paragraph (1) until such time as the Congress has enacted proposals to allow, with appropriate safeguards, all banks or bank holding companies to compete on a more equal basis with banks controlled by companies referred to in paragraph (1) or, alternatively, proposals to permanently restrict the activities of banks controlled by companies referred to in paragraph (1).

[(B) LIMITATIONS.—Until such time as the Congress has taken action pursuant to subparagraph (A), a bank controlled by a company described in paragraph (1) shall not—

[(i) engage in any activity in which such bank was not lawfully engaged as of March 5, 1987;

[(ii) offer or market products or services of an affiliate that are not permissible for bank holding companies to provide under subsection (c)(8), or permit its products or services to be offered or marketed in connection with products and services of an affiliate, unless—

[(I) the Board, by regulation, has determined such products and services are permissible for bank holding companies to provide under subsection (c)(8);

[(II) such products and services are described in section 20 of the Banking Act of 1933 and the Board, by regulation, has permitted bank holding companies to offer or market such products or services, but has prohibited bank holding companies and their affiliates from principally engaging in the offering or marketing of such products or services; or

[(III) such products or services were being so offered or marketed as of March 5, 1987, and then only in the same manner in which they were being offered or marketed as of that date; or

[(iii) after the date of the enactment of the Competitive Equality Amendments of 1987, permit any overdraft (including an intraday overdraft), or incur any such overdraft in such bank's account at a Federal Reserve bank, on behalf of an affiliate, other than an overdraft described in subparagraph (C).

[(C) PERMISSIBLE OVERDRAFTS DESCRIBED.—For purposes of subparagraph (B)(iii), an overdraft is described in this subparagraph if—

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

[(ii) such overdraft—

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

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

[(4) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—If any company described in paragraph (1) loses the exemption provided under such paragraph by operation of paragraph (2), such company shall divest control of each bank it controls within 180 days after such company becomes a bank holding company due to the loss of such exemption.

[(5) SUBSECTION CEASES TO APPLY UNDER CERTAIN CIRCUMSTANCES.—This subsection shall cease to apply to any company described in paragraph (1) if such company—

[(A) registers as a bank holding company under section 5(a) of this Act;

[(B) immediately upon such registration, complies with all of the requirements of this Act, and regulations prescribed by the Board pursuant to this Act, including the nonbanking restrictions of this section; and

[(C) does not, at the time of such registration, control banks in more than one State, the acquisition of which would be prohibited by section 3(d) of this Act if an application for such acquisition by such company were filed under section 3(a) of this Act.

[(6) INFORMATION REQUIREMENT.—Each company described in paragraph (1) shall, within 60 days after the date of enactment of the Competitive Equality Amendments of 1987, provide the Board with the name and address of such company, the name and address of each bank such company controls, and a description of each such bank's activities.

[(7) EXAMINATION.—The Board may, from time to time, examine a company described in paragraph (1), or a bank controlled by such company, or require reports under oath from appropriate officers or directors of such company or bank solely for purposes of assuring compliance with the provisions of this subsection and enforcing such compliance.

[(8) ENFORCEMENT.—

[(A) IN GENERAL.—In addition to any other power of the Board, the Board may enforce compliance with the provisions of this Act which are applicable to any company described in paragraph (1), and any bank controlled by such company, under section 8 of the Federal Deposit Insurance Act and such company or bank shall be subject to such sec-

tion (for such purposes) in the same manner and to the same extent as if such company or bank were a State member insured bank.

[(B) APPLICATION OF OTHER ACT.—Any violation of this Act by any company described in paragraph (1), and any bank controlled by such company, may also be treated as a violation of the Federal Deposit Insurance Act for purposes of subparagraph (A).

[(C) NO EFFECT ON OTHER AUTHORITY.—No provision of this paragraph shall be construed as limiting any authority of the Comptroller of the Currency or the Federal Deposit Insurance Corporation.

[(9) TYING PROVISIONS.—A company described in paragraph (1) shall be—

[(A) treated as a bank holding company for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 and section 22(h) of the Federal Reserve Act and any regulation prescribed under any such section; and

[(B) subject to the restrictions of section 106 of the Bank Holding Company Act Amendments of 1970, in connection with any transaction involving the products or services of such company or affiliate and those of a bank affiliate, as if such company or affiliate were a bank and such bank were a subsidiary of a bank holding company.

[(10) EXEMPTION UNAFFECTED BY CERTAIN EMERGENCY ACQUISITIONS.—For purposes of clauses (i) and (ii)(VIII) of paragraph (2)(A), an insured institution is described in this paragraph if—

[(A) the insured institution was acquired (or any shares or assets of such institution were acquired) by a company described in paragraph (1) in an acquisition under section 408(m) of the National Housing Act or section 13(k) of the Federal Deposit Insurance Act; and

[(B) either—

[(i) the insured institution is located in a State in which such company controlled a bank on March 5, 1987; or

[(ii) the insured institution has total assets of \$500,000,000 or more at the time of such acquisition.

[(11) SHARES HELD BY INSURANCE AFFILIATES.—Shares described in clause (ii)(IX) of paragraph (2)(A) shall not be excluded for purposes of clause (ii) of such paragraph if—

[(A) all shares held under such clause (ii)(IX) by all insurance company affiliates of such savings association in the aggregate exceed 5 percent of all outstanding shares or of the voting power of the savings association; or

[(B) such shares are acquired or retained with a view to acquiring, exercising, or transferring control of the savings association.

[(12) EXEMPTION UNAFFECTED BY CERTAIN OTHER ACQUISITIONS.—For purposes of clauses (i) and (ii)(VIII) of paragraph (2)(A), an insured institution is described in this paragraph if the insured institution was acquired (or any shares or assets

of such institution were acquired) by a company described in paragraph (1)—

[(A) from the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or the Director of the Office of Thrift Supervision, in any capacity; or

[(B) in an acquisition in which the insured institution has been found to be in danger of default (as defined in section 3 of the Federal Deposit Insurance Act) by the appropriate Federal or State authority.

[(13) SPECIAL RULE RELATING TO SHARES ACQUIRED IN A QUALIFIED STOCK ISSUANCE.—A company described in paragraph (1) that holds shares issued in a qualified stock issuance pursuant to section 10(q) of the Home Owners' Loan Act by any savings association or savings and loan holding company (neither of which is a subsidiary) shall not be deemed to control such savings association or savings and loan holding company solely because such company holds such shares unless—

[(A) the company fails to comply with any requirement or condition imposed by paragraph (2)(A)(ii)(X) or section 10(q) of the Home Owners' Loan Act with respect to such shares; or

[(B) the shares are acquired or retained with a view to acquiring, exercising, or transferring control of the savings association or savings and loan holding company.

[(g) LIMITATIONS ON CERTAIN BANKS.—

[(1) IN GENERAL.—Notwithstanding any other provision of this section (other than the last sentence of subsection (a)(2)), a bank holding company which controls an institution that became a bank as a result of the enactment of the Competitive Equality Amendments of 1987 may retain control of such institution if such institution does not—

[(A) engage in any activity after the date of the enactment of such Amendments which would have caused such institution to be a bank (as defined in section 2(c), as in effect before such date) if such activities had been engaged in before such date; or

[(B) increase the number of locations from which such institution conducts business after March 5, 1987.

[(2) LIMITATIONS CEASE TO APPLY UNDER CERTAIN CIRCUMSTANCES.—The limitations contained in paragraph (1) shall cease to apply to a bank described in such paragraph at such time as the acquisition of such bank, by the bank holding company referred to in such paragraph, would not be prohibited under section 3(d) of this Act if—

[(A) an application for such acquisition were filed under section 3(a) of this Act; and

[(B) such bank were treated as an additional bank (under section 3(d)).

[(h) TYING PROVISIONS.—

[(1) APPLICABLE TO CERTAIN EXEMPT INSTITUTIONS AND PARENT COMPANIES.—An institution described in subparagraph (D), (F), (G), (H), (I), or (J) of section 2(c)(2) shall be treated as a bank, and a company that controls such an institution shall be treated as a bank holding company, for purposes of

section 106 of the Bank Holding Company Act Amendments of 1970 and section 22(h) of the Federal Reserve Act and any regulation prescribed under any such section.

[(2) APPLICABLE WITH RESPECT TO CERTAIN TRANSACTIONS.— A company that controls an institution described in subparagraph (D), (F), (G), (H), (I), or (J) of section 2(c)(2) and any of such company's other affiliates, shall be subject to the tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 in connection with any transaction involving the products or services of such company or affiliate and those of such institution, as if such company or affiliate were a bank and such institution were a subsidiary of a bank holding company.

[(i) ACQUISITION OF SAVINGS ASSOCIATIONS.—

[(1) IN GENERAL.—The Board may approve an application by any bank holding company under subsection (c)(8) to acquire any savings association in accordance with the requirements and limitations of this section.

[(2) PROHIBITION ON TANDEM RESTRICTIONS.—In approving an application by a bank holding company to acquire a savings association, the Board shall not impose any restriction on transactions between the savings association and its holding company affiliates, except as required under sections 23A and 23B of the Federal Reserve Act or any other applicable law.

[(3) ACQUISITION OF INSOLVENT SAVINGS ASSOCIATIONS.—

[(A) IN GENERAL.—Notwithstanding any other provision of this Act, any qualified savings association which became a federally chartered stock company in December of 1986 and which is acquired by any bank holding company without Federal financial assistance after June 1, 1991, and before March 1, 1992, and any subsidiary of any such association, may after such acquisition continue to engage within the home State of the qualified savings association in insurance agency activities in which any Federal savings association (or any subsidiary thereof) may engage in accordance with the Home Owners' Loan Act and regulations pursuant to such Act if the qualified savings association or subsidiary thereof was continuously engaged in such activity from June 1, 1991, to the date of the acquisition.

[(B) DEFINITION OF QUALIFIED SAVINGS ASSOCIATION.—For purposes of this paragraph, the term "qualified savings association" means any savings association that—

[(i) was chartered or organized as a savings association before June 1, 1991;

[(ii) had, immediately before the acquisition of such association by the bank holding company referred to in subparagraph (A), negative tangible capital and total insured deposits in excess of \$3,000,000,000; and

[(iii) will meet all applicable regulatory capital requirements as a result of such acquisition.

[(4) SOLICITATION OF VIEWS.—

[(A) NOTICE TO DIRECTOR.—Upon receiving any application or notice by a bank holding company to acquire, di-

rectly or indirectly, a savings association under subsection (c)(8), the Board shall solicit comments and recommendations from the Director with respect to such acquisition.

[(B) COMMENT PERIOD.—The comments and recommendations of the Director under subparagraph (A) with respect to any acquisition subject to such subparagraph shall be transmitted to the Board not later than 30 days after the receipt by the Director of the notice relating to such acquisition (or such shorter period as the Board may specify if the Board advises the Director that an emergency exists that requires expeditious action).

[(5) EXAMINATION.—

[(A) SCOPE.—The Board shall consult with the Director, as appropriate, in establishing the scope of an examination by the Board of a bank holding company that directly or indirectly controls a savings association.

[(B) ACCESS TO INSPECTION REPORTS.—Upon the request of the Director, the Board shall furnish the Director with a copy of any inspection report, additional examination materials, or supervisory information relating to any bank holding company that directly or indirectly controls a savings association.

[(6) COORDINATION OF ENFORCEMENT EFFORTS.—The Board and the Director shall cooperate in any enforcement action against any bank holding company that controls a savings association, if the relevant conduct involves such association.

[(7) DIRECTOR DEFINED.—For purposes of this section, the term “Director” means the Director of the Office of Thrift Supervision.

[(j) NOTICE PROCEDURES FOR NONBANKING ACTIVITIES.—

[(1) GENERAL NOTICE PROCEDURE.—

[(A) NOTICE REQUIREMENT.—Except as provided in paragraph (3), no bank holding company may engage in any nonbanking activity or acquire or retain ownership or control of the shares of a company engaged in activities based on subsection (c)(8) or (a)(2) without providing the Board with written notice of the proposed transaction or activity at least 60 days before the transaction or activity is proposed to occur or commence.

[(B) CONTENTS OF NOTICE.—The notice submitted to the Board shall contain such information as the Board shall prescribe by regulation or by specific request in connection with a particular notice.

[(C) PROCEDURE FOR AGENCY ACTION.—

[(i) NOTICE OF DISAPPROVAL.—Any notice filed under this subsection shall be deemed to be approved by the Board unless, before the end of the 60-day period beginning on the date the Board receives a complete notice under subparagraph (A), the Board issues an order disapproving the transaction or activity and setting forth the reasons for disapproval.

[(ii) EXTENSION OF PERIOD.—The Board may extend the 60-day period referred to in clause (i) for an additional 30 days. The Board may further extend the pe-

riod with the agreement of the bank holding company submitting the notice pursuant to this subsection.

[(iii) DETERMINATION OF PERIOD IN CASE OF PUBLIC HEARING.—In the event a hearing is requested or the Board determines that a hearing is warranted, the Board may extend the notice period provided in this subsection for such time as is reasonably necessary to conduct a hearing and to evaluate the hearing record. Such extension shall not exceed the 91-day period beginning on the date that the hearing record is complete.

[(D) APPROVAL BEFORE END OF PERIOD.—

[(i) IN GENERAL.—Any transaction or activity may commence before the expiration of any period for disapproval established under this paragraph if the Board issues a written notice of approval.

[(ii) SHORTER PERIODS BY REGULATION.—The Board may prescribe regulations which provide for a shorter notice period with respect to particular activities or transactions.

[(E) EXTENSION OF PERIOD.—In the case of any notice to engage in, or to acquire or retain ownership or control of shares of any company engaged in, any activity pursuant to subsection (c)(8) or (a)(2) that has not been previously approved by regulation, the Board may extend the notice period under this subsection for an additional 90 days. The Board may further extend the period with the agreement of the bank holding company submitting the notice pursuant to this subsection.

[(2) GENERAL STANDARDS FOR REVIEW.—

[(A) CRITERIA.—In connection with a notice under this subsection, the Board shall consider whether performance of the activity by a bank holding company or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

[(B) GROUNDS FOR DISAPPROVAL.—The Board may deny any proposed transaction or activity for which notice has been submitted pursuant to this subsection if the bank holding company submitting such notice neglects, fails, or refuses to furnish the Board all the information required by the Board.

[(C) CONDITIONAL ACTION.—Nothing in this subsection limits the authority of the Board to impose conditions in connection with an action under this section.

[(3) NO NOTICE REQUIRED FOR CERTAIN TRANSACTIONS.—No notice under paragraph (1) of this subsection or under subsection (c)(8) or (a)(2)(B) is required for a proposal by a bank holding company to engage in any activity or acquire the

shares or assets of any company, other than an insured depository institution, if the proposal qualifies under paragraph (4).

[(4) CRITERIA FOR STATUTORY APPROVAL.—A proposal qualifies under this paragraph if all of the following criteria are met:

[(A) FINANCIAL CRITERIA.—Both before and immediately after the proposed transaction—

[(i) the acquiring bank holding company is well capitalized;

[(ii) the lead insured depository institution of such holding company is well capitalized;

[(iii) well capitalized insured depository institutions control at least 80 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by such holding company; and

[(iv) no insured depository institution controlled by such holding company is undercapitalized.

[(B) MANAGERIAL CRITERIA.—

[(i) WELL MANAGED.—At the time of the transaction, the acquiring bank holding company, its lead insured depository institution, and insured depository institutions that control at least 90 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by such holding company are well managed.

[(ii) LIMITATION ON POORLY MANAGED INSTITUTIONS.—Except as provided in paragraph (6), no insured depository institution controlled by the acquiring bank holding company has received 1 of the 2 lowest composite ratings at the later of the institution's most recent examination or subsequent review.

[(C) ACTIVITIES PERMISSIBLE.—Following consummation of the proposal, the bank holding company engages directly or through a subsidiary solely in—

[(i) activities that are permissible under subsection (c)(8), as determined by the Board by regulation or order thereunder, subject to all of the restrictions, terms, and conditions of such subsection and such regulation or order; and

[(ii) such other activities as are otherwise permissible under this section, subject to the restrictions, terms and conditions, including any prior notice or approval requirements, provided in this section.

[(D) SIZE OF ACQUISITION.—

[(i) ASSET SIZE.—The book value of the total assets to be acquired does not exceed 10 percent of the consolidated total risk-weighted assets of the acquiring bank holding company.

[(ii) CONSIDERATION.—The gross consideration to be paid for the securities or assets does not exceed 15 percent of the consolidated Tier 1 capital of the acquiring bank holding company.

[(E) NOTICE NOT OTHERWISE WARRANTED.—For proposals described in paragraph (5)(B), the Board has not, before

the conclusion of the period provided in paragraph (5)(B), advised the bank holding company that a notice under paragraph (1) is required.

【(F) COMPLIANCE CRITERION.—During the 12-month period ending on the date on which the bank holding company proposes to commence an activity or acquisition, no administrative enforcement action has been commenced, and no cease and desist order has been issued pursuant to section 8 of the Federal Deposit Insurance Act, against the bank holding company or any depository institution subsidiary of the holding company, and no such enforcement action, order, or other administrative enforcement proceeding is pending as of such date.

【(5) NOTIFICATION.—

【(A) COMMENCEMENT OF ACTIVITIES APPROVED BY RULE.—A bank holding company that qualifies under paragraph (4) and that proposes to engage de novo, directly or through a subsidiary, in any activity that is permissible under subsection (c)(8), as determined by the Board by regulation, may commence that activity without prior notice to the Board and must provide written notification to the Board not later than 10 business days after commencing the activity.

【(B) ACTIVITIES PERMITTED BY ORDER AND ACQUISITIONS.—

【(i) IN GENERAL.—At least 12 business days before commencing any activity pursuant to paragraph (3) (other than an activity described in subparagraph (A) of this paragraph) or acquiring shares or assets of any company pursuant to paragraph (3), the bank holding company shall provide written notice of the proposal to the Board, unless the Board determines that no notice or a shorter notice period is appropriate.

【(ii) DESCRIPTION OF ACTIVITIES AND TERMS.—A notification under this subparagraph shall include a description of the proposed activities and the terms of any proposed acquisition.

【(6) RECENTLY ACQUIRED INSTITUTIONS.—Any insured depository institution which has been acquired by a bank holding company during the 12-month period preceding the date on which the company proposes to commence an activity or acquisition pursuant to paragraph (3) may be excluded for purposes of paragraph (4)(B)(ii) if—

【(A) the bank holding company has developed a plan for the institution to restore the capital and management of the institution which is acceptable to the appropriate Federal banking agency; and

【(B) all such insured depository institutions represent, in the aggregate, less than 10 percent of the aggregate total risk-weighted assets of all insured depository institutions controlled by the bank holding company.

【(7) ADJUSTMENT OF PERCENTAGES.—The Board may, by regulation, adjust the percentages and the manner in which the percentages of insured depository institutions are calculated

under paragraph (4)(B)(i), (4)(D), or (6)(B) if the Board determines that any such adjustment is consistent with safety and soundness and the purposes of this Act.】

SEC. 4 [REPEALED].

ADMINISTRATION

SEC. 5. (a) Within one hundred and eighty days after the date of enactment of this Act, or within one hundred and eighty days after becoming a bank holding company, whichever is later, each bank holding company shall register with the Board on forms prescribed by the Board, which shall include such information with respect to the financial condition and operations, management, and intercompany relationships of the bank holding company and its subsidiaries, and related matters, as the Board may deem necessary or appropriate to carry about the purposes of this Act. The Board may, in its discretion, extend the time within which a bank holding company shall register and file the requisite information. *A declaration filed pursuant to section 6(a)(1)(F) shall satisfy the requirements of this subsection with regard to the registration of a bank holding company but not any requirement to file an application to acquire a bank pursuant to section 3.*

* * * * *

【(c) The Board from time to time may require reports under oath to keep it informed as to whether the provisions of this Act and such regulations and orders issued thereunder have been complied with; and the Board may make examinations of each bank holding company and each subsidiary thereof, the cost of which shall be assessed against, and paid by, such holding company. The Board shall, as far as possible, use the reports of examinations made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority for the purposes of this section.】

(c) *REPORTS AND EXAMINATIONS.*—

(1) *REPORTS.*—

(A) *IN GENERAL.*—*The Board from time to time may require any bank holding company to submit reports, under oath or otherwise, to enable the Board to determine compliance with the provisions of this Act and regulations and orders issued thereunder.*

(B) *USE OF EXISTING REPORTS.*—

(i) *IN GENERAL.*—*The Board shall not require any report pursuant to subparagraph (A) if information sufficient for the Board to make the determinations required under subparagraph (A) is reasonably available from any other source.*

(ii) *USE.*—*The Board shall, as far as possible, use the reports of examination or comparable reports prepared by any Federal or State regulatory agency, or any self-regulatory organization for purposes of subparagraph (A).*

(iii) *AVAILABILITY.*—*Each Federal and State regulatory agency and self-regulatory organization referred*

to in clause (ii) shall make the reports referred to in such clause available to the Board upon request.

(C) **EXEMPTIONS FROM REPORTING REQUIREMENTS.**—

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

(ii) **CRITERIA FOR EXEMPTION.**—In granting an exemption under clause (i), the Board shall consider, among other factors—

(I) whether information of the type required under this paragraph is available from a supervisory agency (as defined in section 1101(7) of the Right to Financial Privacy Act of 1978), the Commodity Futures Trading Commission, or a foreign regulatory body of a similar type;

(II) the primary business of the company;

(III) the nature and extent of domestic or foreign regulation of the activities of such company; and

(IV) the absolute and relative size within the company of the subsidiary depository institutions of the company.

(2) **EXAMINATIONS.**—

(A) **EXAMINATION AUTHORITY.**—The Board may make examinations of each bank holding company and each subsidiary thereof, the cost of which shall be assessed against, and made payable by such holding company.

(B) **LIMITATIONS ON EXAMINATION AUTHORITY FOR BANK HOLDING COMPANIES AND NONBANK SUBSIDIARIES.**—The Board may make examinations of each bank holding company and each nonbank subsidiary (other than a subsidiary of a depository institution) in order to—

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

(ii) inform the Board of—

(I) the financial and operational risks within the holding company system that may pose a threat to the safety and soundness of any subsidiary depository institution of such holding company; and

(II) the systems of the holding company; and

(iii) monitor compliance with the provisions of this Act and those governing transactions and relationships between any subsidiary depository institution and such subsidiaries.

(C) **RESTRICTED FOCUS OF EXAMINATIONS.**—The Board shall, to the fullest extent possible, limit the focus and scope of any examination of a bank holding company to—

(i) the bank holding company; and

(ii) any nonbank subsidiary of the holding company (other than a subsidiary of a depository institution) that, because of—

(I) the size, condition, or activities of the subsidiary;

(II) the nature or size of transactions between such subsidiary and any depository institution which is also a subsidiary of such holding company; or

(III) the centralization of functions within the holding company system,

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

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

(E) *DEFERENCE TO OTHER EXAMINATIONS.*—The Board shall, to the fullest extent possible, use the reports of examination made of—

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

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

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

(3) *NOTICE TO BANKING AGENCIES OF FINANCIAL AND OPERATIONAL CONCERNS.*—Any agency represented on the National Council on Financial Services or any State supervisory authority shall notify the Board and the appropriate Federal banking agency or State bank supervisor of significant financial or operational risks to any depository institution resulting from the activities of any affiliate of a depository institution.

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

(A) *IN GENERAL.*—In the case of any bank holding company which is not significantly engaged in nonbanking activities, the Board, in consultation with the appropriate Federal banking agency, may designate the appropriate Federal banking agency of the lead insured depository institution subsidiary of such holding company as the appropriate Federal banking agency for the bank holding company.

(B) *AUTHORITY TRANSFERRED.*—An agency designated by the Board under subparagraph (A) shall have the same authority as the Board under this Act to—

(i) examine and require reports from the bank holding company and any affiliate of such company (other than a bank) under section 5;

(ii) approve or disapprove applications or transactions under section 3, 6, or 11;

(iii) take actions and impose penalties under subsections (e) and (f) of section 5 and section 8; and

(iv) take actions regarding the holding company, any affiliate of the holding company (other than a bank), or any institution-affiliated party of such company or affiliate under the Federal Deposit Insurance Act and any other statute which the Board may designate.

(C) AGENCY ORDERS.—Section 9 (of this Act) and section 105 of the Bank Holding Company Act Amendments of 1970 shall apply to orders issued by an agency designated under subparagraph (A) in the same manner such sections apply to orders issued by the Board.

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

(A) the Securities and Exchange Commission with regard to all interpretations of, and the enforcement of, applicable Federal securities laws relating to the activities, conduct, and operations of registered brokers, dealers, investment advisers, and investment companies; and

(B) the relevant State insurance authorities with regard to all interpretations of, and the enforcement of, applicable State insurance laws relating to the activities, conduct, and operations of insurance companies and insurance agents.

* * * * *

(e)(1) Notwithstanding any other provision of this Act, the Board may, whenever it has reasonable cause to believe that the continuation by a bank holding company of any activity or of ownership or control of any of its nonbank subsidiaries, other than a nonbank subsidiary of a bank, constitutes a serious risk to the financial safety, soundness, or stability of a bank holding company subsidiary bank and is inconsistent with sound banking principles or with the purposes of this Act or with the [Financial Institutions Supervisory Act of 1966, order] *Financial Institutions Supervisory Act of 1966, at the election of the bank holding company*—

(A) order the bank holding company or any such nonbank subsidiaries, after due notice and opportunity for hearing, and after considering the views of the bank's primary supervisor, which shall be the Comptroller of the Currency in the case of a national bank or the Federal Deposit Insurance Corporation and the appropriate State supervisory authority in the case of an insured nonmember bank, to terminate such activities or to terminate (within one hundred and twenty days or such longer period as the Board may direct in unusual circumstances) its ownership or control of any such subsidiary either by sale or by distribution of the shares of the subsidiary to the [shareholders of the bank holding company. Such distribution] *shareholders of the bank holding company; or*

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

The distribution referred to in subparagraph (A) shall be pro rata with respect to all of the shareholders of the distributing bank holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.

* * * * *

(g) [Reserved].

(h) CAPITAL ADEQUACY GUIDELINES.—

(1) CAPITAL ADEQUACY PROVISIONS.—The Board may adopt capital adequacy rules or guidelines for bank holding companies.

(2) METHODS OF CALCULATION.—In developing rules or guidelines under paragraph (1)—

(A) FOCUS ON DOUBLE LEVERAGE.—The Board shall address the use by bank holding companies of debt and other liabilities to fund capital investments in subsidiary depository institutions.

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

(C) NO CAPITAL REQUIREMENT ON REGULATED ENTITIES.—The Board shall not, by rule, regulation, guideline, order, or otherwise, impose any capital adequacy provision on a nondepository institution subsidiary that is in compliance with applicable capital requirements of another Federal or State regulatory authority.

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

(i) the capital requirements made applicable to any nondepository institution subsidiary by another Federal or State regulatory authority; and

(ii) industry norms for capitalization of a company's unregulated subsidiaries and activities.

(E) CONSULTATION WITH OTHER SUPERVISORS.—The Board shall consult with the appropriate Federal or State regulatory authority in developing capital adequacy guidelines for bank holding companies that are predominantly engaged, either directly or through nondepository institution subsidiaries, in activities that are supervised by that authority.

(F) APPROPRIATE DIFFERENTIATION OF HOLDING COMPANIES.—The Board may differentiate between different classes or categories of bank holding companies, in particular between bank holding companies that are predominantly engaged in owning and operating insured depository institutions, bank holding companies which do not own or control insured depository institutions, and bank holding companies which are predominantly engaged in activities that are supervised by another Federal or State regulatory authority.

- (G) *INTERNAL RISK MANAGEMENT MODELS.*—The Board may incorporate internal risk management models into its capital adequacy guidelines or rules.
- (i) *AUTHORITY OF STATE INSURANCE REGULATOR.*—
- (1) *IN GENERAL.*—Notwithstanding any other provision of law, any regulation, order, or other action of the Board which requires a bank holding company to provide funds or other assets to a subsidiary insured depository institution shall not be effective nor enforceable if—
- (A) such funds or assets are to be provided by—
- (i) a bank holding company which is an insurance company; or
- (ii) an affiliate of the insured depository institution which is an insurance company; and
- (B) the State insurance authority for the insurance company determines in writing sent to the insurance company and the Board that the insurance company shall not provide such funds or assets because such action would have a material adverse effect on the financial condition of the insurance company.
- (2) *DIVESTITURE IN LIEU OF OTHER ACTION.*—If the Board receives a notice described in paragraph (1)(B) from a State insurance authority with regard to a bank holding company referred to in such paragraph, the Board may order the bank holding company to divest the insured depository institution within 180 days of receiving notice from the State insurance authority or such longer period as the Board determines consistent with the safe and sound operation of the insured depository institution.
- (3) *CONDITIONS BEFORE DIVESTITURE.*—During the period beginning on the date an order to divest is issued by the Board under paragraph (2) to a bank holding company and ending on the date the divestiture is completed, the Board may impose any conditions or restrictions on the holding company's ownership or operation of the insured depository institution, including restricting or prohibiting transactions between the insured depository institution and any affiliate of the institution, as are appropriate under the circumstances.

SEC. 6. QUALIFYING BANK HOLDING COMPANIES.

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

- (1) *QUALIFYING BANK HOLDING COMPANY.*—The term “qualifying bank holding company” means any bank holding company—
- (A) all of the subsidiary depository institutions of which are well capitalized;
- (B) all of the subsidiary depository institutions of which are well managed (as defined in section 5136A(a)(5)(D) of the Revised Statutes of the United States);
- (C) all of the subsidiary depository institutions of which have achieved a rating of “satisfactory record of meeting community credit needs”, or better, at the most recent examination of each such institution;

(D) all of the subsidiary depository institutions of which have a demonstrable record of performance in the provision of low-cost lifeline bank accounts;

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

(i) has not been adjudicated in any Federal court, or has not entered into a consent decree filed in a Federal court or into a settlement agreement, premised upon a violation of the Fair Housing Act for the activities described in this subparagraph and is not in violation of any such decree or settlement agreement as determined by a court of competent jurisdiction or the agency with which the decree or agreement was entered into; or

(ii) has been exempted from the requirements of clause (i) by the Board under subsection (f)(3).

(F) that is deemed under paragraph (2) to be engaged in activities in the United States that are financial in nature or is engaged in activities that are otherwise permissible under this Act (other than activities engaged in pursuant to subsection (k));

(G) which, with respect to any activities engaged in outside of the United States, engages in such activities in conformance with subsection (f) and section 2(h)(2); and

(H) that has filed with the Board a declaration that it is a qualifying bank holding company.

(2) **ACTIVITIES FINANCIAL IN NATURE.**—A bank holding company shall be deemed to be engaged in activities that are financial in nature if not less than 85 percent of the gross revenues of such company from activities conducted in the United States are derived from financial activities in which such company or any of its subsidiaries engages.

(3) **FINANCIAL ACTIVITY.**—The term “financial activity” means any 1 or more of the following:

(A) Receiving money subject to a deposit or other repayment obligation.

(B) Lending, exchanging, transferring, investing, or safeguarding money or other financial assets.

(C) Providing any device or other instrumentality for transferring money or other financial assets;

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

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

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

(G) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including

entities other than depository institutions or subsidiaries of depository institutions that the bank holding company controls), or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates, or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity if—

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

(ii) such shares, assets, or ownership interests are acquired and held as part of a bona fide underwriting, or investment banking activity (including investment activities engaged in for the purpose of appreciation and ultimate sale or other disposition of the investment);

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

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

(H) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including any subsidiary of the holding company which is not a depository institution or a subsidiary of a depository institution), or otherwise, shares, assets, or ownership interests (including debt or equity securities, partnership interests, trust certificates, or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in activities not authorized pursuant to this section if—

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

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

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

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

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

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

(K) Engaging in any activity that was, by regulation or order, permissible for a bank holding company pursuant to section 4(c)(8) of this Act, as in effect on the day before the date of enactment of the Financial Services Competition Act of 1997.

(L) Engaging, in the United States, in any activity that—
(i) a bank holding company may engage in outside the United States; and

(ii) the Board determined, under regulations issued pursuant to section 4(c)(13) of this Act (as in effect on the day before the date of enactment of the Financial Services Competition Act of 1997) to be usual in connection with the transaction of banking or other financial operations abroad.

(M) Owning shares of any company to the extent permissible under paragraph (6) or (7) of section 4(c) of this Act, as in effect on the day before the date of enactment of the Financial Services Competition Act of 1997.

(N) Engaging in any activity that the National Council on Financial Services determines, by regulation or order, to be the functional equivalent of any activity described in 1 or more of subparagraphs (A) through (M).

(O) Engaging in any activity that the National Council on Financial Services determines by regulation or order to be financial, or related to a financial activity, having taken into account—

(i) the purposes of this Act and the Financial Services Competition Act of 1997;

(ii) changes or reasonably expected changes in the market in which bank holding companies compete;

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

(iv) whether such activity is necessary or appropriate to allow a bank holding company and its affiliates to—

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

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

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

(4) WELL CAPITALIZED.—The term “well capitalized” has the same meaning as in section 38 of the Federal Deposit Insurance Act. For purposes of this section, the appropriate Federal banking agency shall have exclusive jurisdiction to determine whether an insured depository institution is well capitalized.

(5) FOREIGN BANKS AND COMPANIES.—For purposes of paragraph (1), the Board shall establish and apply comparable cap-

ital standards to a foreign bank that operates a branch or agency or owns or controls a bank or commercial lending company in the United States, and any company that owns or controls such foreign bank, giving due regard to the principle of national treatment and equality of competitive opportunity.

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

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

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

(b) **AUTHORITY TO ENGAGE IN ACTIVITIES WITHOUT NOTICE.**—

(1) **IN GENERAL.**—*A qualifying bank holding company may engage, directly or through a subsidiary that is not an insured depository institution (or a subsidiary thereof), in any activity to the extent permissible under the Financial Services Competition Act of 1997 without approval from or notice to the Board.*

(2) **RULE OF CONSTRUCTION.**—*No provision of this section shall be construed as authorizing the acquisition of an depository institution other than in accordance with section 3.*

(c) **RESTRICTIONS APPLICABLE TO NONQUALIFYING BANK HOLDING COMPANIES.**—*A bank holding company that is not a qualifying bank holding company may engage, directly or indirectly through a subsidiary that is not an insured depository institution (or a subsidiary of an insured depository institution), only in managing and controlling depository institutions and in any activity that was permissible under section 4(c) (as in effect on the day before the date of the enactment of the Financial Services Competition Act of 1997) other than underwriting securities which a national bank is not authorized to underwrite, except as otherwise provided by law.*

(d) **PROVISIONS APPLICABLE TO QUALIFYING BANK HOLDING COMPANIES THAT FAIL TO MEET REQUIREMENTS.**—

(1) **IN GENERAL.**—*If the Board finds that—*

(A) a qualifying bank holding company is engaged, directly or indirectly, in any activity other than activities described in subsection (c); and

(B) such company is not in compliance with the requirements of subsection (a)(1),

the Board shall give notice to the company to that effect, describing the conditions giving rise to the notice.

(2) **AGREEMENT TO CORRECT CONDITIONS REQUIRED.**—*Within 45 days of receipt by a qualifying bank holding company of a notice given under paragraph (1) (or such additional period as the Board may permit), the company shall execute an agreement*

with the Board to comply with the requirements applicable to a qualifying bank holding company.

(3) **BOARD MAY IMPOSE LIMITATIONS.**—Until the conditions described in a notice to a qualifying bank holding company under paragraph (1) are corrected, the Board may impose such limitations on the conduct or activities of the company or any affiliate of the company as the Board determines to be appropriate under the circumstances.

(4) **FAILURE TO CORRECT.**—If the conditions described in a notice to a qualifying bank holding company under paragraph (1) are not corrected within 180 days after receipt by the company of notice under paragraph (1), the Board may require such company, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the Board's discretion, either—

(A) to divest control of any subsidiary depository institutions; or

(B) to cease to engage in any activity conducted by such company or its subsidiaries (other than a depository institution or a subsidiary of a depository institution) that is not an activity that is permissible under subsection (c).

(e) **SAFEGUARDS FOR BANK SUBSIDIARIES.**—A qualifying bank holding company shall assure that—

(1) the procedures of the holding company for identifying and managing financial and operational risks within the company and the subsidiaries of such company which are not insured depository institutions (or subsidiaries of such subsidiaries) adequately protect the subsidiaries of such company which are insured depository institutions from such risks;

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

(3) the holding company complies with this section.

(f) **EXEMPTIVE AUTHORITY.**—

(1) **FOREIGN BANKS AND FOREIGN INVESTMENTS.**—The Board may grant exemptions from any restriction on activities or investments which is otherwise applicable to a bank holding company, including a qualifying bank holding company—

(A) for shares held or activities conducted by a company organized under the laws of a foreign country the greater part of whose business is conducted outside the United States; or

(B) for shares held of, or activities conducted by, any company which does no business in the United States except as an incident to such company's international or foreign business,

if the Board, by regulation or order, determines that, under the circumstances and subject to any condition set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this Act or the Financial Services Competition Act of 1997 and would be in the public interest.

(2) *CONTINUATION OF PRIOR EXEMPTION.*—*To the extent that such action would not be substantially at variance with the purposes of this Act and subject to such conditions as the Board considers necessary to protect the public interest, the Board by order, after opportunity for hearing, may grant exemptions from the provisions of subsection (c) to any bank holding company which controlled 1 bank prior to July 1, 1968, and has not thereafter acquired the control of any other bank in order—*

(A) to avoid disrupting business relationships that have existed over a long period of years without adversely affecting the banks or communities involved;

(B) to avoid forced sales of small locally owned banks to purchasers not similarly representative of community interests; or

(C) to allow retention of banks that are so small in relation to the holding company's total interests and so small in relation to the banking market to be served as to minimize the likelihood that the bank's powers to grant or deny credit may be influenced by a desire to further the holding company's other interests.

(3) *VIOLATIONS OF THE FAIR HOUSING ACT.*—*The Board may, on a case-by-case basis, exempt a bank holding company from meeting the terms of subsection (a)(1)(E)(i) in satisfying the definition of qualified bank holding company.*

(g) *CERTAIN COMPANIES NOT TREATED AS BANK HOLDING COMPANIES.*—

(1) *IN GENERAL.*—*Except as provided in paragraph (9), any company which—*

(A) on March 5, 1987, controlled an institution which became a bank as a result of the enactment of the Competitive Equality Amendments of 1987; and

(B) was not a bank holding company on the day before the date of the enactment of the Competitive Equality Amendments of 1987,

shall not be treated as a bank holding company for purposes of this Act solely by virtue of such company's control of such institution.

(2) *LOSS OF EXEMPTION.*—*Subject to paragraph (3), a company described in paragraph (1) shall no longer qualify for the exemption provided under such paragraph if—*

(A) such company directly or indirectly—

(i) acquires control of an additional bank or an insured institution (other than an insured institution described in paragraph (10) or (12) of this subsection) after March 5, 1987; or

(ii) acquires control of more than 5 percent of the shares or assets of an additional bank or a savings association other than—

(I) shares held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);

(II) shares held by any person as a bona fide fiduciary solely for the benefit of employees of either the company described in paragraph (1) or any

subsidiary of that company and the beneficiaries of those employees;

(III) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(IV) shares held in an account solely for trading purposes;

(V) shares over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

(VI) loans or other accounts receivable acquired in the normal course of business;

(VII) shares or assets acquired in securing or collecting a debt previously contracted in good faith, during the 2-year period beginning on the date of such acquisition or for such additional time (not exceeding 3 years) as the Board may permit if the Board determines that such an extension will not be detrimental to the public interest;

(VIII) shares or assets of a savings association described in paragraph (10) or (12) of this subsection;

(IX) shares of a savings association held by any insurance company, as defined in section 2(a)(17) of the Investment Company Act of 1940, except as provided in paragraph (11);

(X) shares issued in a qualified stock issuance under section 10(q) of the Home Owners' Loan Act; and

(XI) assets that are derived from, or are incidental to, activities in which institutions described in section 2(c)(2)(F) are permitted to engage,

except that the aggregate amount of shares held under this clause (other than under subclauses (I), (II), (III), (IV), (V), and (VIII)) may not exceed 15 percent of all outstanding shares or of the voting power of a savings association;

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

(C) any bank subsidiary of such company both—

(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to 3d parties; and

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

(D) after the date of the enactment of the Competitive Equality Amendments of 1987, any bank subsidiary of such company permits any overdraft (including any intraday overdraft), or incurs any such overdraft in such bank's ac-

count at a Federal reserve bank, on behalf of an affiliate, other than an overdraft described in paragraph (3).

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

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

(B) such overdraft—

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

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

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

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

(B) implemented procedures that are reasonably adapted to avoid the reoccurrence of such condition or activity.

(5) *SUBSECTION CEASES TO APPLY UNDER CERTAIN CIRCUMSTANCES.*—This subsection shall cease to apply to any company described in paragraph (1) if such company—

(A) registers as a bank holding company under section 5(a) of this Act;

(B) immediately upon such registration, complies with all of the requirements of this Act, and regulations prescribed by the Board pursuant to this Act, including the non-banking restrictions of this section; and

(C) does not, at the time of such registration, control banks in more than one State, the acquisition of which would be prohibited by section 3(d) of this Act if an application for such acquisition by such company were filed under section 3(a) of this Act.

(6) *INFORMATION REQUIREMENT.*—Each company described in paragraph (1) shall, within 60 days after the date of enactment of the Competitive Equality Amendments of 1987, provide the Board with the name and address of such company, the name and address of each bank such company controls, and a description of each such bank's activities.

(7) *EXAMINATION.*—The Board may, from time to time, examine a company described in paragraph (1), or a bank controlled by such company, or require reports under oath from appropriate officers or directors of such company or bank solely for purposes of assuring compliance with the provisions of this subsection and enforcing such compliance.

(8) *ENFORCEMENT.*—

(A) *IN GENERAL.*—In addition to any other power of the Board, the Board may enforce compliance with the provisions of this Act which are applicable to any company described in paragraph (1), and any bank controlled by such company, under section 8 of the Federal Deposit Insurance Act and such company or bank shall be subject to such section (for such purposes) in the same manner and to the same extent as if such company or bank were a State member insured bank.

(B) *APPLICATION OF OTHER ACT.*—Any violation of this Act by any company described in paragraph (1), and any bank controlled by such company, may also be treated as a violation of the Federal Deposit Insurance Act for purposes of subparagraph (A).

(C) *NO EFFECT ON OTHER AUTHORITY.*—No provision of this paragraph shall be construed as limiting any authority of the Comptroller of the Currency or the Federal Deposit Insurance Corporation.

(9) *TYING PROVISIONS.*—A company described in paragraph (1) shall be—

(A) treated as a bank holding company for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 and section 22(h) of the Federal Reserve Act and any regulation prescribed under any such section; and

(B) subject to the restrictions of section 106 of the Bank Holding Company Act Amendments of 1970, in connection with any transaction involving the products or services of such company or affiliate and those of a bank affiliate, as if such company or affiliate were a bank and such bank were a subsidiary of a bank holding company.

(10) *EXEMPTION UNAFFECTED BY CERTAIN EMERGENCY ACQUISITIONS.*—For purposes of clauses (i) and (ii)(VIII) of paragraph (2)(A), an insured institution is described in this paragraph if—

(A) the insured institution was acquired (or any shares or assets of such institution were acquired) by a company described in paragraph (1) in an acquisition under section 408(m) of the National Housing Act or section 13(k) of the Federal Deposit Insurance Act; and

(B) either—

(i) the insured institution is located in a State in which such company controlled a bank on March 5, 1987; or

(ii) the insured institution has total assets of \$500,000,000 or more at the time of such acquisition.

(11) *SHARES HELD BY INSURANCE AFFILIATES.*—Shares described in clause (ii)(IX) of paragraph (2)(A) shall not be excluded for purposes of clause (ii) of such paragraph if—

(A) all shares held under such clause (ii)(IX) by all insurance company affiliates of such savings association in the aggregate exceed 5 percent of all outstanding shares or of the voting power of the savings association; or

(B) such shares are acquired or retained with a view to acquiring, exercising, or transferring control of the savings association.

(12) EXEMPTION UNAFFECTED BY CERTAIN OTHER ACQUISITIONS.—For purposes of clauses (i) and (ii)(VIII) of paragraph (2)(A), an insured institution is described in this paragraph if the insured institution was acquired (or any shares or assets of such institution were acquired) by a company described in paragraph (1)—

(A) from the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or the Director of the Office of Thrift Supervision, in any capacity; or

(B) in an acquisition in which the insured institution has been found to be in danger of default (as defined in section 3 of the Federal Deposit Insurance Act) by the appropriate Federal or State authority.

(13) SPECIAL RULE RELATING TO SHARES ACQUIRED IN A QUALIFIED STOCK ISSUANCE.—A company described in paragraph (1) that holds shares issued in a qualified stock issuance pursuant to section 10(q) of the Home Owners' Loan Act by any savings association or savings and loan holding company (neither of which is a subsidiary) shall not be deemed to control such savings association or savings and loan holding company solely because such company holds such shares unless—

(A) the company fails to comply with any requirement or condition imposed by paragraph (2)(A)(ii)(X) or section 10(q) of the Home Owners' Loan Act with respect to such shares; or

(B) the shares are acquired or retained with a view to acquiring, exercising, or transferring control of the savings association or savings and loan holding company.

(h) LIMITATIONS ON CERTAIN BANKS.—

(1) IN GENERAL.—Notwithstanding any other provision of this section (other than the last sentence of subsection (a)(2)), a bank holding company which controls an institution that became a bank as a result of the enactment of the Competitive Equality Amendments of 1987 may retain control of such institution if such institution does not—

(A) engage in any activity after the date of the enactment of such Amendments which would have caused such institution to be a bank (as defined in section 2(c), as in effect before such date) if such activities had been engaged in before such date; or

(B) increase the number of locations from which such institution conducts business after March 5, 1987.

(2) LIMITATIONS CEASE TO APPLY UNDER CERTAIN CIRCUMSTANCES.—The limitations contained in paragraph (1) shall cease to apply to a bank described in such paragraph at such time as the acquisition of such bank, by the bank holding

company referred to in such paragraph, would not be prohibited under section 3(d) of this Act if—

(A) an application for such acquisition were filed under section 3(a) of this Act; and

(B) such bank were treated as an additional bank (under section 3(d)).

(i) **LIMITATION ON BANK HOLDING COMPANY AFFILIATIONS.**—

(1) **IN GENERAL.**—Except as otherwise provided in this Act, a bank holding company may not become affiliated with any company—

(A) less than 85 percent of the gross revenues of which from activities conducted in the United States are derived from financial activities in which such company or any subsidiary of such company engages; and

(B) which has consolidated assets, at the time such affiliation first occurs, of more than \$750,000,000.

(2) **MIRROR IMAGE.**—Except as otherwise provided in this Act, no company that is, or is affiliated with, a company described in subparagraphs (A) and (B) of paragraph (1) may become a bank holding company.

(j) **TRANSACTIONS WITH NONFINANCIAL AFFILIATES.**—A subsidiary insured depository institution of a bank holding company may not engage in a covered transaction (as defined by section 23A(b)(7) of the Federal Reserve Act) with any affiliate unless the affiliate is engaged only in activities that are financial in nature (as defined in subsection (a)(2)).

(k) **CONTROL OF A QUALIFYING BANK HOLDING COMPANY BY A COMPANY NOT ENGAGED IN ACTIVITIES FINANCIAL IN NATURE.**—

(1) **IN GENERAL.**—

(A) **CONTROL OF 1 BANK AUTHORIZED.**—Notwithstanding subsection (i), a company that is engaged predominantly in nonfinancial activities on a consolidated basis may only control a qualifying bank holding company and not more than 1 bank subject to the provisions of this subsection.

(B) **EXCLUSION FROM TREATMENT AS HOLDING COMPANY.**—Any company that is engaged predominantly in nonfinancial activities and controls a qualifying bank holding company and not more than 1 bank in accordance with this subsection, shall not become a bank holding company for purposes of this Act solely by virtue of such company's control of such qualifying bank holding company and bank.

(C) **FINANCIAL ACTIVITIES REQUIRED TO BE CONDUCTED IN HOLDING COMPANY SUBSIDIARY.**—Any financial activity engaged in by a company that controls a qualifying bank holding company pursuant to paragraph (1) must conduct such activity through a subsidiary of the qualifying bank holding company.

(2) **CONTROL OF 1 BANK.**—The provisions of subparagraphs (A) and (B) of paragraph (1) shall not apply to any company if—

(A) such company directly or indirectly acquires control of a bank other than—

(i) an institution described in section 2(c)(2) or section 6(g)(1) controlled by such company before the date

of enactment of the Financial Services Competition Act of 1997 that becomes a bank; or

(ii) a bank with total consolidated assets not in excess of \$500,000,000 that has been chartered for at least 5 years prior to its date of acquisition by such company; and such bank is and remains at all times a subsidiary of a qualifying bank holding company controlled by such company;

(B) such company directly or indirectly acquires control of all or substantially all of the assets of an additional bank; or

(C) the gross revenues of the bank controlled by such company exceed 15 percent of the consolidated gross revenues of such company derived from activities conducted in the United States.

(3) **ENFORCEMENT OF VIOLATIONS.**—If the Board finds that a company is not in compliance with the provisions of this subsection, the Board shall enforce the provisions of this subsection in the same manner as that described in subsection (d) for a qualifying bank holding company.

(4) **ANTI-TYPING AND INSIDER TRANSACTIONS.**—A company described in paragraph (1) shall be treated as a bank holding company for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 and section 22(h) of the Federal Reserve Act and any regulation prescribed under any such section.

(l) **CONTROL OF UNINSURED DEPOSITORY INSTITUTIONS.**—

(1) **SCOPE OF APPLICATION.**—This subsection shall apply to bank holding companies which control only wholesale financial institutions and control no insured depository institution (other than an institution described in subparagraph (C) or (G) of section 2(c)(2)).

(2) **FINDINGS AND PURPOSES.**—

(A) **FINDINGS.**—The Congress finds as follows:

(i) Some investment banking, insurance, and other financial companies invest in nonfinancial companies—

(I) as an incident to their core business; or

(II) in recognition of an unusual investment opportunity.

(ii) Such ownership, which would not otherwise be permitted under this Act if the investment banking, insurance, or other financial company were a bank holding company—

(I) is in most cases small in relation to the overall size of the company, generally no more than 5 percent of the total consolidated revenue of such company's revenues and, in the case of a foreign bank, such ownership in the United States is generally no more than 5 percent of the total consolidated revenue of such foreign bank in the United States; and

(II) in no way detracts from the financial focus of the company's planning, operations, resource allocation, and risk management.

(iii) Investments of this type should not disqualify an investment banking, insurance, or other financial company from an affiliation with an uninsured depository institution.

(B) PURPOSE.—It is the purpose of this subsection to provide the flexibility necessary to accommodate limited investments in nonfinancial firms that wish to control an uninsured depository institution (and do not otherwise control any insured depository institution) while maintaining the separation of banking and commerce intended by this Act.

(3) LIMITED INVESTMENTS ALLOWED BY FINANCIAL COMPANIES CONTROLLING ONLY UNINSURED DEPOSITORY INSTITUTIONS.—Consistent with the purposes of this subsection, the Board shall, by regulation or order, allow bank holding companies to control the shares of nonfinancial companies so long as—

(A) the nonfinancial firm is sufficiently small such that the financial nature of the bank holding company is unaffected by the control of such shares;

(B) the bank holding company does not control any depository institution (other than a wholesale financial institution or an institution described in subparagraph (C) or (G) of section 2(c)(2); and

(C) the purposes of this Act, including the separation of banking and commerce and the preservation of the safety and soundness of depository institutions, are fulfilled.

(4) PROVISIONS APPLICABLE TO HOLDING COMPANIES WITH INVESTMENTS UNDER THIS SUBSECTION.—

(A) CROSS MARKETING RESTRICTIONS.—A wholesale financial institution or other depository institution controlled by a bank holding company which also controls a company pursuant to this subsection shall not—

(i) offer or market, directly or through any arrangement, any product or service of an affiliate whose shares are owned or controlled by the bank holding company pursuant to this subsection; or

(ii) permit any product or service of such wholesale financial institution or other institution to be offered or marketed, directly or through any arrangement, by or through any such affiliate.

(B) USE OF COMMON NAME.—A bank holding company shall not permit a wholesale financial institution or other depository institution subsidiary to adopt a name which is the same as or similar to, or a variation of, the name or title of an affiliate engaged in activities pursuant to this subsection.

(C) COMMODITIES.—

(i) IN GENERAL.—A bank holding company which controls a company pursuant to this subsection and was predominately engaged as of January 1, 1995, in securities activities in the United States (or any successor to any such company) may engage in, or directly or indirectly own or control shares of a company engaged in, activities related to the trading, sale, or investment in commodities and underlying physical properties that

were not permissible for bank holding companies to conduct in the United States as of January 1, 1995, if such bank holding company, or any subsidiary of such holding company, was engaged directly, indirectly, or through any such company in any of such activities as of January 1, 1995, in the United States.

(ii) *LIMITATION.*—Notwithstanding any other provision of this subsection, the aggregate investment by a bank holding company in activities under this subparagraph (other than those otherwise permitted for all bank holding companies under this Act) shall not at any time exceed 5 percent of the total consolidated assets of such bank holding company.

(iii) *SUCCESSOR DEFINED.*—For purposes of clause (i), the term “successor” means, with respect to any bank holding company described in clause (i), any company that merges with, or acquires control of, such bank holding company.

(D) QUALIFIED INVESTOR IN A BANK HOLDING COMPANY WHICH CONTROLS A COMPANY UNDER THIS SUBSECTION.—

(i) *IN GENERAL.*—Notwithstanding any other provision of Federal or State law, a qualified investor—

(I) shall not be, or be deemed to be, a bank holding company or any similar organization; and

(II) shall not be deemed to control or be affiliated with any such company or organization or any subsidiary of any such company or organization (other than for purposes of section 23A and 23B of the Federal Reserve Act),

by virtue of the investor’s ownership or control of shares of a bank holding company which controls a company pursuant to this subsection.

(ii) *QUALIFIED INVESTOR DEFINED.*—For purposes of this subparagraph, the term “qualified investor” means any United States company (including a parent company and all subsidiaries of which the parent company holds at least 80 percent of the total voting equity securities) which since February 27, 1995, has directly or indirectly owned or controlled shares of capital stock representing at least 10 percent, and not more than 45 percent, of the outstanding voting shares or voting power of a company that—

(I) becomes a bank holding company which controls a company pursuant to this subsection or a subsidiary of any such bank holding company; and

(II) before the company became a bank holding company which controls a company pursuant to this subsection, or a subsidiary of any such bank holding company, had more than 50 percent of the company’s assets employed directly or indirectly in securities activities.

(iii) *CROSS-MARKETING AND COMMON NAME.*—A wholesale financial institution or other uninsured depository institution which is controlled by a bank hold-

ing company which controls a company pursuant to this subsection shall not—

(I) offer or market products or services of a qualified investor in the bank holding company of which the wholesale financial institution is an affiliate;

(II) permit the products or services of such wholesale financial institution or uninsured depository institution to be offered or marketed in connection with products or services of such qualified investor; or

(III) adopt a name which is the same as or similar to, or a variation of, the name or title of such qualified investor.

(iv) *EXAMINATION AND REPORTING.*—Notwithstanding any other provision of law, the Board may conduct examinations of, or require reports from, a qualified investor only to the extent that the Board reasonably determines that such examinations or reports are necessary—

(I) to ensure compliance with this subparagraph;

or

(II) to the extent that the qualified investor is an affiliate of a wholesale financial institution for purposes of section 23A of the Federal Reserve Act, to ensure compliance with restrictions imposed by law or regulation on transactions between the qualified investor and such wholesale financial institution.

(5) *NO DEPOSIT INSURANCE FUND LIABILITY.*—No Federal deposit insurance funds may be used in connection with the failure of, or any proposed assistance to, a wholesale financial institution or other uninsured depository institution controlled by a bank holding company which controls a company pursuant to this subsection.

(6) *QUALIFICATION OF FOREIGN BANK AS BANK HOLDING COMPANY WITH INVESTMENTS PURSUANT TO THIS SUBSECTION.*—

(A) *IN GENERAL.*—Any foreign bank that operates a branch, agency or commercial lending company in the United States (and any company that owns or controls such foreign bank), including a foreign bank that does not own or control a wholesale financial institution, may request a determination from the Board that such bank or company be treated as a bank holding company which controls a company pursuant to this subsection.

(B) *CONDITIONS FOR TREATMENT AS A BANK HOLDING COMPANY SUBJECT TO THIS SUBSECTION.*—A foreign bank and a company that owns or controls a foreign bank may not be treated, under this paragraph, as a bank holding company which controls a company pursuant to this subsection, unless the bank and company meet and continue to meet the following criteria:

(i) *NO INSURED DEPOSITS.*—No deposits which are held directly by a foreign bank or through an affiliate are insured under the Federal Deposit Insurance Act.

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

(iii) *TRANSACTIONS WITH AFFILIATES.*—Transactions between a branch, agency, or commercial lending company subsidiary of the foreign bank in the United States, and any affiliate or company in which the foreign bank (or any company that owns or controls such foreign bank) has invested in accordance with this subsection, shall comply with the provisions of sections 23A and 23B of the Federal Reserve Act in the same manner and to the same extent as such transactions would be required to comply with such sections if the bank were a member bank.

(C) *TREATMENT AS A WHOLESALE FINANCIAL INSTITUTION.*—

(i) *IN GENERAL.*—Any foreign bank which is, or is affiliated with a company which is, treated as a bank holding company which controls a company pursuant to this subsection shall be treated as a wholesale financial institution for purposes of subparagraphs (A) and (B) of paragraph (3) and section 111 of the Financial Services Competition Act of 1997, except that the Board may adopt such modifications, conditions, or exemptions as the Board deems appropriate, giving due regard to the principle of national treatment and equality of competitive opportunity.

(ii) *APPLICABILITY OF COMMUNITY REINVESTMENT ACT OF 1977.*—The branches in the United States of any foreign bank that is, or is affiliated with a company which is, treated as a bank holding company which controls a company pursuant to this subsection shall be subject to section 9B(b)(6) of the Federal Reserve Act as if the foreign bank were a wholesale financial institution under such section. The Board and the Comptroller of the Currency shall apply the provisions of sections 803(2), 804, and 807(1) of the Community Reinvestment Act of 1977 to branches of foreign banks which receive only such deposits as are permissible for receipt by a corporation organized under section 25A of the Federal Reserve Act, in the same manner and to the same extent such sections apply to such a corporation.

(D) *NONAPPLICABILITY OF OTHER EXEMPTION.*—Any foreign bank or company which is treated as a bank holding company which controls a company pursuant to this subsection shall not be eligible for any exemption described in section 2(h).

(E) SUPERVISION ASSESSMENT.—*The Board shall assess the extent to which any foreign bank which is, or is affiliated with a company which is, treated as a bank holding company which controls a company pursuant to this subsection is subject to supervision by authorities in the home country of such foreign bank.*

(F) AUTHORITY TO IMPOSE ADDITIONAL RESTRICTIONS AND REQUIREMENTS.—*The Board may impose additional requirements on any foreign bank which is, or is affiliated with a company which is, treated as a bank holding company which controls a company pursuant to this subsection that are determined to be appropriate or necessary to protect taxpayers and the financial system from risks associated with access to the payments system and availability of discounts, advances, and other extensions of credit from a Federal reserve bank, giving due regard to the principles of national treatment and equality of competitive opportunity.*

* * * * *

SAVING PROVISION

SEC. 11. (a) * * *

(b) ANTITRUST REVIEW.—

(1) IN GENERAL.—The Board shall immediately notify the Attorney General of any approval by it pursuant to section 3 of a proposed acquisition, merger, or consolidation transaction. If the Board has found that it must act immediately in order to prevent the probable failure of a bank or bank holding company involved in any such transaction, the transaction may be consummated immediately upon approval by the Board. If the Board has advised the Comptroller of the Currency or the State supervisory authority, as the case may be, of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the Board. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the Board or[, if the Board has not received any adverse comment from the Attorney General of the United States relating to competitive factors,] such shorter period of time [as may be prescribed by the Board with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval.] *as may be prescribed by the Attorney General.* Any action brought under the antitrust laws arising out of an acquisition, merger, or consolidation transaction approved under section 3 shall be commenced prior to the earliest time under this subsection at which the transaction approval under section 3 might be consummated. The commencement of such an action shall stay the effectiveness of the Board's approval unless the court shall otherwise specifically order. [In any such action, the court shall review de novo the issues presented. In any judicial proceeding attacking any acquisition, merger, or consolidation transaction approved pursuant to sec-

tion 3 on the ground that such transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), the standards applied by the court shall be identical with those that the Board is directed to apply under section 3 of this Act.] Upon the consummation of an acquisition, merger, or consolidation transaction approved under section 3 in compliance with this Act and after the termination of any antitrust litigation commenced within the period prescribed in this section, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), but nothing in this Act shall exempt any bank holding company involved in such a transaction from complying with the antitrust laws after the consummation of such transaction.

* * * * *

[(c) In any action brought under the antitrust laws arising out of any acquisition, merger, or consolidation transaction approved by the Board under section 3 of this Act, the Board and any State banking supervisory agency having jurisdiction within the State involved, may appear as a party of its own motion and as of right, and be represented by its counsel.]

[(d)] (c) Any acquisition, merger, or consolidation of the kind described in section 3(a) of this Act which was consummated at any time prior or subsequent to May 9, 1956, and as to which no litigation was initiated by the Attorney General prior to the date of enactment of this amendment, shall be conclusively presumed not to have been in violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2).

[(e) Any court having pending before it on or after the date of enactment of this amendment any litigation initiated under the antitrust laws by the Attorney General with respect to any acquisition, merger, or consolidation of the kind described in section 3(a) of this Act shall apply the substantive rule of law set forth in section 3 of this Act.]

[(f)] (d) For the purposes of this section, the term "antitrust laws" means the Act of July 2, 1890 (the Sherman Antitrust Act, 15 U.S.C. 1-7), the Act of October 15, 1914 (the Clayton Act, 15 U.S.C. 12-27), and any other Acts in pari materia.

* * * * *

FEDERAL RESERVE ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the short title of this Act shall be the "Federal Reserve Act."

Wherever the word "bank" is used in this Act, the word shall be held to include State bank (as defined in section 3 of the Federal

Deposit Insurance Act), banking association, and trust company, except where national banks or Federal reserve banks are specifically referred to. (12 U.S.C. 221)

The terms “national bank” and “national banking association” used in this Act shall be held to be synonymous and interchangeable. The term “member bank” shall be held to mean any national bank, State bank (*as defined in section 3 of the Federal Deposit Insurance Act*), or bank or trust company which has become a member of one of the reserve banks created by this Act. The term “board” shall be held to mean Board of Governors of the Federal Reserve System; the term “district” shall be held to mean Federal reserve district; the term “reserve bank” shall be held to mean Federal reserve bank; the term “the continental United States” means the States of the United States and the District of Columbia.

The terms “bonds and notes of the United States”, “bonds and notes of the Government of the United States”, and “bonds or notes of the United States” used in this Act shall be held to include certificates of indebtedness and Treasury bills issued under section 3104 of title 31.

* * * * *

STATE BANKS AS MEMBERS

SEC. 9. Any bank incorporated by special law of any State, or organized under the general laws of any State or of the United States, including Morris Plan banks and other incorporated banking institutions engaged in similar business, desiring to become a member of the Federal Reserve System, may make application to the Board of Governors of the Federal Reserve System, under such rules and regulations as it may prescribe, for the right to subscribe to the stock of the Federal reserve bank organized within the district in which the applying bank is located. Such application shall be for the same amount of stock that the applying bank would be required to subscribe to as a national bank. For the purposes of membership of any such bank the terms “capital” and “capital stock” shall include the amount of outstanding capital notes and debentures legally issued by the applying bank and purchased by the Reconstruction Finance Corporation. The Board of Governors of the Federal Reserve System, subject to the provisions of this Act and to such conditions as it may prescribe pursuant thereto may permit the applying bank to become a stockholder of such Federal reserve bank.

* * * * *

State member banks shall be subject to the same limitations and conditions with respect to the purchasing, selling, underwriting, and holding of investment securities and stock as are applicable in the case of national banks under paragraph “Seventh” of section 5136 of the Revised Statutes, as amended. *To the extent permitted under State law, a State member bank may acquire or establish and retain a financial subsidiary (as defined in section 5136A(a)(3)(A) of the Revised Statutes of the United States, except that all references in that section to the Comptroller of the Currency, the Comptroller, or regulations or orders of the Comptroller shall be*

deemed to be references to the Board or regulations or orders of the Board.

* * * * *

SEC. 9B. STATE WHOLESALE FINANCIAL INSTITUTIONS.

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

(1) **APPLICATION REQUIRED.**—

(A) **IN GENERAL.**—Any State bank may apply to the Board of Governors of the Federal Reserve System to become a wholesale financial institution and as a wholesale financial institution, to subscribe to the stock of the Federal reserve bank organized within the district where the applying bank is located.

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

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

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

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

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

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

(B) all references to the appropriate Federal banking agency or to the Corporation in that section shall be deemed to be references to the Board.

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

(4) **CERTAIN OTHER STATUTES APPLICABLE.**—A wholesale financial institution shall be deemed to be a banking institution, and the Board shall be the appropriate Federal banking agency

for such bank and all such bank's affiliates, for purposes of the International Lending Supervision Act.

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

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

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

(1) *LIMITATIONS ON DEPOSITS.*—

(A) *MINIMUM AMOUNT.*—

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

(ii) *LIMITATION ON DEPOSITS OF LESS THAN \$100,000.*—No bank may be treated as a wholesale financial institution if the total amount of the initial deposits of \$100,000 or less at such bank constitute more than 5 percent of the bank's total deposits.

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

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

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

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

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

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

(B) *MINIMUM TIER 1 CAPITAL RATIO.*—The minimum ratio of tier 1 capital to total risk-weighted assets of wholesale financial institutions shall be not less than the level required for a State member insured bank to be well capitalized unless the Board determines otherwise, consistent with safety and soundness.

(3) *ADDITIONAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.*—In addition to any requirement otherwise applicable to State member banks or applicable, under this section, to wholesale financial institutions, the Board may pre-

scribe, by regulation or order, for wholesale financial institutions—

(A) limitations on transactions with affiliates to prevent—

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

or

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

(B) special clearing balance requirements;

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

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

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

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

(D) any additional requirements that the Board determines to be appropriate or necessary to assure compliance with the Community Reinvestment Act of 1977.

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

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

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

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

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

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

(d) CONSERVATORSHIP AUTHORITY.—

(1) IN GENERAL.—The Board may appoint a conservator to take possession and control of a wholesale financial institution to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator for a national bank under section 203 of the Bank Conservation Act, and the conservator shall exercise the same powers, functions, and duties,

subject to the same limitations, as are provided under such Act for conservators of national banks.

(2) BOARD AUTHORITY.—The Board shall have the same authority with respect to any conservator appointed under paragraph (1) and the wholesale financial institution for which such conservator has been appointed as the Comptroller of the Currency has under the Bank Conservation Act with respect to a conservator appointed under such Act and a national bank for which the conservator has been appointed.

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

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SEC. 10B. (a) * * * * *

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(c) REPORTS ON DISCOUNTS AND ADVANCES TO WHOLESALE FINANCIAL INSTITUTIONS.—

(1) IN GENERAL.—The Board shall submit a report to the Congress at the end of any year in which any wholesale financial institution has obtained a discount, advance, or other extension of credit from a Federal reserve bank.

(2) CONTENTS.—Any report submitted under paragraph (1) shall explain the circumstances and need for any discount, advance, or other extension of credit to a wholesale financial institution during the period covered by the report, including the type and amount of credit extended and the amount of credit remaining outstanding as of the date of the report.

SEC. 11. The Board of Governors of the Federal Reserve System shall be authorized and empowered:

(a)(1) * * *

(2) To require any depository institution specified in this paragraph to make, at such intervals as the Board may prescribe, such reports of its liabilities and assets as the Board may determine to be necessary or desirable to enable the Board to discharge its responsibility to monitor and control monetary and credit aggregates. Such reports shall be made (A) directly to the Board in the case of member banks and in the case of other depository institutions whose reserve requirements under section 19 of this Act exceed zero, and (B) for all other reports to the Board through the (i) Federal Deposit Insurance Corporation in the case of insured State nonmember banks, savings banks, and mutual savings banks, (ii) National Credit Union Administration Board in the case of insured credit unions, [(iii) the Director of the Office of Thrift Supervision in the case of any savings association which is an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or which is a member as defined in section 2 of the Federal Home Loan Bank Act, and] and [(iv)] (iii) such State officer or agency as the Board may designate in the case of any other type of bank, savings and loan association, or credit union. The Board shall endeavor to avoid the imposition of unnecessary burdens on reporting institutions and the duplication of other reporting requirements. Except as otherwise required by law, any data provided to any department, agency, or instrumentality of the

United States pursuant to other reporting requirements shall be made available to the Board. The Board may classify depository institutions for the purposes of this paragraph and may impose different requirements on each such class.

* * * * *

[(m) Upon the affirmative vote of not less than six of its members the Board of Governors of the Federal Reserve System shall have power to fix from time to time for each Federal reserve district the percentage of individual bank capital and surplus which may be represented by loans secured by stock or bond collateral made by member banks within such district, but no such loan shall be made by any such bank to any person in an amount in excess of 15 percent of the unimpaired capital and surplus of such bank: *Provided*, That with respect to loans represented by obligations secured by not less than a like amount of bonds or notes of the United States issued since April 24, 1917, certificates of indebtedness of the United States, Treasury bills of the United States, or obligations fully guaranteed both as to principal and interest by the United States, such limitation of 15 percent on loans to any person shall not apply, but State member banks shall be subject to the same limitations and conditions as are applicable in the case of national banks under section 5200(c)(4) of the Revised Statutes. Any percentage so fixed by the Board of Governors of the Federal Reserve System shall be subject to change from time to time upon ten days' notice, and it shall be the duty of the Board to establish such percentages with a view to preventing the undue use of bank loans for the speculative carrying of securities. The Board of Governors of the Federal Reserve System shall have power to direct any member bank to refrain from further increase of its loans secured by stock or bond collateral for any period up to one year under penalty of suspension of all rediscount privileges at Federal reserve banks.]

* * * * *

SEC. 19. (a) * * *

(b) RESERVE REQUIREMENTS.—

(1) DEFINITIONS.—The following definitions and rules apply to this subsection, subsection (c), section 11A, the first paragraph of section 13, and the second, thirteenth, and fourteenth paragraphs of section 16:

(A) The term “depository institution” means—

(i) any insured bank as defined in section 3 of the Federal Deposit Insurance Act [or], any bank which is eligible to make application to become an insured bank under section 5 of such Act, *or any wholesale financial institution as defined in section 9B of this Act*;

* * * * *

(v) any member as defined in section 2 of the Federal Home Loan Bank Act; *and*

[(vi) any savings association (as defined in section 3 of the Federal Deposit Insurance Act) which is an insured depository institution (as defined in such Act) or is eligible to apply to become an insured depository in-

stitution under the Federal Deposit Insurance Act; and

[(vii)] (vi) for the purpose of section 13 and the fourteenth paragraph of section 16, any association or entity which is wholly owned by or which consists only of institutions referred to in clauses (i) through (vi).

* * * * *

(F) In order to prevent evasions of the reserve requirements imposed by this subsection, after consultation with the Board of Directors of the Federal Deposit Insurance Corporation, [the Director of the Office of Thrift Supervision,] and the National Credit Union Administration Board, the Board of Governors of the Federal Reserve System is authorized to determine, by regulation or order, that an account or deposit is a transaction account if such account or deposit may be used to provide funds directly or indirectly for the purpose of making payments or transfers to third persons or others.

* * * * *

(4) SUPPLEMENTAL RESERVES.—(A) * * *

(B) The Board may require the supplemental reserve authorized under subparagraph (A) only after consultation with the Board of Directors of the Federal Deposit Insurance Corporation, [the Director of the Office of Thrift Supervision,] and the National Credit Union Administration Board. The Board shall promptly transmit to the Congress a report with respect to any exercise of its authority to require supplemental reserves under subparagraph (A) and such report shall state the basis for the determination to exercise such authority.

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SEC. 23A. (a) * * *

* * * * *

(d) EXEMPTIONS.—The provisions of this section, except paragraph (a)(4), shall not be applicable to—

(1) * * *

* * * * *

(5) purchasing securities issued by any company [of the kinds described in section 4(c)(1) of the Bank Holding Company Act of 1956;] engaged or to be engaged solely in—

(A) holding or operating properties used wholly or substantially by any bank subsidiary of a bank holding company in the operations of such bank subsidiary or acquired for such future use;

(B) conducting a safe deposit business;

(C) furnishing services to or performing services for a bank holding company or its bank subsidiaries; and

(D) liquidating assets acquired from a bank holding company or its bank subsidiaries.

* * * * *

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

(1) *FINANCIAL SUBSIDIARY DEFINED.*—For purposes of this section and section 23B, the term “financial subsidiary” means a company which—

(A) is a subsidiary of a bank (other than a corporation organized under section 25A of the Federal Reserve Act or a corporation operating under section 25 of such Act); and

(B) is engaged in a financial activity (as defined in section 5136A(a)(4)) that is not a permissible activity for a national bank to engage in directly.

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

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

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

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

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

(B) *CERTAIN AFFILIATES EXCLUDED.*—For purposes of subparagraph (A) and notwithstanding paragraph (4), the term “affiliate” shall not include a bank, or a subsidiary of a bank, which is engaged exclusively in activities permissible for a national bank to engage in directly.

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

[(e)] (f) *RULEMAKING AND ADDITIONAL EXEMPTIONS.*—

(1) The Board may issue such further regulations and orders, including definitions consistent with this section, as may be necessary to administer and carry out the purposes of this section and to prevent evasions thereof.

(2) The Board may, at its discretion, by regulation or order exempt transactions or relationships from the requirements of this section if it finds such exemptions to be in the public interest and consistent with the purposes of this section.

* * * * *

SECTION 206 OF THE BANK EXPORT SERVICES ACT

GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND INVENTORY

SEC. 206. The Export Import Bank of the United States is authorized and directed to establish a program to provide guarantees for loans extended by financial institutions or other public or private creditors to export trading companies [as defined in section 4(c)(14)(F)(i) of the Bank Holding Company Act of 1956], or to other exporters, when such loans are secured by export accounts receivable, inventories of exportable goods, accounts receivable from leases, performance contracts, grant commitments, participation fees, member dues, revenue from publications, or such other collateral as the Board of Directors may deem appropriate, and when in the judgment of the Board of Directors—

- (1) the private credit market is not providing adequate financing to enable otherwise creditworthy export trading companies or exporters to consummate export transactions; and
- (2) such guarantees would facilitate expansion of exports which would not otherwise occur.

The Board of Directors shall attempt to insure that a major share of any loan guarantees ultimately serves to promote exports from small, medium-size, and minority businesses or agricultural concerns. Guarantees provided under the authority of this section shall to limitations contained in annual appropriations Acts. *For purposes of this section, the term “export trading company” means a company that does business under the laws of the United States or any State, that is exclusively engaged in activities related to international trade, and that is organized and operated principally for purposes of exporting goods or services produced in the United States or for purposes of facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services. For purposes of this section, the term “export trade services” includes consulting, international market research, advertising, marketing, insurance (other than acting as principal, agent or broker in the sale of insurance on risks resident or located, or activities performed, in the United States, except for insurance covering the transportation of cargo from any point of origin in the United States to a point of final destination outside the United States), product research and design, legal assistance, transportation, including trade and data processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate the export of goods or services produced in the United States.*

FEDERAL DEPOSIT INSURANCE ACT

SECTION 1. FEDERAL DEPOSIT INSURANCE CORPORATION.

(a) ESTABLISHMENT OF CORPORATION.—There is hereby established a Federal Deposit Insurance Corporation (hereinafter referred to as the “Corporation”) which shall insure, as hereinafter provided, the deposits of all banks [and savings associations]

which are entitled to the benefits of insurance under this Act, and which shall have the powers hereinafter granted.

* * * * *

SEC. 2. MANAGEMENT.

(a) **BOARD OF DIRECTORS.—**

[(1) **IN GENERAL.—**The management of the Corporation shall be vested in a Board of Directors consisting of 5 members—

[(A) 1 of whom shall be the Comptroller of the Currency;

[(B) 1 of whom shall be the Director of the Office of Thrift Supervision; and

[(C) 3 of whom shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States, 1 of whom shall have State bank supervisory experience.]

(1) IN GENERAL.—The management of the Corporation shall be vested in a Board of Directors consisting of 5 members—

(A) 1 of whom shall be the Comptroller of the Currency; and

(B) 4 of whom shall be appointed by the President, and with the advice and consent of the Senate, from among individuals who are citizens of the United States, 1 of whom shall have State bank supervisory experience.

* * * * *

(d) **VACANCY.—**

(1) **IN GENERAL.—**Any vacancy on the Board of Directors shall be filled in the manner in which the original appointment was made.

(2) **ACTING OFFICIALS MAY SERVE.—**In the event of a vacancy in the office of the Comptroller of the Currency [or the office of Director of the Office of Thrift Supervision] and pending the appointment of a successor, or during the absence or disability of the Comptroller [or such Director], the acting Comptroller of the Currency [or the acting Director of the Office of Thrift Supervision, as the case may be], shall be a member of the Board of Directors in the place of the Comptroller [or Director].

* * * * *

(f) **STATUS OF EMPLOYEES.—**

(1) * * *

(2) **DEFINITION.—**For purposes of this subsection, the term “employee of the Corporation” includes any employee of the Office of the Comptroller of the Currency [or of the Office of Thrift Supervision] who serves as a deputy or assistant to a member of the Board of Directors of the Corporation in connection with activities of the Corporation.

* * * * *

SEC. 3. As used in this Act—

(a) **DEFINITIONS OF BANK AND RELATED TERMS.—**

(1) * * *

[(2) **STATE BANK.—**The term “State bank” means any bank, banking association, trust company, savings bank, industrial

bank (or similar depository institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank), or other banking institution which—

[(A) is engaged in the business of receiving deposits, other than trust funds (as defined in this section); and

[(B) is incorporated under the laws of any State or which is operating under the Code of Law for the District of Columbia (except a national bank),

including any cooperative bank or other unincorporated bank the deposits of which were insured by the Corporation on the day before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.]

(2) STATE BANK.—

(A) IN GENERAL.—*The term “State bank” means any bank, banking association, trust company, savings bank, industrial bank (or similar depository institution which the Board of Directors finds to be operating in substantially the same manner as an industrial bank), building and loan association, savings and loan association, homestead association, cooperative bank, or other banking institution—*

(i) which is engaged in the business of receiving deposits, other than trust funds (as defined in this section); and

(ii) which—

(I) is incorporated under the laws of any State;

(II) is organized and operating according to the laws of the State in which such institution is chartered or organized; or

(III) is operating under the Code of Law for the District of Columbia (except a national bank).

(B) CERTAIN INSURED BANKS INCLUDED.—*The term “State bank” includes any cooperative bank or other unincorporated bank the deposits of which were insured by the Corporation on the day before the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.*

(C) CERTAIN UNINSURED BANKS EXCLUDED.—*The term “State bank” shall not include any cooperative bank or other unincorporated bank the deposits of which were not insured by the Corporation on the day before the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.*

* * * * *

(b) DEFINITION OF SAVINGS ASSOCIATIONS AND RELATED TERMS.—

(1) SAVINGS ASSOCIATION.—The term “savings association” means—

[(A) any Federal savings association;]

[(B)] (A) any State savings association; and

[(C)] (B) any corporation (other than a bank) that the Board of Directors [and the Director of the Office of Thrift Supervision jointly determine] *determines* to be operating in substantially the same manner as a savings association.

[(2) FEDERAL SAVINGS ASSOCIATION.—The term “Federal savings association” means any Federal savings association or

Federal savings bank which is chartered under section 5 of the Home Owners' Loan Act.】

【(3)】 (2) STATE SAVINGS ASSOCIATION.—The term “State savings association” means—

(A) any building and loan association, savings and loan association, or homestead association; or

(B) any cooperative bank (other than a cooperative bank which is a State bank as defined in subsection (a)(2)), which is organized and operating according to the laws of the State (as defined in subsection (a)(3)) in which it is chartered or organized.

* * * * *

(l) The term “deposit” means—

(1) * * *

* * * * *

(5) such other obligations of a bank [or savings association] as the Board of Directors, after consultation with the Comptroller of the Currency, [Director of the Office of Thrift Supervision], and the Board of Governors of the Federal Reserve System, shall find and prescribe by regulation to be deposit liabilities by general usage, except that the following shall not be a deposit for any of the purposes of this Act or be included as part of the total deposits or of an insured deposit:

(A) any obligation of a depository institution which is carried on the books and records of an office of such bank [or savings association] located outside of any State, unless—

(i) * * *

* * * * *

(q) APPROPRIATE FEDERAL BANKING AGENCY.—The term “appropriate Federal banking agency” means—

【(1) the Comptroller of the Currency, in the case of any national banking association, any District bank, or any Federal branch or agency of a foreign bank;】

(1) *The Comptroller of the Currency in the case of—*

(A) *any national banking association, any District bank, or any Federal branch or agency of a foreign bank; and*

(B) *supervisory or regulatory proceedings arising from the authority given to the Comptroller under section 5133B of the Revised Statutes of the United States.*

(2) the Board of Governors of the Federal Reserve System, in the case of—

(A) * * *

* * * * *

(F) any bank holding company and any subsidiary of a bank holding company (other than a bank); and

(3) the Federal Deposit Insurance Corporation in the case of a State nonmember insured bank (except a District bank), or a foreign bank having an insured branch【; and】.

【(4) the Director of the Office of Thrift Supervision in the case of any savings association or any savings and loan holding company.】

Under the rule set forth in this subsection, more than one agency may be an appropriate Federal banking agency with respect to any given institution.

* * * * *

(z) FEDERAL BANKING AGENCY.—The term “Federal banking agency” means the Comptroller of the Currency, [the Director of the Office of Thrift Supervision,] the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

SEC. 4. (a) CONTINUATION OF INSURANCE.—

[(1) BANKS.—]Each bank, which is an insured depository institution on the effective date of this amendment, shall be and continue to be, without application or approval, an insured depository institution and shall be subject to the provisions of this Act.

[(2) SAVINGS ASSOCIATIONS.—]Each savings association the accounts of which were insured by the Federal Savings and Loan Insurance Corporation on the day before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, shall be, without application or approval, an insured depository institution.]

* * * * *

SEC. 5. DEPOSIT INSURANCE.

(a) * * *

* * * * *

(e) LIABILITY OF COMMONLY CONTROLLED DEPOSITORY INSTITUTIONS.—

(1) * * *

* * * * *

(9) COMMONLY CONTROLLED DEFINED.—For purposes of this subsection, depository institutions are commonly controlled if—

(A) such institutions are controlled by the same depository institution holding company (including any company required to file reports pursuant to section [4(f)(6)] 6(g)(6) of the Bank Holding Company Act of 1956); or

(B) 1 depository institution is controlled by another depository institution.

* * * * *

SEC. 7. (a)(1) * * *

(2)(A) The Corporation and, with respect to any State depository institution, any appropriate State bank supervisor for such institution, shall have access to reports of examination made by, and reports of condition made to, the Comptroller of the Currency, [the Director of the Office of Thrift Supervision,] the Federal Housing Finance Board, any Federal home loan bank, or any Federal Reserve bank and to all revisions of reports of condition made to any of them, and they shall promptly advise the Corporation of any revisions or changes in respect to deposit liabilities made or required to be made in any report of condition. The Corporation may accept any report made by or to any commission, board, or authority having supervision of a depository institution, and may furnish

to the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Housing Finance Board, any Federal home loan bank, to any Federal Reserve bank, and to any such commission, board, or authority, reports of examinations made on behalf of, and reports of condition made to, the Corporation.

(B) ADDITIONAL REPORTS.—The Board of Directors may from time to time require any insured depository institution to file such additional reports as the Corporation, after agreement with the Comptroller of the Currency, *and* the Board of Governors of the Federal Reserve System, [and the Director of the Office of Thrift Supervision], as appropriate, may deem advisable for insurance purposes.

(3) Each insured depository institution shall make to the appropriate Federal banking agency 4 reports of condition annually upon dates which shall be selected by the Chairman of the Board of Directors, the Comptroller of the Currency, the Chairman of *and* the Board of Governors of the Federal Reserve System[, and the Director of the Office of Thrift Supervision]. The dates selected shall be the same for all insured depository institutions, except that when any of said reporting dates is a nonbusiness day for any depository institution, the preceding business day shall be its reporting date. Two dates shall be selected within the semiannual period of January to June inclusive, and the reports on such dates shall be the basis for the certified statement to be filed in July pursuant to subsection (c) of this section, and two dates shall be selected within the semiannual period of July to December inclusive, and the reports on such dates shall be the basis for the certified statement to be filed in January pursuant to subsection (c) of this section. The deposit liabilities shall be reported in said reports of condition in accordance with and pursuant to paragraphs (4) and (5) of this subsection, and such other information shall be reported therein as may be required by the respective agencies. Each said report of condition shall contain a declaration by the president, a vice president, the cashier or the treasurer, or by any other officer designated by the board of directors or trustees of the reporting depository institution to make such declaration, that the report is true and correct to the best of his knowledge and belief. The correctness of said report of conditions shall be attested by the signatures of at least two directors or trustees of the reporting depository institution other than the officer making such declaration, with a declaration that the report has been examined by them and to be the best of their knowledge and belief is true and correct. At the time of making said reports of condition each insured depository institution shall furnish to the Corporation a copy thereof containing such signed declaration and attestations. Nothing herein shall preclude any of the foregoing agencies from requiring the banks or savings associations under its jurisdiction to make additional reports of condition at any time.

* * * * *

(7) The Board of Directors, after consultation with the Comptroller of the Currency, [the Director of the Office of Thrift Supervision,] and the Board of Governors of the Federal Reserve System, may by regulation define the terms “cash items” and “process of

collection”, and shall classify deposits as “time,” “savings,” and “demand” deposits, for the purposes of this section.

* * * * *

[(n) COLLECTIONS ON BEHALF OF THE DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—When requested by the Director of the Office of Thrift Supervision, the Corporation shall collect on behalf of the Director assessments on savings associations levied by the Director under section 9 of the Home Owners’ Loan Act. The Corporation shall be reimbursed for its actual costs for the collection of such assessments. Any such assessments by the Director shall be in addition to any amounts assessed by the Corporation, the Financing Corporation, and the Resolution Funding Corporation.]

SEC. 8. (a) TERMINATION OF INSURANCE.—

[(1) VOLUNTARY TERMINATION.—Any insured depository institution which is not—

[(A) a national member bank;

[(B) a State member bank;

[(C) a Federal branch;

[(D) a Federal savings association; or

[(E) an insured branch which is required to be insured under subsection (a) or (b) of section 6 of the International Banking Act of 1978,

may terminate such depository institution’s status as an insured depository institution if such insured institution provides written notice to the Corporation of the institution’s intent to terminate such status not less than 90 days before the effective date of such termination.]

[(2) (1) INVOLUNTARY TERMINATION.—

(A) NOTICE TO PRIMARY REGULATOR.—If the Board of Directors determines that—

(i) * * *

* * * * *

[(3) (2) HEARING; TERMINATION.—If, on the basis of the evidence presented at a hearing before the Board of Directors (or any person designated by the Board for such purpose), in which all issues shall be determined on the record pursuant to section 554 of title 5, United States Code, and the written findings of the Board of Directors (or such persons) with respect to such evidence (which shall be conclusive), the Board of Directors finds that any unsafe or unsound practice or condition or any violation specified in the notice to an insured depository institution under paragraph (2)(B) or subsection (w) has been established, the Board of Directors may issue an order terminating the insured status of such depository institution effective as of a date subsequent to such finding.

[(4) (3) APPEARANCE; CONSENT TO TERMINATION.—Unless the depository institution shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its status as an insured depository institution and termination of such status thereupon may be ordered.

[(5) (4) JUDICIAL REVIEW.—Any insured depository institution whose insured status has been terminated by order of the

Board of Directors under this subsection shall have the right of judicial review of such order only to the same extent as provided for the review of orders under subsection (h) of this section.

[(6)] (5) PUBLICATION OF NOTICE OF TERMINATION.—The Corporation may publish notice of such termination and the depository institution shall give notice of such termination to each of its depositors at his last address of record on the books of the depository institution, in such manner and at such time as the Board of Directors may find to be necessary and may order for the protection of depositors.

[(7)] (6) TEMPORARY INSURANCE OF DEPOSITS INSURED AS OF TERMINATION.—After the termination of the insured status of any depository institution under the provisions of this subsection, the insured deposits of each depositor in the depository institution on the date of such termination, less all subsequent withdrawals from any deposits of such depositor, shall continue for a period of at least 6 months or up to 2 years, within the discretion of the Board of Directors, to be insured, and the depository institution shall continue to pay to the Corporation assessments as in the case of an insured depository institution during such period. No additions to any such deposits and no new deposits in such depository institution made after the date of such termination shall be insured by the Corporation, and the depository institution shall not advertise or hold itself out as having insured deposits unless in the same connection it shall also state with equal prominence that such additions to deposits and new deposits made after such date are not so insured. Such depository institution shall, in all other respects, be subject to the duties and obligations of an insured depository institution for the period referred to in the first sentence from the date of such termination, and in the event that such depository institution shall be closed on account of inability to meet the demands of its depositors within such period, the Corporation shall have the same powers and rights with respect to such depository institution as in case of an insured depository institution.

[(8)] (7) TEMPORARY SUSPENSION OF INSURANCE.—

(A) IN GENERAL.—If the Board of Directors initiates a termination proceeding under paragraph (2), and the Board of Directors, after consultation with the appropriate Federal banking agency, finds that an insured depository institution (other than a savings association to which subparagraph (B) applies) has no tangible capital under the capital guidelines or regulations of the appropriate Federal banking agency, the Corporation may issue a temporary order suspending deposit insurance on all deposits received by the institution.

[(B) SPECIAL RULE FOR CERTAIN SAVINGS INSTITUTIONS.—

[(i) CERTAIN GOODWILL INCLUDED IN TANGIBLE CAPITAL.—In determining the tangible capital of a savings association for purposes of this paragraph, the Board of Directors shall include goodwill to the extent it is considered a component of capital under section 5(t) of

the Home Owners' Loan Act. Any savings association which would be subject to a suspension order under subparagraph (A) but for the operation of this subparagraph, shall be considered by the Corporation to be a "special supervisory association".

[(ii) SUSPENSION ORDER.—The Corporation may issue a temporary order suspending deposit insurance on all deposits received by a special supervisory association whenever the Board of Directors determines that—

[(I) the capital of such association, as computed utilizing applicable accounting standards, has suffered a material decline;

[(II) that such association (or its directors or officers) is engaging in an unsafe or unsound practice in conducting the business of the association;

[(III) that such association is in an unsafe or unsound condition to continue operating as an insured association; or

[(IV) that such association (or its directors or officers) has violated any applicable law, rule, regulation, or order, or any condition imposed in writing by a Federal banking agency, or any written agreement including a capital improvement plan entered into with any Federal banking agency, or that the association has failed to enter into a capital improvement plan which is acceptable to the Corporation within the time period set forth in section 5(t) of the Home Owners' Loan Act.

Nothing in this paragraph limits the right of the Corporation or the Director of the Office of Thrift Supervision to enforce a contractual provision which authorizes the Corporation or the Director of the Office of Thrift Supervision, as a successor to the Federal Savings and Loan Insurance Corporation or the Federal Home Loan Bank Board, to require a savings association to write down or amortize goodwill at a faster rate than otherwise required under this Act or under applicable accounting standards.]

[(C)] (B) EFFECTIVE PERIOD OF TEMPORARY ORDER.—Any order issued under subparagraph (A) shall become effective not earlier than 10 days from the date of service upon the institution and, unless set aside, limited, or suspended by a court in proceedings authorized hereunder, such temporary order shall remain effective and enforceable until an order of the Board under paragraph (3) becomes final or until the Corporation dismisses the proceedings under paragraph (3).

[(D)] (C) JUDICIAL REVIEW.—Before the close of the 10-day period beginning on the date any temporary order has been served upon an insured depository institution under subparagraph (A), such institution may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in

which the home office of the institution is located, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order, and such court shall have jurisdiction to issue such injunction.

[(E)] (D) CONTINUATION OF INSURANCE FOR PRIOR DEPOSITS.—The insured deposits of each depositor in such depository institution on the effective date of the order issued under this paragraph, minus all subsequent withdrawals from any deposits of such depositor, shall continue to be insured, subject to the administrative proceedings as provided in this Act.

[(F)] (E) PUBLICATION OF ORDER.—The depository institution shall give notice of such order to each of its depositors in such manner and at such times as the Board of Directors may find to be necessary and may order for the protection of depositors.

[(G)] (F) NOTICE BY CORPORATION.—If the Corporation determines that the depository institution has not substantially complied with the notice to depositors required by the Board of Directors, the Corporation may provide such notice in such manner as the Board of Directors may find to be necessary and appropriate.

[(H)] (G) LACK OF NOTICE.—Notwithstanding subparagraph (A), any deposit made after the effective date of a suspension order issued under this paragraph shall remain insured to the extent that the depositor establishes that—

- (i) such deposit consists of additions made by automatic deposit the depositor was unable to prevent; or
- (ii) such depositor did not have actual knowledge of the suspension of insurance.

[(9)] (8) FINAL DECISIONS TO TERMINATE INSURANCE.—Any decision by the Board of Directors to—

(A) issue a temporary order terminating deposit insurance; or

(B) issue a final order terminating deposit insurance (other than under subsection (p) or (q));

shall be made by the Board of Directors and may not be delegated.

[(10)] (9) LOW- TO MODERATE-INCOME HOUSING LENDER.—In making any determination regarding the termination of insurance of a solvent savings association, the Corporation may consider the extent of the association's low- to moderate-income housing loans.

(b)(1) * * *

* * * * *

[(9) EXPANSION OF AUTHORITY TO SAVINGS AND LOAN AFFILIATES AND ENTITIES.—Subsections (a) through (s) and subsection (u) shall apply to any savings and loan holding company and to any subsidiary (other than a bank or subsidiary of that bank) of a savings and loan holding company, to any service corporation of a savings association and to any subsidiary of such service corporation, whether wholly or partly owned, in the same manner as such subsections apply to a savings association.]

[(10)] (9) STANDARD FOR CERTAIN ORDERS.—No authority under this subsection or subsection (c) to prohibit any institution-affiliated party from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property may be exercised unless the appropriate Federal banking agency meets the standards of Rule 65 of the Federal Rules of Civil Procedure, without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

* * * * *

(o) Whenever the insured status of a State member bank shall be terminated by action of the Board of Directors, the Board of Governors of the Federal Reserve System shall terminate its membership in the Federal Reserve System in accordance with the provisions of section 9 of the Federal Reserve Act, and whenever the insured status of a national member bank shall be so terminated the Comptroller of the Currency shall appoint a receiver for the bank, which shall be the Corporation. Except as provided in subsection (d) of section 4, whenever a member bank shall cease to be a member of the Federal Reserve System, its status as an insured depository institution shall, without notice or other action by the Board of Directors, terminate on the date the bank shall cease to be a member of the Federal Reserve System, with like effect as if its insured status had been terminated on said date by the Board of Directors after proceedings under subsection (a) of this section. **【Whenever the insured status of an insured Federal savings bank shall be terminated by action of the Board of Directors, the Director of the Office of Thrift Supervision shall appoint a receiver for the bank, which shall be the Corporation.】**

* * * * *

(w) **TERMINATION OF INSURANCE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.**—

(1) * * *

* * * * *

(3) **NOTICE TO STATE BANKING SUPERVISOR AND PUBLIC.**—When the order to terminate insured status initiated pursuant to this subsection is final, the Board of Directors shall—

(A) notify the State banking supervisor of any State depository institution described in paragraph (1) **【and the Office of Thrift Supervision, where appropriate】**, at least 10 days prior to the effective date of the order of termination of the insured status of such depository institution, including a State branch of a foreign bank; and

* * * * *

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

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

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

(A) to the Corporation and the Board of Governors of the Federal Reserve System not less than 6 months before the effective date of such termination; and

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

(2) either—

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

(B) the Corporation and the Board of Governors of the Federal Reserve System approve the termination of the bank's insured status and the bank pays an exit fee in accordance with subsection (e).

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

(1) an insured savings association;

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

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

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

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

(e) **EXIT FEES.**—

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

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

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

(1) **TRANSITION PERIOD.**—The insured deposits of each depositor in a State bank or a national bank on the effective date of the voluntary termination of the bank's insured status, less all

subsequent withdrawals from any deposits of such depositor, shall continue to be insured for a period of not less than 6 months and not more than 2 years, as determined by the Corporation. During such period, no additions to any such deposits, and no new deposits in the depository institution made after the effective date of such termination shall be insured by the Corporation.

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

(g) *ADVERTISEMENTS.—*

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

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

(h) *NOTICE REQUIREMENTS.—*

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

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

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

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

(i) *VOLUNTARY TERMINATION OF DEPOSIT INSURANCE.—The provisions on voluntary termination of insurance in this section apply to an insured branch of a foreign bank (including a Federal branch) in the same manner and to the same extent as they apply to an insured State bank or a national bank.*

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SEC. 10. (a) * * *

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(c) In connection with examinations of insured depository institutions and any State nonmember bank, [savings association,] or other institution making application to become insured depository institutions, and affiliates thereof, or with other types of investigations to determine compliance with applicable law and regulations, the appropriate Federal banking agency, or its designated representatives, are authorized to administer oaths and affirmations, and to examine and to take and preserve testimony under oath as to any matter in respect to the affairs or ownership of any such bank or institution or affiliate thereof, and to exercise such other powers as are set forth in section 8(n) of this Act.

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 SEC. 11. (a) * * *

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 (c) APPOINTMENT OF CORPORATION AS CONSERVATOR OR RECEIVER.—

(1) * * *

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[(6) APPOINTMENT BY DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

[(A) CONSERVATOR.—The Corporation or the Resolution Trust Corporation may, at the discretion of the Director of the Office of Thrift Supervision, be appointed conservator and the Corporation may accept any such appointment.

[(B) RECEIVER.—Whenever the Director of the Office of Thrift Supervision appoints a receiver under the provisions of subparagraph (A) or (C) of section 5(d)(2) of the Home Owners' Loan Act for the purpose of liquidation or winding up any savings association's affairs—

[(i) before such date as is determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 21A(b)(3)(A)(ii) of the Federal Home Loan Bank Act, the Resolution Trust Corporation shall be appointed;

[(ii) on or after the date determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 21A(b)(3)(A)(ii) of the Federal Home Loan Bank Act, the Resolution Trust Corporation shall be appointed if the Resolution Trust Corporation had been placed in control of the depository institution at any time before such date; and

[(iii) on or after the date determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 21A(b)(3)(A)(ii) of the Federal Home Loan Bank Act, the Corporation shall be appointed unless the Resolution Trust Corporation is required to be appointed under clause (ii).]

[(7) (6) JUDICIAL REVIEW.—If the Corporation appoints itself as conservator or receiver under paragraph (4), the insured State depository institution may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such institution is lo-

cated, or in the United States District Court for the District of Columbia, for an order requiring the Corporation to remove itself as such conservator or receiver, and the court shall, upon the merits, dismiss such action or direct the Corporation to remove itself as such conservator or receiver.

[(8)] (7) REPLACEMENT OF CONSERVATOR OF STATE DEPOSITORY INSTITUTION.—

(A) **IN GENERAL.**—In the case of any insured State depository institution for which the Corporation appointed itself as conservator pursuant to paragraph (4), the Corporation may, without any requirement of notice, hearing, or other action, replace itself as conservator with itself as receiver of such institution.

(B) **REPLACEMENT TREATED AS REMOVAL OF INCUMBENT.**—The replacement of a conservator with a receiver under subparagraph (A) shall be treated as the removal of the Corporation as conservator.

(C) **RIGHT OF REVIEW OF ORIGINAL APPOINTMENT NOT AFFECTED.**—The replacement of a conservator with a receiver under subparagraph (A) shall not affect any right of the insured State depository institution to obtain review, pursuant to paragraph (7), of the original appointment of the conservator.

[(9)] (8) APPROPRIATE FEDERAL BANKING AGENCY MAY APPOINT CORPORATION AS CONSERVATOR OR RECEIVER FOR INSURED STATE DEPOSITORY INSTITUTION TO CARRY OUT SECTION 38.—

(A) **IN GENERAL.**—The appropriate Federal banking agency may appoint the Corporation as sole receiver (or, subject to paragraph (11), sole conservator) of any insured State depository institution, after consultation with the appropriate State supervisor, if the appropriate Federal banking agency determines that—

(i) 1 or more of the grounds specified in subparagraphs (K) and (L) of paragraph (5) exist with respect to that institution; and

(ii) the appointment is necessary to carry out the purpose of section 38.

(B) **NONDELEGATION.**—The appropriate Federal banking agency shall not delegate any action under subparagraph (A).

[(10)] (9) CORPORATION MAY APPOINT ITSELF AS CONSERVATOR OR RECEIVER FOR INSURED DEPOSITORY INSTITUTION TO PREVENT LOSS TO DEPOSIT INSURANCE FUND.—The Board of Directors may appoint the Corporation as sole conservator or receiver of an insured depository institution, after consultation with the appropriate Federal banking agency and the appropriate State supervisor (if any), if the Board of Directors determines that—

(A) 1 or more of the grounds specified in any subparagraph of paragraph (5) exist with respect to the institution; and

(B) the appointment is necessary to reduce—

(i) the risk that the deposit insurance fund would incur a loss with respect to the insured depository institution, or

(ii) any loss that the deposit insurance fund is expected to incur with respect to that institution.

【(11)】 (10) APPROPRIATE FEDERAL BANKING AGENCY SHALL NOT APPOINT CONSERVATOR UNDER CERTAIN PROVISIONS WITHOUT GIVING CORPORATION OPPORTUNITY TO APPOINT RECEIVER.—The appropriate Federal banking agency shall not appoint a conservator for an insured depository institution under subparagraph (K) or (L) of paragraph (5) without the Corporation’s consent unless the agency has given the Corporation 48 hours notice of the agency’s intention to appoint the conservator and the grounds for the appointment.

【(12)】 (11) DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF CONSERVATOR OR RECEIVER.—The members of the board of directors of an insured depository institution shall not be liable to the institution’s shareholders or creditors for acquiescing in or consenting in good faith to—

(A) the appointment of the Corporation or the Resolution Trust Corporation as conservator or receiver for that institution; or

(B) an acquisition or combination under section 38(f)(2)(A)(iii).

【(13)】 (12) ADDITIONAL POWERS.—In any case in which the Corporation is appointed conservator or receiver under paragraph (4), (6), (9), or (10) for any insured State depository institution—

(A) this section shall apply to the Corporation as conservator or receiver in the same manner and to the same extent as if that institution were a Federal depository institution for which the Corporation had been appointed conservator or receiver; and

(B) the Corporation as receiver of the institution may—
 (i) liquidate the institution in an orderly manner; and

(ii) make any other disposition of any matter concerning the institution, as the Corporation determines is in the best interests of the institution, the depositors of the institution, and the Corporation.

(d) POWERS AND DUTIES OF CORPORATION AS CONSERVATOR OR RECEIVER.—

(1) RULEMAKING AUTHORITY OF CORPORATION.—The Corporation may prescribe such regulations as the Corporation determines to be appropriate regarding the conduct of conservatorships or receiverships.

(2) GENERAL POWERS.—

(A) * * *

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(F) ORGANIZATION OF NEW INSTITUTIONS.—The Corporation may, as [receiver—

【(i) with respect to savings associations and by application to the Director of the Office of Thrift Supervision, organize a new Federal savings association to

take over such assets or such liabilities as the Corporation may determine to be appropriate; and

[(ii) with] *receiver with* respect to any insured bank, organize a new national bank under subsection (m) or a bridge bank under subsection (n).

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(17) FRAUDULENT TRANSFERS.—

(A) IN GENERAL.—The Corporation, as conservator or receiver for any insured depository institution, and any conservator appointed by the Comptroller of the Currency [or the Director of the Office of Thrift Supervision] may avoid a transfer of any interest of an institution-affiliated party, or any person who the Corporation or conservator determines is a debtor of the institution, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Corporation or conservator was appointed conservator or receiver if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the insured depository institution, the Corporation or other conservator, or any other appropriate Federal banking agency.

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(18) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to paragraph (19), any court of competent jurisdiction may, at the request of—

(A) the Corporation (in the Corporation's capacity as conservator or receiver for any insured depository institution or in the Corporation's corporate capacity with respect to any asset acquired or liability assumed by the Corporation under section 11, 12, or 13); or

(B) any conservator appointed by the Comptroller of the Currency [or the Director of the Office of Thrift Supervision],

issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Corporation or such conservator under the control of the court and appointing a trustee to hold such assets.

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SEC. 13. (a) * * *

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[(k) EMERGENCY ACQUISITIONS.—

[(1) IN GENERAL.—

[(A) ACQUISITIONS AUTHORIZED.—

[(i) TRANSACTIONS DESCRIBED.—Notwithstanding any provision of State law, upon determining that severe financial conditions threaten the stability of a significant number of savings associations, or of savings associations possessing significant financial resources, the Corporation, in its discretion and if it determines

such authorization would lessen the risk to the Corporation, may authorize—

[(I) a savings association that is eligible for assistance pursuant to subsection (c) to merge or consolidate with, or to transfer its assets and liabilities to, any other savings association or any insured bank,

[(II) any other savings association to acquire control of such savings association, or

[(III) any company to acquire control of such savings association or to acquire the assets or assume the liabilities thereof.

The Corporation may not authorize any transaction under this subsection unless the Corporation determines that the authorization will not present a substantial risk to the safety or soundness of the savings association to be acquired or any acquiring entity.

[(ii) TERMS OF TRANSACTIONS.—Mergers, consolidations, transfers, and acquisitions under this subsection shall be on such terms as the Corporation shall provide.

[(iii) APPROVAL BY APPROPRIATE AGENCY.—Where otherwise required by law, transactions under this subsection must be approved by the appropriate Federal banking agency of every party thereto.

[(iv) ACQUISITIONS BY SAVINGS ASSOCIATIONS.—Any Federal savings association that acquires another savings association pursuant to clause (i) may, with the concurrence of the Director of the Office of Thrift Supervision, hold that savings association as a subsidiary notwithstanding the percentage limitations of section 5(c)(4)(B) of the Home Owners' Loan Act.

[(v) DUAL SERVICE.—Dual service by a management official that would otherwise be prohibited under the Depository Institution Management Interlocks Act may, with the approval of the Corporation, continue for up to 10 years.

[(vi) CONTINUED APPLICABILITY OF CERTAIN STATE RESTRICTIONS.—Nothing in this subsection overrides or supersedes State laws restricting or limiting the activities of a savings association on behalf of another entity.

[(B) CONSULTATION WITH STATE OFFICIAL.—

[(i) CONSULTATION REQUIRED.—Before making a determination to take any action under subparagraph (A), the Corporation shall consult the State official having jurisdiction of the acquired institution.

[(ii) PERIOD FOR STATE RESPONSE.—The official shall be given a reasonable opportunity, and in no event less than 48 hours, to object to the use of the provisions of this paragraph. Such notice may be provided by the Corporation prior to its appointment as receiver, but in anticipation of an impending appointment.

[(iii) APPROVAL OVER OBJECTION OF STATE OFFICIAL.—If the official objects during such period, the Corporation may use the authority of this paragraph only by a vote of 75 percent or more of the voting members of the Board of Directors. The Corporation shall provide to the official, as soon as practicable, a written certification of its determination.

[(2) SOLICITATION OF OFFERS.—

[(A) IN GENERAL.—In considering authorizations under this subsection, the Corporation may solicit such offers or proposals as are practicable from any prospective purchasers or merger partners it determines, in its sole discretion, are both qualified and capable of acquiring the assets and liabilities of the savings association.

[(B) MINORITY-CONTROLLED INSTITUTIONS.—In the case of a minority-controlled depository institution, the Corporation shall seek an offer from other minority-controlled depository institutions before seeking an offer from other persons or entities.

[(3) DETERMINATION OF COSTS.—In determining the cost of offers under this subsection, the Corporation's calculations and estimations shall be determinative. The Corporation may set reasonable time limits on offers.

[(4) BRANCHING PROVISIONS.—

[(A) IN GENERAL.—If a merger, consolidation, transfer, or acquisition under this subsection involves a savings association eligible for assistance and a bank or bank holding company, a savings association may retain and operate any existing branch or branches or any other existing facilities. If the savings association continues to exist as a separate entity, it may establish and operate new branches to the same extent as any savings association that is not affiliated with a bank holding company and the home office of which is located in the same State.

[(B) RESTRICTIONS.—

[(i) IN GENERAL.—Notwithstanding subparagraph (A), if—

[(I) a savings association described in such subparagraph does not have its home office in the State of the bank holding company bank subsidiary, and

[(II) such association does not qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986, or does not meet the asset composition test imposed by subparagraph (C) of that section on institutions seeking so to qualify,

such savings association shall be subject to the conditions upon which a bank may retain, operate, and establish branches in the State in which the Savings Association Insurance Fund member is located.

[(ii) TRANSITION PERIOD.—The Corporation, for good cause shown, may allow a savings association up to 2 years to comply with the requirements of clause (i).

[(5) ASSISTANCE BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

[(A) ASSISTANCE PROPOSALS.—The Corporation shall consider proposals by Savings Association Insurance Fund members for assistance pursuant to subsection (c) before grounds exist for appointment of a conservator or receiver for such member under the following circumstances:

[(i) TROUBLED CONDITION CRITERIA.—The Corporation determines—

[(I) that grounds for appointment of a conservator or receiver exist or likely will exist in the future unless the member's tangible capital is increased;

[(II) that it is unlikely that the member can achieve positive tangible capital without assistance; and

[(III) that providing assistance pursuant to the member's proposal would be likely to lessen the risk to the Corporation.

[(ii) OTHER CRITERIA.—The member meets the following criteria:

[(I) Before enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the member was solvent under applicable regulatory accounting principles but had negative tangible capital.

[(II) The member's negative tangible capital position is substantially attributable to its participation in acquisition and merger transactions that were instituted by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation for supervisory reasons.

[(III) The member is a qualified thrift lender (as defined in section 10(m) of the Home Owners' Loan Act) or would be a qualified thrift lender if commercial real estate owned and nonperforming commercial loans acquired in acquisition and merger transactions that were instituted by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation for supervisory reasons were excluded from the member's total assets.

[(IV) The appropriate Federal banking agency has determined that the member's management is competent and has complied with applicable laws, rules, and supervisory directives and orders.

[(V) The member's management did not engage in insider dealing or speculative practices or other activities that jeopardized the member's safety and soundness or contributed to its impaired capital position.

[(VI) The member's offices are located in an economically depressed region.

[(B) CORPORATION CONSIDERATION OF ASSISTANCE PROPOSAL.—If a member meets the requirements of clauses (i) and (ii) of subparagraph (A), the Corporation shall consider providing direct financial assistance.

[(C) ECONOMICALLY DEPRESSED REGION DEFINED.—For purposes of this paragraph, the term “economically depressed region” means any geographical region which the Corporation determines by regulation to be a region within which real estate values have suffered serious decline due to severe economic conditions, such as a decline in energy or agricultural values or prices.]

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 SEC. 18. (a) * * * * *
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 (c)(1) * * * * *

(2) No insured depository institution shall merge or consolidate with any other insured depository institution or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured depository institution except with the prior written approval of the responsible agency, which shall be—

(A) the Comptroller of the Currency if the acquiring, assuming, or resulting bank is to be a national bank or a District bank;

(B) the Board of Governors of the Federal Reserve System if the acquiring, assuming, or resulting bank is to be a State member bank (except a District bank); *and*

(C) the Corporation if the acquiring, assuming, or resulting bank is to be a State nonmember insured bank [(except a District bank or a savings bank supervised by the Director of the Office of Thrift Supervision); *and*] (*except a District bank*).

[(D) the Director of the Office of Thrift Supervision if the acquiring, assuming, or resulting institution is to be a savings association.]

(3) Notice of any proposed transaction for which approval is required under paragraph (1) or (2) (referred to hereafter in this subsection as a “merger transaction”) shall, unless the responsible agency finds that it must act immediately in order to prevent the probable default of one of the banks or savings associations involved, be published—

(A) prior to the granting of approval of such transaction,

(B) in a form approved by the responsible agency,

(C) at appropriate intervals [during a period at least as long as the period allowed for furnishing reports under paragraph (4) of this subsection], *and*

(D) in a newspaper of general circulation in the community or communities where the main offices of the banks or savings associations involved are located, or, if there is no such newspaper in any such community, then in the newspaper of general circulation published nearest thereto.

[(4) In the interests of uniform standards, before acting on any application for approval of a merger transaction, the responsible agency, unless it finds that it must act immediately in order to pre-

vent the probable failure of one of the banks or savings associations involved, shall request reports on the competitive factors involved from the Attorney General and the other Federal banking agencies referred to in this subsection. The reports shall be furnished within thirty calendar days of the date on which they are requested, or within ten calendar days of such date if the requesting agency advises the Attorney General and the other Federal banking agencies that an emergency exists requiring expeditious action. Notwithstanding the preceding sentence, a banking agency shall not be required to file a report requested by the responsible agency under this paragraph if such banking agency advises the responsible agency by the applicable date under the preceding sentence that the report is not necessary because none of the effects described in paragraph (5) are likely to occur as a result of the transaction.

[(5) The responsible agency shall not approve—

[(A) any proposed merger transaction which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

[(B) any other proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

In every case, the responsible agency shall take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.

[(6) The responsible agency shall immediately notify the Attorney General of any approval by it pursuant to this subsection of a proposed merger transaction. If the agency has found that it must act immediately to prevent the probable failure of one of the banks or savings associations involved and reports on the competitive factors have been dispensed with, the transaction may be consummated immediately upon approval by the agency. If the agency has advised the Attorney General and the other Federal banking agencies of the existence of an emergency requiring expeditious action and has requested reports on the competitive factors within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the agency. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the agency or, if the agency has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the agency with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval.]

(4) FACTORS TO BE CONSIDERED.—In determining whether to approve a transaction, the responsible agency shall in every case take into consideration the financial and managerial resources and fu-

ture prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.

(5) NOTICE TO ATTORNEY GENERAL.—The responsible agency shall immediately notify the Attorney General of any approval by it pursuant to this subsection of a proposed merger transaction. If the responsible agency has found that it must act immediately in order to prevent the probable failure of one of the banks involved, the transaction may be consummated immediately upon approval by the agency. If the responsible agency has notified the other Federal banking agencies referred to in this section of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within 10 days, the transaction may not be consummated before the 5th calendar day after the date of approval of the responsible agency. In all other cases, the transaction may not be consummated before the 30th calendar day after the date of approval by the agency, or such shorter period of time as may be prescribed by the Attorney General.

[(7)] (6)(A) Any action brought under the antitrust laws arising out of a merger transaction shall be commenced prior to the earliest time under paragraph **[(6)] (5)** at which a merger transaction approved under paragraph **[(5)] (4)** might be consummated. The commencement of such an action shall stay the effectiveness of the agency's approval unless the court shall otherwise specifically order. **[In any such action, the court shall review de novo the issues presented.]**

[(B)] In any judicial proceeding attacking a merger transaction approved under paragraph (5) on the ground that the merger transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), the standards applied by the court shall be identical with those that the banking agencies are directed to apply under paragraph (5).**]**

[(C)] (B) Upon the consummation of a merger transaction in compliance with this subsection and after the termination of any antitrust litigation commenced within the period prescribed in this paragraph, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), but nothing in this subsection shall exempt any bank or savings association resulting from a merger transaction from complying with the antitrust laws after the consummation of such transaction.

[(D)] In any action brought under the antitrust laws arising out of a merger transaction approved by a Federal supervisory agency pursuant to this subsection, such agency, and any State banking supervisory agency having jurisdiction within the State involved, may appear as a party of its own motion and as of right, and be represented by its counsel.**]**

[(8)] (7) For the purposes of this subsection, the term "antitrust laws" means the Act of July 2, 1890 (the Sherman Antitrust Act,

15 U.S.C. 1-7), the Act of October 15, 1914 (the Clayton Act, 15 U.S.C. 12-27), and any other Acts in pari materia.

[(9)] (8) Each of the responsible agencies shall include in its annual report to the Congress a description of each merger transaction approved by it during the period covered by the report, along with—

(A) the name and total resources of each bank or savings association involved; *and*

[(B)] whether a report was submitted by the Attorney General under paragraph (4), and, if so, a summary by the Attorney General of the substance of such report; and

[(C)] (B) a statement by the responsible agency of the basis for its approval.

[(10)] (9) Until June 30, 1976, the responsible agency shall not grant any approval required by law which has the practical effect of permitting a conversion from the mutual to the stock form of organization, including approval of any application pending on the date of enactment of this subsection, except that this sentence shall not be deemed to limit now or hereafter the authority of the responsible agency to grant approvals in cases where the responsible agency finds that it must act in order to maintain the safety, soundness, and stability of an insured depository institution. The responsible agency may by rule, regulation, or otherwise and under such civil penalties (which shall be cumulative to any other remedies) as it may prescribe take whatever action it deems necessary or appropriate to implement or enforce this subsection.

[(11)] (10) The provisions of this subsection do not apply to any merger transaction involving a foreign bank if no party to the transaction is principally engaged in business in the United States.

(11) REQUIREMENT TO FILE INFORMATION WITH ATTORNEY GENERAL.—Any applicant seeking prior written approval of the responsible Federal banking agency to engage in a merger transaction under this subsection shall file simultaneously with the Attorney General copies of any documents regarding the proposed transaction required by the Federal banking agency.

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(g)(1) The Board of Directors shall by regulation prohibit the payment of interest or dividends on demand deposits in insured nonmember banks and in insured branches of foreign banks and for such purpose it may define the term “demand deposits”; but such exceptions from this prohibition shall be made as are now or may hereafter be prescribed with respect to deposits payable on demand in member banks by section 19 of the Federal Reserve Act, as amended, or by regulation of the Board of Governors of the Federal Reserve System. The Board of Directors may from time to time, after consulting with the Board of Governors of the Federal Reserve System **[and the Director of the Office of Thrift Supervision]**, prescribe rules governing the advertisement of interest or dividends on deposits, including limitations on the rates of interest or dividends that may be paid by insured nonmember banks (including insured mutual savings banks) on time and savings deposits. The Board of Directors is authorized for the purposes of this subsection to define the terms “time deposits” and “savings deposits”, to determine what shall be deemed a payment of interest, and to

prescribe such regulations as it may deem necessary to effectuate the purposes of this subsection and to prevent evasions thereof. The provisions of this subsection and of regulations issued thereunder shall also apply, in the discretion of the Board of Directors, to obligations other than deposits that are undertaken by insured nonmember banks or their affiliates. As used in this subsection, the term "affiliate" has the same meaning as when used in section 2(b) of the Banking Act of 1933, as amended (12 U.S.C. 221a(b)), except that the term "member bank", as used in such section 2(b), shall be deemed to refer to an insured nonmember bank. For each violation of any provision of this subsection or any lawful provision of such regulations relating to the payment of interest or dividends on deposits or to withdrawal of deposits, the offending bank shall be subject to a penalty of not more than \$100, which the Corporation may recover for its use. During the period commencing on October 15, 1962, and ending on October 15, 1968, the provisions of this subsection shall not apply to the rate of interest which may be paid by insured nonmember banks on time deposits of foreign governments, monetary and financial authorities of foreign governments when acting as such, or international financial institutions of which the United States is a member. The authority conferred by this subsection shall also apply to noninsured banks in any State if the total amount of time and savings deposits held in all such banks in the State, plus the total amount of deposits, shares, and withdrawable accounts held in all building and loan, savings and loan, and homestead associations (including cooperative banks) in the State which are not members of a Federal home loan bank, is more than 20 per centum of the total amount of such deposits, shares, and withdrawable accounts held in all banks, and building and loan, savings and loan, and homestead associations (including cooperative banks) in the State. Such authority shall only be exercised by the Board of Directors with respect to such noninsured banks prior to July 31, 1970, to limit the rates of interest or dividends which such banks may pay on time and savings deposits to maximum rates not lower than 5½ per centum per annum. Whenever it shall appear to the Board of Directors that any noninsured bank or any affiliate thereof is engaged or has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this subsection or of any regulations thereunder, the Board of Directors may, in its discretion, bring an action in the United States district court for the judicial district in which the principal office of the noninsured bank or affiliate thereof is located to enjoin such acts or practices, to enforce compliance with this subsection or any regulations thereunder, or for a combination of the foregoing, and such courts shall have jurisdiction of such actions, and, upon a proper showing, an injunction, restraining order, or other appropriate order may be granted without bond.

* * * * *

(i)(1) No insured State nonmember bank (except a District bank) shall, without the prior consent of the Corporation, reduce the amount or retire any part of its common or preferred capital stock, or retire any part of its capital notes or debentures.

(2) No insured Federal depository institution shall convert into an insured State depository institution if its capital stock or its surplus will be less than the capital stock or surplus, respectively, of the converting bank at the time of the shareholder's meeting approving such conversion, without the prior written consent of—

(A) the Comptroller of the Currency if the resulting bank is to be a District bank;

(B) the Board of Governors of the Federal Reserve System if the resulting bank is to be a State member bank (except a District bank); *and*

(C) the Corporation if the resulting bank is to be a State nonmember insured bank (except a District bank); **and**.

[(D) the Director of the Office of Thrift Supervision if the resulting institution is to be an insured State savings association.]

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[(m) ACTIVITIES OF SAVINGS ASSOCIATIONS AND THEIR SUBSIDIARIES.—

[(1) PROCEDURES.—When an insured savings association establishes or acquires a subsidiary or when an insured savings association elects to conduct any new activity through a subsidiary that the insured savings association controls, the insured savings association—

[(A) shall notify the Corporation and the Director of the Office of Thrift Supervision not less than 30 days prior to the establishment, or acquisition, of any such subsidiary, and not less than 30 days prior to the commencement of any such activity, and in either case shall provide at that time such information as each such agency may, by regulation, require; and

[(B) shall conduct the activities of the subsidiary in accordance with regulations and orders of the Director of the Office of Thrift Supervision.

[(2) ENFORCEMENT POWERS.—With respect to any subsidiary of an insured savings association:

[(A) the Corporation and the Director of the Office of Thrift Supervision shall each have, with respect to such subsidiary, the respective powers that each has with respect to the insured savings association pursuant to this section or section 8; and

[(B) the Director of the Office of Thrift Supervision may determine, after notice and opportunity for hearing, that the continuation by the insured savings association of its ownership or control of, or its relationship to, the subsidiary—

[(i) constitutes a serious risk to the safety, soundness, or stability of the insured savings association, or

[(ii) is inconsistent with sound banking principles or with the purposes of this Act.

Upon making any such determination, the Corporation or the Director of the Office of Thrift Supervision shall have authority to order the insured savings association to divest itself of control of the subsidiary. The Director of the Office of Thrift Supervision may take any other corrective meas-

ures with respect to the subsidiary, including the authority to require the subsidiary to terminate the activities or operations posing such risks, as the Director may deem appropriate.

[(3) ACTIVITIES INCOMPATIBLE WITH DEPOSIT INSURANCE.—

[(A) IN GENERAL.—The Corporation may determine by regulation or order that any specific activity poses a serious threat to the Savings Association Insurance Fund. Prior to adopting any such regulation, the Corporation shall consult with the Director of the Office of Thrift Supervision and shall provide appropriate State supervisors the opportunity to comment thereon, and the Corporation shall specifically take such comments into consideration. Any such regulation shall be issued in accordance with section 553 of title 5, United States Code. If the Board of Directors makes such a determination with respect to an activity, the Corporation shall have authority to order that no Savings Association Insurance Fund member may engage in the activity directly.

[(B) AUTHORITY OF DIRECTOR.—This section does not limit the authority of the Office of Thrift Supervision to issue regulations to promote safety and soundness or to enforce compliance with other applicable laws.

[(C) ADDITIONAL AUTHORITY OF FDIC TO PREVENT SERIOUS RISKS TO INSURANCE FUND.—Notwithstanding subparagraph (A), the Corporation may prescribe and enforce such regulations and issue such orders as the Corporation determines to be necessary to prevent actions or practices of savings associations that pose a serious threat to the Savings Association Insurance Fund or the Bank Insurance Fund.

[(4) “SUBSIDIARY” DEFINED.—As used in this subsection, the term “subsidiary” does not include an insured depository institution.

[(5) APPLICABILITY TO CERTAIN SAVINGS BANKS.—Subparagraphs (A) and (B) of paragraph (1) of this subsection do not apply to—

[(A) any Federal savings bank that was chartered prior to October 15, 1982, as a savings bank under State law, or

[(B) a savings association that acquired its principal assets from an institution that was chartered prior to October 15, 1982, as a savings bank under State law.]

* * * * *

(t) *BANKING PRODUCTS DEFINITION.*—

(1) *DEFINITION.*—The term “banking product”, as used in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934, means—

(A) a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank;

(B) a banker’s acceptance;

(C) a letter of credit issued by a bank;

(D) a debit account at a bank arising from a credit card or similar arrangement;

(E) a loan or loan participation issued in the ordinary course of bank business, including any debt security issued in connection with sovereign debt restructuring which a bank purchases and sells pursuant to such bank's lending authority;

(F) a qualified financial contract (as defined in or determined pursuant to section 11(e)(8)(D)(i)), except that such term does not include—

(i) any securities contract (as defined in section 11(e)(8)(D)(ii)) that is based on or directly relates to a security that section 5136 of the Revised Statutes of the United States does not expressly authorize a national bank to underwrite or deal in, unless the appropriate Federal banking agency determines that such securities contract is appropriate for a bank to underwrite or deal in, taking into account other qualified financial contracts which a bank is permitted to underwrite or deal in; and

(ii) any agreement, contract, or transaction that the Corporation determines (in a regulation prescribed after the date of the enactment of the Financial Services Competition Act of 1997) to be a qualified financial contract, unless the appropriate Federal banking agency determines that such agreement, contract, or transaction shall be treated as a qualified financial contract for purposes of this subsection;

(G) notwithstanding subparagraph (F), swap agreements (as defined in or pursuant to section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act) including credit swaps and equity swaps, unless the appropriate Federal banking agency determines that credit swaps and equity swaps shall not be included in the definition of such term; and

(H) any other product that is available in the course of a banking business if the Board of Governors of the Federal Reserve System, after consultation with the Securities and Exchange Commission, determines by order or regulation—

(i) that the product is more appropriately regulated as a banking product; and

(ii) that regulation of the product as a banking product is consistent with the maintenance of fair and orderly markets and the protection of investors.

(2) **SECURITIZATION.**—Paragraph (1) does not authorize any agency to exempt from the requirements of paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934 securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations.

(3) **EXEMPTION LIMITED.**—Exemption of a particular product as a banking product pursuant to this subsection shall not be construed as finding or implying that such product is or is not a security for any purpose other than defining the term “banking product” in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934.

* * * * *

SEC. 22. NONDISCRIMINATION.

[It is not] (a) *IN GENERAL.*—*It is not the purpose of this Act to discriminate in any manner against State nonmember banks [or State savings associations and in favor of national or member banks or Federal savings associations, respectively] and in favor of national or member banks. It is the purpose of this Act to provide all banks [and savings associations] with the same opportunity to obtain and enjoy the benefits of this Act.*

(b) *PROGRAMS FOR PROMOTING HOUSING FINANCE.*—

(1) *FINDINGS.*—*The Congress finds that it is in the national interest to protect and promote housing finance in the process of converting savings associations to banks and eliminating the separate Federal regulation of savings associations.*

(2) *PROGRAMS REQUIRED.*—*In furtherance of paragraph (1), each appropriate Federal banking agency shall—*

(A) *develop and implement a program designed to—*

(i) *facilitate the conversion of savings associations to banks and the treatment of State savings associations as State banks; and*

(ii) *promote housing finance by assuring that insured depository institutions may, at their own election, specialize in acquisition, development, residential mortgage finance, and residential mortgage and housing production lending; and*

(B) *develop guidelines and procedures for assuring that insured depository institutions are not subject to supervisory criticism or sanction for prudently concentrating in acquisition, development, residential mortgage finance, and residential mortgage and housing production lending.*

* * * * *

SEC. 24. ACTIVITIES OF INSURED STATE BANKS.

(a) * * *

* * * * *

(d) **SUBSIDIARIES OF INSURED STATE BANKS.**—

(1) * * *

* * * * *

(3) **CONDITIONS ON CERTAIN ACTIVITIES.**—

(A) *IN GENERAL.*—*Subject to the approval of the appropriate Federal banking agency, a subsidiary of a State bank may engage in an activity in which a subsidiary of a national bank may engage as principal pursuant to subsection (a)(1) of section 5136A of the Revised Statutes of the United States but only if the State bank meets the same requirements which are applicable to national banks under subparagraphs (B) and (C) of such subsection and subsections (b) and (c) of such section.*

(B) *APPLICATION OF SECTION 5136A OF REVISED STATUTES.*—*For purposes of applying section 5136A of the Revised Statutes of the United States with regard to the activities of a subsidiary of a State bank, all references in such section to the Comptroller of the Currency, or regulations and orders of the Comptroller, shall be deemed to be*

references to the appropriate Federal banking agency with respect to such State bank, and regulations and orders of such agency.

(4) STATE BANKS WHICH FAIL TO COMPLY WITH PARAGRAPH (3) CONDITIONS.—

(A) IN GENERAL.—If the appropriate Federal banking agency determines that a State bank that controls a subsidiary which is engaged as principal in financial activities pursuant to paragraph (3) does not meet the requirements of subparagraph (A) of such paragraph, the appropriate Federal banking agency shall give notice to the bank to that effect, describing the conditions giving rise to the notice.

(A) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—

(i) CONTENT OF AGREEMENT.—Within 45 days of the receipt by a bank of a notice given under paragraph (1) (or such additional period as the appropriate Federal banking agency for such bank may permit), the bank failing to meet the requirements of paragraph (3)(A) shall execute an agreement with the appropriate Federal banking agency for such bank to correct the conditions described in the notice.

(B) AGENCY MAY IMPOSE LIMITATIONS.—Until the conditions giving rise to the notice are corrected, the appropriate Federal banking agency for the State bank may impose such limitations on the conduct of the business of the bank or a subsidiary of the bank as the agency determines to be appropriate under the circumstances.

(C) FAILURE TO CORRECT.—If the conditions described in the notice are not corrected within 180 days after the bank receives the notice, the appropriate Federal banking agency for the State may require, under such terms and conditions as may be imposed by such agency and subject to such extensions of time as may be granted in the discretion of the agency—

(i) the bank to divest control of each subsidiary engaged in an activity as principal that is not permissible for the bank to engage in directly; or

(ii) each subsidiary of the bank to cease any activity as principal that is not permissible for the bank to engage in directly.

* * * * *

[SEC. 28. ACTIVITIES OF SAVINGS ASSOCIATIONS.

[(a) IN GENERAL.—On and after January 1, 1990, a savings association chartered under State law may not engage as principal in any type of activity, or in any activity in an amount, that is not permissible for a Federal savings association unless—

[(1) the Corporation has determined that the activity would pose no significant risk to the affected deposit insurance fund; and

[(2) the savings association is and continues to be in compliance with the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act.

[(b) DIFFERENCES OF MAGNITUDE BETWEEN STATE AND FEDERAL POWERS.—Notwithstanding subsection (a)(1), if an activity (other than an activity described in section 5(c)(2)(B) of the Home Owners' Loan Act) is permissible for a Federal savings association, a savings association chartered under State law may engage as principal in that activity in an amount greater than the amount permissible for a Federal savings association if—

[(1) the Corporation has not determined that engaging in that amount of the activity poses any significant risk to the affected deposit insurance fund; and

[(2) the savings association chartered under State law is and continues to be in compliance with the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act.

[(c) EQUITY INVESTMENTS BY STATE SAVINGS ASSOCIATIONS.—

[(1) IN GENERAL.—Notwithstanding subsections (a) and (b), a savings association chartered under State law may not directly acquire or retain any equity investment of a type or in an amount that is not permissible for a Federal savings association.

[(2) EXCEPTION FOR SERVICE CORPORATIONS.—Paragraph (1) does not prohibit a savings association from acquiring or retaining shares of one or more service corporations if—

[(A) the Corporation has determined that no significant risk to the affected deposit insurance fund is posed by—

[(i) the amount that the association proposes to acquire or retain; or

[(ii) the activities in which the service corporation engages; and

[(B) the savings association is and continues to be in compliance with the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act.

[(3) TRANSITION RULE.—

[(A) IN GENERAL.—The Corporation shall require any savings association to divest any equity investment the retention of which is not permissible under paragraph (1) or (2) as quickly as can be prudently done, and in any event not later than July 1, 1994.

[(B) TREATMENT OF NONCOMPLIANCE DURING DIVESTMENT.—With respect to any equity investment held by any savings association on May 1, 1989, the savings association shall be deemed not to be in violation of the prohibition in paragraph (1) or (2) on retaining such investment so long as the savings association complies with any applicable requirement established by the Corporation pursuant to subparagraph (A) for divesting such investments.

[(d) CORPORATE DEBT SECURITIES NOT OF INVESTMENT GRADE.—

[(1) IN GENERAL.—No savings association may, directly or through a subsidiary, acquire or retain any corporate debt security not of investment grade.

[(2) EXCEPTION FOR SECURITIES HELD BY QUALIFIED AFFILIATE.—Paragraph (1) shall not apply with respect to any corporate debt security not of investment grade which is acquired and retained by any qualified affiliate of a savings association.

[(3) TRANSITION RULE.—

[(A) IN GENERAL.—The Corporation shall require any savings association or any subsidiary of any savings association to divest any corporate debt security not of investment grade the retention of which is not permissible under paragraph (1) as quickly as can be prudently done, and in any event not later than July 1, 1994.

[(B) TREATMENT OF NONCOMPLIANCE DURING DIVESTMENT.—With respect to any corporate debt security not of investment grade held by any savings association or subsidiary on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the savings association or subsidiary shall be deemed not to be in violation of the prohibition in paragraph (1) on retaining such investment so long as the association or subsidiary complies with any applicable requirement established by the Corporation pursuant to subparagraph (A) for divesting such securities.

[(4) DEFINITIONS.—For purposes of this section—

[(A) INVESTMENT GRADE.—Any corporate debt security is not of “investment grade” unless that security, when acquired by the savings association or subsidiary, was rated in one of the 4 highest rating categories by at least one nationally recognized statistical rating organization.

[(B) QUALIFIED AFFILIATE.—The term “qualified affiliate” means—

[(i) in the case of a stock savings association, an affiliate other than a subsidiary or an insured depository institution; and

[(ii) in the case of a mutual savings association, a subsidiary other than an insured depository institution, so long as all of the savings association’s investments in and extensions of credit to the subsidiary are deducted from the savings association’s capital.

[(C) CERTAIN SECURITIES NOT INCLUDED.—The term “corporate debt security not of investment grade” does not include any obligation issued or guaranteed by a corporation that may be held by a Federal savings association without limitation as to percentage of assets under subparagraph (D), (E), or (F) of section 5(c)(1) of the Home Owners’ Loan Act.

[(e) TRANSFER OF CORPORATE DEBT SECURITY NOT OF INVESTMENT GRADE IN EXCHANGE FOR A QUALIFIED NOTE.—

[(1) ACQUISITION OF NOTE.—Notwithstanding subsections (a), (b), and (c) of section 5 of the Home Owners’ Loan Act and any other provision of Federal or State law governing extensions of credit by savings associations, any insured savings association, and any subsidiary of any insured savings association, that, on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, holds any corporate debt security not of investment grade may acquire a qualified note in exchange for the transfer of such security to—

[(A) any holding company which controls 80 percent or more of the shares of such insured savings association; or

[(B) any company other than an insured savings association, or any subsidiary of any insured savings association, 80 percent or more of the shares of which are controlled by such holding company,
if the conditions of paragraph (2) are met.

[(2) CONDITIONS FOR EXCHANGE OF SECURITY FOR QUALIFIED NOTE.—The conditions of this paragraph are met if—

[(A) the insured savings association was in compliance with applicable capital requirements on December 31, 1988, and the insured savings association after such date—

[(i) remains in compliance with applicable capital requirements; or

[(ii) adopts and complies with a capital plan acceptable to the Director of the Office of Thrift Supervision;

[(B) the company to which the corporate debt security not of investment grade is transferred is not a bank holding company, an insured savings association, or a direct or indirect subsidiary of such holding company or insured savings association;

[(C) before the end of the 90-day period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the insured savings association notifies the Director of the Office of Thrift Supervision of such association's intention to transfer the corporate debt security not of investment grade to the savings and loan holding company or the subsidiary of such holding company;

[(D) the transfer of the corporate debt security not of investment grade is completed—

[(i) before the end of the 1-year period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, in the case of an insured savings association that, as of such date, is controlled by a savings and loan holding company; or

[(ii) before the end of the 2-year period beginning on such date, in the case of a savings association that is not, as of such date, a subsidiary of a savings and loan holding company;

[(E) the insured savings association receives in exchange for the corporate debt security not of investment grade the fair market value of such security;

[(F) the Director of the Office of Thrift Supervision has—

[(i) approved the transaction; and

[(ii) determined that the transfer represents a complete and effective divestiture of the corporate debt security not of investment grade and is in compliance with the provisions of this subsection; and

[(G) any gain on the sale of the corporate debt security not of investment grade is recognized, and included for applicable regulatory capital requirements, by the insured savings association only at such time and to the extent

that the insured savings association receives payment of principal on the note in cash in excess of the fair market value of the transferred corporate debt security not of investment grade as carried on the accounts of the insured savings association immediately prior to the transfer.

[(3) QUALIFIED NOTE DEFINED.—The term “qualified note” means any note that—

[(A) is at all times fully secured by the corporate debt security note of investment grade transferred in exchange for the note, or by other collateral of at least equivalent value that is acceptable to the Director of the Office of Thrift Supervision;

[(B) contains provisions acceptable to the Director of the Office of Thrift Supervision that would—

[(i) prevent any action to encumber or impair the value of the collateral referred to in subparagraph (A); and

[(ii) allow the sale of the corporate debt security not of investment grade if the proceeds of the sale are re-invested in assets of equivalent value;

[(C) is on market terms, including interest rate, which must in all cases be above the insured savings association’s borrowing rate for similar term funds;

[(D) is fully repayable over a period of time not to exceed 5 years from the date of transfer;

[(E) is repaid with annual principal payments at least as large as would be necessary to repay the note within 5 years if it were on a level payment amortization schedule and the interest rate for the first year of repayment were fixed throughout the amortization period;

[(F) is fully guaranteed by each holding company of the insured savings association that acquires such note; and

[(G) is repaid in full in cash in accordance with its terms and this subsection.

[(4) FAILURE TO REPAY ON SCHEDULE.—The exemption provided by this subsection from subsections (a), (b), and (c) of section 11 of the Home Owners’ Loan Act and any other applicable provision of Federal or State law shall terminate immediately if the insured savings association or any affiliate of such association fails to comply with the terms of the qualified note or this subsection.

[(f) DETERMINATIONS.—The Corporation shall make determinations under this section by regulation or order.

[(g) ACTIVITY DEFINED.—For purposes of subsections (a) and (b)—

[(1) IN GENERAL.—The term “activity” includes acquiring or retaining any investment.

[(2) DIVESTITURE OF CERTAIN ASSETS.—Notwithstanding paragraph (1), subsections (a) and (b) shall not be construed to require a savings association to divest itself of any assets acquired before the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

[(h) OTHER AUTHORITY NOT AFFECTED.—This section may not be construed as limiting—

[(1) any other authority of the Corporation; or
 [(2) any authority of the Director of the Office of Thrift Supervision or of a State to impose more stringent restrictions.]

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SEC. 33. DEPOSITORY INSTITUTION EMPLOYEE PROTECTION REMEDY.

(a) * * *

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(e) FEDERAL BANKING AGENCY DEFINED.—For purposes of subsections (a) and (c), the term “Federal banking agency” means the Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Board, *and* the Comptroller of the Currency[, and the Director of the Office of Thrift Supervision].

* * * * *

SEC. 38. PROMPT CORRECTIVE ACTION.

(a) * * *

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[(o) TRANSITION RULES FOR SAVINGS ASSOCIATIONS.—

[(1) RTC’S ROLE DOES NOT DIMINISH CARE REQUIRED OF OTS.—

[(A) IN GENERAL.—In implementing this section, the appropriate Federal banking agency (and, to the extent applicable, the Corporation) shall exercise the same care as if the Savings Association Insurance Fund (rather than the Resolution Trust Corporation) bore the cost of resolving the problems of insured savings associations described in clauses (i) and (ii)(II) of section 21A(b)(3)(A) of the Federal Home Loan Bank Act.

[(B) REPORTS.—Subparagraph (A) does not require reports under subsection (k).

[(2) ADDITIONAL FLEXIBILITY FOR CERTAIN SAVINGS ASSOCIATIONS.—Subsections (e)(2), (f), and (h) shall not apply before July 1, 1994, to any insured savings association if—

[(A) before the date of enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991—

[(i) the savings association had submitted a plan meeting the requirements of section 5(t)(6)(A)(ii) of the Home Owners’ Loan Act; and

[(ii) the Director of the Office of Thrift Supervision had accepted the plan;

[(B) the plan remains in effect; and

[(C) the savings association remains in compliance with the plan or is operating under a written agreement with the appropriate Federal banking agency.]

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SEC. 42. NOTICE OF BRANCH CLOSURE.

(a) * * *

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(d) BRANCH CLOSURES IN INTERSTATE BANKING OR BRANCHING OPERATIONS.—

(1) * * *

* * * * *

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

(A) INTERSTATE BANK DEFINED.—The term “interstate bank” means a bank which maintains branches in more than 1 State and any bank controlled by an out-of-State bank holding company (as defined in section 2(o)(7) of the Bank Holding Company Act of 1956).

* * * * *

SEC. 45. CONSUMER PROTECTION REGULATIONS.

(a) REGULATIONS REQUIRED.—

(1) IN GENERAL.—Each Federal banking agency shall prescribe and publish in final form, not later than 3 months after the effective date of the Financial Services Competition Act of 1997, consumer protection regulations which—

(A) apply to retail sales, solicitations, advertising, or offers of any nondeposit product by any insured depository institution or any person who is engaged in such activities at an office of the institution or on behalf of the institution; and

(B) meet the requirements of this section and provide such additional protections for consumers to whom such sales, solicitations, advertising, or offers are directed as the agency determines to be appropriate.

(2) APPLICABILITY TO SUBSIDIARIES.—The regulations prescribed pursuant to paragraph (1) shall extend such protections to any subsidiaries of an insured depository institution, as deemed appropriate by the regulators referred to in paragraph (3), where such extension is necessary to ensure the consumer protections provided by this section.

(3) CONSULTATION AND JOINT REGULATIONS.—The Federal banking agencies shall consult with each other and prescribe joint regulations pursuant to paragraph (1), after consultation with the Securities and Exchange Commission and the National Association of Insurance Commissioners, as appropriate.

(4) NONDEPOSIT PRODUCT DEFINED.—For purposes of this section, the term “nondeposit product”—

(A) means any investment and insurance product which is not a deposit;

(B) includes shares issued by a registered investment company; and

(C) does not include—

(i) any loan or any other extension of credit by an insured depository institution;

(ii) any letter of credit;

(iii) trust services;

(iv) discount; or

(v) any other instrument or insurance or investment product specifically excluded from the definition of such term by regulations prescribed jointly by the Federal banking agencies, to the extent necessary to carry out the purpose of this Act.

(b) *SALES PRACTICES.*—The regulations prescribed pursuant to subsection (a) shall include the following provisions relating to sales practices in connection with the sale of nondeposit products:

(1) *ANTICOERCION RULES.*—

(A) *IN GENERAL.*—Anticoercion rules prohibiting an insured depository institution from engaging in any practice that would lead a consumer to believe an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970, is conditional upon—

(i) the purchase of a nondeposit product from the institution or any of its affiliates or subsidiaries; or

(ii) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, a nondeposit product from an unaffiliated entity.

(B) *APPLICABILITY TO SUBSIDIARIES.*—Regulations prescribed under subparagraph (A) shall apply to subsidiaries of insured depository institutions if the regulators determine such application is necessary to prevent coercive activities.

(2) *SUITABILITY OF PRODUCT.*—

(A) *IN GENERAL.*—Standards to ensure that an investment product sold to a consumer is suitable and any other nondeposit product is appropriate for the consumer based on financial information disclosed by the consumer.

(B) *RULES OF FAIR PRACTICE.*—In prescribing the standards under subparagraph (A) with respect to the sale of investments, the Federal banking agencies shall take into account the Rules of Fair Practice of the National Association of Securities Dealers.

(c) *DISCLOSURES AND ADVERTISING.*—The regulations prescribed pursuant to subsection (a) shall include the following provisions relating to disclosures and advertising at the time the consumer opens an account for the purchase of any nondeposit product or in connection with the initial purchase of a nondeposit product:

(1) *DISCLOSURES.*—

(A) *IN GENERAL.*—Requirements that the following disclosures be made orally and in writing before the completion of the initial sale and, in the case of clause (iv), at the time of application for an extension of credit:

(i) *UNINSURED STATUS.*—The product is not insured by the Federal Deposit Insurance Corporation, or the United States Government as appropriate.

(ii) *INSURANCE PRODUCT.*—In the case of an insurance product, the product is not guaranteed by an insured depository institution.

(iii) *INVESTMENT RISK.*—In the case of an investment product, there is an investment risk associated with the product, including possible loss of principal.

(iv) *COERCION.*—The approval of an extension of credit may not be conditioned on—

(I) the purchase of a nondeposit product from the institution in which the application for credit is pending or any of its affiliates or subsidiaries; or

(II) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, a nondeposit product from an unaffiliated entity.

(B) **MAKING DISCLOSURE READILY UNDERSTANDABLE.**—Regulations prescribed under subparagraph (A) shall encourage the use of disclosure that is conspicuous, simple, direct, and readily understandable such as the following:

- (i) “NOT FDIC-INSURED”.
- (ii) “NOT GUARANTEED BY THE BANK”.
- (iii) “MAY GO DOWN IN VALUE”.

(C) **ADJUSTMENTS FOR ALTERNATIVE METHODS OF PURCHASE.**—In prescribing the requirements under subparagraphs (A) and (D), necessary adjustments shall be made for purchase in person, by telephone or by electronic media to provide for the most appropriate and complete form of disclosure and acknowledgements.

(D) **CONSUMER ACKNOWLEDGEMENT.**—

(i) **IN GENERAL.**—A requirement that an insured depository institution shall require any person selling a nondeposit product at any office of, or on behalf of, the institution to obtain, at the time a consumer receives the disclosures required under subsection (c)(1) or at the time of the initial purchase by the consumer of such product, a separate statement, signed and dated by the consumer, which contains the declaration that the purchaser has received the disclosure required under this subsection with respect to such product.

(ii) **APPLICATION TO SUBSIDIARIES.**—If the regulations require subsidiaries of insured depository institutions to make the disclosures under this section, the regulations shall require that these subsidiaries obtain the consumer acknowledgement provided for in this subparagraph.

(2) **PROHIBITION ON MISREPRESENTATIONS.**—

(A) **INSURANCE.**—A prohibition on any practice, or any advertising, at any office of, or on behalf of, the insured depository institution, or any subsidiary as appropriate, which could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to—

(i) the uninsured nature of any nondeposit product sold, or offered for sale by the institution or any subsidiary of the institution; or

(ii) the investment risk associated with any such product.

(B) **SECURITIES.**—With regard to securities, a prohibition on any practice, or any advertising, at any office of the insured depository institution, or any subsidiary as appropriate, which could violate section 10(b) of the Securities Exchange Act of 1934.

(d) **SEPARATION OF BANKING AND NONBANKING ACTIVITIES.**—

(1) **REGULATIONS REQUIRED.**—The regulations prescribed pursuant to subsection (a) shall include such provisions as the Federal banking agencies consider appropriate to ensure that the

routine acceptance of deposits is kept, to the extent practicable, physically segregated from nondeposit product activity.

(2) *MINIMUM REQUIREMENTS.—Regulations prescribed pursuant to paragraph (1) shall include, at a minimum, the following requirements:*

(A) *SEPARATE SETTING.—A clear delineation of the setting in which, and the circumstances under which, transactions involving nondeposit products may be effected to ensure that such activity is conducted in a location physically segregated from the area where retail deposits are routinely accepted.*

(B) *CERTAIN PERSONS PROHIBITED FROM SELLING NON-DEPOSIT PRODUCTS.—Standards prohibiting any person accepting deposits from the public in an area where deposits are routinely taken in an insured depository institution from selling or offering to sell, or offering an opinion or investment advice on, any nondeposit product.*

(C) *REFERRALS.—The regulations shall include standards which permit any such person to refer a customer who seeks to purchase, or seeks an opinion or investment advice on, any nondeposit product to a qualified person who sells or provides opinions or investment advice on such product, only if the person making the referral receives no more than a one-time nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.*

(D) *QUALIFICATION REQUIREMENTS AND TRAINING.—Standards prohibiting any insured depository institution from permitting any person to sell or offer for sale, or provide an opinion or investment advice about, any nondeposit product in any part of any office of the institution, or on behalf of the institution, unless such person—*

(i) is registered with a self-regulatory organization or the Securities and Exchange Commission, as appropriate, as a broker or dealer, as a representative of a broker or dealer, or as an investment adviser; or

(ii) meets qualification and training requirements which the Federal banking agencies jointly determine are equivalent to the training and qualification requirements applicable to a person who is registered with a self-regulatory organization or the Commission as a broker or dealer, as a representative of a broker or dealer, or as an investment adviser, as the case may be; or

(iii) in the case of insurance sales, is appropriately qualified.

(E) *COMPENSATION PROGRAMS.—Standards to ensure that compensation programs are not structured in such a way as to provide incentives for the sales of nondeposit products that are not suitable or appropriate for the consumer.*

(e) *CONSUMER GRIEVANCE PROCESS.—The Federal banking agencies shall jointly establish a consumer complaint mechanism, for receiving and addressing expeditiously meritorious consumer com-*

plaints alleging a violation of regulations issued under the section, which shall—

- (1) establish a group within each regulatory agency to receive such complaints;
- (2) develop procedures for investigating such complaints;
- (3) develop procedures for informing consumers of rights they may have in connection with such complaints; and
- (4) develop procedures for addressing concerns raised by such complaints, as appropriate.

(f) **NO EFFECT ON OTHER AUTHORITY.**—

(1) **IN GENERAL.**—No provision of this section shall be construed as granting, limiting, or otherwise affecting—

(A) any authority of the Securities and Exchange Commission, any self-regulatory organization, the Municipal Securities Rulemaking Board, or the Secretary of the Treasury under any Federal securities law;

(B) any authority of any State insurance commissioner or other State authority under any State insurance law; or

(C) the applicability of any Federal securities law or any State securities or insurance law, or any regulation prescribed by the Commission, any self-regulatory organization, the Municipal Securities Rulemaking Board, the Secretary of the Treasury, or any State insurance commissioner or other State authority pursuant to any such law, to any person.

(2) **DEFINITIONS.**—For purposes of this subsection, the following definitions shall apply:

(A) **FEDERAL SECURITIES LAW.**—The term “Federal securities law” has the meaning given to the term “securities laws” in section 3(a)(47) of the Securities Exchange Act of 1934.

(B) **SELF-REGULATORY ORGANIZATION.**—The term “self-regulatory organization” has the meaning given to such term in section 3(a)(26) of the Securities Exchange Act of 1934.

SEC. 46. OBLIGATIONS OF SUBSIDIARIES AND AFFILIATES CANNOT BE EXTENDED TO INSURED DEPOSITORY INSTITUTIONS.

(a) **IN GENERAL.**—Notwithstanding any other law (including any law relating to insurance), no obligation of an affiliate or subsidiary of an insured depository institution arising more than 270 days after the date of enactment of the Financial Services Competition Act of 1997 may be charged against such insured depository institution by reason of any ruling, determination, or judgment disregarding the separate corporate identity or limited liability of the insured depository institution or the affiliate or subsidiary.

(b) **MAINTENANCE OF SEPARATE CORPORATE IDENTITY AND SEPARATE LEGAL STATUS.**—

(1) **IN GENERAL.**—The appropriate Federal banking agency shall take steps, including conducting the review required by paragraph (2), to assure that each insured depository institution observes the separate corporate identity and separate legal status of each of the institutions’ subsidiaries and affiliates.

(2) **EXAMINATIONS.**—Each appropriate Federal banking agency, when examining an insured depository institution, shall re-

view whether the institution is observing the separate corporate identity and separate legal status of the institution's subsidiaries and affiliates.

(c) MISREPRESENTATIONS REGARDING DEPOSITORY INSTITUTION LIABILITY PROHIBITED.—

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

(2) CRIMINAL PENALTY.—Whoever violates paragraph (1) shall be fined not more than \$100,000, imprisoned for not more than 1 year, or both.

(3) INSTITUTION-AFFILIATED PARTY DEFINED.—For purposes of this subsection, the term “institution-affiliated party” with respect to a subsidiary or affiliate has the same meaning as in section 3 except references to an insured depository institution shall be deemed to be references to a subsidiary or affiliate of an insured depository institution.

(d) RULE OF CONSTRUCTION.—This section shall not be construed as—

(1) excusing an insured depository institution from—

(A) any liability that it has expressly and lawfully assumed; or

(B) any liability to which it would be otherwise subject for engaging or participating in any violation of law or any breach of contract;

(2) limiting the authority of the Corporation under section 5(e);

(3) permitting any obligation to be charged against an insured depository institution that would not otherwise be charged against the institution; or

(4) prohibiting joint or cooperative marketing, information sharing, or the purchase or sale of services among affiliates.

BANK HOLDING COMPANY ACT AMENDMENTS OF 1970

* * * * *

TITLE I—BANK HOLDING COMPANIES

* * * * *

SEC. 105. With respect to any proceeding before the Federal Reserve Board wherein an applicant seeks authority to acquire a subsidiary which is a bank under section 3 of the Bank Holding Company Act of 1956¹, to engage directly or indirectly in a nonbanking activity pursuant to section 4 of such Act,² or to engage in an activity otherwise prohibited under section 106 of this Act, a party who would become a competitor of the applicant or subsidiary thereof by virtue of the applicant's or its subsidiary's acquisition, entry into the business involved, or activity, shall have the right to be a party in interest in the proceeding and, in the event of an adverse order of the Board, shall have the right as an aggrieved party to obtain judicial review thereof as provided in section 9 of such Act of 1956 or as otherwise provided by law.

SEC. 106. (a) As used in this section, the terms “bank”, “bank holding company”, “subsidiary”, and “Board” have the meaning ascribed to such terms in section 2 of the Bank Holding Company Act of 1956. For purposes of this section only, the term “company”, as used in section 2 of the Bank Holding Company Act of 1956, means any person, estate, trust, partnership, corporation, association, or similar organization, but does not include any corporation the majority of the shares of which are owned by the United States or by any State. The term “trust service” means any service customarily performed by a bank trust department. *For purposes of this section, a financial subsidiary (as defined in section 5136A(a)(4)(A) of the Revised Statutes of the United States or referenced in the 20th undesignated paragraph of section 9 of the Federal Reserve Act or section 24(d)(3)(A) of the Federal Deposit Insurance Act) shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank.*

* * * * *

SECTION 4 OF THE BANK SERVICE COMPANY ACT

* * * * *

PERMISSIBLE BANK SERVICE COMPANY ACTIVITIES FOR OTHER PERSONS

SEC. 4. (a) * * *

* * * * *

(f) Notwithstanding the other provisions of this section or any other provision of law, other than the provisions of Federal and State branching law regulating the geographic location of banks to the extent that those laws are applicable to an activity authorized by this subsection, a bank service company may perform at any geographic location any service, other than deposit taking, that the Board has determined, by regulation, to be permissible for a bank holding company under section 4(c)(8) of the Bank Holding Company Act^[.] (as in effect on the day before the date of enactment of the *Financial Services Competition Act of 1997*).

INTERNATIONAL BANKING ACT OF 1978

* * * * *

NONBANKING ACTIVITIES

SEC. 8. (a) * * *

* * * * *

(c)(1) * * *

* * * * *

(3) **TERMINATION OF GRANDFATHERED RIGHTS.**—

(A) **IN GENERAL.**—*If any foreign bank or foreign company files a declaration under section 6(a)(1)(F) of the Bank Holding Company Act of 1956 or receives a determination from the Board under section 6(l)(6) of such Act, any authority conferred*

by this subsection on any foreign bank or company to engage in any financial activity (as defined in section 6(a)(3) of such Act) shall terminate immediately.

(B) *RESTRICTIONS AND REQUIREMENTS AUTHORIZED.*—If a foreign bank or company that engages, directly or through an affiliate pursuant to paragraph (1), in a financial activity (as defined in section 6(a)(3) of the Bank Holding Company Act of 1956) has not filed a declaration with the Board of its status as a qualifying bank holding company under section 6(a) of the Bank Holding Company Act of 1956 by the end of the second year after the date of enactment of the Financial Services Competition Act of 1997, the Board, giving due regard to the principle of national treatment and equality of competitive opportunity, may impose such restrictions and requirements on the conduct of such activities by such foreign bank or company as are comparable to those imposed on a qualifying bank holding company organized under the laws of the United States, including a requirement to conduct such activities in compliance with the safeguards of section 6 of the Bank Holding Company Act of 1956 and any additional safeguards imposed by the National Council on Financial Services.

(d) Nothing in this section shall be construed to define a branch or agency of a foreign bank or a commercial lending company controlled by a foreign bank or foreign company that controls a foreign bank as a “bank” for the purposes of any provisions of the Bank Holding Company Act of 1956, or section 105 of the Bank Holding Company Act Amendments of 1970, except that any such branch, agency or commercial lending company subsidiary shall be deemed a “bank” or “banking subsidiary”, as the case may be, for the purposes of applying the prohibitions of section 106 of the Bank Holding Company Act Amendments of 1970 [and the exemptions provided in sections 4(c)(1), 4(c)(2), 4(c)(3), and 4(c)(4) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c) (1), (2), (3), and (4))] to any foreign bank or other company to which subsection (a) applies.

* * * * *

SEC. 15. COOPERATION WITH FOREIGN SUPERVISORS.

(a) *DISCLOSURE OF SUPERVISORY INFORMATION TO FOREIGN SUPERVISORS.*—Notwithstanding any other provision of law, the Board, Comptroller of the Currency, [Federal Deposit Insurance Corporation, and Director of the Office of Thrift Supervision] and Federal Deposit Insurance Corporation may disclose information obtained in the course of exercising supervisory or examination authority to any foreign bank regulatory or supervisory authority if the Board, Comptroller, Corporation, or Director determines that such disclosure is appropriate and will not prejudice the interests of the United States.

(b) *REQUIREMENT OF CONFIDENTIALITY.*—Before making any disclosure of any information to a foreign authority, the Board, Comptroller of the Currency, [Federal Deposit Insurance Corporation, and Director of the Office of Thrift Supervision] and Federal Deposit Insurance Corporation shall obtain, to the extent necessary, the agreement of such foreign authority to maintain the confiden-

tiality of such information to the extent possible under applicable law.

* * * * *

SECTION 1101 OF THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978

DEFINITIONS

SEC. 1101. For the purpose of this title, the term—

(1) * * *

* * * * *

(6) “holding company” means—

(A) any bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956); and

(B) any company described in section **[4(f)(1)] 6(f)(1)** of the Bank Holding Company Act of 1956**;** and**].**

[(C) any savings and loan holding company (as defined in the Home Owners’ Loan Act);]

(7) “supervisory agency” means with respect to any particular financial institution, holding company, or any subsidiary of a financial institution or holding company, any of the following which has statutory authority to examine the financial condition, business operations, or records or transactions of that institution, holding company, or subsidiary—

(A) the Federal Deposit Insurance Corporation;

[(B) Director, Office of Thrift Supervision;]

[(C)] (B) the National Credit Union Administration;

[(D)] (C) the Board of Governors of the Federal Reserve System;

[(E)] (D) the Comptroller of the Currency;

[(F)] (E) the Securities and Exchange Commission;

[(G)] (F) the Secretary of the Treasury, with respect to the Bank Secrecy Act and the Currency and Foreign Transactions Reporting Act (Public Law 91–508, title I and II); or

[(H)] (G) any State banking or securities department or agency: and

* * * * *

SECTION 7A OF THE CLAYTON ACT

SEC. 7A. (a) * * *

* * * * *

(c) The following classes of transactions are exempt from the requirements of this section—

(1) * * *

* * * * *

[(8) transactions which require agency approval under section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) or section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464), if copies of all information and documentary material filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed transaction;]

* * * * *

SECTION 109 OF THE RIEGLE-NEAL INTERSTATE BANKING AND BRANCHING EFFICIENCY ACT OF 1994

SEC. 109. PROHIBITION AGAINST DEPOSIT PRODUCTION OFFICES.

(a) * * *

* * * * *

(d) APPLICATION.—This section shall apply with respect to any interstate branch established or acquired in a host State pursuant to this title, *the Financial Services Competition Act of 1997*, or any amendment made by this title *or such Act* to any other provision of law.

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

(1) * * *

* * * * *

(4) INTERSTATE BRANCH.—The term “interstate branch” means a branch established pursuant to this title or any amendment made by this title to any other provision of law *and any branch of a bank controlled by an out-of-State bank holding company (as defined in section 2(o)(7) of the Bank Holding Company Act of 1956).*

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REVISED STATUTES OF THE UNITED STATES

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TITLE VII

THE DEPARTMENT OF THE TREASURY

* * * * *

CHAPTER NINE

THE COMPTROLLER OF THE CURRENCY

* * * * *

SEC. 324. There shall be in the Department of the Treasury a bureau charged with the execution of all laws passed by Congress relating to the issue and regulation of national currency secured by United States bonds and, under the general supervision of the Federal Reserve Board, of all Federal Reserve notes, except for the cancellation and destruction, and accounting with respect to such cancellation and destruction, of Federal reserve notes unfit for circulation, of notes the chief officer of which bureau shall be called the Comptroller of the Currency and shall perform his duties under the general directions of the Secretary of the Treasury. **[The Comptroller of the Currency shall have the same authority over matters within the jurisdiction of the Comptroller as the Director of the Office of Thrift Supervision has over matters within the Director's jurisdiction under section 3(b)(3) of the Home Owners' Loan Act]** *The Secretary of the Treasury may not intervene in any matter or proceeding before the Comptroller of the Currency (including agency enforcement actions) unless otherwise specifically provided by law.* The Secretary of the Treasury may not delay or prevent the issuance of any rule or the promulgation of any regulation by the Comptroller of the Currency.

* * * * *

TITLE LXII

NATIONAL BANKS

CHAPTER ONE

ORGANIZATION AND POWERS

- Sec.
 5133. Formation of national banking associations.
 5133A. *Mutual national banks.*
 5133B. *Federal mutual bank holding companies.*
 5134. Requisites of organization certificate.
 5135. How certificate shall be acknowledged and filed.
 5136. Corporate powers of associations.
 5136A. *Financial subsidiaries of national banks.*
 5136B. *National wholesale financial institutions.*
[5136A.] 5136C. Participation in lotteries prohibited.
 5137. Power to hold real property.

* * * * *

SEC. 5133A. MUTUAL NATIONAL BANKS.

(a) *IN GENERAL.*—The Comptroller of the Currency may charter national banking associations as mutual national banks, either *de novo* or through the conversion of an insured depository institution, in accordance with this section and such regulations as the Comptroller may prescribe.

(b) *APPLICABLE LAW.*—Unless otherwise provided by this section or by the Comptroller of the Currency because of the mutual form of the institution, a mutual national bank—

(1) shall be subject to the same laws, requirements, duties, and obligations that apply to a national banking association operating in stock form;

(2) shall have the same powers and privileges as, and may engage in the same activities subject to the same restrictions and limitations that apply to, a national banking association operating in stock form; and

(3) shall be supervised and examined by the Comptroller in the same manner and to the same extent as a national banking association operating in stock form.

(c) *CONVERSIONS.*—Subject to any requirements imposed by the Comptroller—

(1) a mutual national bank may convert to, or acquire and retain all or substantially all of the assets and liabilities of, a national banking association operating in stock form; and

(2) a national banking association operating in stock form may convert to a mutual national bank.

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

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

(2) *MUTUAL NATIONAL BANK.*—The term “mutual national bank” means a national banking association that operates in mutual form and is chartered by the Comptroller under this section.

(e) *CONFORMING REFERENCES.*—Unless otherwise provided by the Comptroller—

(1) any reference in any Federal law to a national bank, including a reference to the term “national banking association”, “member bank”, “national bank”, “national association”, “bank”, “insured bank”, “insured depository institution”, or “depository institution”, shall be deemed to refer also to a “mutual national bank”;

(2) any reference in any Federal law to the term “shareholder”, “shareholders”, “stockholder”, or “stockholders” of a national bank shall be deemed to refer also to any member or members of a mutual national bank;

(3) any reference in any Federal law to the term “board of directors”, “director”, or “directors” of a national bank shall be deemed to refer also to the board of trustees, trustee, or trustees, respectively, of a mutual national bank; and

(4) any terms in Federal law that may apply only to a national bank operating in stock form, including the terms “stock”, “shares”, “shares of stock”, “capital stock”, “common

stock, “*stock certificate*”, “*stock certificates*”, “*certificate representing shares of stock*”, “*stock dividend*”, “*transferable stock*”, “*each class of stock*”, “*cumulate such shares*”, “*par value*”, “*preferred stock*”, “*body corporate*”, “*corporation*”, “*corporate powers*”, “*incorporated*”, “*articles of association*”, and “*corporate existence*”, shall not apply to a mutual national bank, unless the Comptroller determines that the context requires otherwise.

SEC. 5133B. FEDERAL MUTUAL BANK HOLDING COMPANIES.

(a) *REORGANIZATION OF MUTUAL NATIONAL BANK AS A HOLDING COMPANY.*—

(1) *IN GENERAL.*—Subject to approval under the Bank Holding Company Act of 1956, a mutual national bank may reorganize so as to become a Federal mutual bank holding company by submitting a reorganization plan to the Comptroller of the Currency for the Comptroller’s approval.

(2) *PLAN APPROVAL.*—Upon the approval of the reorganization plan by the Comptroller of the Currency and the issuance of the appropriate charters—

(A) *the substantial part of the mutual national bank’s assets and liabilities, including all of the bank’s insured liabilities, shall be transferred to a national banking association, the stock of which is owned (except as otherwise provided by this section) by the mutual national bank; and*

(B) *the mutual national bank shall become a Federal mutual bank holding company.*

(b) *DIRECTORS AND CERTAIN ACCOUNT HOLDERS’ APPROVAL OF PLAN REQUIRED.*—This subsection does not authorize a reorganization unless—

(1) *a majority of the mutual national bank’s board of directors has approved the plan providing for such reorganization; and*

(2) *in the case of a mutual national bank in which holders of accounts and obligors exercise voting rights, a majority of such individuals has approved the plan at a meeting held at the call of the directors under the procedures prescribed by the bank’s charter and bylaws.*

(c) *RETENTION OF CAPITAL.*—In connection with a transaction described in subsection (a), a mutual national bank may, subject to the Comptroller’s approval, retain capital at the holding company level to the extent that the capital retained at the holding company level exceeds the amount of capital required for the national banking association chartered as a part of a transaction described in subsection (a) to meet all relevant capital standards established by the Comptroller for national banking associations.

(d) *OWNERSHIP.*—

(1) *IN GENERAL.*—Persons having ownership rights in the mutual national bank under Federal or State law shall have the same ownership rights with respect to the Federal mutual bank holding company.

(2) *HOLDERS OF CERTAIN ACCOUNTS.*—Holders of savings, demand, or other accounts in the following institutions shall have the same ownership rights with respect to the Federal mutual bank holding company as persons described in paragraph (1):

(A) A national bank chartered as part of a transaction described in subsection (a).

(B) A mutual bank acquired through the merger of the mutual bank into a national bank subsidiary of the holding company or an interim national bank subsidiary of the holding company.

(e) *REGULATION.*—A Federal mutual bank holding company shall be—

(1) chartered by the Comptroller of the Currency and shall be subject to such regulations as the Comptroller shall prescribe; and

(2) regulated under the Bank Holding Company Act of 1956 on the same terms and subject to the same limitations as any other company that controls a bank.

(f) *CAPITAL IMPROVEMENT.*—

(1) *PLEDGE OF STOCK OF NATIONAL BANK SUBSIDIARY.*—This section shall not prohibit a Federal mutual bank holding company from pledging all or a portion of the stock of a national banking association chartered as part of a transaction described in subsection (a) to raise capital for such bank.

(2) *ISSUANCE OF NONVOTING SHARES.*—This section shall not prohibit a national banking association chartered as part of a transaction described in subsection (a) from issuing any nonvoting shares, or less than 50 percent of the voting shares of such bank, to any person other than the Federal mutual bank holding company.

(g) *INSOLVENCY AND LIQUIDATION.*—

(1) *IN GENERAL.*—Notwithstanding any other provision of law, the Comptroller of the Currency may file a petition under chapter 7 of title 11, United States Code, with respect to a Federal mutual bank holding company upon—

(A) the default of any national bank—

(i) the stock of which is owned by the Federal mutual bank holding company; and

(ii) that was chartered in a transaction described in subsection (a); or

(B) a foreclosure on a pledge by the Federal mutual bank holding company described in subsection (f)(1).

(2) *DISTRIBUTION OF NET PROCEEDS.*—Except as provided in paragraph (3), the net proceeds of any liquidation of any Federal mutual bank holding company under paragraph (1) shall be transferred to persons who hold ownership interests in such Federal mutual bank holding company.

(3) *RECOVERY BY FDIC.*—If the Federal Deposit Insurance Corporation incurs a loss as a result of the default of any insured bank subsidiary of a Federal mutual bank holding company that is liquidated under paragraph (1), the Federal Deposit Insurance Corporation shall succeed to the ownership interests of the depositors of the bank in the Federal mutual bank holding company, to the extent of the Federal Deposit Insurance Corporation's loss.

(h) *DEFINITIONS.*—

(1) *FEDERAL MUTUAL BANK HOLDING COMPANY.*—The term “Federal mutual bank holding company” means a corporation chartered under this section.

(2) *DEFAULT.*—With respect to a national bank, the term “default” means an adjudication or other official determination by any court of competent jurisdiction, the Comptroller, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for the national bank.

* * * * *

SEC. 5136. (a) *IN GENERAL.*—Upon duly making and filing articles of association and an organization certificate, the association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

First. To adopt and use a corporate seal.

* * * * *

Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this title. The business of dealing in securities and stock by the association shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock: *Provided*, That the association may purchase for its own account investment securities under such limitations and restrictions as the Comptroller of the Currency may by regulation prescribe. In no event shall the total amount of the investment securities of any one obligor or maker, held by the association for its own account, exceed at any time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund, except that this limitation shall not require any association to dispose of any securities lawfully held by it on the date of enactment of the Banking Act of 1935. As used in this section the term “investment securities” shall mean marketable obligations evidencing indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes and/or debentures commonly known as investment securities under such further definition of the term “investment securities” as may by regulation be prescribed by the Comptroller of the Currency. Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation. The limitations and restrictions herein contained as to dealing in, underwriting and purchasing for its own account, investment securities shall not apply to obligations of the United States, or general obligations of any State or of any political subdivision thereof, or obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under

section 9 of the National Capital Transportation Act of 1969, or obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the thirteen banks for cooperatives or any of them or the Federal Home Loan Banks, or obligations which are insured by the Secretary of Housing and Urban Development under title XI of the National Housing Act, or obligations which are insured by the Secretary of Housing and Urban Development (hereafter in this sentence referred to as the "Secretary" pursuant to section 207 of the National Housing Act, if the debentures to be issued in payment of such insured obligations are guaranteed as to principal and interest by the United States, or obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association, or mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act or obligations of the Federal Financing Bank or obligations of the Environmental Financing Authority or obligations or other instruments or securities of the Student Loan Marketing Association, or such obligations of any local public agency (as defined in section 110(h) of the Housing Act of 1949) as are secured by an agreement between the local public agency and the Secretary in which the local public agency agrees to borrow from said Secretary and said Secretary agrees to lend to said local public agency, monies in an aggregate amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay, when due, the interest on and all installments (including the final installment) of the principal of such obligations, which monies under the terms of said agreement are required to be used for such payments, or such obligations of a public housing agency (as defined in the United States Housing Act of 1937, as amended) as are secured (1) by an agreement between the public housing agency and the Secretary in which the public housing agency agrees to borrow from the Secretary and the Secretary agrees to lend to the public housing agency, prior to the maturity of such obligations, monies in an amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of such obligations with interest to maturity thereon, which monies under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity, (2) by a pledge of annual contributions under an annual contributions contract between such public housing agency and the Secretary if such contract shall contain the covenant by the Secretary which is authorized by subsection (b) of section 22 of the United States Housing Act of 1937, as amended, and if the maximum sum and the maximum period specified in such contract pursuant to said subsection 22(b) shall not be less than the annual amount and the period for payment which are requisite to provide for the payment when due of all installments of principal and interest on such obligations, or (3) by a pledge or both annual contributions under an annual contributions contract containing the covenant by the Secretary which is authorized by section 6(g) of the United States Housing Act of

1937, and a loan under an agreement between the local public housing agency and the Secretary in which the public housing agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the public housing agency, prior to the maturity of the obligations involved, moneys in an amount which (together with any other moneys irrevocably committed under the annual contributions contract to the payment of principal and interest on such obligations) will suffice to provide for the payment when due of all installments of principal and interest on such obligations, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal and interest on such obligations at their maturity: *Provided*, That in carrying on the business commonly known as the safe-deposit business the association shall not invest in the capital stock of a corporation organized under the law of any State to conduct a safe-deposit business in an amount in excess of 15 per centum of the capital stock of the association actually paid in and unimpaired and 15 per centum of its unimpaired surplus. The limitations and restrictions herein contained as to dealing in and underwriting investment securities shall not apply to obligations issued by the International Bank for Reconstruction and Development, the European Bank for Reconstruction and Development, the Inter-American Development Bank, Bank for Economic Cooperation and Development in the Middle East and North Africa, the Asian Development Bank, the African Development Bank, the Inter-American Investment Corporation, or the International Finance Corporation, or obligations issued by any State or political subdivision or any agency of a State or political subdivision for housing, university, or dormitory purposes, which are at the time eligible for purchase by a national bank for its own account, nor to bonds, notes and other obligations issued by the Tennessee Valley Authority or by the United States Postal Service,: *Provided*, That no association shall hold obligations issued by any of said organizations as a result of underwriting, dealing, or purchasing for its own account (and for this purpose obligations as to which it is under commitment shall be deemed to be held by it) in a total amount exceeding at any one time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation authorized to be created pursuant to title IX of the Housing and Urban Development Act of 1968, and may make investments in a partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of that Act. Notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock issued by any State housing corporation incorporated in the State in which the association is located and may make investments in loans and commitments for loans to any such corporation: *Provided*, That in no event shall the total amount of such stock held for its own account and such investments in loans and commitments made by the association exceed at any time 5 per centum of its capital stock actually paid in and unimpaired plus 5 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for

its own account shares of stock issued by a corporation organized solely for the purpose of making loans to farmers and ranchers for agricultural purposes, including the breeding, raising, fattening, or marketing of livestock. However, unless the association owns at least 80 per centum of the stock of such agricultural credit corporation the amount invested by the association at any one time in the stock of such corporation shall not exceed 20 per centum of the unimpaired capital and surplus of the association: *Provided further*, That notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock of a bank insured by the Federal Deposit Insurance Corporation or a holding company which owns or controls such an insured bank if the stock of such bank or company is owned exclusively (except to the extent directors' qualifying shares are required by law) by depository institutions or depository institution holding companies (as defined in section 3 of the Federal Deposit Insurance Act) and such bank or company and all subsidiaries thereof are engaged exclusively in providing services to or for other depository institutions, their holding companies, and the officers, directors, and employees of such institutions and companies, and in providing correspondent banking services at the request of other depository institutions or their holding companies (also referred to as a "banker's bank"), but in no event shall the total amount of such stock held by the association in any bank or holding company exceed at any time 10 per centum of the associations capital stock and paid in and unimpaired surplus and in no event shall the purchase of such stock result in an association's acquiring more than 5 per centum of any class of voting securities of such bank or company. The limitations and restrictions contained in this paragraph as to an association purchasing for its own account investment securities shall not apply to securities that (A) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); (B) are small business related securities (as defined in section 3(a)(53) of the Securities Exchange Act of 1934); or (C) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)). The exception provided for the securities described in subparagraphs (A), (B), and (C) shall be subject to such regulations as the Comptroller of the Currency may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both. A national banking association may deal in, underwrite, and purchase for such association's own account qualified Canadian government obligations to the same extent that such association may deal in, underwrite, and purchase for such association's own account obligations of the United States or general obligations of any State or of any political subdivision thereof. For purposes of this paragraph—

(1) the term "qualified Canadian government obligations" means any debt obligation which is backed by Canada, any Province of Canada, or any political subdivision of any such Province to a degree which is comparable to the liability of the United States, any State, or any political subdivision thereof for any obligation which is backed by the full faith and credit of the United States, such State, or such political subdivision,

and such term includes any debt obligation of any agent of Canada or any such Province or any political subdivision of such Province if—

(A) the obligation of the agent is assumed in such agent's capacity as agent for Canada or such Province or such political subdivision; and

(B) Canada, such Province, or such political subdivision on whose behalf such agent is acting with respect to such obligation is ultimately and unconditionally liable for such obligation; and

(2) the term "Province of Canada" means a Province of Canada and includes the Yukon Territory and the Northwest Territories and their successors.

In addition to the provisions in this paragraph for dealing in, underwriting or purchasing securities, the limitations and restrictions contained in this paragraph as to dealing in, underwriting, and purchasing investment securities for the national bank's own account shall not apply to obligations (including limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of section 142(b)(1) of the Internal Revenue Code of 1986) issued by or on behalf of any state or political subdivision of a state, including any municipal corporate instrumentality of 1 or more states, or any public agency or authority of any state or political subdivision of a state, if the national banking association is well capitalized (as defined in section 38 of the Federal Deposit Insurance Act).

* * * * *

(12) *To exercise all the powers and privileges authorized by the Director of the Office of Thrift Supervision for a Federal savings association on the day before the date of enactment of the Financial Services Competition Act of 1997, subject to the requirements otherwise applicable to national banks, including sections 5136A and 5155, except this paragraph shall not confer on a national bank the power granted to a Federal savings association under section 5(c)(4)(B) of the Home Owners' Loan Act to invest in a corporation engaged in real estate development and the power granted to a Federal savings association under section 5(c)(4)(B) of the Home Owners' Loan Act to invest in a corporation may be exercised by a national bank only if the investment is made in a corporation that is a subsidiary of the bank.*

(b) SCOPE OF PRINCIPAL ACTIVITIES.—

(1) EXISTING PRODUCTS.—

(A) IN GENERAL.—*Subject to subparagraph (B), a national bank may not provide insurance in a State as principal.*

(B) EXCEPTION.—*Except for title insurance and annuity contracts as described in paragraph (3)(A), subparagraph (A) shall not apply to—*

(i) insurance that national banks or subsidiaries of national banks had authority to provide as principal pursuant to subsection (a) as of January 1, 1997; or

(ii) a product that was regulated as insurance as of January 1, 1997, by the appropriate insurance regulatory authority of the State in which the product is to

be provided but ceases to be so regulated after the date of enactment of the Financial Services Competition Act of 1997.

(2) NEW PRODUCTS.—

(A) IN GENERAL.—This paragraph shall apply with regard to any product which—

(i) is not described in paragraph (1); and

(ii) the Comptroller of the Currency has determined a national bank may provide as principal.

(B) PETITION FOR DEFINITION OF OTHER PRODUCTS.—

(i) IN GENERAL.—Any State insurance supervisory agency may petition the National Council of Financial Services (hereafter in this paragraph referred to as the ‘Council’) objecting to a determination of the Comptroller of the Currency referred to in subparagraph (A)(ii) and requesting a determination under 122(b)(2) of the Financial Services Competition Act of 1997 whether a product described in subparagraph (A) constitutes an insurance product or a banking product.

(ii) STATEMENTS AND ARGUMENTS.—A petition submitted under clause (i) shall include a concise statement of the questions presented for review, a concise statement of any facts material to the consideration of the questions, and a statement of the arguments of the petitioner on the merits.

(iii) STATUTE OF LIMITATION.—No petition may be filed with the Council under clause (i) after the end of the 2-year period beginning on the date on which the first public notice is made of the determination by the Comptroller to which the petition relates.

(iii) FILING WITH COMPTROLLER OF THE CURRENCY.—A copy of any petition filed with the Council under clause (i) shall be filed with the Comptroller of the Currency at the same time as such filing.

(C) EXPEDITED REVIEW OF PETITION BY FEDERAL RESERVE BOARD.—

(i) REFERRAL TO BOARD.—Upon receipt of a petition filed with the Council under subparagraph (B)(i), the Council shall refer the petition, together with the statements and arguments accompanying the petition, to the Board of Governors of the Federal Reserve System for review.

(ii) REVIEW.—The Board shall review the material referred pursuant to clause (i) to determine whether the petition raises a substantial question for review, taking into account the nature of the product and the history of its regulation, and report the findings and conclusions of the Board in connection with such review to the Council before the end of the 15-day period beginning on the date of the referral.

(iii) DISMISSAL UPON FINDING OF LACK OF A SUBSTANTIAL QUESTION.—If the Board reports to the Council that the petition failed to raise a substantial question for review of the decision of the Comptroller of the

Currency on the merits, the Council shall dismiss the petition and the determination of the Comptroller of the Currency shall constitute final agency action, subject to judicial review. The Council shall promptly notify the Comptroller and any affected party of any such dismissal.

(iv) DETERMINATION BY COUNCIL UPON FINDING OF A SUBSTANTIAL QUESTION.—If the Board reports to the Council that the petition raises a substantial question for review of the decision of the Comptroller of the Currency on the merits, the Council shall proceed to consider such petition under section 122(b)(2) of the Financial Services Competition Act of 1997 and in accordance with the subsequent subparagraphs of this paragraph.

(D) PARTICIPATION OF COMPTROLLER OF THE CURRENCY AND ANY AFFECTED PARTY.—

(i) RESPONSE.—Unless notified by the Council of the dismissal of the petition under subparagraph (C)(iii), the Comptroller of the Currency and any affected party supporting the Comptroller may file, before the end of the 60-day period beginning on the date of the filing of any petition with the Council under subparagraph (B)(i), a response to such petition with the Council.

(ii) PARTICIPATION IN HEARING.—The Comptroller of the Currency or any affected party may participate, as a party, in any hearing under subparagraph (E).

(E) HEARING.—

(i) REQUEST.—The State insurance supervisory agency, the Comptroller of the Currency, or any affected party may request a hearing by the Council on any petition filed with the Council in accordance with subparagraph (B) which was not dismissed under subparagraph (C)(iii).

(ii) NOTICE AND SELECTION OF HEARING OFFICER.—If a hearing is requested pursuant to clause (i), the Council shall promptly—

(I) notify the State insurance supervisory agency, the Comptroller of the Currency, or any affected party of such request and the time and place for such hearing; and

(II) select a hearing officer from among administrative law judges who are employed by agencies that are not represented on the Council.

(iii) TIME.—Any hearing under this subparagraph shall commence before the end of the 60-day period beginning on the date a request for such hearing is filed with the Council under clause (i) and shall be conducted and concluded expeditiously.

(iv) HEARING ON A RECORD.—In any hearing under this subparagraph, all issues shall be determined on a record in accordance with section 554 of title 5, United States Code.

(v) *RECOMMENDED OPINION.*—Upon the conclusion of any hearing under this subparagraph, the administrative law judge shall promptly submit a recommended opinion on all issues considered in such hearing to the Council.

(F) *FINAL DECISION BY COUNCIL.*—

(i) *DETERMINATION AFTER HEARING.*—If a hearing was requested under this paragraph, the Council shall, before the end of the 60-day period beginning on the date the recommended opinion of the administrative law judge is filed with the Council, make a final determination regarding the matter on the basis of the record of the hearing.

(ii) *DETERMINATION IF NO HEARING IS REQUESTED.*—If a hearing was not requested with regard to a petition filed with the Council under subparagraph (B)(i), the Council shall, before the end of the 60-day period beginning on the date by which the Council received such petition and any response to such petition pursuant to subparagraph (D)(i), make a final determination regarding the matter.

(G) *APPEAL OF FINAL DECISION.*—

(i) *IN GENERAL.*—Any State insurance supervisory agency which filed a petition under subparagraph (B)(i), the Comptroller of the Currency (if the Comptroller filed a response to such petition or participated as a party in a hearing with regard to such petition), or an affected party (if the party filed a response to the petition or participated as a party in a hearing with regard to the petition) may obtain judicial review of the final decision of the Council with regard to such petition by the United States court of appeals for the circuit in which the State insurance supervisory agency is located or the United States Circuit Court of Appeals for the District of Columbia Circuit, in accordance with section 706 of title 5, United States Code, and title 28 of such Code, by filing a notice of appeal in such court within 10 days after the date of the final determination of the Council.

(ii) *NOTICE TO COUNCIL AND OTHER PARTIES.*—Any party who petitions for judicial review of any final decision of the Council under this paragraph shall simultaneously send a copy of such petition to the Council and the Comptroller of the Currency, the State insurance supervisory agency, and any affected party, as the case may be, by registered or certified mail.

(iii) *SUBMISSION OF RECORD.*—The Council shall promptly certify and file in the appropriate court of appeal the record on which a final decision was based.

(3) *DEFINITIONS.*—For purposes of this subsection, the following definitions shall apply:

(A) *INSURANCE.*—The term “insurance” shall include any product regulated as insurance as of January 1, 1997, in accordance with the relevant State insurance law in the

State in which the product is to be provided, any new form of such product that is developed after January 1, 1997, and any annuity contract the income on which is tax deferred under section 72 of the Internal Revenue Code of 1986.

(B) *AFFECTED PARTY*.—The term “affected party” means any party that sought or otherwise was a party to the determination that is the subject of the petition filed with the Council under paragraph (2)(B)(i).

(4) *AUTHORITY*.—

(A) *IN GENERAL*.—For purposes of this subsection, national banks had authority to provide a product in any State as of January 1, 1997, if on or before such date—

(i) the Comptroller of the Currency had determined, in writing, that national banks may provide the product; or

(ii) national banks were providing the product.

(B) *EXCEPTION*.—Notwithstanding subparagraph (A), national banks did not have authority to provide a product in a State as of January 1, 1997, if on or before such date a court of relevant jurisdiction for such State had, by final judgment, overturned a determination of the Comptroller of the Currency that national banks may provide such product.

* * * * *

SEC. 5136A. FINANCIAL SUBSIDIARIES OF NATIONAL BANKS.

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

(1) *IN GENERAL*.—A subsidiary of a national bank may engage in an activity that is not permissible for a national bank to engage in directly, but only if—

(A) the activity is a financial activity (as defined in paragraph (4));

(B) the national bank is well capitalized, well managed, and achieved a rating of “satisfactory record of meeting community credit needs”, or better, at the most recent examination of the bank;

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

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

(2) *NO EFFECT ON EDGE ACT OR AGREEMENT CORPORATIONS*.—Paragraph (1) shall not apply with respect to any subsidiary which is a corporation organized under section 25A of the Federal Reserve Act or a corporation operating under section 25 of such Act.

(3) *OTHER SUBSIDIARIES PROHIBITED*.—A national bank may not control any subsidiary other than a subsidiary—

(A) which engages solely in activities that are permissible for a national bank to engage in directly or are authorized under paragraph (1); or

(B) which a national bank may control pursuant to section 25 or 25A of the Federal Reserve Act, the Bank Service Company Act, or any other Act that expressly by its terms authorizes national banks to control subsidiaries.

(4) *FINANCIAL ACTIVITY DEFINED.*—For purposes of this section and subject to paragraph (5), the term “financial activity” means any 1 or more of the following:

(A) Receiving money subject to a deposit or other repayment obligation.

(B) Lending, exchanging, transferring, investing, or safeguarding money or other financial assets.

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

(D) Acting as agent or broker in the placement of annuities contracts or contracts insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death.

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

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

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

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

(I) Engaging in any activity that was, by regulation or order, permissible for a bank holding company pursuant to section 4(c)(8) of the Bank Holding Company Act of 1956 (as in effect on the day before the date of enactment of the Financial Services Competition Act of 1997).

(J) Engaging, in the United States, in any activity that—
(i) a bank holding company may engage in outside the United States; and

(ii) the Board of Governors of the Federal Reserve System determined, under regulations issued pursuant to section 4(c)(13) of the Bank Holding Company Act of 1956 (as in effect on the day before the date of enactment of the Financial Services Competition Act of 1997) to be usual in connection with the transaction of banking or other financial operations abroad;

(K) Owning shares of a company to the extent permissible under section 4(c)(7) of the Bank Holding Company Act of 1956 (as in effect on the day before the date of enactment of the Financial Services Competition Act of 1997).

(L) Engaging in any activity that the National Council on Financial Services determines by regulation or order is the functional equivalent of any activity described in 1 or more of subparagraphs (A) through (K).

(M) *Engaging in any activity that the National Council on Financial Services determines by regulation or order to be financial, or related to a financial activity, having taken into account—*

(i) *the purposes of this title and the Financial Services Competition Act of 1997;*

(ii) *changes or reasonably expected changes in the market in which bank subsidiaries compete;*

(iii) *changes or reasonable expected changes in the technology delivering financial services; and*

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

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

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

(III) *offer customers any available or emerging technological means for using financial services.*

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

(A) *FINANCIAL SUBSIDIARY.—The term “financial subsidiary” means a company which—*

(i) *is a subsidiary of a national bank (other than a corporation organized under section 25A of the Federal Reserve Act or a corporation operating under section 25 of such Act); and*

(ii) *is engaged in a financial activity pursuant to paragraph (1) that is not a permissible activity for a national bank to engage in directly.*

(B) *SUBSIDIARY.—The term “subsidiary” has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956.*

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

(D) *WELL MANAGED.—The term “well managed” means—*

(i) *in the case of a bank that has been examined, unless otherwise determined in writing by the Comptroller, the achievement of—*

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

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

(ii) *in the case of any national bank that has not been examined, the existence and use of managerial re-*

sources that the Comptroller determines are satisfactory.

(6) *INSURANCE UNDERWRITING, MERCHANT BANKING, AND DIRECT INVESTMENT.*—Except as provided in section 5136(b)(1)(B) of the Revised Statutes of the United States, no subsidiary of a national bank (other than a corporation organized under section 25A of the Federal Reserve Act or a corporation operating under section 25 of such Act) may underwrite noncredit-related insurance, engage in real estate investment or development activities (except to the extent a national bank is specifically authorized by statute to engage in any such activity directly), or engage in merchant banking (as described in section 6(a)(3)(G) of the Bank Holding Company Act of 1956).

(7) *LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSITORY INSTITUTIONS.*—Any depository institution which becomes affiliated with a national bank during the 12-month period preceding the submission of an application to acquire a financial subsidiary and any depository institution which becomes so affiliated after the approval of such application may be excluded for purposes of paragraph (1)(C) during the 12-month period beginning on the date of such acquisition if—

(A) the national bank has submitted an affirmative plan to the Comptroller of the Currency to take such action as may be necessary in order for such institution to achieve a “satisfactory record of meeting community credit needs”, or better, during the most next examination of the institution; and

(B) the plan has been accepted by the Comptroller.

(b) *CAPITAL DEDUCTION REQUIRED.*—

(1) *IN GENERAL.*—In determining compliance with applicable capital standards—

(A) the amount of a national bank’s equity investment in a financial subsidiary shall be deducted from the national bank’s assets and tangible equity; and

(B) the financial subsidiary’s assets and liabilities shall not be consolidated with those of the national bank.

(2) *REGULATIONS REQUIRED.*—The Comptroller shall prescribe regulations implementing this subsection.

(c) *SAFEGUARDS FOR THE BANK.*—A national bank that establishes or maintains a financial subsidiary shall assure that—

(1) the bank’s procedures for identifying and managing financial and operational risks within the bank and financial subsidiaries of the bank adequately protect the bank from such risks;

(2) the bank has, for the protection of the bank, reasonable policies and procedures to preserve the separate corporate identity and limited liability of the bank and subsidiaries of the bank; and

(3) the bank complies with this section.

(d) *NATIONAL BANKS WHICH DO NOT COMPLY WITH REQUIREMENTS OF THIS SECTION.*—

(1) *IN GENERAL.*—If the Comptroller determines that a national bank which controls a financial subsidiary, or a deposi-

tory institution affiliate of such national bank, does not continue to meet the requirements of subsection (a), the Comptroller shall give notice to the bank to that effect, describing the conditions giving rise to the notice.

(2) **AGREEMENT TO CORRECT CONDITIONS REQUIRED.**—

(A) **CONTENT OF AGREEMENT.**—Within 45 days of the receipt by a depository institution of a notice given under paragraph (1) (or such additional period as the Comptroller may permit), the depository institution failing to meet the requirements of subsection (a) shall execute an agreement with the appropriate Federal banking agency for such institution to correct the conditions described in the notice.

(B) **COMPTROLLER MAY IMPOSE LIMITATIONS.**—Until the conditions giving rise to the notice are corrected, the Comptroller may impose such limitations on the conduct of the business of the national bank or subsidiary of such bank as the Comptroller determines to be appropriate under the circumstances.

(3) **FAILURE TO CORRECT.**—If the conditions described in the notice are not corrected within 180 days after the bank receives the notice, the Comptroller may require, under such terms and conditions as may be imposed by the Comptroller and subject to such extensions of time as may be granted in the discretion of the Comptroller—

(A) the national bank to divest control of each subsidiary engaged in an activity that is not permissible for the bank to engage in directly; or

(B) each subsidiary of the national bank to cease any activity that is not permissible for the bank to engage in directly.

SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.

(a) **AUTHORIZATION OF THE COMPTROLLER REQUIRED.**—A national bank may apply to the Comptroller, on such forms and in accordance with such regulations as the Comptroller may prescribe, for permission to operate as a national wholesale financial institution.

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

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

SEC. [5136A.] 5136C. (a) A national bank may not—

(1) deal in lottery tickets;

(2) deal in bets used as a means or substitute for participation in a lottery;

(3) announce, advertise, or publicize the existence of any lottery;

(4) announce, advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery.

(b) A national bank may not permit—

- (1) the use of any part of any of its banking offices by any person for any purpose forbidden to the bank under subsection (a), or
 - (2) direct access by the public from any of its banking offices to any premises used by any person for any purpose forbidden to the bank under subsection (a).
- (c) As used in this section—
- (1) The term “deal in” includes making, taking, buying, selling, redeeming, or collecting.
 - (2) The term “lottery” includes any arrangement whereby three or more persons (the “participants”) advance money or credit to another in exchange for the possibility or expectation that one or more but not all of the participants (the “winners”) will receive by reason of their advances more than the amounts they have advanced, the identity of the winners being determined by any means which includes—
 - (A) a random selection;
 - (B) a game, race, or contest; or
 - (C) any record or tabulation of the result of one or more events in which any participant has no interest except for its bearing upon the possibility that he may become a winner.
 - (3) The term “lottery ticket” includes any right, privilege, or possibility (and any ticket, receipt, record, or other evidence of any such right, privilege, or possibility) of becoming a winner in a lottery.
- (d) Nothing contained in this section prohibits a national bank from accepting deposits or cashing or otherwise handling checks or other negotiable instruments, or performing other lawful banking services for a State operating a lottery, or for an officer or employee of that State who is charged with the administration of the lottery.
- (e) The Comptroller of the Currency shall issue such regulations as may be necessary to the strict enforcement of this section and the prevention of evasions thereof.

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FEDERAL HOME LOAN BANK ACT

* * * * *

DEFINITIONS

SEC. 2. As used in this Act—

(1) * * *

* * * * *

[(3) The term “State” includes the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States.]

(3) *The term “State” in addition to the states of the United States, includes the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.*

* * * * *

[(9) SAVINGS ASSOCIATION.—The term “savings association” has the meaning given to such term in section 3 of the Federal Deposit Insurance Act.]

[(10)] (9) CHAIRPERSON.—The term “Chairperson” means the Chairperson of the Board.

[(11)] (10) SECRETARY.—The term “Secretary” means the Secretary of Housing and Urban Development.

[(12)] (11) INSURED DEPOSITORY INSTITUTION.—The term “insured depository institution” means—

(A) an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act), and

(B) except as used in sections 21A and 21B, an insured credit union (as defined in section 101 of the Federal Credit Union Act).

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SEC. 2A. FEDERAL HOUSING FINANCE BOARD.

(a) * * *

(b) MANAGEMENT.—

(1) IN GENERAL.—The management of the Board shall be vested in a Board of Directors consisting of 5 directors as follows:

(A) *The Secretary of the Treasury (or the Secretary of the Treasury’s designee), who shall serve without additional compensation.*

[(A)] (B) The Secretary who shall serve without additional compensation.

[(B) Four] (C) 3 citizens of the United States, appointed by the President, by and with the advice and consent of the Senate, each of whom shall hold office for a term of 7 years.

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SEC. 2B. POWERS AND DUTIES.

(a) GENERAL POWERS.—The Board shall have the following powers:

(1) To supervise the Federal Home Loan Banks and to promulgate and enforce such regulations and orders as are necessary from time to time to carry out the provisions of this Act [.] *; and to have the same powers, rights, and duties to enforce this Act with respect to the Federal home loan banks and the senior officers and directors of such banks as the Office of Federal Housing Enterprise Oversight has over the Federal housing enterprises and the senior officers and directors of such enterprises under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.*

* * * * *

(b) STAFF.—

[(1) BOARD STAFF.—] Subject to title IV of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Board may employ, direct, and fix the compensation and number of employees, attorneys, and agents of the Federal Housing Finance Board, except that in no event shall the Board delegate any [function to any employee, administrative unit] *func-*

tion to any employee or administrative unit of any Bank, or joint office of the Federal Home Loan Bank System. [The prohibition contained in the preceding sentence shall not apply to the delegation of ministerial functions including issuing consolidated obligations pursuant to section 11(b).] In directing and fixing such compensation, the Board shall consult with and maintain comparability with the compensation at the Federal bank regulatory agencies. Such compensation shall be paid without regard to the provisions of other laws applicable to officers or employees of the United States, except the Chairperson and other Directors shall be compensated as prescribed in sections 5314 and 5315 of title 5, United States Code, respectively.

[(2) ABOLITION OF JOINT OFFICES.—The joint or collective offices of the Federal Home Loan Bank System, except for the Office of Finance, are hereby abolished.]

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FEDERAL HOME LOAN BANKS

SEC. 3. As soon as practicable the Board shall divide [the continental United States, Puerto Rico, the Virgin Islands, Guam, and the Territories of Alaska and Hawaii into not less than eight] *the States into not less than 1* nor more than twelve districts. Such districts shall be apportioned with due regard to the convenience and customary course of business of the institutions eligible to and likely to subscribe for stock of a Federal Home Loan Bank to be formed under this Act, but no such district shall contain a fractional part of any State. The districts thus created may be readjusted and new districts may from time to time be created by the Board, not to exceed twelve in all. Such districts shall be known as Federal Home Loan Bank districts and may be designated by number. As soon as practicable the Board shall establish, in each district, a Federal Home Loan Bank at such city as may be designated by the Board. Its title shall include the name of the city at which it is established.

ELIGIBILITY OF MEMBERS AND NONMEMBER BORROWERS

SEC. 4. (a) CRITERIA FOR ELIGIBILITY.—

(1) * * *

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(3) *ELIGIBILITY REQUIREMENTS FOR COMMUNITY FINANCIAL INSTITUTIONS.*—The requirements of paragraph (2) (other than subparagraph (B) of such paragraph) shall not apply to any FDIC-insured depository institution which has total assets of less than \$500,000,000.

* * * * *

SEC. 5. *THE OFFICE OF FINANCE.*

(a) *OPERATION.*—The Federal home loan banks shall operate jointly an office of finance (hereafter in this section referred to as the “Office”) to issue the notes, bonds, and debentures of the Federal home loan banks in accordance with this Act.

(b) *POWERS.*—Subject to the other provisions of this Act and such safety and soundness regulations as the Finance Board may prescribe, the Office shall be authorized by the Federal home loan banks to act as the agent of such banks to issue Federal home loan bank notes, bonds and debentures pursuant to section 11 of this Act on behalf of the banks.

(c) *CENTRAL BOARD OF DIRECTORS.*—

(1) *ESTABLISHMENT.*—The Federal home loan banks shall establish a central board of directors of the Office to administer the affairs of the Office in accordance with the provisions of this Act.

(2) *COMPOSITION OF BOARD.*—Each Federal home loan bank shall annually select 1 individual who, as of the time of the election, is an officer or director of such bank to serve as a member of the central board of directors of the Office.

(d) *STATUS.*—Except to the extent expressly provided in this Act, the Office shall be treated as a Federal home loan bank for purposes of any law.

【CAPITAL OF FEDERAL HOME LOAN BANKS AND SUBSCRIPTIONS
THERE TO

【SEC. 6. (a) The capital stock of each Federal Home Loan Bank shall be divided into shares of a par value of \$100 each. The minimum capital stock shall be issued at par. Stock issued thereafter shall be issued at such price not less than par as may be fixed by the Board.

【(b)(1) The original stock subscription of each institution eligible to become a member under section 4 shall be an amount equal to 1 per centum of the subscriber's aggregate unpaid loan principal, but not less than \$500. The bank shall annually, as of the close of the calendar year, adjust, at such time and in such manner and upon such terms and conditions as the Board may by regulations or otherwise prescribe, the amount of stock held by each member so that such member shall have invested in the stock of the Federal Home Loan Bank at least an amount calculated in the manner provided in the next preceding sentence (but not less than \$500). If the bank finds that the investment of any member in stock is greater than that required under this subsection it may, unless prohibited by said Board or by the provisions of paragraph (2) of this subsection, in its discretion and upon application of such member retire the stock of such member in excess of the amount so required. Said Board, in its discretion, may, by regulations or otherwise, provide for adjustments in amounts of stock to be issued or retired in order that stock may be issued or retired only in entire shares.

【(2) Notwithstanding any other provision of this subsection, no action shall be taken by any bank with respect to any member pursuant to any of the foregoing provisions of this subsection if the effect of such action would be to cause the aggregate outstanding advances, within the meaning of the last sentence of subsection (c) of section 10 of this Act or within the meaning of regulations of the Board defining such term for the purposes of this sentence, made by such bank to such member to exceed twenty times the amounts

paid in by such member for outstanding capital stock held by such member.

[(3) Except as provided in subsection (i), upon retirement of stock of any member the bank shall pay such member for the stock retired an amount equal to the par value of such stock, or, at the election of the bank, the whole or any part of the payment which would otherwise be so made shall be credited upon the indebtedness of the member to the bank. In either such event, stock equal in par value to the amount of the payment or credit, or both, as the case may be, shall be canceled.

[(4) For the purposes of this subsection, the term "aggregate unpaid loan principal" means the aggregate unpaid principal of a subscriber's or member's home mortgage loans, home-purchase contracts, and similar obligations.

[(5) The Board, by regulations or otherwise, may require each member to submit such reports and information as said Board, in its discretion, may determine to be necessary or appropriate for the purposes of this subsection.

[(c) Stock subscriptions other than by the United States shall be paid for in cash, and shall be paid for at the time of application therefor, or, at the election of the subscriber, in installments, but not less than one-fourth of the total amount payable shall be paid at the time of filing application, and a further sum of not less than one-fourth of such total shall have been paid at the end of each succeeding period of four months.

[(d) Stock subscribed for otherwise than by the United States, and the right to the proceeds thereof, shall not be transferred or hypothecated except as hereinafter provided and the certificates therefor shall so state.

[(e) Any member other than a Federal savings and loan association may withdraw from membership in a Federal Home Loan Bank six months after filing with the Board written notice of intention so to do, and the Board may, after hearing, remove any member from membership, if, in the opinion of the Board, such member (i) has failed to comply with any provision of this Act or regulation of the Board made pursuant thereto; (ii) is insolvent: *Provided*, That any member of a bank which is a building and loan association, savings and loan association, cooperative bank, or homestead association shall be deemed insolvent if the assets of such member are less than its obligations to its creditors and others, including the holders of its withdrawable accounts; or (iii) has a management or home-financing policy of a character inconsistent with sound and economical home financing or with the purposes of this Act. If any member's membership in a Federal Home Loan Bank is terminated, the indebtedness of such member to the Federal Home Loan Bank shall be liquidated in an orderly manner (as determined by the Federal Home Loan Bank), and upon completion of such liquidation, the capital stock in the Federal Home Loan Bank owned by such member shall be surrendered and canceled. Any such liquidation shall be deemed a prepayment of any such indebtedness, and shall be subject to any penalties or other fees applicable to such prepayment. Upon the liquidation of such indebtedness such member shall be entitled to the return of its collateral, and, upon surrender and cancellation of such capital stock, the member shall

receive a sum equal to its cash paid subscriptions for the capital stock surrendered, except that if at any time the Board finds that the paid-in capital of a Federal Home Loan Bank is or is likely to be impaired as a result of losses in or depreciation of the assets held, the Federal Home Loan Bank shall on the order of the Board withhold from the amount to be paid in retirement of the stock a pro rata share of the amount of such impairment as determined by the Board.

[(f) A Federal Home Loan Bank may, with the approval of the Board, permit the disposal of stock to another member, or to an institution eligible to become a member, but only to enable such an institution to become a member.

[(g) All stock of any Federal Home Loan Bank shall share in dividend distributions without preference.

[(h) Notwithstanding any other provision of this Act, an institution which withdraws from membership may acquire membership in any Federal Home Loan Bank only after the expiration of a period of 10 years thereafter, except where such withdrawal is a consequence of a transfer of membership on a non-interrupted basis between banks or in connection with obtaining a charter as a Federal savings association (as defined in section 3 of the Federal Deposit Insurance Act).]

SEC. 6. CAPITAL STRUCTURE OF FEDERAL HOME LOAN BANKS.

(a) *CAPITAL STRUCTURE PLAN.*—On or before January 1, 1999, the board of directors of each Federal home loan bank shall submit for Finance Board approval a plan establishing and implementing a capital structure for such bank which—

(1) the board of directors determines is the best suited for the condition and operation of the bank and the interests of the shareholders of the bank;

(2) meets the requirements of subsection (b); and

(3) meets the minimum capital standards and requirements established under subsection (c) and any regulations prescribed by the Finance Board pursuant to such subsection.

(b) *CONTENTS OF PLAN.*—The capital structure plan of each Federal Home Loan Bank shall meet the following requirements:

(1) *STOCK PURCHASE REQUIREMENTS.*—

(A) *IN GENERAL.*—Each capital structure plan of a Federal home loan bank shall require the shareholders of the bank to maintain an investment in the stock of the bank in amount not less than—

(i) a minimum percentage of the total assets of the shareholder; and

(ii) a minimum percentage of the outstanding advances from the bank to the shareholder.

(B) *MINIMUM PERCENTAGE LEVELS.*—The minimum percentages established pursuant to subparagraph (A) shall be set at levels sufficient to meet the bank's minimum capital requirements established by the Finance Board under subsection (c).

(C) *MAXIMUM ASSET BASED CAPITAL REQUIREMENT.*—The asset-based capital requirement applicable to any shareholder of a Federal home loan bank in any year shall not exceed the lesser of—

- (i) 0.6 percent of a shareholder's total assets at the close of the preceding year; or
- (ii) \$300,000,000.

(D) **MAXIMUM ADVANCE-BASED REQUIREMENT.**—The advance-based capital requirement applicable to any shareholder of a Federal home loan bank shall not exceed 6 percent of the total outstanding advances from the bank to the shareholder.

(E) **MINIMUM STOCK PURCHASE REQUIREMENT AUTHORIZED.**—A capital structure plan may establish a minimum dollar amount of stock of a Federal home loan bank in which a shareholder shall be required to invest.

(2) **ADJUSTMENTS TO STOCK PURCHASE REQUIREMENTS.**—The capital structure plan adopted by each Federal home loan bank shall impose a continuing obligation on the board of directors of the bank to review and adjust as necessary member stock purchase requirements in order to ensure that the bank remains in compliance with applicable minimum capital levels established by the Finance Board.

(3) **TRANSITION RULE FOR STOCK PURCHASE REQUIREMENTS.**—

(A) **IN GENERAL.**—A capital structure plan may allow shareholders who were members of a Federal home loan bank on the date of the enactment of the Financial Services Competition Act of 1997 to come into compliance with the asset-based stock purchase requirement established under paragraph (1) during a transition period established under the plan of not more than 3 years, if such requirement exceeds the asset-based stock purchase requirement in effect on such date of enactment.

(B) **INTERIM PURCHASE REQUIREMENTS.**—A capital structure plan may establish interim asset-based stock purchase requirements applicable to members referred to in subparagraph (A) during a transition period established under subparagraph (A).

(4) **CLASSES OF STOCK.**—

(A) **IN GENERAL.**—Each capital structure plan shall afford each shareholder of a Federal home loan bank the option of meeting the shareholder's stock purchase requirements through the purchase of any combination of Class A or Class B stock.

(B) **CLASS A STOCK.**—Class A stock shall be stock of a Federal home loan bank that shall be redeemed in cash and at par by the bank no later than 12 months following submission of a written notice by a shareholder of the shareholder's intention to divest all shares of stock in the bank.

(C) **CLASS B STOCK.**—Class B stock shall be stock of a Federal home loan bank that shall be redeemed in cash and at par by the bank no later than 5 years following submission of a written notice by a shareholder of the shareholder's intention to divest all shares of stock in the bank.

(D) **RIGHTS REQUIREMENT.**—The Class B stock of a Federal home loan bank may receive a dividend premium over that paid on Class A stock, and may have preferential vot-

ing rights in the election of Federal home loan bank directors.

(E) LOWER STOCK PURCHASE REQUIREMENTS FOR CLASS B STOCK.—A capital structure plan may provide for lower stock purchase requirements with respect to those shareholder's that elect to purchase Class B stock in a manner that is consistent with meeting the bank's own minimum capital requirements as established by the Finance Board.

(F) NO OTHER CLASSES OF STOCK PERMITTED.—No class of stock other than the Class A and Class B stock described in subparagraphs (B) and (C) may be issued by a Federal home loan bank.

(5) LIMITED TRANSFERABILITY OF STOCK.—Each capital structure plan shall provide that any equity securities issued by the bank shall be available only to, held only by, and tradable only among shareholders of the bank.

(c) CAPITAL STANDARDS.—

(1) IN GENERAL.—The Finance Board shall prescribe, by regulation, uniform capital standards applicable to each Federal home loan bank which shall include—

(A) a leverage limit in accordance with paragraph (2); and

(B) a risk-based capital requirement in accordance with paragraph (3).

(2) MINIMUM LEVERAGE LIMIT.—The leverage limit established by the Finance Board shall require each Federal home loan bank to maintain total capital in an amount not less than 5 percent of the total assets of the bank. In determining compliance with the minimum leverage ratio, the amount of retained earnings and the paid-in value of Class B stock, if any, shall be multiplied by 1.5 and such higher amount shall be deemed to be capital for purposes of meeting the 5 percent minimum leverage ratio.

(3) RISK-BASED CAPITAL STANDARD.—The risk-based capital requirement shall be composed of the following components:

(A) Capital sufficient to meet the credit risk to which a Federal home loan bank is subject, based on an amount which is not less than the amount of tier 1, risk-based capital required by regulations prescribed, or guidelines issued under section 38 of the Federal Deposit Insurance Act for a well capitalized insured depository institution.

(B) Capital sufficient to meet the interest rate risk to which a Federal home loan bank is subject, based on an interest rate stress test applied by the Finance Board that rigorously tests for changes in interest rates, rate volatility, and changes in the shape of the yield curve.

(d) REDEMPTION OF CAPITAL.—

(1) IN GENERAL.—Any shareholder of a Federal home loan bank shall have the right to withdraw the shareholder's membership from a Federal home loan bank and to redeem the shareholder's stock in accordance with the redemption rights associated with the class of stock the shareholder holds, if—

(A) such shareholder has filed a written notice of an intention to redeem all such shares; and

(B) the shareholder has no outstanding advances from any Federal home loan bank at the time of such redemption.

(2) *PARTIAL REDEMPTION.*—A shareholder who files notice of intention to redeem all shares of stock in a Federal home loan bank may redeem not more than 1/2 of all such shares, in cash and at par, 6 months before the date by which the bank is required to redeem such stock pursuant to subparagraph (B) or (C) of subsection (b)(4).

(3) *DIVESTITURE.*—The board of directors of any Federal home loan bank may, after a hearing, order the divestiture by any shareholder of all ownership interests of such shareholder in the bank, if—

(A) in the opinion of the board of directors, such shareholder has failed to comply with a provision of this Act or any regulation prescribed under this Act; or

(B) the shareholder has been determined to be insolvent, or otherwise subject to the appointment of a conservator, receiver, or other legal custodian, by a State or Federal authority with regulatory and supervisory responsibility for such shareholder.

(4) *RETIREMENT OF EXCESS STOCK.*—Any shareholder may—

(A) retire shares of Class A stock or, at the option of the shareholder, shares of Class B stock, or any combination of Class A and Class B stock, that are excess to the minimum stock purchase requirements applicable to the shareholder; and

(B) receive from the Federal home loan bank a prompt payment in cash equal to the par value of such stock.

(5) *IMPAIRMENT OF CAPITAL.*—If the Finance Board or the board of directors of a Federal home loan bank determines that the paid-in capital of the bank is, or is likely to be, impaired as a result of losses in or depreciation of the assets of the bank, the Federal home loan bank shall withhold that portion of the amount due any shareholder with respect to any redemption or retirement of any class of stock which bears the same ratio to the total of such amount as the amount of the impaired capital bears to the total amount of capital allocable to such class of stock.

(6) *POLICIES.*—Subject to the requirements of this section, the board of directors of each Federal home loan bank shall promptly establish policies, consistent with this Act, governing the capital stock of such bank and other provisions of this section.

MANAGEMENT OF BANKS

SEC. 7. [(a) The management of each Federal Home Loan Bank shall be vested in a board of fourteen directors, eight of whom shall be elected by the members as hereinafter provided in this section and six of whom shall be appointed by the Board referred to in section 2A, all of whom shall be citizens of the United States and bona fide residents of the district in which such bank is located: *Provided*, That in any district which includes five or more States the Board may by regulation increase the elective directors to a num-

ber not exceeding thirteen and may increase the appointive directors to a number not exceeding three-fourths the number of elective directors: *Provided further*, That, if at any time the number of elective directors in the case of any district is not at least equal to the number of States in such district the Board shall exercise the authority conferred by the next preceding proviso so as to increase such elective directors to a number at least equal to the number of States in such district. At least 2 of the Federal Home Loan Bank directors who are appointed by the Board shall be representatives chosen from organizations with more than a 2-year history of representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections. No Federal Home Loan Bank director who is appointed pursuant to this subsection may, during such Bank director's term of office, serve as an officer of any Federal Home Loan Bank or a director or officer of any member of a Bank, or hold shares, or any other financial interest in, any member of a Bank.

[(b) Each elective directorship shall be designated by the Board as representing the members located in a particular State, and shall be filled by a person who is an officer or director of a member located in that State, each of which members shall be entitled to nominate an eligible person for such directorship, and such office shall be filled from such nominees by a plurality of the votes which such members may cast in an election held for the purpose of filling such office, in which election each such member may cast for such office a number of votes equal to the number of shares of stock in such bank required by this Act to be held by such member at the end of the calendar year next preceding the election, as determined pursuant to regulation of the Board, but not in excess of the average number of shares of stock in such bank required by this Act to be held at the end of such calendar year by the respective members of such bank located in such State, as so determined. No person who is an officer or director of a member that fails to meet any applicable capital requirement is eligible to hold the office of Federal Home Loan Bank director. As used in this subsection and in subsection (c) of this section, the term "member" means a member of a Federal home loan bank which was a member of such bank at the end of such calendar year.

[(c) The number of elective directorships designated as representing the members located in each separate State in a bank district shall be determined by the Board in the approximate ratio of the percentage of the required stock, as determined pursuant to regulation of the Board, of the members located in that State at the end of the calendar year next preceding the date of the election to the total required stock, as so determined, of all members of such bank at the end of such year, except that in the case of each State such number shall not be less than one and shall not be more than six. Notwithstanding any other provision of this section, if at any time the number of elective directorships so designated as representing the members located in any State would not be at least equal to the total number of elective directorships which, on December 31, 1960, were filled by officers or directors of members whose principal places of business were located in such State, the Board shall add to the board of directors of the bank of the district

in which such State is located such number of elective directorships, and shall so designate the directorship or directorships thus added, that the number of elective directorships designated as representing the members located in such State will equal said total number. Any elective directorship so added shall exist only until the expiration of its first term. The Board shall, with respect to each member of a Federal home loan bank, designate the State in the district of such bank in which such member shall, for the purposes of this subsection and subsection (b) of this section, be deemed to be located, and may from time to time change any such designation, but if the principal place of business of any such member is located in a State of such district it shall be the duty of the Board to designate such State as the State in which such member shall, for said purposes, be deemed to be located. As used in the second sentence of this subsection, the term "total number of elective directorships" means the total number of elective directorships on the board of directors of the bank of the district in which such State was located on December 31, 1960, and the term "members" where used for the second time in such sentence means members of such bank.】

(a) The management of each Federal home loan bank shall be vested in a board of 15 directors, 9 of whom shall be elected by the members in accordance with this section, 6 of whom shall be appointed by the Board referred to in section 2A, and all of whom shall be citizens of the United States and bona fide residents of the district in which such bank is located. At least 2 of the Federal home loan bank directors who are appointed by the Board shall be representatives chosen from organizations with more than a 2-year history of representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections. No Federal home loan bank director who is appointed pursuant to this subsection may, during such bank director's term of office, serve as an officer of any Federal home loan bank or a director or officer of any member of a bank, or hold shares, or any other financial interest in, any member of a bank.

(b) The elective directors shall be divided into three classes, designated as classes A, B, and C, as nearly equal in number as possible. Each directorship shall be filled by a person who is an officer or director of a member located in that bank's district. Each class shall represent members of similar asset size, and the Board shall, to the maximum extent possible, seek to achieve geographic diversity. The Finance Board shall establish the minimum and maximum asset size for each class. Any member shall be entitled to nominate and elect eligible persons for its class of directorship; such offices shall be filled from such nominees by a plurality of the votes which members of each class may cast for nominees in their corresponding class of directors in an election held for the purpose of filling such offices. Each member shall be permitted to cast one vote for each share of Federal home loan bank stock owned by that member. No person who is an officer or director of a member that fails to meet any applicable capital requirement is eligible to hold the office of Federal Home Loan Bank director. As used in this subsection, the term "member" means a member of a Federal home loan

bank which was a member of such Bank as of a record date established by the Bank.

[(d) The term of each elective directorship shall be two years and the term of each appointive directorship shall be four years. If any person, before or after, or partly before and partly after, the date of the enactment of this sentence, has been elected to each of three consecutive full terms as an elective director of a Federal home loan bank in any elective directorship or elective directorships and has served for all or part of each of said terms, such person shall not be eligible for election to an elective directorship of such bank for a term which begins earlier than two years after the expiration of the last expiring of said three terms.] *(c) The term of each elective directorship and each appointive directorship shall be 3 years. No director serving for three consecutive terms, nor any other officer, director or that member or any affiliated depository institution, shall be eligible for another term earlier than 3 years after the expiration of the last expiring of said three year terms. 3 elected directors of different classes as specified by the Finance Board shall be elected by ballot annually. The Board is hereby authorized to prescribe such rules and regulations as it may deem necessary or appropriate for the nomination and election of directors of Federal home loan banks, including, without limitation on the generality of the foregoing, rules and regulations with respect to the breaking of ties and with respect to the inclusion of more than one directorship on a single ballot and the methods of voting and of determining the results of voting in such cases.*

[(e) Each term, outstanding on the effective date of the amendment to this section abolishing the division of elective directors into classes, of an elective or appointive directorship then existing shall continue until its original date of expiration, and any elective or appointive directorship in existence on said date shall continue to exist to the same extent as if it had been established by or under this section on or after said date. The Board in its discretion may shorten the next succeeding term of any such elective directorship to one year, and may fill such term by appointment. The term "States" or "State" as used in this section shall mean the States of the Union, the District of Columbia, and the Commonwealth of Puerto Rico. The Board, by regulation or otherwise, may add an additional elective directorship to the board of directors of the bank of any district in which the Commonwealth of Puerto Rico is included at the time such directorship is added and which does not then include five or more States, may fix the commencement and the duration, which shall not exceed two years, of the initial term of any directorship so added, and may fill any such initial term by appointment: *Provided*, That (1) any directorship added pursuant to the foregoing provisions of this sentence shall be designated by the Board, pursuant to subsection (b) of this section, as representing the members located in the Commonwealth of Puerto Rico, (2) such designation of such directorship shall not be changed, and (3) such directorship shall automatically cease to exist if and when the Commonwealth of Puerto Rico ceases to be included in such district.]

(d) TRANSITION PROVISION.—In the 1st election after the date of the enactment of the Financial Services Competition Act of 1997, 3

directors shall be elected in each of the 3 classes of elective directorship. The Finance Board may, in the 1st election after such date of enactment, designate the terms of each elected director in each class, not to exceed 3 years, to assure that, in each subsequent election, 3 directors from different classes of elective directorships are elected each year.

[(f)] *(e)* VACANCIES.—

(1) * * *

* * * * *

[(g)] *(f)* The Board shall designate one of the directors of each bank to be chairperson, and one to be vice chairperson, of the board of directors of such bank.

[(h)] If at any time when nominations are required members shall hold less than \$1,000,000 of the capital stock of the Federal home loan bank, the Board shall appoint a director or directors to fill the place or places for which such nominations are required, and the Board may, prior to the filing of the certificate mentioned in section 12, appoint directors who shall be respectively designated by it as appointive directors and as elective directors, in accordance with the provisions of this section.】

[(i)] *(g)* Each bank may pay its directors reasonable compensation for the time required of them, and their necessary expenses, in the performance of their duties, in accordance with the resolutions adopted by the such directors【, subject to the approval of the board】.

[(j)] *(h)* Such board of directors shall administer the affairs of the bank fairly and impartially and without discrimination in favor of or against any member, and shall, subject to the provisions hereof, extend to each institution authorized to secure advances such advances as may be made safely and reasonably with due regard for the claims and demands of other institutions, and with due regard to the maintenance of adequate credit standing for the Federal Home Loan Bank and its obligations.

[(k)] *(i)* INDEMNIFICATION OF DIRECTORS, OFFICERS, AND EMPLOYEES.—The board of directors of each Bank shall determine the terms and conditions under which such Bank may indemnify its directors, officers, employees or agents.

* * * * *

ELIGIBILITY TO SECURE ADVANCES

SEC. 9. Any member of a Federal Home Loan Bank shall be entitled to apply in writing for advances. Such application shall be in such form as shall be required by the Federal Home Loan Bank 【with the approval of the Board】. Such Federal Home Loan Bank may at its discretion deny any such application, or【, subject to the approval of the Board,】 may grant it on such conditions as the Federal Home Loan Bank may prescribe.

ADVANCES TO MEMBERS

SEC. 10. (a) Each Federal Home Loan Bank is authorized to make secured advances to its members upon collateral sufficient, in the judgment of the Bank, to fully secure advances obtained from the Bank under this section or section 11(g) of this Act. 【All long-

term advances] *Except as provided in the succeeding sentence, all long-term advances shall only be made for the purpose of providing funds for residential housing finance. Notwithstanding the preceding sentence, long-term advances may be made to FDIC-insured members which have less than \$500,000,000 in total assets for the purpose of funding small businesses, agriculture, rural development, or low-income community development (as defined by the Board).* A Bank, at the time of origination or renewal of a loan or advance, shall obtain and maintain a security interest in collateral eligible pursuant to one or more of the following categories:

(1) * * *

* * * * *

(3) **[Deposits]** *Cash or deposits* of a Federal Home Loan Bank.

* * * * *

(5) *In the case of any FDIC-insured member which has total assets of less than \$500,000,000, secured loans for small business, agriculture, rural development, or low-income community development, or securities representing a whole interest in such secured loans.*

[(5)] (6) Paragraphs (1) through (4) shall not affect the ability of any Federal Home Loan Bank to take such steps as it deems necessary to protect its security position with respect to outstanding advances, including requiring deposits of additional collateral security, whether or not such additional security would be eligible to originate an advance. If an advance existing on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 matures and the member does not have sufficient eligible collateral to fully secure a renewal of such advance, a Bank may renew such advance secured by such collateral as the Bank **[and the Board]** determines is appropriate. A member that has an advance secured by such insufficient eligible collateral must reduce its level of outstanding advances promptly and prudently in accordance with a schedule determined by the **[Board]** Bank.

* * * * *

(c) Such advances shall be made upon the note or obligation of the member secured as provided in this section, bearing such rate of interest as the **[Board]** *Federal home loan bank* may approve or determine, and the Federal Home Loan Bank shall have a lien upon and shall hold the stock of such member as further collateral security for all indebtedness of the member to the Federal Home Loan Bank. **[At no time shall the aggregate outstanding advances made by any Federal Home Loan Bank to any member exceed twenty times the amounts paid in by such member for outstanding capital stock held by it exceed twenty times the value of the security required to be deposited under section 6(e).]**

(d) The institution applying for an advance shall enter into a primary and unconditional obligation to pay off all advances, together with interest and any unpaid costs and expenses in connection therewith according to the terms under which they were made, in such form as shall meet the requirements of the bank **[and the ap-**

proval of the Board]. The bank shall reserve the right to require at any time, when deemed necessary for its protection, deposits of additional collateral security or substitutions of security by the borrowing institution, and each borrowing institution shall assign additional or substituted security when and as so required. [Subject to the approval of the Board, any] Any Federal Home Loan Bank shall have power to sell to any other Federal Home Loan Bank, with or without recourse, any advance made under the provisions of this Act, or to allow to such bank a participation therein, and any other Federal Home Loan Bank shall have power to purchase such advance or to accept a participation therein, together with an appropriate assignment of security therefor.

[(e) QUALIFIED THRIFT LENDER STATUS.—

[(1) IN GENERAL.—A member that is not a qualified thrift lender may only receive an advance if it holds stock in its Federal Home Loan Bank at the time it receives that advance in an amount equal to at least—

[(A) 5 percent of that member's total advances, divided by

[(B) such member's actual thrift investment percentage. Such members that are not qualified thrift lenders may only apply for advances under this section for the purpose of obtaining funds for housing finance.

[(2) PRIORITY.—The Board, by regulation, shall establish a priority for advances to members that are qualified thrift lenders. The aggregate amount of the advances by the Federal Home Loan Bank System to members that are not qualified thrift lenders shall not exceed 30 percent of the total advances of the Federal Home Loan Bank System.

[(3) MINIMUM STOCK PURCHASE REQUIREMENT FOR MEMBERSHIP.—Each member of a Federal Home Loan Bank shall, at a minimum, purchase and maintain stock in its Federal Home Loan Bank in the amount that would be required under section 6(b) if at least 30 percent of such member's assets were home mortgage loans.

[(4) EXCEPTIONS.—Paragraphs (1) and (2) of this subsection do not apply to—

[(A) a savings bank as defined in section 3 of the Federal Deposit Insurance Act; or

[(B) a Federal savings association in existence as a Federal savings association on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

[(i) that was chartered as a savings bank or cooperative bank prior to October 15, 1982; or

[(ii) that acquired its principal assets from an institution which was chartered prior to October 15, 1982, as a savings bank or cooperative bank under State law.

[(5) DEFINITIONS.—As used in this subsection—

[(A) SAVINGS ASSOCIATION.—The term "savings association" has the same meaning as in section 10(a)(1)(A) of the Home Owners' Loan Act.

[(B) QUALIFIED THRIFT LENDER.—The term “qualified thrift lender” has the same meaning as in section 10(m) of the Home Owners’ Loan Act.

[(C) ACTUAL THRIFT INVESTMENT PERCENTAGE.—The term “actual thrift investment percentage” has the same meaning as in section 10(m) of the Home Owners’ Loan Act.]

* * * * *

[(h) SPECIAL LIQUIDITY ADVANCES.—

[(1) IN GENERAL.—Subject to paragraph (2), the Federal Home Loan Banks may, upon the request of the Director of the Office of Thrift Supervision, make short-term liquidity advances to a savings association that—

[(A) is solvent but presents a supervisory concern because of such association’s poor financial condition; and

[(B) has reasonable and demonstrable prospects of returning to a satisfactory financial condition.

[(2) INTEREST ON AND SECURITY FOR SPECIAL LIQUIDITY ADVANCES.—Any loan by a Federal Home Loan Bank pursuant to paragraph (1) shall be subject to all applicable collateral requirements, including the requirements of section 10(a) of this Act, and shall be at an interest rate no less favorable than those made available for similar short-term liquidity advances to savings associations that do not present such supervisory concern.]

(h) *[Repealed]*.

(i) COMMUNITY INVESTMENT PROGRAM.—

(1) * * *

* * * * *

(j) AFFORDABLE HOUSING PROGRAM.—

(1) IN GENERAL.—(A) Pursuant to regulations promulgated by the Board, each Bank shall establish an Affordable Housing Program [to subsidize the interest rate on advances] to provide subsidies, including subsidized interest rates on advances to members engaged in lending for long term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates.

(B) *Subject to such regulations as the Finance Board may prescribe, the board of directors of each Federal home loan bank may approve or disapprove requests from members for Affordable Housing Program subsidies, and may not delegate such authority.*

(2) STANDARDS.—The Board’s regulations shall permit Bank members to use [subsidized advances] subsidies, including subsidized advances received from the Banks to—

(A) finance homeownership by families with incomes at or below 80 percent of the median income for the area; or

[(B) finance the purchase, construction, or rehabilitation of rental housing, at least 20 percent of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term.]

(B) finance the purchase, construction or rehabilitation of rental housing if, for a period of at least 15 years, either 20 percent or more of the units in such housing are occupied by and affordable for households whose income is 50 percent or less of area median income (as determined by the Secretary of Housing and Urban Development, and as adjusted for family size); or 40 percent or more of the units in such housing are occupied by and affordable for households whose income is 60 percent or less of area median income (as determined by the Secretary of Housing and Urban Development, and as adjusted for family size).

(3) PRIORITIES FOR MAKING ADVANCES.—In using [advances] *subsidies, including subsidized advances* authorized under paragraph (1), each Bank member shall give priority to qualified projects such as the following:

(A) purchase of homes by families whose income is 80 percent or less of the median income for the area,

(B) purchase or rehabilitation of housing owned or held by the United States Government or any agency or instrumentality of the United States; and

(C) purchase or rehabilitation of housing sponsored by any nonprofit organization, any State or political subdivision of any State, any local housing authority or State housing finance agency.

(4) REPORT.—Each member receiving [advances] *subsidies, including subsidized advances* under this program shall report annually to the Bank making such [advances] *subsidies, including subsidized advances* concerning the member's use of [advances] *subsidies, including subsidized advances* received under this program.

(5) CONTRIBUTION TO PROGRAM.—Each Bank shall annually contribute the percentage of its annual net earnings prescribed in the following subparagraphs to support [subsidized advances] *subsidies, including subsidized advances* through the Affordable Housing Program[:]

[(A) In 1990, 1991, 1992, and 1993, 5 percent of the preceding year's net income, or such prorated sums as may be required to assure that the aggregate contribution of all the Banks shall not be less than \$50,000,000 for each such year.

[(B) In 1994, 6 percent of the preceding year's net income, or such prorated sum as may be required to assure that the aggregate contribution of the Banks shall not be less than \$75,000,000 for such year.]

[(C) In 1995, and subsequent years,] 10 percent of the preceding year's net income, or such prorated sums as may be required to assure that the aggregate contribution of the Banks shall not be less than \$100,000,000 for each such year.

* * * * *

(9) REGULATIONS.—The Federal Housing Finance Board shall promulgate regulations to implement this subsection. Such regulations shall, at a minimum—

(A) specify activities eligible to receive **【subsidized advances】** *subsidies, including subsidized advances* from the Banks under this program;

(B) specify priorities for the use of such **【advances】** *subsidies, including subsidized advances*;

(C) ensure that **【advances】** *subsidies, including subsidized advances* made under this program will be used only to assist projects for which adequate long-term monitoring is available to guarantee that affordability standards and other requirements of this subsection are satisfied;

(D) ensure that a preponderance of assistance provided under this subsection is ultimately received by low- and moderate-income households;

(E) ensure that subsidies provided by Banks to member institutions under this program are passed on to the ultimate borrower;

(F) establish uniform standards for **【subsidized advances】** *subsidies, including subsidized advances* under this program and subsidized lending by member institutions supported by such **【advances】** *subsidies, including subsidized advances*, including maximum subsidy and risk limitations for different categories of loans made under this subsection; and

(G) coordinate activities under this subsection with other Federal or federally-subsidized affordable housing activities to the maximum extent possible.

(10) OTHER PROGRAMS.—No provision of this subsection or subsection (i) shall preclude any Bank from establishing additional community investment cash advance programs or contributing additional sums to the Affordable Housing Reserve Fund.

(11) ADVISORY COUNCIL.—Each Bank shall appoint an Advisory Council of 7 to 15 persons, *pursuant to a nomination process that is as broad and as participatory as possible, and giving consideration to the size of the District and the diversity of low- and moderate-income housing needs and activities within the District*, drawn from a diverse range of community and non-profit organizations actively involved in providing or promoting low- and moderate-income housing in its district. *Representatives of no one group shall constitute an undue proportion of the membership of the Advisory Council.* The Advisory Council shall meet with representatives of the board of directors of the Bank quarterly to advise the Bank on low- and moderate-income housing programs and needs in the district and on the utilization of the **【advances】** *subsidies, including subsidized advances* for these purposes. Each Advisory Council established under this paragraph shall submit to the Board at least annually its analysis of the low-income housing activity of the Bank by which it is appointed.

(12) REPORTS TO CONGRESS.—

(A) The Board shall monitor and report annually to the Congress and the Advisory Council for each Bank the support of low-income housing and community development by

the Banks and the utilization of [advances] *subsidies, including subsidized advances* for these purposes.

(B) The analyses submitted by the Advisory Councils to the Board under paragraph (11) shall be included as part of the report required by this paragraph.

(C) The Comptroller General of the United States shall audit and evaluate the Affordable Housing Program established by this subsection after such program has been operating for 2 years. The Comptroller General shall report to Congress on the conclusions of the audit and recommend improvements or modifications to the program.

(13) DEFINITIONS.—For purposes of this subsection—

(A) LOW- OR MODERATE-INCOME HOUSEHOLD.—The term “low- or moderate-income household” means any household which has an income of 80 percent or less of the area median.

(B) VERY LOW-INCOME HOUSEHOLD.—The term “very low-income household” means any household that has an income of 50 percent or less of the area median.

(C) LOW- OR MODERATE-INCOME NEIGHBORHOOD.—The term “low- or moderate-income neighborhood” means any neighborhood in which 51 percent or more of the households are low- or moderate-income households.

[(D) AFFORDABLE FOR VERY-LOW INCOME HOUSEHOLDS.—For purposes of paragraph (2)(B) the term “affordable for very-low income households” means that rents charged to tenants for units made available for occupancy by low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 50 percent of the income for the area (as determined by the Secretary of Housing and Urban Development) with adjustment for family size.]

(D) AFFORDABLE.—*For purposes of paragraph (2)(B), the term “affordable” means that the rent with respect to a unit shall not exceed 30 percent of the income limitation under paragraph (2)(B) applicable to occupants of such unit.*

* * * * *

SEC. 10b. [(a) IN GENERAL.—]Each Federal Home Loan Bank is authorized to make advances to nonmember mortgagees approved under title II of the National Housing Act. Such mortgagees must be chartered institutions having succession and subject to the inspection and supervision of some governmental agency, and whose principal activity in the mortgage field must consist of lending their own funds. Such advances shall not be subject to the other provisions and restrictions of this Act, but shall be made upon the security of insured mortgages, insured under title II of the National Housing Act. [Advances made under the terms of this section shall be at such rates of interest and upon such terms and conditions as shall be determined by the Board, but no advance may be for an amount in excess of 90 per centum of the unpaid principal of the mortgage loan given as security.] *Notwithstanding the preceding sentence, if an advance is made for the purpose of facilitating mortgage lending that benefits individuals and families that meet the income requirements set forth in section 142(d) or 143(f)*

of the Internal Revenue Code of 1986, the advance may be collateralized as provided in section 10(a) of this Act.

[(b) EXCEPTION.—An advance made to a State housing finance agency for the purpose of facilitating mortgage lending that benefits individuals and families that meet the income requirements set forth in section 142(d) or 143(f) of the Internal Revenue Code of 1986, need not be collateralized by a mortgage insured under title II of the National Housing Act or otherwise, if—

[(1) such advance otherwise meets the requirements of this subsection; and

[(2) such advance meets the requirements of section 10(a) of this Act, and any real estate collateral for such loan comprises single family or multifamily residential mortgages.]

GENERAL POWERS AND DUTIES OF BANKS

SEC. 11. (a) Each Federal Home Loan Bank shall have power, subject to rules and regulations prescribed by the Board to borrow and give security therefor and to pay interest thereon, to issue through the Office of Finance debentures, bonds, or other obligations upon such terms and conditions as the [Board] board of directors of the bank may approve, and to do all things necessary for carrying out the provisions of this Act and all things incident thereto.

[(b) The Board may issue consolidated Federal Home Loan Bank debentures which shall be the joint and several obligations of all Federal Home Loan Banks organized and existing under this Act, in order to provide funds for any such bank or banks, and such debentures shall be issued upon such terms and conditions as the Board may prescribe. No such debentures shall be issued at any time if any of the assets of any Federal Home Loan Bank are pledged to secure any debts or subject to any lien, and neither the Board nor any Federal Home Loan Bank shall have power to pledge any of the assets of any Federal Home Loan Bank, or voluntarily to permit any lien to attach to the same while any of such debentures so issued are outstanding. The debentures issued under this section and outstanding shall at no time exceed five times the total paid-in capital of all the Federal Home Loan Banks as of the time of the issue of such debentures. It shall be the duty of the Board not to issue debentures under this section in excess of the notes or obligations of member institutions held and secured under section 10(a) of this Act by all the Federal Home Loan Banks.

[(c) At any time that no debentures are outstanding under this Act, or in order to refund all outstanding consolidated debentures issued under this section, the Board may issue consolidated Federal Home Loan Bank bonds which shall be the joint and several obligations of all the Federal Home Loan Banks, and shall be secured and be issued upon such terms and conditions as the Board may prescribe.]

(b) ISSUANCE OF FEDERAL HOME LOAN BANK CONSOLIDATED BONDS.—

(1) IN GENERAL.—The Office of Finance may issue consolidated Federal home loan bank bonds and other consolidated obligations on behalf of the banks.

(2) *JOINT AND SEVERAL OBLIGATION; TERMS AND CONDITIONS.*—*Consolidated obligations issued by the Office of Finance under paragraph (1) shall—*

(A) *be the joint and several obligations of all the Federal home loan banks; and*

(B) *shall be issued upon such terms and conditions as shall be established by the Office of Finance subject to such rules and regulations as the Finance Board may prescribe.*

[(d)] (c) The Board shall have full power to require any Federal Home Loan Bank to deposit additional collateral or to make substitutions of collateral or to adjust equities between the Federal Home Loan Banks.

[(e)] (d)(1) Each Federal Home Loan Bank shall have power to accept deposits made by members of such bank or by any other Federal Home Loan Bank or other instrumentality of the United States, upon such terms and conditions as the Board may prescribe, but no Federal Home Loan Bank shall transact any banking or other business not incidental to activities authorized by this Act.

(2)(A) * * *

* * * * *

(C) The Board is authorized, with respect to participation in the collection and settlement of any items by Federal Home Loan Banks[, and with respect to the collection and settlement (including payment by the payor institution) of items payable by Federal savings and loan associations and Federal mutual savings banks,] to prescribe rules and regulations regarding the rights, powers, responsibilities, duties, and liabilities, including standards relating thereto, of such Federal Home Loan Banks[, associations, or banks] and other parties to any such items or their collection and settlement. In prescribing such rules and regulations, the Board may adopt or apply, in whole or in part, general banking usage and practices, and, in instances or respects in which they would otherwise not be applicable, Federal Reserve regulations and operating letters, the Uniform Commercial Code, and clearinghouse rules.

[(f)] (e) The Board is authorized and empowered to permit[, or to require, Federal Home Loan Banks, upon such terms and conditions as the Board may prescribe, to rediscount the discounted notes of members held by other Federal Home Loan Banks, or to make loans to, or make deposits with, such other Federal Home Loan Banks, or to purchase any bonds or debentures issued under this section.

[(g)] (f) Each Federal Home Loan Bank shall at all times have at least an amount equal to the current deposits received from its members invested in (1) obligations of the United States, (2) deposits in banks or trust companies, (3) advances with a maturity of not to exceed five years which are made to members, upon such terms and conditions as the Board may prescribe, and (4) advances with a maturity of not to exceed five years which are made to members whose creditor liabilities (not including advances from the Federal Home Loan Bank) do not exceed 5 per centum of their net assets, and which may be made without the security of home mortgages or other security, upon such terms and conditions as the Board may prescribe.

[(h)] (g) Such part of the assets of each Federal Home Loan Bank (except reserves and amounts provided for in subsection (g)) as are not required for advances to members, may be invested, to such extent as the bank may deem desirable and subject to such regulations, restrictions, and limitations as may be prescribed by the Board, in obligations of the United States, in obligations, participations, or other instruments of or issued by the Federal National Mortgage Association, or the Government National Mortgage Association, in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act, in the stock of the Federal National Mortgage Association in stock, obligations, or other securities of any small business investment company formed pursuant to section 301 of the Small Business Investment Act of 1958, for the purpose of aiding members of the Federal Home Loan Bank System, and in such securities as fiduciary and trust funds may be invested in under the laws of the State in which the Federal Home Loan Bank is located.

[(i)] (h) The Secretary of the Treasury is authorized in his discretion to purchase any obligations issued pursuant to this section, as heretofore, now, or hereafter in force and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of the sale of any securities hereafter issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force, are extended to include such purchases. The Secretary of the Treasury may, at any time, sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such obligations under this subsection shall be treated as public-debt transactions of the United States. The Secretary of the Treasury shall not at any time purchase any obligations under this paragraph if such purchase would increase the aggregate principal amount of his then outstanding holdings of such obligations under this paragraph to an amount greater than \$4,000,000,000. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon terms and conditions as shall be determined by the Secretary of the Treasury and shall bear such rate of interest as may be determined by the Secretary of the Treasury taking into consideration the current average market yield for the month preceding the month of such purchase on outstanding marketable obligations of the United States.

[In addition to obligations authorized to be purchased by the preceding paragraph, the Secretary of the Treasury is authorized to purchase any obligations issued pursuant to this section in amounts not to exceed \$2,000,000,000. The authority provided in this paragraph shall expire August 10, 1975.]

* * * * *

[(j)] (i) Notwithstanding the provisions of the first sentence of section 202 of the Government Corporation Control Act, audits by the General Accounting Office of the financial transactions of a

Federal Home Loan Bank shall not be limited to periods during which Government capital has been invested therein. The provisions of the first sentence of subsection (d) of section 303 of the Government Corporation Control Act shall not apply to any Federal Home Loan Bank.

[(k) BANK LOANS TO SAIF.—

[(1) LOANS AUTHORIZED.—Subject to paragraph (3), the Federal Home Loan Banks may, upon the request of the Federal Deposit Insurance Corporation, make loans to such Corporation for the use of the Savings Association Insurance Fund.

[(2) LIABILITY OF THE FUND.—Any loan by a Federal Home Loan Bank pursuant to paragraph (1) shall be a direct liability of the Savings Association Insurance Fund.

[(3) INTEREST ON AND SECURITY FOR SUCH LOANS.—Any loan by a Federal Home Loan Bank pursuant to paragraph (1) shall—

[(A) bear a rate of interest not less than such Bank's current marginal cost of funds, taking into account the maturities involved; and

[(B) be adequately secured.]

(j) INVESTMENTS.—Each bank shall reduce its investments to those necessary for liquidity purposes, for safe and sound operation of the banks, or for housing finance, as administered by the Finance Board.

(k) PROHIBITION ON OTHER ACTIVITIES.—

(1) A Federal home loan bank may not engage in any activity other than the activities authorized under this Act and activities incidental to such authorized activities.

(2) All activities specified in paragraph (1) are subject to Finance Board approval.

INCORPORATION OF BANKS, AND CORPORATE POWERS

SEC. 12. (a) The directors of each Federal Home Loan Bank shall, in accordance with such rules and regulations as the Board may prescribe, make and file with the Board at the earliest practicable date after the establishment of such bank, an organization certificate which shall contain such information as the Board may require. Upon the making and filing of such organization certificate with the Board, such bank shall become, as of the date of the execution of its organization certificate, a body corporate, and as such and in its name as designated by the Board it shall have power to adopt, alter, and use a corporate seal; to make contracts; to purchase or lease and hold or dispose of such real estate as may be necessary or convenient for the transaction of its business, but, except with the prior approval of the Board, no bank building shall be bought or erected to house any such bank, or leased by such bank under any lease for such purpose which has a term of more than ten years; to sue and be sued, to complain, and to defend, in any court of competent jurisdiction, State or Federal; to select, employ, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary for the transaction of its business **[(subject to the approval of the Board)]**; to define their duties, require bonds of them and fix the penalties thereof, and to dismiss at pleasure such officers, employees, attorneys, and agents;

【and, by its Board of directors, to prescribe, amend, and repeal by-laws, rules, and regulations governing the manner in which its affairs may be administered; and the powers granted to it by law may be exercised and enjoyed subject to the approval of the Board. The president of a Federal Home Loan Bank may also be a member of the Board of directors thereof, but no other officer, employee, attorney, or agent of such bank,】 *and, by the board of directors of the bank, to prescribe, amend, and repeal by-laws governing the manner in which its affairs may be administered, consistent with applicable statute and regulation, as administered by the Finance Board. No officer, employee, attorney or agent of a Federal home loan bank who receives compensation, may be a member of the Board of directors. Each such bank shall have all such incidental powers, not inconsistent with the provisions of this Act, as are customary and usual in corporations generally.*

* * * * *

(c) *PROHIBITION ON EXCESSIVE COMPENSATION.—*

(1) *IN GENERAL.—The Finance Board shall prohibit the Federal home loan banks from providing compensation to any officer, director, or employee that is not reasonable and comparable with the compensation for employment in other similar businesses involving similar duties and responsibilities. However the Finance Board may not prescribe or set a specific level or range of compensation for any officer, director, or employee.*

(2) *REGULATIONS.—The Finance Board, by regulation, may provide for the requirements of paragraph (1) to be phased-in over a period not to exceed 3 years.*

(3) *EXCEPTION FOR EXISTING CONTRACTS.—Paragraph (1) shall not apply to any contract entered into before June 1, 1997.*

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RESERVES AND DIVIDENDS

SEC. 16. (a) Each Federal Home Loan Bank may carry to a reserve account from time-to-time such portion of its net earnings as may be determined by its board of directors. Each Federal Home Loan Bank shall establish such additional reserves and/or make such charge-offs on account of depreciation or impairment of its assets as the Board shall require from time to time. No dividends shall be paid except out of 【net earnings】 *previously retained earnings or current net earnings* remaining after reductions for all reserves, chargeoffs, purchases of capital certificates of the Financing Corporation, and payments relating to the Funding Corporation required under this Act have been provided for, other than chargeoffs or expenses incurred by a Bank in connection with the purchase of capital stock of the Financing Corporation under section 21 or payments relating to the Funding Corporation Principal Fund under section 21B(e)【, and then only with the approval of the Federal Housing Finance Board. Beginning on January 1, 1992, the preceding sentence shall be applied by substituting “previously retained earnings or current net earnings” for “net earnings”】. The reserves of each Federal Home Loan Bank shall be invested, subject to such regulations, restrictions, and limitations as may be prescribed by the Board, in direct obligations of the United States, in obligations,

participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association, in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act, and in such securities as fiduciary and trust funds may be invested in under the laws of the State in which the Federal Home Loan Bank is located.

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ADMINISTRATIVE EXPENSES

SEC. 18. (a) * * *

(b) ASSESSMENTS FOR ADMINISTRATIVE EXPENSES.—

(1) * * *

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[(4) TRANSITION PROVISION.—On or after the effective date of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Board may levy a one-time special assessment on the Banks pursuant to this subsection for the Board's estimated expenses for the transitional period following enactment of such Act, if such assessment is made before the Board's first semiannual assessment under paragraph (1).

[(c)(1) The Director of the Office of Thrift Supervision, utilizing the services of the Administrator of General Services (hereinafter referred to as the "Administrator"), and subject to any limitation hereon which may hereafter be imposed in appropriation Acts, is hereby authorized—

[(A) to acquire, in the name of the United States, real property in the District of Columbia, for the purposes set forth in this subsection;

[(B) to construct, develop, furnish, and equip such buildings thereon and such facilities as in its judgment may be appropriate to provide, to such extent as the Director of the Office of Thrift Supervision may deem advisable, suitable and adequate quarters and facilities for the Director of the Office of Thrift Supervision and the agencies under its administration or supervision;

[(C) to enlarge, remodel, or reconstruct any of the same; and

[(D) to make or enter into contracts for any of the foregoing.

[(2) The Director of the Office of Thrift Supervision may require of the respective banks, and they shall make to the Director of the Office of Thrift Supervision, such advances of funds for the purposes set out in paragraph (1) as in the sole judgment of the Director of the Office of Thrift Supervision may from time to time be advisable. Such advances shall be in addition to the assessments authorized in subsection (b) and shall be apportioned by the Director of the Office of Thrift Supervision among the banks in proportion to the total assets of the respective banks, determined in such manner and as of such times as the Director of the Office of Thrift Supervision may prescribe. Each such advance shall bear interest at the rate of 4 1/2 per centum per annum from the date of the advance and shall be repaid by the Director of the Office of Thrift Supervision in such installments and over such period, not longer

than twenty-five years from the making of the advance, as the Director of the Office of Thrift Supervision may determine. Payments of interest and principal upon such advances shall be made from receipts of the Director of the Office of Thrift Supervision or from other sources which may from time to time be available to the Director of the Office of Thrift Supervision. The obligation of the Director of the Office of Thrift Supervision to make any such payment shall not be regarded as an obligation of the United States. To such extent as the Director of the Office of Thrift Supervision may prescribe any such obligation shall be regarded as a legal investment for the purposes of subsections (g) and (h) of section 11 and for the purposes of section 16.

[(3) The plans and designs for such buildings and facilities and for any such enlargement, remodeling, or reconstruction shall, to such extent as the chairperson of the Director of the Office of Thrift Supervision may request, be subject to his approval.

[(4) Upon the making of arrangements mutually agreeable to the Director of the Office of Thrift Supervision and the Administrator, which arrangements may be modified from time to time by mutual agreement between them and may include but shall not be limited to the making of payments by the Director of the Office of Thrift Supervision and such agencies to the Administrator and by the Administrator to the Director of the Office of Thrift Supervision, the custody, management, and control of such buildings and facilities and of such real property shall be vested in the Administrator in accordance therewith. Until the making of such arrangements such custody, management, and control including the assignment and allotment and the reassignment and reallocation of building and other space, shall be vested in the Director of the Office of Thrift Supervision.

[(5) Any proceeds (including advances) received by the Director of the Office of Thrift Supervision in connection with this subsection, and any proceeds from the sale or other disposition of real or other property acquired by the Director of the Office of Thrift Supervision under this subsection, shall be considered as receipts of the Director of the Office of Thrift Supervision, and obligations and expenditures of the Director of the Office of Thrift Supervision and such agencies in connection with this subsection shall not be considered as administrative expenses. As used in this subsection, the term "property" shall include interests in property.

[(6) With respect to its functions under this subsection the Director of the Office of Thrift Supervision shall (A) annually prepare and submit a budget program as provided in title I of the Government Corporation Control Act with regard to wholly owned Government corporations, and for purposes of this sentence, the terms "wholly owned Government corporations" and "Government corporations", wherever used in such title, shall include the Director of the Office of Thrift Supervision, and (B) maintain an integral set of accounts which shall be audited by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions as provided in such title, and no other settlement or adjustment shall be required with respect to transactions under this subsection or with respect to claims, demands, or accounts by or against any person arising thereunder.

The first budget program shall be for the first full fiscal year beginning on or after the date of the enactment of this subsection. Except as otherwise provided in this subsection or by the Director of the Office of Thrift Supervision, the provisions of this subsection and the functions thereby or thereunder subsisting shall be applicable and exercisable notwithstanding and without regard to the Act of June 20, 1938 (D.C. Code, secs. 5-413-5-428), except that the proviso of section 16 thereof shall apply to any building constructed under this subsection, and section 306 of the Act of July 30, 1947 (61 Stat. 584), or any other provision of law relating to the construction, alteration, repair, or furnishing of public or other buildings or structures or the obtaining of sites therefor, but any person or body in whom any such function is vested may provide for delegation or redelegation of the exercise of such function.

[(7) No obligation shall be incurred and no expenditure, except in liquidation of obligation, shall be made pursuant to the first two subparagraphs of paragraph (1) of this subsection if the total amount of all obligations incurred pursuant thereto would thereupon exceed \$13,200,000, or such greater amount as may be provided in an appropriation Act or other law.]

* * * * *

SEC. 21B. RESOLUTION FUNDING CORPORATION ESTABLISHED.

(a) * * *

* * * * *

(f) OBLIGATIONS OF FUNDING CORPORATION.—

(1) * * *

* * * * *

(2) INTEREST PAYMENTS.—The Funding Corporation shall pay the interest due on such obligations from funds obtained for such interest payments from the following sources:

(A) * * *

* * * * *

[(C) PAYMENTS BY FEDERAL HOME LOAN BANKS.—To the extent the amounts available pursuant to subparagraphs (A) and (B) are insufficient to cover the amount of interest payments, the Federal Home Loan Banks shall pay to the Funding Corporation each calendar year the aggregate amount of \$300,000,000 minus the amounts required in such year for Financing Corporation principal payments (pursuant to section 21) and the amounts required in such year by the Funding Corporation pursuant to subsection (e). Each Bank's individual share of any amounts required to be paid by the Banks under this subparagraph shall be determined as follows:

[(i) AMOUNTS UP TO 20 PERCENT OF NET EARNINGS.—Each Federal Home Loan Bank shall pay an equal percentage of its net earnings for the year for which such amount is required to be paid, up to a maximum of 20 percent of net earnings.

[(ii) AMOUNTS IN EXCESS OF 20 PERCENT OF NET EARNINGS.—If the aggregate amount required to be

paid by the Federal Home Loan Banks under this subparagraph for any year exceeds 20 percent of the aggregate net earnings of the Banks for such year, each Bank shall pay 20 percent of its net earnings for such year as provided in clause (i), and each Bank's individual share of the excess of the required amount over 20 percent of the aggregate net earnings of the Banks for such year shall be determined by dividing—

【(I) the average month-end level in the prior year of advances outstanding by such Bank to Savings Associations Insurance Fund members; by

【(II) the average month-end level in the prior year of advances outstanding by all such Banks to Savings Associations Insurance Fund members.】

(C) PAYMENTS BY FEDERAL HOME LOAN BANKS.—To the extent the amounts available pursuant to subparagraphs (A) and (B) are insufficient to cover the amount of interest payments, each Federal home loan bank shall pay to the Funding Corporation each calendar year 20.75 percent of the net earnings of such bank (after deducting expenses relating to subsection (j) of section 10 and operating expenses).

* * * * *

SEC. 22. MEMBER FINANCIAL INFORMATION.

(a) **IN GENERAL.**—In order to enable the Federal Home Loan Banks to carry out the provisions of this Act, the Secretary of the Treasury, the Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, the Chairperson of the Federal Deposit Insurance Corporation, and the Chairperson of the National Credit Union Administration, and the Director of the Office of Thrift Supervision, upon request by any Federal Home Loan Bank—

(1) shall make available in confidence to any Federal Home Loan Bank, such reports, records, or other information as may be available, relating to the condition of any member of any Federal Home Loan Bank or any institution with respect to which any such Bank has had or contemplates having transactions under this Act; and

(2) may perform through their examiners or other employees or agents, for the confidential use of the Federal Home Loan Bank, examinations of institutions for which such agency is the appropriate Federal banking regulatory agency.

In addition, the Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, and the Chairperson of the National Credit Union Administration, and the Director of the Office of Thrift Supervision shall make available to the Board or any Federal Home Loan Bank the financial reports filed by members of any Bank to enable the Board or a Bank to compile and publish cost of funds indices or other financial or statistical reports.

* * * * *

[SEC. 22A. INFORMAL REVIEW OF CERTAIN SUPERVISORY DECISIONS.

[(a) REVIEW OF CERTAIN SUPERVISORY DECISIONS.—The Board shall establish an informal review procedure under which any association, insured institution, or member may obtain a review, by the principal supervisory agent for the Federal home loan bank district in which such association, institution, or member is located, of any decision by any examiner or supervisory agent of the Federal home loan bank for such district with respect to—

[(1) the appraisal value of—

[(A) any loan held by the association, insured institution, or member; or

[(B) any property serving as collateral to secure the repayment of any loan (held by the association, institution, or member);

[(2) the classification of any loan held by the association, institution, or member; or

[(3) any requirement imposed on the association, institution, or member to establish or to add to a reserve or allowance for a possible loss on any loan held by such institution.

[(b) STANDARDS FOR REVIEW.—The review procedure established pursuant to subsection (a) shall provide that the principal supervisory agent for the appropriate Federal home loan bank district, after taking into account the report described in subsection (c)(2) by the arbiter (or panel of arbiters), shall approve, modify, or set aside any decision for which a review has been requested on the basis of the supervisory agent's review of all the facts and the regulations applicable to such decision and shall take such action as such agent may determine to be necessary or appropriate in light of such review.

[(c) APPOINTMENT OF INDEPENDENT ARBITER.—The review procedure established pursuant to subsection (a) shall provide for the appointment (by the principal supervisory agent for the appropriate Federal home loan bank district, upon the filing of a request for a review under this section by an association, insured institution, or member) of an independent arbiter (or, upon the request of such association, institution, or member, a panel of independent arbiters) who shall—

[(1) review the decision which is the subject of the review in light of all the facts of the case and the regulations applicable to such determination; and

[(2) report the conclusions and recommendations of the independent arbiter (or the panel) with respect to the decision under review to the principal supervisory agent for the appropriate Federal home loan bank district and the association, insured institution, or member.

[(d) CONSOLIDATION OF REVIEWS OF RELATED DECISIONS.—The principal supervisory agent may consolidate requests for review under this section of related decisions and conduct a single review of all such related decisions.

[(e) 25-DAY ARBITER REVIEW PERIOD; 20-DAY PSA REVIEW PERIOD.—

[(1) ARBITER REVIEW.—The review procedure established pursuant to subsection (a) shall provide that any review described in subsection (c) by an arbiter (or panel of arbiters)

shall be completed before the end of the 25-day period beginning on the date the request for the review was filed with the principal supervisory agent.

[(2) REVIEW BY PSA.—The review procedure established pursuant to subsection (a) shall provide that any review by the principal supervisory agent of an arbiter's report described in subsection (c)(2) (or the report of a panel of arbiters) shall be completed before the end of the 20-day period beginning on the date the agent receives such report.

[(3) ONLY BUSINESS DAYS INCLUDED.—Saturdays, Sundays, and holidays shall not be taken into account in determining the periods described in paragraphs (1) and (2).

[(f) CLARIFICATION OF RELATIONSHIP BETWEEN INFORMAL REVIEW AND OTHER AVAILABLE REVIEW.—

[(1) INFORMAL REVIEW NOT EXCLUSIVE.—The informal review procedure established pursuant to subsection (a) for reviewing any decision referred to in such subsection shall be in addition to, and not in lieu of, any other procedure established by law, or any regulation of the Board, which provides for formal administrative or judicial review of such decision.

[(2) ONLY THE ORIGINAL DECISION IS WITHIN SCOPE OF ADMINISTRATIVE AND JUDICIAL REVIEW.—If any association, insured institution, or member seeks administrative or judicial review of any examiner or supervisory agent decision for which such association, insured institution, or member obtained an informal review under the procedure established pursuant to subsection (a), such administrative or judicial review shall be carried out—

[(A) without regard to the fact that such informal review was made; and

[(B) without admitting into evidence, or otherwise taking into account, the findings, recommendations, or conclusions of the principal supervisory agent and the independent arbiter (or the panel of independent arbiters) which conducted the informal review.

[(3) INFORMAL REVIEW NOT SUBJECT TO FORMAL REVIEW.—The findings, recommendations, or conclusions of any principal supervisory agent who conducted a review under the procedure established pursuant to subsection (a) are not decisions which may be subject to review by the Board or any court under any regulation of the Board or any law.

[(g) EXPENSES OF REVIEW BORNE BY ASSOCIATION, INSTITUTION, OR MEMBER.—All reasonable expenses incurred as a direct or indirect result of any review under the procedure established pursuant to subsection (a) shall be paid by the association, insured institution, or member which requested the review.]

* * * * *

[SEC. 24. (a) Any organization organized under the laws of any State and subject to inspection and regulation under the banking or similar laws of such State shall be eligible to become a member under this Act if—

[(1) it is organized solely for the purpose of supplying credit to its members;

[(2) its membership (A) is confined exclusively to building and loan associations, savings and loan associations, cooperative banks, and homestead associations; or (B) is confined exclusively to savings banks; and

[(3) of the institutions to which its membership is confined which are organized within the State, its membership includes a majority of such institutions.

[(b) In all respects, but subject to such additional rules and regulations as the Board may provide, any such organization shall be a member for the purposes of this Act.]

* * * * *

SEC. 26. (a) Whenever the Board finds that the efficient and economical accomplishment of the purposes of this Act will be aided by such action, and in accordance with such rules, regulations, and orders as the Board may prescribe, any Federal Home Loan Bank may be liquidated or reorganized, and its stock paid off and retired in whole or in part in connection therewith after paying or making provision for the payment of its liabilities. In the case of any such liquidation or reorganization, any other Federal Home Loan Bank may, with the approval of the Board, acquire assets of any such liquidated or reorganized bank and assume liabilities thereof, in whole or in part.

(b) *Nothing in this section shall preclude voluntary mergers, combinations or consolidation by or among the Federal home loan banks pursuant to such regulations as the Finance Board may prescribe.*

(c) *NUMBER OF ELECTED DIRECTORS OF RESULTING BANK.—Subject to section 7 of this Act, any bank resulting from a merger, combination, or consolidation pursuant to this section may have a number of elected directors equal to or less than the total number of elected directors of all the banks which participated in such transaction (as determined immediately before such transaction).*

(d) *NUMBER OF APPOINTED DIRECTORS OF RESULTING BANK.—The number of appointed directors of any bank resulting from a merger, combination, or consolidation pursuant to this section shall be a number that is three less than the number of elected directors.*

(e) *ADJUSTMENT OF DISTRICT BOUNDARIES.—After consummation of any merger, combination, or consolidation of 2 or more Federal home loan banks, the Finance Board shall adjust the districts established in section 3 of this Act to reflect such merger, combination, or consolidation.*

[SEC. 27. HOUSING OPPORTUNITY HOTLINE PROGRAM.

[(a) ESTABLISHMENT.—The Federal Home Loan Banks shall, individually or (at the discretion of the Federal Housing Finance Board) on a consolidated basis, establish and provide a service substantially similar (in the determination of the Board) to the “Housing Opportunity Hotline” program established in October 1992, by the Federal Home Loan Bank of Dallas.

[(b) PURPOSE.—The service or services established under this section shall provide information regarding the availability for purchase of single family properties that are owned or held by Federal agencies and are located in the Federal Home Loan Bank district for such Bank. Such agencies shall provide to the Federal Home

Loan Banks the information necessary to provide such service or services.

[(c) REQUIRED INFORMATION.—The service or services established under this section shall use the information obtained from Federal agencies to provide information regarding the size, location, price, and other characteristics of such single family properties, the eligibility requirements for purchasers of such properties, the terms for such sales, and the terms of any available seller financing, and shall identify properties that are affordable to low- and moderate-income families.

[(d) TOLL-FREE TELEPHONE NUMBER.—The service or services established under this section shall establish and maintain a toll-free telephone line for providing the information made available under the service or services.

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

[(1) FEDERAL AGENCIES.—The term “Federal agencies” means—

[(A) the Farmers Home Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the General Services Administration, the Department of Housing and Urban Development, and the Department of Veterans Affairs;

[(B) the Resolution Trust Corporation, subject to the discretion of such Corporation; and

[(C) the Federal Deposit Insurance Corporation, subject to the discretion of such Corporation.

[(2) SINGLE FAMILY PROPERTY.—The term “single family property” means a 1- to 4-family residence, including a manufactured home.]

* * * * *

HOME OWNERS' LOAN ACT

AN ACT To provide emergency relief with respect to home mortgage indebtedness, to refinance home mortgages, to extend relief to the owners of homes occupied by them and who are unable to amortize their debt elsewhere, to amend the Federal Home Loan Bank Act, to increase the market for obligations of the United States and for other purposes.

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

[This Act may be cited as the “Home Owners’ Loan Act”.

TABLE OF CONTENTS

- [Sec. 1. Short title and table of contents.
- [Sec. 2. Definitions.
- [Sec. 3. Director of the Office of Thrift Supervision.
- [Sec. 4. Supervision of savings associations.
- [Sec. 5. Federal savings associations.
- [Sec. 6. Liquid asset requirements.
- [Sec. 7. Applicability.
- [Sec. 8. District associations.
- [Sec. 9. Examination fees.

- [Sec. 10. Regulation of holding companies.
- [Sec. 11. Transactions with affiliates; extensions of credit to executive officers, directors, and principal shareholders.
- [Sec. 12. Advertising.
- [Sec. 13. Powers of examiners.
- [Sec. 14. Separability provision.

[SEC. 2. DEFINITIONS.

[For purposes of this Act—

[(1) DIRECTOR.—The term “Director” means the Director of the Office of Thrift Supervision.

[(2) CORPORATION.—The term “Corporation” means the Federal Deposit Insurance Corporation.

[(3) OFFICE.—The term “Office” means the Office of Thrift Supervision.

[(4) SAVINGS ASSOCIATION.—The term “savings association” means a savings association, as defined in section 3 of the Federal Deposit Insurance Act, the deposits of which are insured by the Corporation.

[(5) FEDERAL SAVINGS ASSOCIATION.—The term “Federal savings association” means a Federal savings association or a Federal savings bank chartered under section 5 of this Act.

[(6) NATIONAL BANK.—The term “national bank” has the same meaning as in section 3 of the Federal Deposit Insurance Act.

[(7) FEDERAL BANKING AGENCIES.—The term “Federal banking agencies” means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

[(8) STATE.—The term “State” has the same meaning as in section 3 of the Federal Deposit Insurance Act.

[(9) AFFILIATE.—The term “affiliate” means any person that controls, is controlled by, or is under common control with, a savings association, except as provided in section 10.

[SEC. 3. DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.

[(a) ESTABLISHMENT OF OFFICE.—There is established the Office of Thrift Supervision, which shall be an office in the Department of the Treasury.

[(b) ESTABLISHMENT OF POSITION OF DIRECTOR.—

[(1) IN GENERAL.—There is established the position of the Director of the Office of Thrift Supervision, who shall be the head of the Office of Thrift Supervision and shall be subject to the general oversight of the Secretary of the Treasury.

[(2) AUTHORITY TO PRESCRIBE REGULATIONS.—The Director may prescribe such regulations and issue such orders as the Director may determine to be necessary for carrying out this Act and all other laws within the Director’s jurisdiction.

[(3) AUTONOMY OF DIRECTOR.—The Secretary of the Treasury may not intervene in any matter or proceeding before the Director (including agency enforcement actions) unless otherwise specifically provided by law.

[(4) BANKING AGENCY RULEMAKING.—The Secretary of the Treasury may not delay or prevent the issuance of any rule or the promulgation of any regulation by the Director.

[(c) APPOINTMENT; TERM.—

[(1) APPOINTMENT.—The Director shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States.

[(2) TERM.—The Director shall be appointed for a term of 5 years.

[(3) VACANCY.—A vacancy in the position of Director which occurs before the expiration of the term for which a Director was appointed shall be filled in the manner established in paragraph (1) and the Director appointed to fill such vacancy shall be appointed only for the remainder of such term.

[(4) SERVICE AFTER END OF TERM.—An individual may serve as Director after the expiration of the term for which appointed until a successor Director has been appointed.

[(5) TRANSITIONAL PROVISION.—Notwithstanding paragraphs (1) and (2), the Chairman of the Federal Home Loan Bank Board on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, shall be the Director until the date on which that individual's term as Chairman of the Federal Home Loan Bank Board would have expired.

[(d) PROHIBITION ON FINANCIAL INTERESTS.—The Director shall not have a direct or indirect financial interest in any insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act.

[(e) POWERS OF THE DIRECTOR.—The Director shall have all powers which—

[(1) were vested in the Federal Home Loan Bank Board (in the Board's capacity as such) or the Chairman of such Board on the day before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

[(2) were not—

[(A) transferred to the Federal Deposit Insurance Corporation, the Federal Housing Finance Board, the Resolution Trust Corporation, or the Federal Home Loan Mortgage Corporation pursuant to any amendment made by such Act; or

[(B) established under any provision of law repealed by such Act.

[(f) STATE HOMESTEAD PROVISIONS.—No provision of this Act or any other provision of law administered by the Director shall be construed as superseding any homestead provision of any State constitution, including any implementing State statute, in effect on the date of enactment of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, or any subsequent amendment to such a State constitutional or statutory provision in effect on such date, that exempts the homestead of any person from foreclosure, or forced sale, for the payment of all debts, other than a purchase money obligation relating to the homestead, taxes due on the homestead, or an obligation arising from work and material used in constructing improvements on the homestead.

[(g) ANNUAL REPORT REQUIRED.—The Director shall make an annual report to the Congress. Such report shall include—

[(1) a description of any changes the Director has made or is considering making in the district offices of the Office, including a description of the geographic allocation of the Office's resources and personnel used to carry out examination and supervision functions; and

[(2) a description of actions taken to carry out section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

[(h) STAFF.—

[(1) APPOINTMENT AND COMPENSATION.—The Director shall fix the compensation and number of, and appoint and direct, all employees of the Office of Thrift Supervision notwithstanding section 301(f)(1) of title 31, United States Code. Such compensation shall be paid without regard to the provisions of other laws applicable to officers or employees of the United States.

[(2) RATES OF BASIC PAY.—Rates of basic pay for employees of the Office may be set and adjusted by the Director without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5, United States Code.

[(3) ADDITIONAL COMPENSATION AND BENEFITS.—The Director may provide additional compensation and benefits to employees of the Office if the same type of compensation or benefits are then being provided by any Federal banking agency or, if not then being provided, could be provided by such an agency under applicable provisions of law, rule, or regulation. In setting and adjusting the total amount of compensation and benefits for employees of the Office, the Director shall consult, and seek to maintain comparability with, the Federal banking agencies.

[(4) DELEGATION AUTHORITY.—

[(A) IN GENERAL.—The Director may—

[(i) designate who shall act as Director in the Director's absence; and

[(ii) delegate to any employee, representative, or agent any power of the Director.

[(B) LIMITATIONS.—Notwithstanding subparagraph (A)(ii), the Director shall not, directly or indirectly—

[(i) after October 10, 1989, delegate to any Federal home loan bank or to any officer, director, or employee of a Federal home loan bank, any power involving examining, supervising, taking enforcement action with respect to, or otherwise regulating any savings association, savings and loan holding company, or other person subject to regulation by the Director; or

[(ii) delegate the Director's authority to serve as a member of the Corporation's Board of Directors.

[(i) FUNDING THROUGH ASSESSMENTS.—The compensation of the Director and other employees of the Office and all other expenses thereof may be paid from assessments levied under this Act.

[(j) GAO AUDIT.—The Director shall make available to the Comptroller General of the United States all books and records necessary to audit all of the activities of the Office of Thrift Supervision.

[SEC. 4. SUPERVISION OF SAVINGS ASSOCIATIONS.**[(a) FEDERAL SAVINGS ASSOCIATIONS.—**

[(1) IN GENERAL.—The Director shall provide for the examination, safe and sound operation, and regulation of savings associations.

[(2) REGULATIONS.—The Director may issue such regulations as the Director determines to be appropriate to carry out the responsibilities of the Director or the Office.

[(3) SAFE AND SOUND HOUSING CREDIT TO BE ENCOURAGED.—The Director shall exercise all powers granted to the Director under this Act so as to encourage savings associations to provide credit for housing safely and soundly.

[(b) ACCOUNTING AND DISCLOSURE.—

[(1) IN GENERAL.—The Director shall, by regulation, prescribe uniform accounting and disclosure standards for savings associations, to be used in determining savings associations' compliance with all applicable regulations.

[(2) SPECIFIC REQUIREMENTS FOR ACCOUNTING STANDARDS.—Subject to section 5(t), the uniform accounting standards prescribed under paragraph (1) shall—

[(A) incorporate generally accepted accounting principles to the same degree that such principles are used to determine compliance with regulations prescribed by the Federal banking agencies;

[(B) allow for no deviation from full compliance with such standards as are in effect after December 31, 1993; and

[(C) prior to January 1, 1994, require full compliance by savings associations with accounting standards in effect at any time before such date not later than provided under the schedule in section 563.23-3 of title 12, Code of Federal Regulations (as in effect on May 1, 1989).

[(3) AUTHORITY TO PRESCRIBE MORE STRINGENT ACCOUNTING STANDARDS.—The Director may at any time prescribe accounting standards more stringent than required under paragraph (2) if the Director determines that the more stringent standards are necessary to ensure the safe and sound operation of savings associations.

[(c) STRINGENCY OF STANDARDS.—All regulations and policies of the Director governing the safe and sound operation of savings associations, including regulations and policies governing asset classification and appraisals, shall be no less stringent than those established by the Comptroller of the Currency for national banks.

[(d) INVESTMENT OF CERTAIN FUNDS IN ACCOUNTS OF SAVINGS ASSOCIATIONS.—The savings accounts and share accounts of savings associations insured by the Corporation shall be lawful investments and may be accepted as security for all public funds of the United States, fiduciary and trust funds under the authority or control of the United States or any officer thereof, and for the funds of all corporations organized under the laws of the United States (subject to any regulatory authority otherwise applicable), regardless of any limitation of law upon the investment of any such funds or upon the acceptance of security for the investment or deposit of any of such funds.

[(e) PARTICIPATION BY SAVINGS ASSOCIATIONS IN LOTTERIES AND RELATED ACTIVITIES.—

[(1) PARTICIPATION PROHIBITED.—No savings association may—

[(A) deal in lottery tickets;

[(B) deal in bets used as a means or substitute for participation in a lottery;

[(C) announce, advertise, or publicize the existence of any lottery; or

[(D) announce, advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery.

[(2) USE OF FACILITIES PROHIBITED.—No savings association may permit—

[(A) the use of any part of any of its own offices by any person for any purpose forbidden to the institution under paragraph (1); or

[(B) direct access by the public from any of its own offices to any premises used by any person for any purpose forbidden to the institution under paragraph (1).

[(3) DEFINITIONS.—For purposes of this subsection—

[(A) DEAL IN.—The term “deal in” includes making, taking, buying, selling, redeeming, or collecting.

[(B) LOTTERY.—The term “lottery” includes any arrangement under which—

[(i) 3 or more persons (hereafter in this subparagraph referred to as the “participants”) advance money or credit to another in exchange for the possibility or expectation that 1 or more but not all of the participants (hereafter in this paragraph referred to as the “winners”) will receive by reason of those participants’ advances more than the amounts those participants have advanced; and

[(ii) the identity of the winners is determined by any means which includes—

[(I) a random selection;

[(II) a game, race, or contest; or

[(III) any record or tabulation of the result of 1 or more events in which any participant has no interest except for the bearing that event has on the possibility that the participant may become a winner.

[(C) LOTTERY TICKET.—The term “lottery ticket” includes any right, privilege, or possibility (and any ticket, receipt, record, or other evidence of any such right, privilege, or possibility) of becoming a winner in a lottery.

[(4) EXCEPTION FOR STATE LOTTERIES.—Paragraphs (1) and (2) shall not apply with respect to any savings association accepting funds from, or performing any lawful services for, any State operating a lottery, or any officer or employee of such a State who is charged with administering the lottery.

[(5) REGULATIONS.—The Director shall prescribe such regulations as may be necessary to provide for enforcement of this subsection and to prevent any evasion of any provision of this subsection.

[(f) **FEDERALLY RELATED MORTGAGE LOAN DISCLOSURES.**—A savings association may not make a federally related mortgage loan to an agent, trustee, nominee, or other person acting in a fiduciary capacity without requiring that the identity of the person receiving the beneficial interest of such loan shall at all times be revealed to the savings association. At the request of the Director, the savings association shall report to the Director the identity of such person and the nature and amount of the loan.

[(g) **PREEMPTION OF STATE USURY LAWS.**—(1) Notwithstanding any State law, a savings association may charge interest on any extension of credit at a rate of not more than 1 percent in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district in which such savings association is located or at the rate allowed by the laws of the State in which such savings association is located, whichever is greater.

[(2) If the rate prescribed in paragraph (1) exceeds the rate such savings association would be permitted to charge in the absence of this subsection, the receiving or charging a greater rate of interest than that prescribed by paragraph (1), when knowingly done, shall be deemed a forfeiture of the entire interest which the extension of credit carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than 2 years after the date of such payment, an amount equal to twice the amount of the interest paid from the savings association taking or receiving such interest.

[(h) **FORM AND MATURITY OF SECURITIES.**—No savings association shall—

[(1) issue securities which guarantee a definite maturity except with the specific approval of the Director, or

[(2) issue any securities the form of which has not been approved by the Director.

[SEC. 5. FEDERAL SAVINGS ASSOCIATIONS.

[(a) **IN GENERAL.**—In order to provide thrift institutions for the deposit of funds and for the extension of credit for homes and other goods and services, the Director is authorized, under such regulations as the Director may prescribe—

[(1) to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as Federal savings associations (including Federal savings banks), and

[(2) to issue charters therefor, giving primary consideration of the best practices of thrift institutions in the United States. The lending and investment powers conferred by this section are intended to encourage such institutions to provide credit for housing safely and soundly.

[(b) **DEPOSITS AND RELATED POWERS.**—

[(1) **DEPOSIT ACCOUNTS.**—

[(A) Subject to the terms of its charter and regulations of the Director, a Federal savings association may—

[(i) raise funds through such deposit, share, or other accounts, including demand deposit accounts (hereafter in this section referred to as “accounts”); and

[(ii) issue passbooks, certificates, or other evidence of accounts.

[(B) A Federal savings association may not—

[(i) pay interest on a demand account; or

[(ii) permit any overdraft (including an intraday overdraft) on behalf of an affiliate, or incur any such overdraft in such savings association's account at a Federal reserve bank or Federal home loan bank on behalf of an affiliate.

All savings accounts and demand accounts shall have the same priority upon liquidation. Holders of accounts and obligors of a Federal savings association shall, to such extent as may be provided by its charter or by regulations of the Director, be members of the savings association, and shall have such voting rights and such other rights as are thereby provided.

[(C) A Federal savings association may require not less than 14 days notice prior to payment of savings accounts if the charter of the savings association or the regulations of the Director so provide.

[(D) If a Federal savings association does not pay all withdrawals in full (subject to the right of the association, where applicable, to require notice), the payment of withdrawals from accounts shall be subject to such rules and procedures as may be prescribed by the savings association's charter or by regulation of the Director. Except as authorized in writing by the Director, any Federal savings association that fails to make full payment of any withdrawal when due shall be deemed to be in an unsafe or unsound condition.

[(E) Accounts may be subject to check or to withdrawal or transfer on negotiable or transferable or other order or authorization to the Federal savings association, as the Director may by regulation provide.

[(F) A Federal savings association may establish remote service units for the purpose of crediting savings or demand accounts, debiting such accounts, crediting payments on loans, and the disposition of related financial transactions, as provided in regulations prescribed by the Director.

[(2) OTHER LIABILITIES.—To such extent as the Director may authorize in writing, a Federal savings association may borrow, may give security, may be surety as defined by the Director and may issue such notes, bonds, debentures, or other obligations, or other securities, including capital stock.

[(3) LOANS FROM STATE HOUSING FINANCE AGENCIES.—

[(A) IN GENERAL.—Subject to regulation by the Director but without regard to any other provision of this subsection, any Federal savings association that is in compliance with the capital standards in effect under subsection (t) may borrow funds from a State mortgage finance agency of the State in which the head office of such savings association is situated to the same extent as State law authorizes a savings association organized under the laws of

such State to borrow from the State mortgage finance agency.

[(B) INTEREST RATE.—A Federal savings association may not make any loan of funds borrowed under subparagraph (A) at an interest rate which exceeds by more than $1\frac{3}{4}$ percent per annum the interest rate paid to the State mortgage finance agency on the obligations issued to obtain the funds so borrowed.

[(4) MUTUAL CAPITAL CERTIFICATES.—In accordance with regulations issued by the Director, mutual capital certificates may be issued and sold directly to subscribers or through underwriters. Such certificates may be included in calculating capital for the purpose of subsection (t) to the extent permitted by the Director. The issuance of certificates under this paragraph does not constitute a change of control or ownership under this Act or any other law unless there is in fact a change in control or reorganization. Regulations relating to the issuance and sale of mutual capital certificates shall provide that such certificates—

[(A) are subordinate to all savings accounts, savings certificates, and debt obligations;

[(B) constitute a claim in liquidation on the general reserves, surplus, and undivided profits of the Federal savings association remaining after the payment in full of all savings accounts, savings certificates, and debt obligations;

[(C) are entitled to the payment of dividends; and

[(D) may have a fixed or variable dividend rate.

[(c) LOANS AND INVESTMENTS.—To the extent specified in regulations of the Director, a Federal savings association may invest in, sell, or otherwise deal in the following loans and other investments:

[(1) LOANS OR INVESTMENTS WITHOUT PERCENTAGE OF ASSETS LIMITATION.—Without limitation as a percentage of assets, the following are permitted:

[(A) ACCOUNT LOANS.—Loans on the security of its savings accounts and loans specifically related to transaction accounts.

[(B) RESIDENTIAL REAL PROPERTY LOANS.—Loans on the security of liens upon residential real property.

[(C) UNITED STATES GOVERNMENT SECURITIES.—Investments in obligations of, or fully guaranteed as to principal and interest by, the United States.

[(D) FEDERAL HOME LOAN BANK AND FEDERAL NATIONAL MORTGAGE ASSOCIATION SECURITIES.—Investments in the stock or bonds of a Federal home loan bank or in the stock of the Federal National Mortgage Association.

[(E) FEDERAL HOME LOAN MORTGAGE CORPORATION INSTRUMENTS.—Investments in mortgages, obligations, or other securities which are or have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act.

[(F) OTHER GOVERNMENT SECURITIES.—Investments in obligations, participations, securities, or other instruments issued by, or fully guaranteed as to principal and interest

by, the Federal National Mortgage Association, the Student Loan Marketing Association, the Government National Mortgage Association, or any agency of the United States. A savings association may issue and sell securities which are guaranteed pursuant to section 306(g) of the National Housing Act.

【(G) DEPOSITS.—Investments in accounts of any insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act.

【(H) STATE SECURITIES.—Investments in obligations issued by any State or political subdivision thereof (including any agency, corporation, or instrumentality of a State or political subdivision). A Federal savings association may not invest more than 10 percent of its capital in obligations of any one issuer, exclusive of investments in general obligations of any issuer.

【(I) PURCHASE OF INSURED LOANS.—Purchase of loans secured by liens on improved real estate which are insured or guaranteed under the National Housing Act, the Servicemen's Readjustment Act of 1944, or chapter 37 of title 38, United States Code.

【(J) HOME IMPROVEMENT AND MANUFACTURED HOME LOANS.—Loans made to repair, equip, alter, or improve any residential real property, and loans made for manufactured home financing.

【(K) INSURED LOANS TO FINANCE THE PURCHASE OF FEE SIMPLE.—Loans insured under section 240 of the National Housing Act.

【(L) LOANS TO FINANCIAL INSTITUTIONS, BROKERS, AND DEALERS.—Loans to—

【(i) financial institutions with respect to which the United States or an agency or instrumentality thereof has any function of examination or supervision, or

【(ii) any broker or dealer registered with the Securities and Exchange Commission,

which are secured by loans, obligations, or investments in which the Federal savings association has the statutory authority to invest directly.

【(M) LIQUIDITY INVESTMENTS.—Investments which, when made, are of a type that may be used to satisfy any liquidity requirement imposed by the Director pursuant to section 6.

【(N) INVESTMENT IN THE NATIONAL HOUSING PARTNERSHIP CORPORATION, PARTNERSHIPS, AND JOINT VENTURES.—Investments in shares of stock issued by a corporation authorized to be created pursuant to title IX of the Housing and Urban Development Act of 1968, and investments in any partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of such Act.

【(O) CERTAIN HUD INSURED OR GUARANTEED INVESTMENTS.—Loans that are secured by mortgages—

【(i) insured under title X of the National Housing Act, or

[(ii) guaranteed under title IV of the Housing and Urban Development Act of 1968, under part B of the National Urban Policy and New Community Development Act of 1970, or under section 802 of the Housing and Community Development Act of 1974.

[(P) STATE HOUSING CORPORATION INVESTMENTS.—Obligations of and loans to any State housing corporation, if—

[(i) such obligations or loans are secured directly, or indirectly through an agent or fiduciary, by a first lien on improved real estate which is insured under the provisions of the National Housing Act, and

[(ii) in the event of default, the holder of the obligations or loans has the right directly, or indirectly through an agent or fiduciary, to cause to be subject to the satisfaction of such obligations or loans the real estate described in the first lien or the insurance proceeds under the National Housing Act.

[(Q) INVESTMENT COMPANIES.—A Federal savings association may invest in, redeem, or hold shares or certificates issued by any open-end management investment company which—

[(i) is registered with the Securities and Exchange Commission under the Investment Company Act of 1940, and

[(ii) the portfolio of which is restricted by such management company's investment policy (changeable only if authorized by shareholder vote) solely to investments that a Federal savings association by law or regulation may, without limitation as to percentage of assets, invest in, sell, redeem, hold, or otherwise deal in.

[(R) MORTGAGE-BACKED SECURITIES.—Investments in securities that—

[(i) are offered and sold pursuant to section 4(5) of the Securities Act of 1933; or

[(ii) are mortgage related securities (as defined in section 3(a)(41) of the Securities Exchange Act of 1934),

subject to such regulations as the Director may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales price, or both.

[(S) SMALL BUSINESS RELATED SECURITIES.—Investments in small business related securities (as defined in section 3(a)(53) of the Securities Exchange Act of 1934), subject to such regulations as the Director may prescribe, including regulations concerning the minimum size of the issue (at the time of the initial distribution), the minimum aggregate sales price, or both.

[(T) CREDIT CARD LOANS.—Loans made through credit cards or credit card accounts.

[(U) EDUCATIONAL LOANS.—Loans made for the payment of educational expenses.

[(2) LOANS OR INVESTMENTS LIMITED TO A PERCENTAGE OF ASSETS OR CAPITAL.—The following loans or investments are permitted, but only to the extent specified:

[(A) COMMERCIAL AND OTHER LOANS.—Secured or unsecured loans for commercial, corporate, business, or agricultural purposes. The aggregate amount of loans made under this subparagraph may not exceed 20 percent of the total assets of the Federal savings association, and amounts in excess of 10 percent of such total assets may be used under this subparagraph only for small business loans, as that term is defined by the Director.

[(B) NONRESIDENTIAL REAL PROPERTY LOANS.—

[(i) IN GENERAL.—Loans on the security of liens upon nonresidential real property. Except as provided in clause (ii), the aggregate amount of such loans shall not exceed 400 percent of the Federal savings association's capital, as determined under subsection (t).

[(ii) EXCEPTION.—The Director may permit a savings association to exceed the limitation set forth in clause (i) if the Director determines that the increased authority—

[(I) poses no significant risk to the safe and sound operation of the association, and

[(II) is consistent with prudent operating practices.

[(iii) MONITORING.—If the Director permits any increased authority pursuant to clause (ii), the Director shall closely monitor the Federal savings association's condition and lending activities to ensure that the savings association carries out all authority under this paragraph in a safe and sound manner and complies with this subparagraph and all relevant laws and regulations.

[(C) INVESTMENTS IN PERSONAL PROPERTY.—Investments in tangible personal property, including vehicles, manufactured homes, machinery, equipment, or furniture, for rental or sale. Investments under this subparagraph may not exceed 10 percent of the assets of the Federal savings association.

[(D) CONSUMER LOANS AND CERTAIN SECURITIES.—A Federal savings association may make loans for personal, family, or household purposes, including loans reasonably incident to providing such credit, and may invest in, sell, or hold commercial paper and corporate debt securities, as defined and approved by the Director. Loans and other investments under this subparagraph may not exceed 35 percent of the assets of the Federal savings association, except that amounts in excess of 30 percent of the assets may be invested only in loans which are made by the association directly to the original obligor and with respect to which the association does not pay any finder, referral, or other fee, directly or indirectly, to any third party.

[(3) LOANS OR INVESTMENTS LIMITED TO 5 PERCENT OF ASSETS.—The following loans or investments are permitted, but

not to exceed 5 percent of assets of a Federal savings association for each subparagraph:

[(A) COMMUNITY DEVELOPMENT INVESTMENTS.—Investments in real property and obligations secured by liens on real property located within a geographic area or neighborhood receiving concentrated development assistance by a local government under title I of the Housing and Community Development Act of 1974. No investment under this subparagraph in such real property may exceed an aggregate of 2 percent of the assets of the Federal savings association.

[(B) NONCONFORMING LOANS.—Loans upon the security of or respecting real property or interests therein used for primarily residential or farm purposes that do not comply with the limitations of this subsection.

[(C) CONSTRUCTION LOANS WITHOUT SECURITY.—Loans—

[(i) the principal purpose of which is to provide financing with respect to what is or is expected to become primarily residential real estate; and

[(ii) with respect to which the association—

[(I) relies substantially on the borrower's general credit standing and projected future income for repayment, without other security; or

[(II) relies on other assurances for repayment, including a guarantee or similar obligation of a third party.

The aggregate amount of such investments shall not exceed the greater of the Federal savings association's capital or 5 percent of its assets.

[(4) OTHER LOANS AND INVESTMENTS.—The following additional loans and other investments to the extent authorized below:

[(A) BUSINESS DEVELOPMENT CREDIT CORPORATIONS.—A Federal savings association that is in compliance with the capital standards prescribed under subsection (t) may invest in, lend to, or to commit itself to lend to, any business development credit corporation incorporated in the State in which the home office of the association is located in the same manner and to the same extent as savings associations chartered by such State are authorized. The aggregate amount of such investments, loans, and commitments of any such Federal savings association shall not exceed one-half of 1 percent of the association's total outstanding loans or \$250,000, whichever is less.

[(B) SERVICE CORPORATIONS.—Investments in the capital stock, obligations, or other securities of any corporation organized under the laws of the State in which the Federal savings association's home office is located, if such corporation's entire capital stock is available for purchase only by savings associations of such State and by Federal associations having their home offices in such State. No Federal savings association may make any investment under this subparagraph if the association's aggregate outstanding investment under this subparagraph would exceed 3 percent

of the association's assets. Not less than one-half of the investment permitted under this subparagraph which exceeds 1 percent of the association's assets shall be used primarily for community, inner-city, and community development purposes.

[(C) FOREIGN ASSISTANCE INVESTMENTS.—Investments in housing project loans having the benefit of any guaranty under section 221 of the Foreign Assistance Act of 1961 or loans having the benefit of any guarantee under section 224 of such Act, or any commitment or agreement with respect to such loans made pursuant to either of such sections and in the share capital and capital reserve of the Inter-American Savings and Loan Bank. This authority extends to the acquisition, holding, and disposition of loans guaranteed under section 221 or 222 of such Act. Investments under this subparagraph shall not exceed 1 percent of the Federal savings association's assets.

[(D) SMALL BUSINESS INVESTMENT COMPANIES.—A Federal savings association may invest in stock, obligations, or other securities of any small business investment company formed pursuant to section 301(d) of the Small Business Investment Act of 1958 for the purpose of aiding members of a Federal home loan bank. A Federal savings association may not make any investment under this subparagraph if its aggregate outstanding investment under this subparagraph would exceed 1 percent of the assets of such savings association.

[(E) BANKERS' BANKS.—A Federal savings association may purchase for its own account shares of stock of a bankers' bank, described in Paragraph Seventh of section 5136 of the Revised Statutes or in section 5169(b) of the Revised Statutes, on the same terms and conditions as a national bank may purchase such shares.

[(5) TRANSITION RULE FOR SAVINGS ASSOCIATIONS ACQUIRING BANKS.—

[(A) IN GENERAL.—If, under section 5(d)(3) of the Federal Deposit Insurance Act, a savings association acquires all or substantially all of the assets of a bank that is a member of the Bank Insurance Fund, the Director may permit the savings association to retain any such asset during the 2-year period beginning on the date of the acquisition.

[(B) EXTENSION.—The Director may extend the 2-year period described in subparagraph (A) for not more than 1 year at a time and not more than 2 years in the aggregate, if the Director determines that the extension is consistent with the purposes of this Act.

[(6) DEFINITIONS.—As used in this subsection—

[(A) RESIDENTIAL PROPERTY.—The terms "residential real property" or "residential real estate" mean leaseholds, homes (including condominiums and cooperatives, except that in connection with loans on individual cooperative units, such loans shall be adequately secured as defined by the Director) and, combinations of homes or dwelling units

and business property, involving only minor or incidental business use, or property to be improved by construction of such structures.

[(B) LOANS.—The term “loans” includes obligations and extensions or advances of credit; and any reference to a loan or investment includes an interest in such a loan or investment.

[(d) REGULATORY AUTHORITY.—

[(1) IN GENERAL.—

[(A) ENFORCEMENT.—The Director shall have power to enforce this section, section 8 of the Federal Deposit Insurance Act, and regulations prescribed hereunder. In enforcing any provision of this section, regulations prescribed under this section, or any other law or regulation, or in any other action, suit, or proceeding to which the Director is a party or in which the Director is interested, and in the administration of conservatorships and receiverships, the Director may act in the Director’s own name and through the Director’s own attorneys. Except as otherwise provided, the Director shall be subject to suit (other than suits on claims for money damages) by any Federal savings association or director or officer thereof with respect to any matter under this section or any other applicable law, or regulation thereunder, in the United States district court for the judicial district in which the savings association’s home office is located, or in the United States District Court for the District of Columbia, and the Director may be served with process in the manner prescribed by the Federal Rules of Civil Procedure.

[(B) ANCILLARY PROVISIONS.—(i) In making examinations of savings associations, examiners appointed by the Director shall have power to make such examinations of the affairs of all affiliates of such savings associations as shall be necessary to disclose fully the relations between such savings associations and their affiliates and the effect of such relations upon such savings associations. For purposes of this subsection, the term “affiliate” has the same meaning as in section 2(b) of the Banking Act of 1933, except that the term “member bank” in section 2(b) shall be deemed to refer to a savings association.

[(ii) In the course of any examination of any savings association, upon request by the Director, prompt and complete access shall be given to all savings association officers, directors, employees, and agents, and to all relevant books, records, or documents of any type.

[(iii) Upon request made in the course of supervision or oversight of any savings association, for the purpose of acting on any application or determining the condition of any savings association, including whether operations are being conducted safely, soundly, or in compliance with charters, laws, regulations, directives, written agreements, or conditions imposed in writing in connection with the granting of an application or other request, the Director shall be given prompt and complete access to all savings

association officers, directors, employees, and agents, and to all relevant books, records, or documents of any type.

[(iv) If prompt and complete access upon request is not given as required in this subsection, the Director may apply to the United States district court for the judicial district (or the United States court in any territory) in which the principal office of the institution is located, or in which the person denying such access resides or carries on business, for an order requiring that such information be promptly provided.

[(v) In connection with examinations of savings associations and affiliates thereof, the Director may—

[(I) administer oaths and affirmations and examine and to take and preserve testimony under oath as to any matter in respect of the affairs or ownership of any such savings association or affiliate, and

[(II) issue subpoenas and, for the enforcement thereof, apply to the United States district court for the judicial district (or the United States court in any territory) in which the principal office of the savings association or affiliate is located, or in which the witness resides or carries on business.

Such courts shall have jurisdiction and power to order and require compliance with any such subpoena.

[(vi) In any proceeding under this section, the Director may administer oaths and affirmations, take depositions, and issue subpoenas. The Director may prescribe regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory at any designated place where such proceeding is being conducted.

[(vii) Any party to a proceeding under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district (or the United States court in any territory) in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpoena issued pursuant to this subsection or section 10(c) of the Federal Deposit Insurance Act, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. All expenses of the Director in connection with this section shall be considered as nonadministrative expenses. Any court having jurisdiction of any proceeding instituted under this section by a savings association, or a director or officer thereof, may allow to any such party reasonable expenses and attorneys' fees. Such expenses and fees shall be paid by the savings association.

[(2) CONSERVATORSHIPS AND RECEIVERSHIPS.—

[(A) GROUNDS FOR APPOINTING CONSERVATOR OR RECEIVER FOR INSURED SAVINGS ASSOCIATION.—The Director

of the Office of Thrift Supervision may appoint a conservator or receiver for any insured savings association if the Director determines, in the Director's discretion, that 1 or more of the grounds specified in section 11(c)(5) of the Federal Deposit Insurance Act exists.

[(B) POWER OF APPOINTMENT; JUDICIAL REVIEW.—The Director shall have exclusive power and jurisdiction to appoint a conservator or receiver for a Federal savings association. If, in the opinion of the Director, a ground for the appointment of a conservator or receiver for a savings association exists, the Director is authorized to appoint ex parte and without notice a conservator or receiver for the savings association. In the event of such appointment, the association may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such association is located, or in the United States District Court for the District of Columbia, for an order requiring the Director to remove such conservator or receiver, and the court shall upon the merits dismiss such action or direct the Director to remove such conservator or receiver. Upon the commencement of such an action, the court having jurisdiction of any other action or proceeding authorized under this subsection to which the association is a party shall stay such action or proceeding during the pendency of the action for removal of the conservator or receiver.

[(C) REPLACEMENT.—The Director may, without any prior notice, hearing, or other action, replace a conservator with another conservator or with a receiver, but such replacement shall not affect any right which the association may have to obtain judicial review of the original appointment, except that any removal under this subparagraph shall be removal of the conservator or receiver in office at the time of such removal.

[(D) COURT ACTION.—Except as otherwise provided in this subsection, no court may take any action for or toward the removal of any conservator or receiver or, except at the request of the Director, to restrain or affect the exercise of powers or functions of a conservator or receiver.

[(E) POWERS.—

[(i) IN GENERAL.—A conservator shall have all the powers of the members, the stockholders, the directors, and the officers of the association and shall be authorized to operate the association in its own name or to conserve its assets in the manner and to the extent authorized by the Director.

[(ii) FDIC OR RTC AS CONSERVATOR OR RECEIVER.—Except as provided in section 21A of the Federal Home Loan Bank Act, the Director, at the Director's discretion, may appoint the Federal Deposit Insurance Corporation or the Resolution Trust Corporation, as appropriate, as conservator for a savings association. The Director shall appoint only the Federal Deposit Insurance Corporation or the Resolution Trust Cor-

poration, as appropriate, as receiver for a savings association for the purpose of liquidation or winding up the affairs of such savings association. The conservator or receiver so appointed shall, as such, have power to buy at its own sale. The Federal Deposit Insurance Corporation, as such conservator or receiver, shall have all the powers of a conservator or receiver, as appropriate, granted under the Federal Deposit Insurance Act, and (when not inconsistent therewith) any other rights, powers, and privileges possessed by conservators or receivers, as appropriate, of savings associations under this Act and any other provisions of law.

[(F) DISCLOSURE REQUIREMENT FOR THOSE ACTING ON BEHALF OF CONSERVATOR.—A conservator shall require that any independent contractor, consultant, or counsel employed by the conservator in connection with the conservatorship of a savings association pursuant to this section shall fully disclose to all parties with which such contractor, consultant, or counsel is negotiating, any limitation on the authority of such contractor, consultant, or counsel to make legally binding representations on behalf of the conservator.

[(3) REGULATIONS.—

[(A) IN GENERAL.—The Director may prescribe regulations for the reorganization, consolidation, liquidation, and dissolution of savings associations, for the merger of insured savings associations with insured savings associations, for savings associations in conservatorship and receivership, and for the conduct of conservatorships and receiverships. The Director may, by regulation or otherwise, provide for the exercise of functions by members, stockholders, directors, or officers of a savings association during conservatorship and receivership.

[(B) FDIC OR RTC AS CONSERVATOR OR RECEIVER.—In any case where the Federal Deposit Insurance Corporation or the Resolution Trust Corporation is the conservator or receiver, any regulations prescribed by the Director shall be consistent with any regulations prescribed by the Federal Deposit Insurance Corporation pursuant to the Federal Deposit Insurance Act.

[(4) REFUSAL TO COMPLY WITH DEMAND.—Whenever a conservator or receiver appointed by the Director demands possession of the property, business, and assets of any savings association, or of any part thereof, the refusal by any director, officer, employee, or agent of such association to comply with the demand shall be punishable by a fine of not more than \$5,000 or imprisonment for not more than one year, or both.

[(5) DEFINITIONS.—As used in this subsection, the term “savings association” includes any savings association or former savings association that retains deposits insured by the Corporation, notwithstanding termination of its status as an institution insured by the Corporation.

[(6) COMPLIANCE WITH MONETARY TRANSACTION RECORD-KEEPING AND REPORT REQUIREMENTS.—

[(A) COMPLIANCE PROCEDURES REQUIRED.—The Director shall prescribe regulations requiring savings associations to establish and maintain procedures reasonably designed to assure and monitor the compliance of such associations with the requirements of subchapter II of chapter 53 of title 31, United States Code.

[(B) EXAMINATIONS OF SAVINGS ASSOCIATIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

[(i) IN GENERAL.—Each examination of a savings association by the Director shall include a review of the procedures required to be established and maintained under subparagraph (A).

[(ii) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the association.

[(C) ORDER TO COMPLY WITH REQUIREMENTS.—If the Director determines that a savings association—

[(i) has failed to establish and maintain the procedures described in subparagraph (A); or

[(ii) has failed to correct any problem with the procedures maintained by such association which was previously reported to the association by the Director, the Director shall issue an order under section 8 of the Federal Deposit Insurance Act requiring such association to cease and desist from its violation of this paragraph or regulations prescribed under this paragraph.

[(e) CHARACTER AND RESPONSIBILITY.—A charter may be granted only—

[(1) to persons of good character and responsibility,

[(2) if in the judgment of the Director a necessity exists for such an institution in the community to be served,

[(3) if there is a reasonable probability of its usefulness and success, and

[(4) if the association can be established without undue injury to properly conducted existing local thrift and home financing institutions.

[(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—Each Federal savings association, upon receiving its charter, shall become automatically a member of the Federal home loan bank of the district in which it is located, or if convenience requires and the Director approves, shall become a member of a Federal home loan bank of an adjoining district. Such associations shall qualify for such membership in the manner provided in the Federal Home Loan Bank Act with respect to other members.]

(f)¹ FEDERAL HOME LOAN BANK MEMBERSHIP.—A Federal savings association may become a member, of the Federal Home Loan Bank System, and shall qualify for such membership in the manner

¹Subsection (f) (as amended by section 172(a)) and the entire Act is repealed effective 2 years after the date of enactment of the Financial Services Competition Act of 1997, pursuant to section 323.

provided by the Federal Home Loan Bank Act, beginning January 1, 1999.

[(h) DISCRIMINATORY STATE AND LOCAL TAXATION PROHIBITED.—No State, county, municipal, or local taxing authority may impose any tax on Federal savings associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions.

[(i) CONVERSIONS.—

[(1) IN GENERAL.—Any savings association which is, or is eligible to become, a member of a Federal home loan bank may convert into a Federal savings association (and in so doing may change directly from the mutual form to the stock form, or from the stock form to the mutual form). Such conversion shall be subject to such regulations as the Director shall prescribe. Thereafter such Federal savings association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this Act.

[(2) AUTHORITY OF DIRECTOR.—(A) No savings association may convert from the mutual to the stock form, or from the stock form to the mutual form, except in accordance with the regulations of the Director.

[(B) Any aggrieved person may obtain review of a final action of the Director which approves or disapproves a plan of conversion pursuant to this subsection only by complying with the provisions of section 10(j) of this Act within the time limit and in the manner therein prescribed, which provisions shall apply in all respects as if such final action were an order the review of which is therein provided for, except that such time limit shall commence upon publication of notice of such final action in the Federal Register or upon the giving of such general notice of such final action as is required by or approved under regulations of the Director, whichever is later.

[(C) Any Federal savings association may change its designation from a Federal savings association to a Federal savings bank, or the reverse.

[(3) CONVERSION TO STATE ASSOCIATION.—(A) Any Federal savings association may convert itself into a savings association or savings bank organized pursuant to the laws of the State in which the principal office of such Federal savings association is located if—

[(i) the State permits the conversion of any savings association or savings bank of such State into a Federal savings association;

[(ii) such conversion of a Federal savings association into such a State savings association is determined—

[(I) upon the vote in favor of such conversion cast in person or by proxy at a special meeting of members or stockholders called to consider such action, specified by the law of the State in which the home office of the Federal savings association is located, as required by such law for a State-chartered institution to convert itself into a Federal savings association, but in no event

upon a vote of less than 51 percent of all the votes cast at such meeting, and

[(II) upon compliance with other requirements reciprocally equivalent to the requirements of such State law for the conversion of a State-chartered institution into a Federal savings association;

[(iii) notice of the meeting to vote on conversion shall be given as herein provided and no other notice thereof shall be necessary; the notice shall expressly state that such meeting is called to vote thereon, as well as the time and place thereof; and such notice shall be mailed, postage prepaid, at least 30 and not more than 60 days prior to the date of the meeting, to the Director and to each member or stockholder of record of the Federal savings association at the member's or stockholder's last address as shown on the books of the Federal savings association;

[(iv) when a mutual savings association is dissolved after conversion, the members or shareholders of the savings association will share on a mutual basis in the assets of the association in exact proportion to their relative share or account credits;

[(v) when a stock savings association is dissolved after conversion, the stockholders will share on an equitable basis in the assets of the association; and

[(vi) such conversion shall be effective upon the date that all the provisions of this Act shall have been fully complied with and upon the issuance of a new charter by the State wherein the savings association is located.

[(B)(i) The act of conversion constitutes consent by the institution to be bound by all the requirements that the Director may impose under this Act.

[(ii) The savings association shall upon conversion and thereafter be authorized to issue securities in any form currently approved at the time of issue by the Director for issuance by similar savings associations in such State.

[(iii) If the insurance of accounts is terminated in connection with such conversion, the notice and other action shall be taken as provided by law and regulations for the termination of insurance of accounts.

[(4) SAVINGS BANK ACTIVITIES.—(A) To the extent authorized by the Director, but subject to section 18(m)(3) of the Federal Deposit Insurance Act—

[(i) any Federal savings bank chartered as such prior to October 15, 1982, may continue to make any investment or engage in any activity not otherwise authorized under this section, to the degree it was permitted to do so as a Federal savings bank prior to October 15, 1982; and

[(ii) any Federal savings bank in existence on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and formerly organized as a mutual savings bank under State law may continue to make any investment or engage in any activity not otherwise authorized under this section, to the degree

it was authorized to do so as a mutual savings bank under State law.

[(B) The authority conferred by this paragraph may be utilized by any Federal savings association that acquires, by merger or consolidation, a Federal savings bank enjoying grandfather rights hereunder.

[(k) DEPOSITORY OF PUBLIC MONEY.—When designated for that purpose by the Secretary of the Treasury, a savings association the deposits of which are insured by the Corporation shall be a depository of public money and may be employed as fiscal agent of the Government under such regulations as may be prescribed by the Secretary and shall perform all such reasonable duties as fiscal agent of the Government as may be required of it. A savings association the deposits of which are insured by the Corporation may act as agent for any other instrumentality of the United States when designated for that purpose by such instrumentality, including services in connection with the collection of taxes and other obligations owed the United States, and the Secretary of the Treasury may deposit public money in any such savings association, and shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

[(l) RETIREMENT ACCOUNTS.—A Federal savings association is authorized to act as trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan which qualifies or qualified for specific tax treatment under section 401(d) of the Internal Revenue Code of 1986 and to act as trustee or custodian of an individual retirement account within the meaning of section 408 of such Code if the funds of such trust or account are invested only in savings accounts or deposits in such Federal savings association or in obligations or securities issued by such Federal savings association. All funds held in such fiduciary capacity by any Federal savings association may be commingled for appropriate purposes of investment, but individual records shall be kept by the fiduciary for each participant and shall show in proper detail all transactions engaged in under this paragraph.

[(m) BRANCHING.—

[(1) IN GENERAL.—

[(A) No savings association incorporated under the laws of the District of Columbia or organized in the District or doing business in the District shall establish any branch or move its principal office or any branch without the Director's prior written approval.

[(B) No savings association shall establish any branch in the District of Columbia or move its principal office or any branch in the District without the Director's prior written approval.

[(2) DEFINITION.—For purposes of this subsection the term "branch" means any office, place of business, or facility, other than the principal office as defined by the Director, of a savings association at which accounts are opened or payments are received or withdrawals are made, or any other office, place of business, or facility of a savings association defined by the Director as a branch within the meaning of such sentence.

[(n) TRUSTS.—

[(1) PERMITS.—The Director may grant by special permit to a Federal savings association applying therefor the right to act as trustee, executor, administrator, guardian, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which compete with Federal savings associations are permitted to act under the laws of the State in which the Federal savings association is located. Subject to the regulations of the Director, service corporations may invest in State or federally chartered corporations which are located in the State in which the home office of the Federal savings association is located and which are engaged in trust activities.

[(2) SEGREGATION OF ASSETS.—A Federal savings association exercising any or all of the powers enumerated in this section shall segregate all assets held in any fiduciary capacity from the general assets of the association and shall keep a separate set of books and records showing in proper detail all transactions engaged in under this subsection. The State banking authority involved may have access to reports of examination made by the Director insofar as such reports relate to the trust department of such association but nothing in this subsection shall be construed as authorizing such State banking authority to examine the books, records, and assets of such associations.

[(3) PROHIBITIONS.—No Federal savings association shall receive in its trust department deposits of current funds subject to check or the deposit of checks, drafts, bills of exchange, or other items for collection or exchange purposes. Funds deposited or held in trust by the association awaiting investment shall be carried in a separate account and shall not be used by the association in the conduct of its business unless it shall first set aside in the trust department United States bonds or other securities approved by the Director.

[(4) SEPARATE LIEN.—In the event of the failure of a Federal savings association, the owners of the funds held in trust for investment shall have a lien on the bonds or other securities so set apart in addition to their claim against the estate of the association.

[(5) DEPOSITS.—Whenever the laws of a State require corporations acting in a fiduciary capacity to deposit securities with the State authorities for the protection of private or court trusts, Federal savings associations so acting shall be required to make similar deposits. Securities so deposited shall be held for the protection of private or court trusts, as provided by the State law. Federal savings associations in such cases shall not be required to execute the bond usually required of individuals if State corporations under similar circumstances are exempt from this requirement. Federal savings associations shall have power to execute such bond when so required by the laws of the State involved.

[(6) OATHS AND AFFIDAVITS.—In any case in which the laws of a State require that a corporation acting as trustee, executor, administrator, or in any capacity specified in this section, shall take an oath or make an affidavit, the president, vice

president, cashier, or trust officer of such association may take the necessary oath or execute the necessary affidavit.

[(7) CERTAIN LOANS PROHIBITED.—It shall be unlawful for any Federal savings association to lend any officer, director, or employee any funds held in trust under the powers conferred by this section. Any officer, director, or employee making such loan, or to whom such loan is made, may be fined not more than \$50,000 or twice the amount of that person's gain from the loan, whichever is greater, or may be imprisoned not more than 5 years, or may be both fined and imprisoned, in the discretion of the court.

[(8) FACTORS TO BE CONSIDERED.—In reviewing applications for permission to exercise the powers enumerated in this section, the Director may consider—

[(A) the amount of capital of the applying Federal savings association,

[(B) whether or not such capital is sufficient under the circumstances of the case,

[(C) the needs of the community to be served, and

[(D) any other facts and circumstances that seem to it proper.

The Director may grant or refuse the application accordingly, except that no permit shall be issued to any association having capital less than the capital required by State law of State banks, trust companies, and corporations exercising such powers.

[(9) SURRENDER OF CHARTER.—(A) Any Federal savings association may surrender its right to exercise the powers granted under this subsection, and have returned to it any securities which it may have deposited with the State authorities, by filing with the Director a certified copy of a resolution of its board of directors indicating its intention to surrender its right.

[(B) Upon receipt of such resolution, the Director, if satisfied that such Federal savings association has been relieved in accordance with State law of all duties as trustee, executor, administrator, guardian or other fiduciary, may in the Director's discretion, issue to such association a certificate that such association is no longer authorized to exercise the powers granted by this subsection.

[(C) Upon the issuance of such a certificate by the Director, such Federal savings association (i) shall no longer be subject to the provisions of this section or the regulations of the Director made pursuant thereto, (ii) shall be entitled to have returned to it any securities which it may have deposited with State authorities, and (iii) shall not exercise thereafter any of the powers granted by this section without first applying for and obtaining a new permit to exercise such powers pursuant to the provisions of this section.

[(D) The Director may prescribe regulations necessary to enforce compliance with the provisions of this subsection.

[(10) REVOCATION.—(A) In addition to the authority conferred by other law, if, in the opinion of the Director, a Federal savings association is unlawfully or unsoundly exercising, or has unlawfully or unsoundly exercised, or has failed for a pe-

riod of 5 consecutive years to exercise, the powers granted by this subsection or otherwise fails or has failed to comply with the requirements of this subsection, the Director may issue and serve upon the association a notice of intent to revoke the authority of the association to exercise the powers granted by this subsection. The notice shall contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to exercise powers, or failure to comply, and shall fix a time and place at which a hearing will be held to determine whether an order revoking authority to exercise such powers should issue against the association.

[(B) Such hearing shall be conducted in accordance with the provisions of subsection (d)(1)(B), and subject to judicial review as therein provided, and shall be fixed for a date not earlier than 30 days and not later than 60 days after service of such notice unless the Director sets an earlier or later date at the request of any Federal savings association so served.

[(C) Unless the Federal savings association so served shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the revocation order. In the event of such consent, or if upon the record made at any such hearing, the Director shall find that any allegation specified in the notice of charges has been established, the Director may issue and serve upon the association an order prohibiting it from accepting any new or additional trust accounts and revoking authority to exercise any and all powers granted by this subsection, except that such order shall permit the association to continue to service all previously accepted trust accounts pending their expeditious divestiture or termination.

[(D) A revocation order shall become effective not earlier than the expiration of 30 days after service of such order upon the association so served (except in the case of a revocation order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Director or a reviewing court.

[(o) CONVERSION OF STATE SAVINGS BANKS.—(1) Subject to the provisions of this subsection and under regulations of the Director, the Director may authorize the conversion of a State-chartered savings bank that is a Bank Insurance Fund member into a Federal savings bank, if such conversion is not in contravention of State law, and provide for the organization, incorporation, operation, examination, and regulation of such institution.

[(2)(A) Any Federal savings bank chartered pursuant to this subsection shall continue to be a Bank Insurance Fund member until such time as it changes its status to a Savings Association Insurance Fund member.

[(B) The Director shall notify the Corporation of any application under this Act for conversion to a Federal charter by an institution insured by the Corporation, shall consult with the Corporation before disposing of the application, and shall notify the Corporation of the Director's determination with respect to such application.

[(C) Notwithstanding any other provision of law, if the Corporation determines that conversion into a Federal stock savings bank or the chartering of a Federal stock savings bank is necessary to prevent the default of a savings bank it insures or to reopen a savings bank in default that it insured, or if the Corporation determines, with the concurrence of the Director, that severe financial conditions exist that threaten the stability of a savings bank insured by the Corporation and that such a conversion or charter is likely to improve the financial condition of such savings bank, the Corporation shall provide the Director with a certificate of such determination, the reasons therefor in conformance with the requirements of this Act, and the bank shall be converted or chartered by the Director, pursuant to the regulations thereof, from the time the Corporation issues the certificate.

[(D) A bank may be converted under subparagraph (C) only if the board of trustees of the bank—

[(i) has specified in writing that the bank is in danger of closing or is closed, or that severe financial conditions exist that threaten the stability of the bank and a conversion is likely to improve the financial condition of the bank; and

[(ii) has requested in writing that the Corporation use the authority of subparagraph (C).

[(E)(i) Before making a determination under subparagraph (D), the Corporation shall consult the State bank supervisor of the State in which the bank in danger of closing is chartered. The State bank supervisor shall be given a reasonable opportunity, and in no event less than 48 hours, to object to the use of the provisions of subparagraph (D).

[(ii) If the State supervisor objects during such period, the Corporation may use the authority of subparagraph (D) only by an affirmative vote of three-fourths of the Board of Directors. The Board of Directors shall provide the State supervisor, as soon as practicable, with a written certification of its determination.

[(3) A Federal savings bank chartered under this subsection shall have the same authority with respect to investments, operations, and activities, and shall be subject to the same restrictions, including those applicable to branching and discrimination, as would apply to it if it were chartered as a Federal savings bank under any other provision of this Act.

[(p) CONVERSIONS.—(1) Notwithstanding any other provision of law, and consistent with the purposes of this Act, the Director may authorize (or in the case of a Federal savings association, require) the conversion of any mutual savings association or Federal mutual savings bank that is insured by the Corporation into a Federal stock savings association or Federal stock savings bank, or charter a Federal stock savings association or Federal stock savings bank to acquire the assets of, or merge with such a mutual institution under the regulations of the Director.

[(2) Authorizations under this subsection may be made only—

[(A) if the Director has determined that severe financial conditions exist which threaten the stability of an association and that such authorization is likely to improve the financial condition of the association,

[(B) when the Corporation has contracted to provide assistance to such association under section 13 of the Federal Deposit Insurance Act, or

[(C) to assist an institution in receivership.

[(3) A Federal savings bank chartered under this subsection shall have the same authority with respect to investments, operations and activities, and shall be subject to the same restrictions, including those applicable to branching and discrimination, as would apply to it if it were chartered as a Federal savings bank under any other provision of this Act, and may engage in any investment, activity, or operation that the institution it acquired was engaged in if that institution was a Federal savings bank, or would have been authorized to engage in had that institution converted to a Federal charter.

[(q) TYING ARRANGEMENTS.—(1) A savings association may not in any manner extend credit, lease, or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement—

[(A) that the customer shall obtain additional credit, property, or service from such savings association, or from any service corporation or affiliate of such association, other than a loan, discount, deposit, or trust service;

[(B) that the customer provide additional credit, property, or service to such association, or to any service corporation or affiliate of such association, other than those related to and usually provided in connection with a similar loan, discount, deposit, or trust service; and

[(C) that the customer shall not obtain some other credit, property, or service from a competitor of such association, or from a competitor of any service corporation or affiliate of such association, other than a condition or requirement that such association shall reasonably impose in connection with credit transactions to assure the soundness of credit.

[(2)(A) Any person may sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by reason of a violation of paragraph (1), under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity and under the rules governing such proceedings.

[(B) Upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue.

[(3) Any person injured by a violation of paragraph (1) may bring an action in any district court of the United States in which the defendant resides or is found or has an agent, without regard to the amount in controversy, or in any other court of competent jurisdiction, and shall be entitled to recover three times the amount of the damages sustained, and the cost of suit, including a reasonable attorney's fee. Any such action shall be brought within 4 years from the date of the occurrence of the violation.

[(4) Nothing contained in this subsection affects in any manner the right of the United States or any other party to bring an action

under any other law of the United States or of any State, including any right which may exist in addition to specific statutory authority, challenging the legality of any act or practice which may be proscribed by this subsection. No regulation or order issued by the Director under this subsection shall in any manner constitute a defense to such action.

[(5) For purposes of this subsection, the term “loan” includes obligations and extensions or advances of credit.

[(6) EXCEPTIONS.—The Director may, by regulation or order, permit such exceptions to the prohibitions of this subsection as the Director considers will not be contrary to the purposes of this subsection and which conform to exceptions granted by the Board of Governors of the Federal Reserve System pursuant to section 106(b) of the Bank Holding Company Act Amendments of 1970.

[(r) OUT-OF-STATE BRANCHES.—(1) No Federal savings association may establish, retain, or operate a branch outside the State in which the Federal savings association has its home office, unless the association qualifies as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986 or meets the asset composition test imposed by subparagraph (C) of that section on institutions seeking so to qualify, or qualifies as a qualified thrift lender, as determined under section 10(m) of this Act. No out-of-State branch so established shall be retained or operated unless the total assets of the Federal savings association attributable to all branches of the Federal savings association in that State would qualify the branches as a whole, were they otherwise eligible, for treatment as a domestic building and loan association under section 7701(a)(19) or as a qualified thrift lender, as determined under section 10(m) of this Act, as applicable.

[(2) The limitations of paragraph (1) shall not apply if—

[(A) the branch results from a transaction authorized under section 13(k) of the Federal Deposit Insurance Act;

[(B) the branch was authorized for the Federal savings association prior to October 15, 1982;

[(C) the law of the State where the branch is located, or is to be located, would permit establishment of the branch if the association was a savings association or savings bank chartered by the State in which its home office is located; or

[(D) the branch was operated lawfully as a branch under State law prior to the association’s conversion to a Federal charter.

[(3) The Director, for good cause shown, may allow Federal savings associations up to 2 years to comply with the requirements of this subsection.

[(s) MINIMUM CAPITAL REQUIREMENTS.—

[(1) IN GENERAL.—Consistent with the purposes of section 908 of the International Lending Supervision Act of 1983 and the capital requirements established pursuant to such section by the appropriate Federal banking agencies (as defined in section 903(1) of such Act), the Director shall require all savings associations to achieve and maintain adequate capital by—

[(A) establishing minimum levels of capital for savings associations; and

[(B) using such other methods as the Director determines to be appropriate.

[(2) MINIMUM CAPITAL LEVELS MAY BE DETERMINED BY DIRECTOR CASE-BY-CASE.—The Director may, consistent with subsection (t), establish the minimum level of capital for a savings association at such amount or at such ratio of capital-to-assets as the Director determines to be necessary or appropriate for such association in light of the particular circumstances of the association.

[(3) UNSAFE OR UNSOUND PRACTICE.—In the Director's discretion, the Director may treat the failure of any savings association to maintain capital at or above the minimum level required by the Director under this subsection or subsection (t) as an unsafe or unsound practice.

[(4) DIRECTIVE TO INCREASE CAPITAL.—

[(A) PLAN MAY BE REQUIRED.—In addition to any other action authorized by law, including paragraph (3), the Director may issue a directive requiring any savings association which fails to maintain capital at or above the minimum level required by the Director to submit and adhere to a plan for increasing capital which is acceptable to the Director.

[(B) ENFORCEMENT OF PLAN.—Any directive issued and plan approved under subparagraph (A) shall be enforceable under section 8 of the Federal Deposit Insurance Act to the same extent and in the same manner as an outstanding order which was issued under section 8 of the Federal Deposit Insurance Act and has become final.

[(5) PLAN TAKEN INTO ACCOUNT IN OTHER PROCEEDINGS.—The Director may—

[(A) consider a savings association's progress in adhering to any plan required under paragraph (4) whenever such association or any affiliate of such association (including any company which controls such association) seeks the Director's approval for any proposal which would have the effect of diverting earnings, diminishing capital, or otherwise impeding such association's progress in meeting the minimum level of capital required by the Director; and

[(B) disapprove any proposal referred to in subparagraph (A) if the Director determines that the proposal would adversely affect the ability of the association to comply with such plan.

[(t) CAPITAL STANDARDS.—

[(1) IN GENERAL.—

[(A) REQUIREMENT FOR STANDARDS TO BE PRESCRIBED.—The Director shall, by regulation, prescribe and maintain uniformly applicable capital standards for savings associations. Those standards shall include—

[(i) a leverage limit;

[(ii) a tangible capital requirement; and

[(iii) a risk-based capital requirement.

[(B) COMPLIANCE.—A savings association is not in compliance with capital standards for purposes of this sub-

section unless it complies with all capital standards prescribed under this paragraph.

[(C) STRINGENCY.—The standards prescribed under this paragraph shall be no less stringent than the capital standards applicable to national banks.

[(D) DEADLINE FOR REGULATIONS.—The Director shall promulgate final regulations under this paragraph not later than 90 days after the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and those regulations shall become effective not later than 120 days after the date of enactment.

[(2) CONTENT OF STANDARDS.—

[(A) LEVERAGE LIMIT.—The leverage limit prescribed under paragraph (1) shall require a savings association to maintain core capital in an amount not less than 3 percent of the savings association's total assets.

[(B) TANGIBLE CAPITAL REQUIREMENT.—The tangible capital requirement prescribed under paragraph (1) shall require a savings association to maintain tangible capital in an amount not less than 1.5 percent of the savings association's total assets.

[(C) RISK-BASED CAPITAL REQUIREMENT.—Notwithstanding paragraph (1)(C), the risk-based capital requirement prescribed under paragraph (1) may deviate from the risk-based capital standards applicable to national banks to reflect interest-rate risk or other risks, but such deviations shall not, in the aggregate, result in materially lower levels of capital being required of savings associations under the risk-based capital requirement than would be required under the risk-based capital standards applicable to national banks.

[(3) TRANSITION RULE.—

[(A) CERTAIN QUALIFYING SUPERVISORY GOODWILL INCLUDED IN CALCULATING CORE CAPITAL.—Notwithstanding paragraph (9)(A), an eligible savings association may include qualifying supervisory goodwill in calculating core capital. The amount of qualifying supervisory goodwill that may be included may not exceed the applicable percentage of total assets set forth in the following table:

For the following period:	The applicable percentage is:
Prior to January 1, 1992	1.500 percent
January 1, 1992–December 31, 1992	1.000 percent
January 1, 1993–December 31, 1993	0.750 percent
January 1, 1994–December 31, 1994	0.375 percent
Thereafter	0 percent

[(B) ELIGIBLE SAVINGS ASSOCIATIONS.—For purposes of subparagraph (A), a savings association is an eligible savings association so long as the Director determines that—

[(i) the savings association's management is competent;

[(ii) the savings association is in substantial compliance with all applicable statutes, regulations, orders, and supervisory agreements and directives; and

[(iii) the savings association's management has not engaged in insider dealing, speculative practices, or any other activities that have jeopardized the association's safety and soundness or contributed to impairing the association's capital.

[(4) SPECIAL RULES FOR PURCHASED MORTGAGE SERVICING RIGHTS.—

[(A) IN GENERAL.—Notwithstanding paragraphs (1)(C) and (9), the standards prescribed under paragraph (1) may permit a savings association to include in calculating capital for the purpose of the leverage limit and risk-based capital requirement prescribed under paragraph (1), on terms no less stringent than under both the capital standards applicable to State nonmember banks and (except as to the amount that may be included in calculating capital) the capital standards applicable to national banks, 90 percent of the fair market value of readily marketable purchased mortgage servicing rights.

[(B) TANGIBLE CAPITAL REQUIREMENT.—Notwithstanding paragraphs (1)(C) and (9)(C), the standards prescribed under paragraph (1) may permit a savings association to include in calculating capital for the purpose of the tangible capital requirement prescribed under paragraph (1), on terms no less stringent than under both the capital standards applicable to State nonmember banks and (except as to the amount that may be included in calculating capital) the capital standards applicable to national banks, 90 percent of the fair market value of readily marketable purchased mortgage servicing rights.

[(C) PERCENTAGE LIMITATION PRESCRIBED BY FDIC.—Notwithstanding paragraph (1)(C) and subparagraphs (A) and (B) of this paragraph—

[(i) for the purpose of subparagraph (A), the maximum amount of purchased mortgage servicing rights that may be included in calculating capital under the leverage limit and the risk-based capital requirement prescribed under paragraph (1) may not exceed the amount that could be included if the savings association were an insured State nonmember bank; and

[(ii) for the purpose of subparagraph (B), the Corporation shall prescribe a maximum percentage of the tangible capital requirement that savings associations may satisfy by including purchased mortgage servicing rights in calculating such capital.

[(D) QUARTERLY VALUATION.—The fair market value of purchased mortgage servicing rights shall be determined not less often than quarterly.

[(5) SEPARATE CAPITALIZATION REQUIRED FOR CERTAIN SUBSIDIARIES.—

[(A) IN GENERAL.—In determining compliance with capital standards prescribed under paragraph (1), all of a savings association's investments in and extensions of credit to any subsidiary engaged in activities not permissible for

a national bank shall be deducted from the savings association's capital.

[(B) EXCEPTION FOR AGENCY ACTIVITIES.—Subparagraph (A) shall not apply with respect to a subsidiary engaged, solely as agent for its customers, in activities not permissible for a national bank unless the Corporation, in its sole discretion, determines that, in the interests of safety and soundness, this subparagraph should cease to apply to that subsidiary.

[(C) OTHER EXCEPTIONS.—Subparagraph (A) shall not apply with respect to any of the following:

[(i) MORTGAGE BANKING SUBSIDIARIES.—A savings association's investments in and extensions of credit to a subsidiary engaged solely in mortgage-banking activities.

[(ii) SUBSIDIARY INSURED DEPOSITORY INSTITUTIONS.—A savings association's investments in and extensions of credit to a subsidiary—

[(I) that is itself an insured depository institution or a company the sole investment of which is an insured depository institution, and

[(II) that was acquired by the parent insured depository institution prior to May 1, 1989.

[(iii) CERTAIN FEDERAL SAVINGS BANKS.—Any Federal savings association existing as a Federal savings association on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

[(I) that was chartered prior to October 15, 1982, as a savings bank or a cooperative bank under State law; or

[(II) that acquired its principal assets from an association that was chartered prior to October 15, 1982, as a savings bank or a cooperative bank under State law.

[(D) TRANSITION RULE.—

[(i) INCLUSION IN CAPITAL.—Notwithstanding subparagraph (A), if a savings association's subsidiary was, as of April 12, 1989, engaged in activities not permissible for a national bank, the savings association may include in calculating capital the applicable percentage (set forth in clause (ii)) of the lesser of—

[(I) the savings association's investments in and extensions of credit to the subsidiary on April 12, 1989; or

[(II) the savings association's investments in and extensions of credit to the subsidiary on the date as of which the savings association's capital is being determined.

[(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is as follows:

For the following period:	The applicable percentage is:
Prior to July 1, 1990	100 percent

July 1, 1990–June 30, 1991	90 percent
July 1, 1991–October 31, 1992	75 percent
November 1, 1992–June 30, 1993	60 percent
July 1, 1993–June 30, 1994	40 percent
Thereafter	0 percent

[(iii) AGENCY DISCRETION TO PRESCRIBE GREATER PERCENTAGE.—Subject to clauses (iv), (v), and (vi), the Director may prescribe by order, with respect to a particular qualified savings association, an applicable percentage greater than that provided in clause (ii) if the Director determines, in the Director’s sole discretion, that the use of the greater percentage, under the circumstances—

[(I) would not constitute an unsafe or unsound practice;

[(II) would not increase the risk to the affected deposit insurance fund; and

[(III) would not be likely to result in the association’s being in an unsafe or unsound condition.

[(iv) SUBSTANTIAL COMPLIANCE WITH APPROVED CAPITAL PLAN.—In the case of a savings association which is subject to a plan submitted under paragraph (7)(D) of this subsection or an order issued under this subsection, a directive issued or plan approved under subsection (s), or a capital restoration plan approved or order issued under section 38 or 39 of the Federal Deposit Insurance Act, an order issued under clause (iii) with respect to the association shall be effective only so long as the association is in substantial compliance with such plan, directive, or order.

[(v) LIMITATION ON INVESTMENTS TAKEN INTO ACCOUNT.—In prescribing the amount by which an applicable percentage under clause (iii) may exceed the applicable percentage under clause (ii) with respect to a particular qualified savings association, the Director may take into account only the sum of—

[(I) the association’s investments in, and extensions of credit to, the subsidiary that were made on or before April 12, 1989; and

[(II) the association’s investments in, and extensions of credit to, the subsidiary that were made after April 12, 1989, and were necessary to complete projects initiated before April 12, 1989.

[(vi) LIMIT.—The applicable percentage limit allowed by the Director in an order under clause (iii) shall not exceed the following limits:

For the following period:	The limit is:
Prior to July 1, 1994	75 percent
July 1, 1994 through June 30, 1995	60 percent
July 1, 1995 through June 30, 1996	40 percent
After June 30, 1996	0 percent

[(vii) CRITICALLY UNDERCAPITALIZED INSTITUTION.—In the case of a savings association that becomes critically undercapitalized (as defined in section 38 of the

Federal Deposit Insurance Act) as determined under this subparagraph without applying clause (iii), clauses (iii) through (v) shall be applied by substituting "Corporation" for "Director" each place such term appears.

[(viii) QUALIFIED SAVINGS ASSOCIATION DEFINED.—For purposes of clause (iii), the term "qualified savings association" means an eligible savings association (as defined in paragraph (3)(B)) which is subject to this paragraph solely because of the real estate investments or other real estate activities of the association's subsidiary, and—

[(I) is adequately capitalized (as defined in section 38 of the Federal Deposit Insurance Act); or

[(II) is in compliance with an approved capital restoration plan meeting the requirements of section 38 of the Federal Deposit Insurance Act, and is not critically undercapitalized (as defined in such section).

[(ix) FDIC'S DISCRETION TO PRESCRIBE LESSER PERCENTAGE.—The Corporation may prescribe by order, with respect to a particular savings association, an applicable percentage less than that provided in clause (ii) or prescribed under clause (iii) if the Corporation determines, in its sole discretion, that the use of a greater percentage would, under the circumstances, constitute an unsafe or unsound practice or be likely to result in the association's being in an unsafe or unsound condition.

[(E) CONSOLIDATION OF SUBSIDIARIES NOT SEPARATELY CAPITALIZED.—In determining compliance with capital standards prescribed under paragraph (1), the assets and liabilities of each of a savings association's subsidiaries (other than any subsidiary described in subparagraph (C)(ii)) shall be consolidated with the savings association's assets and liabilities, unless all of the savings association's investments in and extensions of credit to the subsidiary are deducted from the savings association's capital pursuant to subparagraph (A).

[(6) CONSEQUENCES OF FAILING TO COMPLY WITH CAPITAL STANDARDS.—

[(A) PRIOR TO JANUARY 1, 1991.—Prior to January 1, 1991, the Director—

[(i) may restrict the asset growth of any savings association not in compliance with capital standards; and

[(ii) shall, beginning 60 days following the promulgation of final regulations under this subsection, require any savings association not in compliance with capital standards to submit a plan under subsection (s)(4)(A) that—

[(I) addresses the savings association's need for increased capital;

【(II) describes the manner in which the savings association will increase its capital so as to achieve compliance with capital standards;

【(III) specifies the types and levels of activities in which the savings association will engage;

【(IV) requires any increase in assets to be accompanied by an increase in tangible capital not less in percentage amount than the leverage limit then applicable;

【(V) requires any increase in assets to be accompanied by an increase in capital not less in percentage amount than required under the risk-based capital standard then applicable; and

【(VI) is acceptable to the Director.

【(B) ON OR AFTER JANUARY 1, 1991.—On or after January 1, 1991, the Director—

【(i) shall prohibit any asset growth by any savings association not in compliance with capital standards, except as provided in subparagraph (C); and

【(ii) shall require any savings association not in compliance with capital standards to comply with a capital directive issued by the Director (which may include such restrictions, including restrictions on the payment of dividends and on compensation, as the Director determines to be appropriate).

【(C) LIMITED GROWTH EXCEPTION.—The Director may permit any savings association that is subject to subparagraph (B) to increase its assets in an amount not exceeding the amount of net interest credited to the savings association's deposit liabilities if—

【(i) the savings association obtains the Director's prior approval;

【(ii) any increase in assets is accompanied by an increase in tangible capital in an amount not less than 6 percent of the increase in assets (or, in the Director's discretion if the leverage limit then applicable is less than 6 percent, in an amount equal to the increase in assets multiplied by the percentage amount of the leverage limit);

【(iii) any increase in assets is accompanied by an increase in capital not less in percentage amount than required under the risk-based capital standard then applicable;

【(iv) any increase in assets is invested in low-risk assets, such as first mortgage loans secured by 1- to 4-family residences and fully secured consumer loans; and

【(v) the savings association's ratio of core capital to total assets is not less than the ratio existing on January 1, 1991.

【(D) ADDITIONAL RESTRICTIONS IN CASE OF EXCESSIVE RISKS OR RATES.—The Director may restrict the asset growth of any savings association that the Director deter-

mines is taking excessive risks or paying excessive rates for deposits.

[(E) FAILURE TO COMPLY WITH PLAN, REGULATION, OR ORDER.—The Director shall treat as an unsafe and unsound practice any material failure by a savings association to comply with any plan, regulation, or order under this paragraph.

[(F) EFFECT ON OTHER REGULATORY AUTHORITY.—This paragraph does not limit any authority of the Director under other provisions of law.

[(7) EXEMPTION FROM CERTAIN SANCTIONS.—

[(A) APPLICATION FOR EXEMPTION.—Any savings association not in compliance with the capital standards prescribed under paragraph (1) may apply to the Director for an exemption from any applicable sanction or penalty for noncompliance which the Director may impose under this Act.

[(B) EFFECT OF GRANT OF EXEMPTION.—If the Director approves any savings association's application under subparagraph (A), the only sanction or penalty to be imposed by the Director under this Act for the savings association's failure to comply with the capital standards prescribed under paragraph (1) is the growth limitation contained in paragraph (6)(B) or paragraph (6)(C), whichever is applicable.

[(C) STANDARDS FOR APPROVAL OR DISAPPROVAL.—

[(i) APPROVAL.—The Director may approve an application for an exemption if the Director determines that—

[(I) such exemption would pose no significant risk to the affected deposit insurance fund;

[(II) the savings association's management is competent;

[(III) the savings association is in substantial compliance with all applicable statutes, regulations, orders, and supervisory agreements and directives; and

[(IV) the savings association's management has not engaged in insider dealing, speculative practices, or any other activities that have jeopardized the association's safety and soundness or contributed to impairing the association's capital.

[(ii) DENIAL OR REVOCATION OF APPROVAL.—The Director shall deny any application submitted under clause (i) and revoke any prior approval granted with respect to any such application if the Director determines that the association's failure to meet any capital standards prescribed under paragraph (1) is accompanied by—

[(I) a pattern of consistent losses;

[(II) substantial dissipation of assets;

[(III) evidence of imprudent management or business behavior;

[(IV) a material violation of any Federal law, any law of any State to which such association is subject, or any applicable regulation; or

[(V) any other unsafe or unsound condition or activity, other than the failure to meet such capital standards.

[(D) SUBMISSION OF PLAN REQUIRED.—Any application submitted under subparagraph (A) shall be accompanied by a plan which—

[(i) meets the requirements of paragraph (6)(A)(ii); and

[(ii) is acceptable to the Director.

[(E) FAILURE TO COMPLY WITH PLAN.—The Director shall treat as an unsafe and unsound practice any material failure by any savings association which has been granted an exemption under this paragraph to comply with the provisions of any plan submitted by such association under subparagraph (D).

[(F) EXEMPTION NOT AVAILABLE WITH RESPECT TO UNSAFE OR UNSOUND PRACTICES.—This paragraph does not limit any authority of the Director under any other provision of law, including section 8 of the Federal Deposit Insurance Act, to take any appropriate action with respect to any unsafe or unsound practice or condition of any savings association, other than the failure of such savings association to comply with the capital standards prescribed under paragraph (1).

[(8) TEMPORARY AUTHORITY TO MAKE EXCEPTIONS FOR ELIGIBLE SAVINGS ASSOCIATIONS.—

[(A) IN GENERAL.—Notwithstanding paragraph (1)(C), the Director may, by order, make exceptions to the capital standards prescribed under paragraph (1) for eligible savings associations. No exception under this paragraph shall be effective after January 1, 1991.

[(B) STANDARDS FOR APPROVAL OR DISAPPROVAL.—In determining whether to grant an exception under subparagraph (A), the Director shall apply the same standards as apply to determinations under paragraph (7)(C).

[(9) DEFINITIONS.—For purposes of this subsection—

[(A) CORE CAPITAL.—Unless the Director prescribes a more stringent definition, the term “core capital” means core capital as defined by the Comptroller of the Currency for national banks, less any unidentifiable intangible assets, plus any purchased mortgage servicing rights excluded from the Comptroller’s definition of capital but included in calculating the core capital of savings associations pursuant to paragraph (4).

[(B) QUALIFYING SUPERVISORY GOODWILL.—The term “qualifying supervisory goodwill” means supervisory goodwill existing on April 12, 1989, amortized on a straightline basis over the shorter of—

[(i) 20 years, or

[(ii) the remaining period for amortization in effect on April 12, 1989.

[(C) TANGIBLE CAPITAL.—The term “tangible capital” means core capital minus any intangible assets (as intangible assets are defined by the Comptroller of the Currency for national banks).

[(D) TOTAL ASSETS.—The term “total assets” means total assets (as total assets are defined by the Comptroller of the Currency for national banks) adjusted in the same manner as total assets would be adjusted in determining compliance with the leverage limit applicable to national banks if the savings association were a national bank.

[(10) USE OF COMPTROLLER’S DEFINITIONS.—

[(A) IN GENERAL.—The standards prescribed under paragraph (1) shall include all relevant substantive definitions established by the Comptroller of the Currency for national banks.

[(B) SPECIAL RULE.—If the Comptroller of the Currency has not made effective regulations defining core capital or establishing a risk-based capital standard, the Director shall use the definition and standard contained in the Comptroller’s most recently published final regulations.

[(u) LIMITS ON LOANS TO ONE BORROWER.—

[(1) IN GENERAL.—Section 5200 of the Revised Statutes shall apply to savings associations in the same manner and to the same extent as it applies to national banks.

[(2) SPECIAL RULES.—

[(A) Notwithstanding paragraph (1), a savings association may make loans to one borrower under one of the following clauses:

[(i) for any purpose, not to exceed \$500,000; or

[(ii) to develop domestic residential housing units, not to exceed the lesser of \$30,000,000 or 30 percent of the savings association’s unimpaired capital and unimpaired surplus, if—

[(I) the purchase price of each single family dwelling unit the development of which is financed under this clause does not exceed \$500,000;

[(II) the savings association is and continues to be in compliance with the fully phased-in capital standards prescribed under subsection (t);

[(III) the Director, by order, permits the savings association to avail itself of the higher limit provided by this clause;

[(IV) loans made under this clause to all borrowers do not, in aggregate, exceed 150 percent of the savings association’s unimpaired capital and unimpaired surplus; and

[(V) such loans comply with all applicable loan-to-value requirements.

[(B) A savings association’s loans to one borrower to finance the sale of real property acquired in satisfaction of debts previously contracted in good faith shall not exceed 50 percent of the savings association’s unimpaired capital and unimpaired surplus.

[(3) **AUTHORITY TO IMPOSE MORE STRINGENT RESTRICTIONS.**—The Director may impose more stringent restrictions on a savings association's loans to one borrower if the Director determines that such restrictions are necessary to protect the safety and soundness of the savings association.

[(v) **REPORTS OF CONDITION.**—

[(1) **IN GENERAL.**—Each association shall make reports of conditions to the Director which shall be in a form prescribed by the Director and shall contain—

[(A) information sufficient to allow the identification of potential interest rate and credit risk;

[(B) a description of any assistance being received by the association, including the type and monetary value of such assistance;

[(C) the identity of all subsidiaries and affiliates of the association;

[(D) the identity, value, type, and sector of investment of all equity investments of the associations and subsidiaries; and

[(E) other information that the Director may prescribe.

[(2) **PUBLIC DISCLOSURE.**—

[(A) Reports required under paragraph (1) and all information contained therein shall be available to the public upon request, unless the Director determines—

[(i) that a particular item or classification of information should not be made public in order to protect the safety or soundness of the institution concerned or institutions concerned, the Savings Association Insurance Fund; or

[(ii) that public disclosure would not otherwise be in the public interest.

[(B) Any determination made by the Director under subparagraph (A) not to permit the public disclosure of information shall be made in writing, and if the Director restricts any item of information for savings institutions generally, the Director shall disclose the reason in detail in the Federal Register.

[(C) The Director's determinations under subparagraph (A) shall not be subject to judicial review.

[(3) **ACCESS BY CERTAIN PARTIES.**—

[(A) Notwithstanding paragraph (2), the persons described in subparagraph (B) shall not be denied access to any information contained in a report of condition, subject to reasonable requirements of confidentiality. Those requirements shall not prevent such information from being transmitted to the Comptroller General of the United States for analysis.

[(B) The following persons are described in this subparagraph for purposes of subparagraph (A):

[(i) the Chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and their designees; and

[(ii) the Chairman and ranking minority member of the Committee on Banking, Finance and Urban Af-

fairs of the House of Representatives and their designees.

[(4) FIRST TIER PENALTIES.—Any savings association which—
 [(A) maintains procedures reasonably adapted to avoid any inadvertent and unintentional error and, as a result of such an error—

[(i) fails to submit or publish any report or information required by the Director under paragraph (1) or (2), within the period of time specified by the Director; or

or
 [(ii) submits or publishes any false or misleading report or information; or

[(B) inadvertently transmits or publishes any report which is minimally late,
 shall be subject to a penalty of not more than \$2,000 for each day during which such failure continues or such false or misleading information is not corrected. The savings association shall have the burden of proving by a preponderance of the evidence that an error was inadvertent and unintentional and that a report was inadvertently transmitted or published late.

[(5) SECOND TIER PENALTIES.—Any savings association which—

[(A) fails to submit or publish any report or information required by the Director under paragraph (1) or (2), within the period of time specified by the Director; or

[(B) submits or publishes any false or misleading report or information,
 in a manner not described in paragraph (4) shall be subject to a penalty of not more than \$20,000 for each day during which such failure continues or such false or misleading information is not corrected.

[(6) THIRD TIER PENALTIES.—If any savings association knowingly or with reckless disregard for the accuracy of any information or report described in paragraph (5) submits or publishes any false or misleading report or information, the Director may assess a penalty of not more than \$1,000,000 or 1 percent of total assets, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

[(7) ASSESSMENT.—Any penalty imposed under paragraph (4), (5), or (6) shall be assessed and collected by the Director in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act (for penalties imposed under such section), and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

[(8) HEARING.—Any savings association against which any penalty is assessed under this subsection shall be afforded a hearing if such savings association submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this subsection.

[(w) FORFEITURE OF FRANCHISE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.—

[(1) IN GENERAL.—

[(A) CONVICTION OF TITLE 18 OFFENSE.—

[(I) DUTY TO NOTIFY.—If a Federal savings association has been convicted of any criminal offense under section 1956 or 1957 of title 18, United States Code, the Attorney General shall provide to the Director a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

[(II) NOTICE OF TERMINATION; PRETERMINATION HEARING.—After receiving written notification from the Attorney General of such a conviction, the Director shall issue to the savings association a notice of the Director's intention to terminate all rights, privileges, and franchises of the savings association and schedule a pretermination hearing.

[(B) CONVICTION OF TITLE 31 OFFENSES.—If a Federal savings association is convicted of any criminal offense under section 5322 or 5324 of title 31, United States Code, after receiving written notification from the Attorney General, the Director may issue to the savings association a notice of the Director's intention to terminate all rights, privileges, and franchises of the savings association and schedule a pretermination hearing.

[(C) JUDICIAL REVIEW.—Subsection (d)(1)(B)(vii) shall apply to any proceeding under this subsection.

[(2) FACTORS TO BE CONSIDERED.—In determining whether a franchise shall be forfeited under paragraph (1), the Director shall take into account the following factors:

[(A) The extent to which directors or senior executive officers of the savings association knew of, were involved in, the commission of the money laundering offense of which the association was found guilty.

[(B) The extent to which the offense occurred despite the existence of policies and procedures within the savings association which were designed to prevent the occurrence of any such offense.

[(C) The extent to which the savings association has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the association was found guilty.

[(D) The extent to which the savings association has implemented additional internal controls (since the commission of the offense of which the savings association was found guilty) to prevent the occurrence of any other money laundering offense.

[(E) The extent to which the interest of the local community in having adequate deposit and credit services available would be threatened by the forfeiture of the franchise.

[(3) SUCCESSOR LIABILITY.—This subsection shall not apply to a successor to the interests of, or a person who acquires, a savings association that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of

the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

[(4) DEFINITION.—The term “senior executive officer” has the same meaning as in regulations prescribed under section 32(f) of the Federal Deposit Insurance Act.

[SEC. 6. LIQUID ASSET REQUIREMENTS.

[(a) IN GENERAL.—The purpose of this section is to provide a means for creating effective and flexible liquidity in savings associations which can be increased when mortgage money is plentiful, maintained in easily liquidated instruments, and reduced to add to the flow of funds to the mortgage market in periods of credit stringency. More flexible liquidity will help support sound mortgage credit and a more stable supply of such credit.

[(b) MAINTENANCE OF ACCOUNT.—

[(1) IN GENERAL.—Every savings association shall maintain the aggregate amount of its assets of the following types at not less than such amount as, in the opinion of the Director, is appropriate:

[(A) cash;

[(B) balances maintained in a Federal reserve bank or passed through a Federal home loan bank or another depository institution to a Federal reserve bank pursuant to the Federal Reserve Act; and

[(C) to such extent as the Director may approve for the purposes of this section—

[(i) time and savings deposits in Federal home loan banks, institutions which are, or are eligible to become, members thereof, and commercial banks;

[(ii) such obligations, including such special obligations, of the United States, a State, any territory or possession of the United States, or a political subdivision, agency, or instrumentality of any one or more of the foregoing, and bankers' acceptances, as the Director may approve;

[(iii) shares or certificates of any open-end management investment company which is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and the portfolio of which is restricted by such investment company's investment policy, changeable only if authorized by shareholder vote, solely to any of the obligations or other investments enumerated in subparagraph (A) and in clauses (i), (ii), (iv), (v), (vi), and (vii) of this subparagraph;

[(iv) liquid, highly rated corporate debt obligations with 3 years or less remaining until maturity;

[(v) highly rated commercial paper with 270 days or less remaining until maturity;

[(vi) mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934)—

[(I) that have one year or less remaining until maturity; or

[(II) that are subject to an agreement (including a repurchase agreement, put option, right of redemption,

or takeout commitment) that requires another person to purchase the securities within a period that does not exceed one year, and that person is an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) that is in compliance with applicable capital standards, a primary dealer in United States Government securities, or a broker or dealer registered under the Securities Exchange Act of 1934; and

[(vii) mortgage loans on the security of a first lien on residential real property, if the mortgage loans qualify as backing for mortgage-backed securities issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Association or guaranteed by the Government National Mortgage Association, and either—

[(I) the mortgage loans have one year or less remaining until maturity, or

[(II) the mortgage loans are subject to an agreement (including a repurchase agreement, put option, right of redemption, or takeout commitment) that requires another person to purchase the loans within a period that does not exceed one year, and that person is an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) that is in compliance with applicable capital standards, a primary dealer in United States Government securities, or a broker or dealer registered under the Securities Exchange Act of 1934.

[(2) LIMITATION.—The requirement prescribed by the Director pursuant to this subsection (hereafter in this section referred to as the “liquidity requirement”) may not be less than 4 percent or more than 10 percent of the obligation of the institution on withdrawable accounts and borrowings payable on demand or with unexpired maturities of one year or less. The Director shall prescribe regulations to implement the provisions of this subsection.

[(c) CALCULATION.—The amount of any savings association’s liquidity requirement, and any deficiency in compliance therewith, shall be calculated as the Director shall prescribe. The Director may prescribe different liquidity requirements, within the limitations specified herein, for different classes of savings associations, and for such purposes the Director is authorized to classify savings associations according to type, size, location, rate of withdrawals, or on such other basis or bases of differentiation as the Director may deem to be reasonably necessary or appropriate for the purposes of this section.

[(d) DEFICIENCY ASSESSMENTS.—For any deficiency in compliance with the liquidity requirements, the Director may, in the Director’s discretion, assess a penalty consisting of the payment by the institution of such sum as may be assessed by the Director but not in excess of a rate equal to the highest rate on Federal home loan bank advances of one year or less, plus 2 percent per year, on the amount of the deficiency for the period with respect to which the deficiency existed. Any penalty assessed under this subsection

against a savings association shall be paid to the Director. The Director may authorize or require that, at any time before collection thereof, and whether before or after the bringing of any action or other legal proceeding, the obtaining of any judgment or other recovery, or the issuance or levy of any execution or other legal process therefor, and with or without consideration, any such penalty or recovery be compromised, remitted, or mitigated in whole or part. The penalties authorized under this subsection are in addition to all remedies and sanctions otherwise available.

[(e) REDUCTION OR SUSPENSION.—Whenever the Director deems it advisable in order to enable a savings association to meet withdrawals or to pay obligations, the Director may, to such extent and subject to such conditions as the Director may prescribe, permit the savings association to reduce its liquidity below the minimum amount. Whenever the Director determines that conditions of national emergency or unusual economic stress exist, the Director may suspend any part or all of the liquidity requirements hereunder for such period as the Director may prescribe. Any such suspension, unless sooner terminated by its terms or by the Director, shall terminate at the expiration of 90 days next after its commencement. The preceding sentence does not prevent the Director from again exercising, before, at, or after any such termination, the authority conferred by this subsection.

[(f) REGULATING AUTHORITY.—The Director is authorized to issue such regulations, including definitions of terms used in this section, to make such examinations, and to conduct such investigations as the Director deems necessary or appropriate to effectuate the purposes of this section. The reasonable cost of any such examination or investigation, as determined by the Director, shall be paid by the association.

[SEC. 7. APPLICABILITY.

[(The provisions of this Act shall apply to the United States and to Puerto Rico, Guam, and the Virgin Islands.

[SEC. 8. DISTRICT ASSOCIATIONS.

[(a) IN GENERAL.—The Director shall, with respect to all incorporated or unincorporated building, building or loan, building and loan, or homestead associations, and similar institutions, of or transacting or doing business in the District of Columbia, or maintaining any office in the District of Columbia (other than Federal savings associations), have the same powers and functions as to examination, operation, and regulation as the Director has with respect to Federal savings associations.

[(b) ADDITIONAL POWERS.—Any such association or institution incorporated under the laws of, or organized in, the District of Columbia shall have in addition to any existing statutory authority such statutory authority as is vested in Federal savings associations.

[(c) CHARTER AMENDMENTS.—Charters, certificates of incorporation, articles of incorporation, constitutions, bylaws, or other organic documents of associations or institutions referred to in subsection (b) of this section may, without regard to anything contained therein or otherwise, be amended in such manner and to

such extent and upon such votes if any as the Director may by regulation or otherwise provide.

[(d) LIMITATION.—Nothing in this section shall cause, or permit the Director to cause, District of Columbia associations to be or become Federal savings associations, or require the Director to impose on District of Columbia associations the same regulations as are imposed on Federal savings associations.

[SEC. 9. EXAMINATION FEES.

[(a) EXAMINATION OF SAVINGS ASSOCIATIONS.—The cost of conducting examinations of savings associations pursuant to section 5(d) shall be assessed by the Director against each such savings association as the Director deems necessary or appropriate.

[(b) EXAMINATION OF AFFILIATES.—The cost of conducting examinations of affiliates of savings associations pursuant to this Act may be assessed by the Director against each affiliate that is examined as the Director deems necessary or appropriate.

[(c) ASSESSMENT AGAINST ASSOCIATION IN CASE OF AFFILIATE'S REFUSAL TO PAY.—

[(1) IN GENERAL.—Subject to paragraph (2), if any affiliate of any savings association—

[(A) refuses to pay any assessment under subsection (b);

or

[(B) fails to pay any such assessment before the end of the 60-day period beginning on the date of the assessment, the Director may assess such cost against, and collect such cost from, such savings association.

[(2) AFFILIATE OF MORE THAN 1 SAVINGS ASSOCIATION.—If any affiliate referred to in paragraph (1) is an affiliate of more than 1 savings association, the assessment with respect to the affiliate against, and collected from, any affiliated savings association in such proportions as the Director may prescribe.

[(d) CIVIL MONEY PENALTY FOR AFFILIATE'S REFUSAL TO COOPERATE.—

[(1) PENALTY IMPOSED.—If any affiliate of any savings association—

[(A) refuses to permit any examiner appointed by the Director to make an examination; or

[(B) refuses to provide any information required to be disclosed in the course of any examination, the savings association shall forfeit and pay a civil penalty of not more than \$5,000 for each day that any such refusal continues.

[(2) ASSESSMENT AND COLLECTION.—Any penalty imposed under paragraph (1) shall be assessed and collected by the Director, in the manner provided in section 8(i)(2) of the Federal Deposit Insurance Act.

[(e) REGULATIONS.—Only the Director may prescribe regulations with respect to—

[(1) the computation of, and the assessment for, the cost of conducting examinations pursuant to this section; and

[(2) the collection and use of such assessments and any fees under this section.

Such regulations may establish formulas to determine a fee or schedule of fees to cover the costs of examinations and also to cover

the cost of processing applications, filings, notices, and requests for approvals by the Director or the Director's designee.

[(f) COLLECTION THROUGH FDIC OR FEDERAL HOME LOAN BANKS.—The Corporation or the Federal home loan banks shall, upon request of and by agreement with the Director, collect fees and assessments on behalf of the Director and be reimbursed for the actual cost of collection.

[(g) COSTS OF OTHER EXAMINATIONS.—

[(1) EXAMINATION OF FIDUCIARY ACTIVITIES.—In addition to any assessment imposed pursuant to subsection (a), the cost of conducting examinations of fiduciary activities of savings associations which exercise fiduciary powers (including savings associations or similar institutions in the District of Columbia) shall be assessed by the Director against such savings associations (or similar institutions).

[(2) EXAMINATIONS IN EXCESS OF 2 PER CALENDAR YEAR.—If any savings association or affiliate of a savings association is examined by the Director, or the Corporation, as the case may be, more than 2 times in any calendar year, the cost of conducting such additional examinations shall be assessed, in addition to any assessment imposed pursuant to subsection (a), by the Director or the Corporation, as the case may be, against such savings association or affiliate.

[(h) ADDITIONAL INFORMATION.—Any savings association and any affiliate of any savings association shall provide the Director with access to any information or report with respect to any examination made by any public regulatory authority and furnish any additional information with respect thereto as the Director may require.

[(i) TREATMENT OF EXAMINATION ASSESSMENTS.—

[(1) DEPOSITS.—Amounts received by the Director from assessments under this section (other than an assessment under subsection (d)(2)) or section 10(b)(4) may be deposited in the manner provided in section 5234 of the Revised Statutes with respect to assessments by the Comptroller of the Currency.

[(2) ASSESSMENTS ARE NOT GOVERNMENT FUNDS.—The amounts received by the Director from any assessment under this section shall not be construed to be Government or public funds or appropriated money.

[(3) ASSESSMENTS ARE NOT SUBJECT TO APPORTIONMENT OF FUNDS.—Notwithstanding any other provision of law, the amounts received by the Director from any assessment under this section shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.

[(j) PROCESSING FEE.—The Director may, in the Director's sole discretion, assess against any person that submits to the Director an application, filing, notice, or request a fee to cover the cost of processing such submission.

[(k) FEES FOR EXAMINATIONS AND SUPERVISORY ACTIVITIES.—The Director may assess against institutions for which the Director is the appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act, fees to fund the direct and indirect expenses of the Office as the Director deems necessary or ap-

appropriate. The fees may be imposed more frequently than annually at the discretion of the Director.

[(l) WORKING CAPITAL.—The Director is authorized to impose fees and assessments pursuant to subsections (a), (b), (e), and (k) of this section, in excess of actual expenses for any given year, to permit the Director to maintain a working capital fund. The Director shall remit to the payors of such fees and assessments any funds collected in excess of what he deems necessary to maintain such working capital fund.

[(m) USE OF FUNDS.—The Director is authorized to use the combined resources retained through fees and assessments imposed pursuant to this section to pay all direct and indirect salary and administrative expenses of the Office, including contracts and purchases of property and services, and the direct and indirect expenses of the examinations and supervisory activities of the Office.

[SEC. 10. REGULATION OF HOLDING COMPANIES.

[(a) DEFINITIONS.—

[(1) IN GENERAL.—As used in this section, unless the context otherwise requires—

[(A) SAVINGS ASSOCIATION.—The term “savings association” includes a savings bank or cooperative bank which is deemed by the Director to be a savings association under subsection (l).

[(B) UNINSURED INSTITUTION.—The term “uninsured institution” means any depository institution the deposits of which are not insured by the Federal Deposit Insurance Corporation.

[(C) COMPANY.—The term “company” means any corporation, partnership, trust, joint-stock company, or similar organization, but does not include the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, any Federal home loan bank, or any company the majority of the shares of which is owned by the United States or any State, or by an instrumentality of the United States or any State.

[(D) SAVINGS AND LOAN HOLDING COMPANY.—

[(i) IN GENERAL.—Except as provided in clause (ii), the term “savings and loan holding company” means any company that directly or indirectly controls a savings association or that controls any other company that is a savings and loan holding company.

[(ii) EXCLUSION.—The term “savings and loan holding company” does not include a bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956, or to any company directly or indirectly controlled by such company (other than a savings association).

[(E) MULTIPLE SAVINGS AND LOAN HOLDING COMPANY.—The term “multiple savings and loan holding company” means any savings and loan holding company which directly or indirectly controls 2 or more savings associations.

[(F) DIVERSIFIED SAVINGS AND LOAN HOLDING COMPANY.—The term “diversified savings and loan holding company” means any savings and loan holding company

whose subsidiary savings association and related activities as permitted under paragraph (2) of subsection (c) of this section represented, on either an actual or a pro forma basis, less than 50 percent of its consolidated net worth at the close of its preceding fiscal year and of its consolidated net earnings for such fiscal year, as determined in accordance with regulations issued by the Director.

[(G) SUBSIDIARY.—The term “subsidiary” has the same meaning as in section 3 of the Federal Deposit Insurance Act.

[(H) AFFILIATE.—The term “affiliate” of a savings association means any person which controls, is controlled by, or is under common control with, such savings association.

[(I) BANK HOLDING COMPANY.—The terms “bank holding company” and “bank” have the meanings given to such terms in section 2 of the Bank Holding Company Act of 1956.

[(J) ACQUIRE.—The term “acquire” has the meaning given to such term in section 13(f)(8) of the Federal Deposit Insurance Act.

[(2) CONTROL.—For purposes of this section, a person shall be deemed to have control of—

[(A) a savings association if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares of such savings association, or controls in any manner the election of a majority of the directors of such association;

[(B) any other company if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares or rights of such other company, or controls in any manner the election or appointment of a majority of the directors or trustees of such other company, or is a general partner in or has contributed more than 25 percent of the capital of such other company;

[(C) a trust if the person is a trustee thereof; or

[(D) a savings association or any other company if the Director determines, after reasonable notice and opportunity for hearing, that such person directly or indirectly exercises a controlling influence over the management or policies of such association or other company.

[(3) EXCLUSIONS.—Notwithstanding any other provision of this subsection, the term “savings and loan holding company” does not include—

[(A) any company by virtue of its ownership or control of voting shares of a savings association or a savings and loan holding company acquired in connection with the underwriting of securities if such shares are held only for such period of time (not exceeding 120 days unless ex-

tended by the Director) as will permit the sale thereof on a reasonable basis; and

[(B) any trust (other than a pension, profit-sharing, shareholders', voting, or business trust) which controls a savings association or a savings and loan holding company if such trust by its terms must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, and is (i) in existence on June 26, 1967, or (ii) a testamentary trust created on or after June 26, 1967.

[(4) SPECIAL RULE RELATING TO QUALIFIED STOCK ISSUANCE.—No savings and loan holding company shall be deemed to control a savings association solely by reason of the purchase by such savings and loan holding company of shares issued by such savings association, or issued by any savings and loan holding company (other than a bank holding company) which controls such savings association, in connection with a qualified stock issuance if such purchase is approved by the Director under subsection (q)(1)(D), unless the acquiring savings and loan holding company, directly or indirectly, or acting in concert with 1 or more other persons, or through 1 or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 15 percent of the voting shares of such savings association or holding company.

[(b) REGISTRATION AND EXAMINATION.—

[(1) IN GENERAL.—Within 90 days after becoming a savings and loan holding company, each savings and loan holding company shall register with the Director on forms prescribed by the Director, which shall include such information, under oath or otherwise, with respect to the financial condition, ownership, operations, management, and intercompany relationships of such holding company and its subsidiaries, and related matters, as the Director may deem necessary or appropriate to carry out the purposes of this section. Upon application, the Director may extend the time within which a savings and loan holding company shall register and file the requisite information.

[(2) REPORTS.—Each savings and loan holding company and each subsidiary thereof, other than a savings association, shall file with the Director, and the regional office of the Director of the district in which its principal office is located, such reports as may be required by the Director. Such reports shall be made under oath or otherwise, and shall be in such form and for such periods, as the Director may prescribe. Each report shall contain such information concerning the operations of such savings and loan holding company and its subsidiaries as the Director may require.

[(3) BOOKS AND RECORDS.—Each savings and loan holding company shall maintain such books and records as may be prescribed by the Director.

[(4) EXAMINATIONS.—Each savings and loan holding company and each subsidiary thereof (other than a bank) shall be subject to such examinations as the Director may prescribe. The cost of such examinations shall be assessed against and

paid by such holding company. Examination and other reports may be furnished by the Director to the appropriate State supervisory authority. The Director shall, to the extent deemed feasible, use for the purposes of this subsection reports filed with or examinations made by other Federal agencies or the appropriate State supervisory authority.

[(5) AGENT FOR SERVICE OF PROCESS.—The Director may require any savings and loan holding company, or persons connected therewith if it is not a corporation, to execute and file a prescribed form of irrevocable appointment of agent for service of process.

[(6) RELEASE FROM REGISTRATION.—The Director may at any time, upon the Director's own motion or upon application, release a registered savings and loan holding company from any registration theretofore made by such company, if the Director determines that such company no longer has control of any savings association.

[(c) HOLDING COMPANY ACTIVITIES.—

[(1) PROHIBITED ACTIVITIES.—Except as otherwise provided in this subsection, no savings and loan holding company and no subsidiary which is not a savings association shall—

[(A) engage in any activity or render any service for or on behalf of a savings association subsidiary for the purpose or with the effect of evading any law or regulation applicable to such savings association;

[(B) commence any business activity, other than the activities described in paragraph (2); or

[(C) continue any business activity, other than the activities described in paragraph (2), after the end of the 2-year period beginning on the date on which such company received approval under subsection (e) of this section to become a savings and loan holding company subject to the limitations contained in this subparagraph.

[(2) EXEMPT ACTIVITIES.—The prohibitions of subparagraphs (B) and (C) of paragraph (1) shall not apply to the following business activities of any savings and loan holding company or any subsidiary (of such company) which is not a savings association:

[(A) Furnishing or performing management services for a savings association subsidiary of such company.

[(B) Conducting an insurance agency or escrow business.

[(C) Holding, managing, or liquidating assets owned or acquired from a savings association subsidiary of such company.

[(D) Holding or managing properties used or occupied by a savings association subsidiary of such company.

[(E) Acting as trustee under deed of trust.

[(F) Any other activity—

[(i) which the Board of Governors of the Federal Reserve System, by regulation, has determined to be permissible for bank holding companies under section 4(c) of the Bank Holding Company Act of 1956, unless the Director, by regulation, prohibits or limits any such activity for savings and loan holding companies; or

[(ii) in which multiple savings and loan holding companies were authorized (by regulation) to directly engage on March 5, 1987.

[(G) In the case of a savings and loan holding company, purchasing, holding, or disposing of stock acquired in connection with a qualified stock issuance if the purchase of such stock by such savings and loan holding company is approved by the Director pursuant to subsection (q)(1)(D).

[(3) CERTAIN LIMITATIONS ON ACTIVITIES NOT APPLICABLE TO CERTAIN HOLDING COMPANIES.—Notwithstanding paragraphs (4) and (6) of this subsection, the limitations contained in subparagraphs (B) and (C) of paragraph (1) shall not apply to any savings and loan holding company (or any subsidiary of such company) which controls—

[(A) only 1 savings association, if the savings association subsidiary of such company is a qualified thrift lender (as determined under subsection (m)); or

[(B) more than 1 savings association, if—

[(i) all, or all but 1, of the savings association subsidiaries of such company were initially acquired by the company or by an individual who would be deemed to control such company if such individual were a company—

[(I) pursuant to an acquisition under section 13(c) or 13(k) of the Federal Deposit Insurance Act or section 408(m) of the National Housing Act; or

[(II) pursuant to an acquisition in which assistance was continued to a savings association under section 13(i) of the Federal Deposit Insurance Act; and

[(ii) all of the savings association subsidiaries of such company are qualified thrift lenders (as determined under subsection (m)).

[(4) PRIOR APPROVAL OF CERTAIN NEW ACTIVITIES REQUIRED.—

[(A) IN GENERAL.—No savings and loan holding company and no subsidiary which is not a savings association shall commence, either de novo or by an acquisition (in whole or in part) of a going concern, any activity described in paragraph (2)(F)(i) of this subsection without the prior approval of the Director.

[(B) FACTORS TO BE CONSIDERED BY DIRECTOR.—In considering any application under subparagraph (A) by any savings and loan holding company or any subsidiary of any such company which is not a savings association, the Director shall consider—

[(i) whether the performance of the activity described in such application by the company or the subsidiary can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, or gains in efficiency) that outweigh possible adverse effects of such activity (such as undue concentration of resources, decreased or unfair com-

petition, conflicts of interest, or unsound financial practices);

[(ii) the managerial resources of the companies involved; and

[(iii) the adequacy of the financial resources, including capital, of the companies involved.

[(C) DIRECTOR MAY DIFFERENTIATE BETWEEN NEW AND ONGOING ACTIVITIES.—In prescribing any regulation or considering any application under this paragraph, the Director may differentiate between activities commenced de novo and activities commenced by the acquisition, in whole or in part, of a going concern.

[(D) APPROVAL OR DISAPPROVAL BY ORDER.—The approval or disapproval of any application under this paragraph by the Director shall be made in an order issued by the Director containing the reasons for such approval or disapproval.

[(5) GRACE PERIOD TO ACHIEVE COMPLIANCE.—If any savings association referred to in paragraph (3) fails to maintain the status of such association as a qualified thrift lender, the Director may allow, for good cause shown, any company that controls such association (or any subsidiary of such company which is not a savings association) up to 3 years to comply with the limitations contained in paragraph (1)(C).

[(6) SPECIAL PROVISIONS RELATING TO CERTAIN COMPANIES AFFECTED BY 1987 AMENDMENTS.—

[(A) EXCEPTION TO 2-YEAR GRACE PERIOD FOR ACHIEVING COMPLIANCE.—Notwithstanding paragraph (1)(C), any company which received approval under subsection (e) of this section to acquire control of a savings association between March 5, 1987, and August 10, 1987, shall not continue any business activity other than an activity described in paragraph (2) after August 10, 1987.

[(B) EXEMPTION FOR ACTIVITIES LAWFULLY ENGAGED IN BEFORE MARCH 5, 1987.—Notwithstanding paragraph (1)(C) and subject to subparagraphs (C) and (D), any savings and loan holding company which received approval, before March 5, 1987, under subsection (e) of this section to acquire control of a savings association may engage, directly or through any subsidiary (other than a savings association subsidiary of such company), in any activity in which such company or such subsidiary was lawfully engaged on such date.

[(C) TERMINATION OF SUBPARAGRAPH (B) EXEMPTION.—The exemption provided under subparagraph (B) for activities engaged in by any savings and loan holding company or a subsidiary of such company (which is not a savings association) which would otherwise be prohibited under paragraph (1)(C) shall terminate with respect to such activities of such company or subsidiary upon the occurrence (after August 10, 1987) of any of the following:

[(i) The savings and loan holding company acquires control of a bank or an additional savings association (other than a savings association acquired pursuant to

section 13(c) or 13(k) of the Federal Deposit Insurance Act or section 406(f) or 408(m) of the National Housing Act).

[(ii) Any savings association subsidiary of the savings and loan holding company fails to qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986.

[(iii) The savings and loan holding company engages in any business activity—

[(I) which is not described in paragraph (2); and

[(II) in which it was not engaged on March 5, 1987.

[(iv) Any savings association subsidiary of the savings and loan holding company increases the number of locations from which such savings association conducts business after March 5, 1987 (other than an increase which occurs in connection with a transaction under section 13(c) or (k) of the Federal Deposit Insurance Act or section 408(m) of the National Housing Act.

[(v) Any savings association subsidiary of the savings and loan holding company permits any overdraft (including an intraday overdraft), or incurs any such overdraft in its account at a Federal Reserve bank, on behalf of an affiliate, unless such overdraft is the result of an inadvertent computer or accounting error that is beyond the control of both the savings association subsidiary and the affiliate.

[(D) ORDER BY DIRECTOR TO TERMINATE SUBPARAGRAPH (B) ACTIVITY.—Any activity described in subparagraph (B) may also be terminated by the Director, after opportunity for hearing, if the Director determines, having due regard for the purposes of this title, that such action is necessary to prevent conflicts of interest or unsound practices or is in the public interest.

[(7) FOREIGN SAVINGS AND LOAN HOLDING COMPANY.—Notwithstanding any other provision of this section, any savings and loan holding company organized under the laws of a foreign country as of June 1, 1984 (including any subsidiary thereof which is not a savings association), which controls a single savings association on August 10, 1987, shall not be subject to this subsection with respect to any activities of such holding company which are conducted exclusively in a foreign country.

[(8) EXEMPTION FOR BANK HOLDING COMPANIES.—Except for paragraph (1)(A), this subsection shall not apply to any company that is treated as a bank holding company for purposes of section 4 of the Bank Holding Company Act of 1956, or any of its subsidiaries.

[(d) TRANSACTIONS WITH AFFILIATES.—Transactions between any subsidiary savings association of a savings and loan holding company and any affiliate (of such savings association subsidiary) shall be subject to the limitations and prohibitions specified in section 11 of this Act.

[(e) ACQUISITIONS.—

[(1) IN GENERAL.—It shall be unlawful for—

[(A) any savings and loan holding company directly or indirectly, or through one or more subsidiaries or through one or more transactions—

[(i) to acquire, except with the prior written approval of the Director, the control of a savings association or a savings and loan holding company, or to retain the control of such an association or holding company acquired or retained in violation of this section as heretofore or hereafter in effect;

[(ii) to acquire, except with the prior written approval of the Director, by the process of merger, consolidation, or purchase of assets, another savings association or a savings and loan holding company, or all or substantially all of the assets of any such association or holding company;

[(iii) to acquire, by purchase or otherwise, or to retain more than 5 percent of the voting shares of a savings association not a subsidiary, or of a savings and loan holding company not a subsidiary, or in the case of a multiple savings and loan holding company (other than a company described in subsection (c)(8)), to so acquire or retain more than 5 percent of the voting shares of any company not a subsidiary which is engaged in any business activity other than the activities specified in subsection (c)(2). This clause shall not apply to shares of a savings association or of a savings and loan holding company—

[(I) held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);

[(II) held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

[(III) held in an account solely for trading purposes;

[(IV) over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

[(V) acquired in securing or collecting a debt previously contracted in good faith, during the 2-year period beginning on the date of such acquisition or for such additional time (not exceeding 3 years) as the Director may permit if the Director determines that such an extension will not be detrimental to the public interest;

[(VI) acquired under section 408(m) of the National Housing Act or section 13(k) of the Federal Deposit Insurance Act;

[(VII) held by any insurance company, as defined in section 2(a)(17) of the Investment Company Act of 1940, except as provided in paragraph (6); or

[(VIII) acquired pursuant to a qualified stock issuance if such purchase is approved by the Director under subsection (q)(1)(D);

except that the aggregate amount of shares held under this clause (other than under subclauses (I), (II), (III), (IV), and (VI)) may not exceed 15 percent of all outstanding shares or of the voting power of a savings association or savings and loan holding company; or

[(iv) to acquire the control of an uninsured institution, or to retain for more than one year after February 14, 1968, or from the date on which such control was acquired, whichever is later, except that the Director may upon application by such company extend such one-year period from year to year, for an additional period not exceeding 3 years, if the Director finds such extension is warranted and is not detrimental to the public interest; and

[(B) any other company, without the prior written approval of the Director, directly or indirectly, or through one or more subsidiaries or through one or more transactions, to acquire the control of one or more savings associations, except that such approval shall not be required in connection with the control of a savings association, (i) acquired by devise under the terms of a will creating a trust which is excluded from the definition of "savings and loan holding company" under subsection (a) of this section, (ii) acquired in connection with a reorganization in which a person or group of persons, having had control of a savings association for more than 3 years, vests control of that association in a newly formed holding company subject to the control of the same person or group of persons, or (iii) acquired by a bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956, or any company controlled by such bank holding company. The Director shall approve an acquisition of a savings association under this subparagraph unless the Director finds the financial and managerial resources and future prospects of the company and association involved to be such that the acquisition would be detrimental to the association or the insurance risk of the Savings Association Insurance Fund or Bank Insurance Fund, and shall render a decision within 90 days after submission to the Director of the complete record on the application.

Consideration of the managerial resources of a company or savings association under subparagraph (B) shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or association.

[(2) FACTORS TO BE CONSIDERED.—The Director shall not approve any acquisition under subparagraph (A)(i) or (A)(ii), or of more than one savings association under subparagraph (B) of paragraph (1) of this subsection, any acquisition of stock in connection with a qualified stock issuance, any acquisition under paragraph (4)(A), or any transaction under section 13(k)

of the Federal Deposit Insurance Act, except in accordance with this paragraph. In every case, the Director shall take into consideration the financial and managerial resources and future prospects of the company and association involved, the effect of the acquisition on the association, the insurance risk to the Savings Association Insurance Fund or the Bank Insurance Fund¹, and the convenience and needs of the community to be served, and shall render a decision within 90 days after submission to the Director of the complete record on the application. Consideration of the managerial resources of a company or savings association shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or association. Before approving any such acquisition, except a transaction under section 13(k) of the Federal Deposit Insurance Act, the Director shall request from the Attorney General and consider any report rendered within 30 days on the competitive factors involved. The Director shall not approve any proposed acquisition—

[(A) which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States,

[(B) the effect of which in any section of the country may be substantially to lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served,

[(C) if the company fails to provide adequate assurances to the Director that the company will make available to the Director such information on the operations or activities of the company, and any affiliate of the company, as the Director determines to be appropriate to determine and enforce compliance with this Act, or

[(D) in the case of an application involving a foreign bank, if the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.

[(3) INTERSTATE ACQUISITIONS.—No acquisition shall be approved by the Director under this subsection which will result in the formation by any company, through one or more subsidiaries or through one or more transactions, of a multiple savings and loan holding company controlling savings associations in more than one State, unless—

[(A) such company, or a savings association subsidiary of such company, is authorized to acquire control of a savings association subsidiary, or to operate a home or branch office, in the additional State or States pursuant to section 13(k) of the Federal Deposit Insurance Act;

[(B) such company controls a savings association subsidiary which operated a home or branch office in the additional State or States as of March 5, 1987; or

[(C) the statutes of the State in which the savings association to be acquired is located permit a savings association chartered by such State to be acquired by a savings association chartered by the State where the acquiring savings association or savings and loan holding company is located or by a holding company that controls such a State chartered savings association, and such statutes specifically authorize such an acquisition by language to that effect and not merely by implication.

[(4) ACQUISITIONS BY CERTAIN INDIVIDUALS.—

[(A) IN GENERAL.—Notwithstanding subsection (h)(2), any director or officer of a savings and loan holding company, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting shares of such holding company, may acquire control of any savings association not a subsidiary of such savings and loan holding company with the prior written approval of the Director.

[(B) TREATMENT OF CERTAIN HOLDING COMPANIES.—If any individual referred to in subparagraph (A) controls more than 1 savings and loan holding company or more than 1 savings association, any savings and loan holding company controlled by such individual shall be subject to the activities limitations contained in subsection (c) to the same extent such limitations apply to multiple savings and loan holding companies, unless all or all but 1 of the savings associations (including any institution deemed to be a savings association under subsection (1) of this section) controlled directly or indirectly by such individual was acquired pursuant to an acquisition described in subclause (I) or (II) of subsection (c)(3)(B)(i).

[(5) ACQUISITIONS PURSUANT TO CERTAIN SECURITY INTERESTS.—This subsection and subsection (c)(2) of this section do not apply to any savings and loan holding company which acquired the control of a savings association or of a savings and loan holding company pursuant to a pledge or hypothecation to secure a loan, or in connection with the liquidation of a loan, made in the ordinary course of business. It shall be unlawful for any such company to retain such control for more than one year after February 14, 1968, or from the date on which such control was acquired, whichever is later, except that the Director may upon application by such company extend such one-year period from year to year, for an additional period not exceeding 3 years, if the Director finds such extension is warranted and would not be detrimental to the public interest.

[(6) SHARES HELD BY INSURANCE AFFILIATES.—Shares described in clause (iii)(VII) of paragraph (1)(A) shall not be excluded for purposes of clause (iii) of such paragraph if—

[(A) all shares held under such clause (iii)(VII) by all insurance company affiliates of such savings association or savings and loan holding company in the aggregate exceed

5 percent of all outstanding shares or of the voting power of the savings association or savings and loan holding company; or

[(B) such shares are acquired or retained with a view to acquiring, exercising, or transferring control of the savings association or savings and loan holding company.

[(f) DECLARATION OF DIVIDEND.—Every subsidiary savings association of a savings and loan holding company shall give the Director not less than 30 days' advance notice of the proposed declaration by its directors of any dividend on its guaranty, permanent, or other nonwithdrawable stock. Such notice period shall commence to run from the date of receipt of such notice by the Director. Any such dividend declared within such period, or without the giving of such notice to the Director, shall be invalid and shall confer no rights or benefits upon the holder of any such stock.

[(g) ADMINISTRATION AND ENFORCEMENT.—

[(1) IN GENERAL.—The Director is authorized to issue such regulations and orders as the Director deems necessary or appropriate to enable the Director to administer and carry out the purposes of this section, and to require compliance therewith and prevent evasions thereof.

[(2) INVESTIGATIONS.—The Director may make such investigations as the Director deems necessary or appropriate to determine whether the provisions of this section, and regulations and orders thereunder, are being and have been complied with by savings and loan holding companies and subsidiaries and affiliates thereof. For the purpose of any investigation under this section, the Director may administer oaths and affirmations, issue subpoenas, take evidence, and require the production of any books, papers, correspondence, memorandums, or other records which may be relevant or material to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in any State. The Director may apply to the United States district court for the judicial district (or the United States court in any territory) in which any witness or company subpoenaed resides or carries on business, for enforcement of any subpoena issued pursuant to this paragraph, and such courts shall have jurisdiction and power to order and require compliance.

[(3) PROCEEDINGS.—(A) In any proceeding under subsection (a)(2)(D) or under paragraph (5) of this section, the Director may administer oaths and affirmations, take or cause to be taken depositions, and issue subpoenas. The Director may make regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this paragraph may be required from any place in any State or in any territory at any designated place where such proceeding is being conducted. Any party to such proceedings may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpoena issued pursuant to this paragraph, and such courts shall have jurisdic-

tion and power to order and require compliance therewith. Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States.

[(B) Any hearing provided for in subsection (a)(2)(D) or under paragraph (5) of this section shall be held in the Federal judicial district or in the territory in which the principal office of the association or other company is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5, United States Code.

[(4) INJUNCTIONS.—Whenever it appears to the Director that any person is engaged or has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this section or of any regulation or order thereunder, the Director may bring an action in the proper United States district court, or the United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, to enforce compliance with this section or any regulation or order, or to require the divestiture of any acquisition in violation of this section, or for any combination of the foregoing, and such courts shall have jurisdiction of such actions. Upon a proper showing an injunction, decree, restraining order, order of divestiture, or other appropriate order shall be granted without bond.

[(5) CEASE AND DESIST ORDERS.—(A) Notwithstanding any other provision of this section, the Director may, whenever the Director has reasonable cause to believe that the continuation by a savings and loan holding company of any activity or of ownership or control of any of its noninsured subsidiaries constitutes a serious risk to the financial safety, soundness, or stability of a savings and loan holding company's subsidiary savings association and is inconsistent with the sound operation of a savings association or with the purposes of this section or section 8 of the Federal Deposit Insurance Act, order the savings and loan holding company or any of its subsidiaries, after due notice and opportunity for hearing, to terminate such activities or to terminate (within 120 days or such longer period as the Director directs in unusual circumstances) its ownership or control of any such noninsured subsidiary either by sale or by distribution of the shares of the subsidiary to the shareholders of the savings and loan holding company. Such distribution shall be pro rata with respect to all of the shareholders of the distributing savings and loan holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.

[(B) The Director may in the Director's discretion apply to the United States district court within the jurisdiction of which the principal office of the company is located, for the enforcement of any effective and outstanding order issued under this section, and such court shall have jurisdiction and power to order and require compliance therewith. Except as provided in subsection (j), no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice

or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

[(h) PROHIBITED ACTS.—It shall be unlawful for—

[(1) any savings and loan holding company or subsidiary thereof, or any director, officer, employee, or person owning, controlling, or holding with power to vote, or holding proxies representing, more than 25 percent of the voting shares, of such holding company or subsidiary, to hold, solicit, or exercise any proxies in respect of any voting rights in a savings association which is a mutual association;

[(2) any director or officer of a savings and loan holding company, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting shares of such holding company, to acquire control of any savings association not a subsidiary of such savings and loan holding company, unless such acquisition is approved by the Director pursuant to subsection (e)(4); or

[(3) any individual, except with the prior approval of the Director, to serve or act as a director, officer, or trustee of, or become a partner in, any savings and loan holding company after having been convicted of any criminal offense involving dishonesty or breach of trust.

[(i) PENALTIES.—

[(1) CRIMINAL PENALTY.—(A) Whoever knowingly violates any provision of this section or being a company, violates any regulation or order issued by the Director under this section, shall be imprisoned not more than 1 year, fined not more than \$100,000 per day for each day during which the violation continues, or both.

[(B) Whoever, with the intent to deceive, defraud, or profit significantly, knowingly violates any provision of this section shall be fined not more than \$1,000,000 per day for each day during which the violation continues, imprisoned not more than 5 years, or both.

[(2) CIVIL MONEY PENALTY.—

[(A) PENALTY.—Any company which violates, and any person who participates in a violation of, any provision of this section, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than \$25,000 for each day during which such violation continues.

[(B) ASSESSMENT.—Any penalty imposed under subparagraph (A) may be assessed and collected by the Director in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

[(C) HEARING.—The company or other person against whom any civil penalty is assessed under this paragraph shall be afforded a hearing if such company or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this paragraph.

【(D) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

【(E) VIOLATE DEFINED.—For purposes of this section, the term “violate” includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

【(F) REGULATIONS.—The Director shall prescribe regulations establishing such procedures as may be necessary to carry out this paragraph.

【(3) CIVIL MONEY PENALTY.—

【(A) PENALTY.—Any company which violates, and any person who participates in a violation of, any provision of this section, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than \$25,000 for each day during which such violation continues.

【(B) ASSESSMENT; ETC.—Any penalty imposed under subparagraph (A) may be assessed and collected by the Director in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

【(C) HEARING.—The company or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such company or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this paragraph.

【(D) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

【(E) VIOLATE DEFINED.—For purposes of this section, the term “violate” includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

【(F) REGULATIONS.—The Director shall prescribe regulations establishing such procedures as may be necessary to carry out this paragraph.

【(5) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to a savings and loan holding company or subsidiary thereof (including a separation caused by the deregistration of such a company or such a subsidiary) shall not affect the jurisdiction and authority of the Director to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such holding company or its subsidiary

(whether such date occurs before, on, or after the date of the enactment of this paragraph).

[(j) JUDICIAL REVIEW.—Any party aggrieved by an order of the Director under this section may obtain a review of such order by filing in the court of appeals of the United States for the circuit in which the principal office of such party is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Director be modified, terminated, or set aside. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Director, and thereupon the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director. Review of such proceedings shall be had as provided in chapter 7 of title 5, United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section 1254 of title 28, United States Code.

[(k) SAVINGS CLAUSE.—Nothing contained in this section, other than any transaction approved under subsection (e)(2) of this section or section 13 of the Federal Deposit Insurance Act, shall be interpreted or construed as approving any act, action, or conduct which is or has been or may be in violation of existing law, nor shall anything herein contained constitute a defense to any action, suit, or proceeding pending or hereafter instituted on account of any act, action, or conduct in violation of the antitrust laws.

[(l) TREATMENT OF FDIC INSURED STATE SAVINGS BANKS AND COOPERATIVE BANKS AS SAVINGS ASSOCIATIONS.—

[(1) IN GENERAL.—Notwithstanding any other provision of law, a savings bank (as defined in section 3(g) of the Federal Deposit Insurance Act) and a cooperative bank that is an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act) upon application shall be deemed to be a savings association for the purpose of this section, if the Director determines that such bank is a qualified thrift lender (as determined under subsection (m)).

[(2) FAILURE TO MAINTAIN QUALIFIED THRIFT LENDER STATUS.—If any savings bank which is deemed to be a savings association under paragraph (1) subsequently fails to maintain its status as a qualified thrift lender, as determined by the Director, such bank may not thereafter be a qualified thrift lender for a period of 5 years.

[(m) QUALIFIED THRIFT LENDER TEST.—

[(1) IN GENERAL.—Except as provided in paragraphs (2) and (7), any savings association is a qualified thrift lender if—

[(A) the savings association qualifies as a domestic building and loan association, as such term is defined in section 7701(a)(19) of the Internal Revenue Code of 1986; or

[(B)(i) the savings association's qualified thrift investments equal or exceed 65 percent of the savings association's portfolio assets; and

[(ii) the savings association's qualified thrift investments continue to equal or exceed 65 percent of the savings association's portfolio assets on a monthly average basis in 9 out of every 12 months.

[(2) EXCEPTIONS GRANTED BY DIRECTOR.—Notwithstanding paragraph (1), the Director may grant such temporary and limited exceptions from the minimum actual thrift investment percentage requirement contained in such paragraph as the Director deems necessary if—

[(A) the Director determines that extraordinary circumstances exist, such as when the effects of high interest rates reduce mortgage demand to such a degree that an insufficient opportunity exists for a savings association to meet such investment requirements; or

[(B) the Director determines that—

[(i) the grant of any such exception will significantly facilitate an acquisition under section 13(c) or 13(k) of the Federal Deposit Insurance Act;

[(ii) the acquired association will comply with the transition requirements of paragraph (7)(B), as if the date of the exemption were the starting date for the transition period described in that paragraph; and

[(iii) the Director determines that the exemption will not have an undue adverse effect on competing savings associations in the relevant market and will further the purposes of this subsection.

[(3) FAILURE TO BECOME AND REMAIN A QUALIFIED THRIFT LENDER.—

[(A) IN GENERAL.—A savings association that fails to become or remain a qualified thrift lender shall either become one or more banks (other than a savings bank) or be subject to subparagraph (B), except as provided in subparagraph (D).

[(B) RESTRICTIONS APPLICABLE TO SAVINGS ASSOCIATIONS THAT ARE NOT QUALIFIED THRIFT LENDERS.—

[(i) RESTRICTIONS EFFECTIVE IMMEDIATELY.—The following restrictions shall apply to a savings association beginning on the date on which the savings association should have become or ceases to be a qualified thrift lender:

[(I) ACTIVITIES.—The savings association shall not make any new investment (including an investment in a subsidiary) or engage, directly or indirectly, in any other new activity unless that investment or activity would be permissible for the savings association if it were a national bank, and is also permissible for the savings association as a savings association.

[(II) BRANCHING.—The savings association shall not establish any new branch office at any location at which a national bank located in the sav-

ings association's home State may not establish a branch office. For purposes of this subclause, a savings association's home State is the State in which the savings association's total deposits were largest on the date on which the savings association should have become or ceased to be a qualified thrift lender.

[(III) ADVANCES.—The savings association shall not be eligible to obtain new advances from any Federal home loan bank.

[(IV) DIVIDENDS.—The savings association shall be subject to all statutes and regulations governing the payment of dividends by a national bank in the same manner and to the same extent as if the savings association were a national bank.

[(ii) ADDITIONAL RESTRICTIONS EFFECTIVE AFTER THREE YEARS.—The following additional restrictions shall apply to a savings association beginning 3 years after the date on which the savings association should have become or ceases to be a qualified thrift lender:

[(I) ACTIVITIES.—The savings association shall not retain any investment (including an investment in any subsidiary) or engage, directly or indirectly, in any activity unless that investment or activity would be permissible for the savings association if it were a national bank, and is also permissible for the savings association as a savings association.

[(II) ADVANCES.—The savings association shall repay any outstanding advances from any Federal home loan bank as promptly as can be prudently done consistent with the safe and sound operation of the savings association.

[(C) HOLDING COMPANY REGULATION.—Any company that controls a savings association that is subject to any provision of subparagraph (B) shall, within one year after the date on which the savings association should have become or ceases to be a qualified thrift lender, register as and be deemed to be a bank holding company subject to all of the provisions of the Bank Holding Company Act of 1956, section 8 of the Federal Deposit Insurance Act, and other statutes applicable to bank holding companies, in the same manner and to the same extent as if the company were a bank holding company and the savings association were a bank, as those terms are defined in the Bank Holding Company Act of 1956.

[(D) REQUALIFICATION.—A savings association that should have become or ceases to be a qualified thrift lender shall not be subject to subparagraph (B) or (C) if the savings association becomes a qualified thrift lender by meeting the qualified thrift lender requirement in paragraph (1) on a monthly average basis in 9 out of the preceding 12 months and remains a qualified thrift lender. If the savings association (or any savings association that ac-

quired all or substantially all of its assets from that savings association) at any time thereafter ceases to be a qualified thrift lender, it shall immediately be subject to all provisions of subparagraphs (B) and (C) as if all the periods described in subparagraphs (B)(ii) and (C) had expired.

[(E) DEPOSIT INSURANCE ASSESSMENTS.—Any bank chartered as a result of the requirements of this section shall be obligated until December 31, 1993, to pay to the Savings Association Insurance Fund the assessments assessed on savings associations under the Federal Deposit Insurance Act. Such association shall also be assessed, on the date of its change of status from a Savings Association Insurance Fund member, the exit fee and entrance fee provided in section 5(d) of the Federal Deposit Insurance Act. Such institution shall not be obligated to pay the assessments assessed on banks under the Federal Deposit Insurance Act until—

[(i) December 31, 1993, or

[(ii) the institution's change of status from a Savings Association Insurance Fund member to a Bank Insurance Fund member,

whichever is later.

[(F) EXEMPTION FOR SPECIALIZED SAVINGS ASSOCIATIONS SERVING CERTAIN MILITARY PERSONNEL.—Subparagraph (A) shall not apply to a savings association subsidiary of a savings and loan holding company if at least 90 percent of the customers of the savings and loan holding company and its subsidiaries and affiliates are active or former members in the United States military services or the widows, widowers, divorced spouses, or current or former dependents of such members.

[(G) EXEMPTION FOR CERTAIN FEDERAL SAVINGS ASSOCIATIONS.—This paragraph shall not apply to any Federal savings association in existence as a Federal savings association on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

[(i) that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law; or

[(ii) that acquired its principal assets from an association that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law.

[(H) NO CIRCUMVENTION OF EXIT MORATORIUM.—Subparagraph (A) of this paragraph shall not be construed as permitting any insured depository institution to engage in any conversion transaction prohibited under section 5(d) of the Federal Deposit Insurance Act.

[(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

[(A) ACTUAL THRIFT INVESTMENT PERCENTAGE.—The term “actual thrift investment percentage” means the percentage determined by dividing—

[(i) the amount of a savings association's qualified thrift investments, by

[(ii) the amount of the savings association's portfolio assets.

[(B) PORTFOLIO ASSETS.—The term “portfolio assets” means, with respect to any savings association, the total assets of the savings association, minus the sum of—

[(i) goodwill and other intangible assets;

[(ii) the value of property used by the savings association to conduct its business; and

[(iii) liquid assets of the type required to be maintained under section 6 of the Home Owners' Loan Act, in an amount not exceeding the amount equal to 20 percent of the savings association's total assets.

[(C) QUALIFIED THRIFT INVESTMENTS.—

[(i) IN GENERAL.—The term “qualified thrift investments” means, with respect to any savings association, the assets of the savings association that are described in clauses (ii) and (iii).

[(ii) ASSETS INCLUDIBLE WITHOUT LIMIT.—The following assets are described in this clause for purposes of clause (i):

[(I) The aggregate amount of loans held by the savings association that were made to purchase, refinance, construct, improve, or repair domestic residential housing or manufactured housing.

[(II) Home-equity loans.

[(III) Securities backed by or representing an interest in mortgages on domestic residential housing or manufactured housing.

[(IV) EXISTING OBLIGATIONS OF DEPOSIT INSURANCE AGENCIES.—Direct or indirect obligations of the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation issued in accordance with the terms of agreements entered into prior to July 1, 1989, for the 10-year period beginning on the date of issuance of such obligations.

[(V) NEW OBLIGATIONS OF DEPOSIT INSURANCE AGENCIES.—Obligations of the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the FSLIC Resolution Fund, and the Resolution Trust Corporation issued in accordance with the terms of agreements entered into on or after July 1, 1989, for the 5-year period beginning on the date of issuance of such obligations.

[(VI) Shares of stock issued by any Federal home loan bank.

[(VII) Loans for educational purposes, loans to small businesses, and loans made through credit cards or credit card accounts.

[(iii) ASSETS INCLUDIBLE SUBJECT TO PERCENTAGE RESTRICTION.—The following assets are described in this clause for purposes of clause (i):

[(I) 50 percent of the dollar amount of the residential mortgage loans originated by such savings association and sold within 90 days of origination.

[(II) Investments in the capital stock or obligations of, and any other security issued by, any service corporation if such service corporation derives at least 80 percent of its annual gross revenues from activities directly related to purchasing, refinancing, constructing, improving, or repairing domestic residential real estate or manufactured housing.

[(III) 200 percent of the dollar amount of loans and investments made to acquire, develop, and construct 1- to 4-family residences the purchase price of which is or is guaranteed to be not greater than 60 percent of the median value of comparable newly constructed 1- to 4-family residences within the local community in which such real estate is located, except that not more than 25 percent of the amount included under this subclause may consist of commercial properties related to the development if those properties are directly related to providing services to residents of the development.

[(IV) 200 percent of the dollar amount of loans for the acquisition or improvement of residential real property, churches, schools, and nursing homes located within, and loans for any other purpose to any small businesses located within any area which has been identified by the Director, in connection with any review or examination of community reinvestment practices, as a geographic area or neighborhood in which the credit needs of the low- and moderate-income residents of such area or neighborhood are not being adequately met.

[(V) Loans for the purchase or construction of churches, schools, nursing homes, and hospitals, other than those qualifying under clause (IV), and loans for the improvement and upkeep of such properties.

[(VI) Loans for personal, family, or household purposes (other than loans for personal, family, or household purposes described in clause (ii)(VII)).

[(VII) Shares of stock issued by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

[(iv) PERCENTAGE RESTRICTION APPLICABLE TO CERTAIN ASSETS.—The aggregate amount of the assets described in clause (iii) which may be taken into account in determining the amount of the qualified thrift in-

vestments of any savings association shall not exceed the amount which is equal to 20 percent of a savings association's portfolio assets.

[(v) The term "qualified thrift investments" excludes—

[(I) except for home equity loans, that portion of any loan or investment that is used for any purpose other than those expressly qualifying under any subparagraph of clause (ii) or (iii); or

[(II) goodwill or any other intangible asset.

[(D) CREDIT CARD.—The Director shall issue such regulations as may be necessary to define the term "credit card".

[(E) SMALL BUSINESS.—The Director shall issue such regulations as may be necessary to define the term "small business".

[(5) CONSISTENT ACCOUNTING REQUIRED.—

[(A) In determining the amount of a savings association's portfolio assets, the assets of any subsidiary of the savings association shall be consolidated with the assets of the savings association if—

[(i) Assets of the subsidiary are consolidated with the assets of the savings association in determining the savings association's qualified thrift investments; or

[(ii) Residential mortgage loans originated by the subsidiary are included pursuant to paragraph (4)(C)(iii)(I) in determining the savings association's qualified thrift investments.

[(B) In determining the amount of a savings association's portfolio assets and qualified thrift investments, consistent accounting principles shall be applied.

[(6) SPECIAL RULES FOR PUERTO RICO AND VIRGIN ISLANDS SAVINGS ASSOCIATIONS.—

[(A) PUERTO RICO SAVINGS ASSOCIATIONS.—With respect to any savings association headquartered and operating primarily in Puerto Rico—

[(i) the term "qualified thrift investments" includes, in addition to the items specified in paragraph (4)—

[(I) the aggregate amount of loans for personal, family, educational, or household purposes made to persons residing or domiciled in the Commonwealth of Puerto Rico; and

[(II) the aggregate amount of loans for the acquisition or improvement of churches, schools, or nursing homes, and of loans to small businesses, located within the Commonwealth of Puerto Rico; and

[(ii) the aggregate amount of loans related to the purchase, acquisition, development and construction of 1- to 4-family residential real estate—

[(I) which is located within the Commonwealth of Puerto Rico; and

[(II) the value of which (at the time of acquisition or upon completion of the development and construction) is below the median value of newly constructed 1- to 4-family residences in the Commonwealth of Puerto Rico, which may be taken into account in determining the amount of the qualified thrift investments and of such savings association shall be doubled.

[(B) VIRGIN ISLANDS SAVINGS ASSOCIATIONS.—With respect to any savings association headquartered and operating primarily in the Virgin Islands—

[(i) the term “qualified thrift investments” includes, in addition to the items specified in paragraph (4)—

[(I) the aggregate amount of loans for personal, family, educational, or household purposes made to persons residing or domiciled in the Virgin Islands; and

[(II) the aggregate amount of loans for the acquisition or improvement of churches, schools, or nursing homes, and of loans to small businesses, located within the Virgin Islands; and

[(ii) the aggregate amount of loans related to the purchase, acquisition, development and construction of 1- to 4-family residential real estate—

[(I) which is located within the Virgin Islands; and

[(II) the value of which (at the time of acquisition or upon completion of the development and construction) is below the median value of newly constructed 1- to 4-family residences in the Virgin Islands, which may be taken into account in determining the amount of the qualified thrift investments and of such savings association shall be doubled.

[(7) TRANSITIONAL RULE FOR CERTAIN SAVINGS ASSOCIATIONS.—

[(A) IN GENERAL.—If any Federal savings association in existence as a Federal savings association on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

[(i) that was chartered as a savings bank or a cooperative bank under State law before October 15, 1982; or

[(ii) that acquired its principal assets from an association that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law, meets the requirements of subparagraph (B), such savings association shall be treated as a qualified thrift lender during period ending on September 30, 1995.

[(B) SUBPARAGRAPH (B) REQUIREMENTS.—A savings association meets the requirements of this subparagraph if, in the determination of the Director—

[(i) the actual thrift investment percentage of such association does not, after the date of enactment of the

Financial Institutions Reform, Recovery, and Enforcement Act of 1989, decrease below the actual thrift investment percentage of such association on July 15, 1989; and

[(ii) the amount by which—

[(I) the actual thrift investment percentage of such association at the end of each period described in the following table, exceeds

[(II) the actual thrift investment percentage of such association on July 15, 1989, is equal to or greater than the applicable percentage (as determined under the following table) of the amount by which 70 percent exceeds the actual thrift investment percentage of such association on such date of enactment:

For the following period:	The applicable percentage is:
July 1, 1991–September 30, 1992	25 percent
October 1, 1992–March 31, 1994	50 percent
April 1, 1994–September 30, 1995	75 percent
Thereafter	100 percent

[(C) For purposes of this paragraph, the actual thrift investment percentage of an association on July 15, 1989, shall be determined by applying the definition of “actual thrift investment percentage” that takes effect on July 1, 1991.

[(n) TYING RESTRICTIONS.—A savings and loan holding company and any of its affiliates shall be subject to section 5(q) and regulations prescribed under such section, in connection with transactions involving the products or services of such company or affiliate and those of an affiliated savings association as if such company or affiliate were a savings association.

[(o) MUTUAL HOLDING COMPANIES.—

[(1) IN GENERAL.—A savings association operating in mutual form may reorganize so as to become a holding company by—

[(A) chartering an interim savings association, the stock of which is to be wholly owned, except as otherwise provided in this section, by the mutual association; and

[(B) transferring the substantial part of its assets and liabilities, including all of its insured liabilities, to the interim savings association.

[(2) DIRECTORS AND CERTAIN ACCOUNT HOLDERS’ APPROVAL OF PLAN REQUIRED.—A reorganization is not authorized under this subsection unless—

[(A) a plan providing for such reorganization has been approved by a majority of the board of directors of the mutual savings association; and

[(B) in the case of an association in which holders of accounts and obligors exercise voting rights, such plan has been submitted to and approved by a majority of such individuals at a meeting held at the call of the directors in accordance with the procedures prescribed by the association’s charter and bylaws.

[(3) NOTICE TO THE DIRECTOR; DISAPPROVAL PERIOD.—

[(A) NOTICE REQUIRED.—At least 60 days prior to taking any action described in paragraph (1), a savings association seeking to establish a mutual holding company shall provide written notice to the Director. The notice shall contain such relevant information as the Director shall require by regulation or by specific request in connection with any particular notice.

[(B) TRANSACTION ALLOWED IF NOT DISAPPROVED.—Unless the Director within such 60-day notice period disapproves the proposed holding company formation, or extends for another 30 days the period during which such disapproval may be issued, the savings association providing such notice may proceed with the transaction, if the requirements of paragraph (2) have been met.

[(C) GROUNDS FOR DISAPPROVAL.—The Director may disapprove any proposed holding company formation only if—

[(i) such disapproval is necessary to prevent unsafe or unsound practices;

[(ii) the financial or management resources of the savings association involved warrant disapproval;

[(iii) the savings association fails to furnish the information required under subparagraph (A); or

[(iv) the savings association fails to comply with the requirement of paragraph (2).

[(D) RETENTION OF CAPITAL ASSETS.—In connection with the transaction described in paragraph (1), a savings association may, subject to the approval of the Director, retain capital assets at the holding company level to the extent that such capital exceeds the association's capital requirement established by the Director pursuant to sections 5 (s) and (t) of this Act.

[(4) OWNERSHIP.—

[(A) IN GENERAL.—Persons having ownership rights in the mutual association pursuant to section 5(b)(1)(B) of this Act or State law shall have the same ownership rights with respect to the mutual holding company.

[(B) HOLDERS OF CERTAIN ACCOUNTS.—Holders of savings, demand or other accounts of—

[(i) a savings association chartered as part of a transaction described in paragraph (1); or

[(ii) a mutual savings association acquired pursuant to paragraph (5)(B),

shall have the same ownership rights with respect to the mutual holding company as persons described in subparagraph (A) of this paragraph.

[(5) PERMITTED ACTIVITIES.—A mutual holding company may engage only in the following activities:

[(A) Investing in the stock of a savings association.

[(B) Acquiring a mutual association through the merger of such association into a savings association subsidiary of such holding company or an interim savings association subsidiary of such holding company.

[(C) Subject to paragraph (6), merging with or acquiring another holding company, one of whose subsidiaries is a savings association.

[(D) Investing in a corporation the capital stock of which is available for purchase by a savings association under Federal law or under the law of any State where the subsidiary savings association or associations have their home offices.

[(E) Engaging in the activities described in subsection (c)(2), except subparagraph (B).

[(6) LIMITATIONS ON CERTAIN ACTIVITIES OF ACQUIRED HOLDING COMPANIES.—

[(A) NEW ACTIVITIES.—If a mutual holding company acquires or merges with another holding company under paragraph (5)(C), the holding company acquired or the holding company resulting from such merger or acquisition may only invest in assets and engage in activities which are authorized under paragraph (5).

[(B) GRACE PERIOD FOR DIVESTING PROHIBITED ASSETS OR DISCONTINUING PROHIBITED ACTIVITIES.—Not later than 2 years following a merger or acquisition described in paragraph (5)(C), the acquired holding company or the holding company resulting from such merger or acquisition shall—

[(i) dispose of any asset which is an asset in which a mutual holding company may not invest under paragraph (5); and

[(ii) cease any activity which is an activity in which a mutual holding company may not engage under paragraph (5).

[(7) REGULATION.—A mutual holding company shall be chartered by the Director and shall be subject to such regulations as the Director may prescribe. Unless the context otherwise requires, a mutual holding company shall be subject to the other requirements of this section regarding regulation of holding companies.

[(8) CAPITAL IMPROVEMENT.—

[(A) PLEDGE OF STOCK OF SAVINGS ASSOCIATION SUBSIDIARY.—This section shall not prohibit a mutual holding company from pledging all or a portion of the stock of a savings association chartered as part of a transaction described in paragraph (1) to raise capital for such savings association.

[(B) ISSUANCE OF NONVOTING SHARES.—This section shall not prohibit a savings association chartered as part of a transaction described in paragraph (1) from issuing any nonvoting shares or less than 50 percent of the voting shares of such association to any person other than the mutual holding company.

[(9) INSOLVENCY AND LIQUIDATION.—

[(A) IN GENERAL.—Notwithstanding any provision of law, upon—

[(i) the default of any savings association—

[(I) the stock of which is owned by any mutual holding company; and

[(II) which was chartered in a transaction described in paragraph (1);

[(ii) the default of a mutual holding company; or

[(iii) a foreclosure on a pledge by a mutual holding company described in paragraph (8)(A),

a trustee shall be appointed receiver of such mutual holding company and such trustee shall have the authority to liquidate the assets of, and satisfy the liabilities of, such mutual holding company pursuant to title 11, United States Code.

[(B) DISTRIBUTION OF NET PROCEEDS.—Except as provided in subparagraph (C), the net proceeds of any liquidation of any mutual holding company pursuant to subparagraph (A) shall be transferred to persons who hold ownership interests in such mutual holding company.

[(C) RECOVERY BY CORPORATION.—If the Corporation incurs a loss as a result of the default of any savings association subsidiary of a mutual holding company which is liquidated pursuant to subparagraph (A), the Corporation shall succeed to the ownership interests of the depositors of such savings association in the mutual holding company, to the extent of the Corporation's loss.

[(10) DEFINITIONS.—For purposes of this subsection—

[(A) MUTUAL HOLDING COMPANY.—The term “mutual holding company” means a corporation organized as a holding company under this subsection.

[(B) MUTUAL ASSOCIATION.—The term “mutual association” means a savings association which is operating in mutual form.

[(C) DEFAULT.—The term “default” means an adjudication or other official determination of a court of competent jurisdiction or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed.

[(p) HOLDING COMPANY ACTIVITIES CONSTITUTING SERIOUS RISK TO SUBSIDIARY SAVINGS ASSOCIATION.—

[(1) DETERMINATION AND IMPOSITION OF RESTRICTIONS.—If the Director determines that there is reasonable cause to believe that the continuation by a savings and loan holding company of any activity constitutes a serious risk to the financial safety, soundness, or stability of a savings and loan holding company's subsidiary savings association, the Director may impose such restrictions as the Director determines to be necessary to address such risk. Such restrictions shall be issued in the form of a directive to the holding company and any of its subsidiaries, limiting—

[(A) the payment of dividends by the savings association;

[(B) transactions between the savings association, the holding company, and the subsidiaries or affiliates of either; and

[(C) any activities of the savings association that might create a serious risk that the liabilities of the holding com-

pany and its other affiliates may be imposed on the savings association.
Such directive shall be effective as a cease and desist order that has become final.

[(2) REVIEW OF DIRECTIVE.—

[(A) ADMINISTRATIVE REVIEW.—After a directive referred to in paragraph (1) is issued, the savings and loan holding company, or any subsidiary of such holding company subject to the directive, may object and present in writing its reasons why the directive should be modified or rescinded. Unless within 10 days after receipt of such response the Director affirms, modifies, or rescinds the directive, such directive shall automatically lapse.

[(B) JUDICIAL REVIEW.—If the Director affirms or modifies a directive pursuant to subparagraph (A), any affected party may immediately thereafter petition the United States district court for the district in which the savings and loan holding company has its main office or in the United States District Court for the District of Columbia to stay, modify, terminate or set aside the directive. Upon a showing of extraordinary cause, the savings and loan holding company, or any subsidiary of such holding company subject to a directive, may petition a United States district court for relief without first pursuing or exhausting the administrative remedies set forth in this paragraph.

[(q) QUALIFIED STOCK ISSUANCE BY UNDERCAPITALIZED SAVINGS ASSOCIATIONS OR HOLDING COMPANIES.—

[(1) IN GENERAL.—For purposes of this section, any issue of shares of stock shall be treated as a qualified stock issuance if the following conditions are met:

[(A) The shares of stock are issued by—

[(i) an undercapitalized savings association; or

[(ii) a savings and loan holding company which is not a bank holding company but which controls an undercapitalized savings association if, at the time of issuance, the savings and loan holding company is legally obligated to contribute the net proceeds from the issuance of such stock to the capital of an undercapitalized savings association subsidiary of such holding company.

[(B) All shares of stock issued consist of previously unissued stock or treasury shares.

[(C) All shares of stock issued are purchased by a savings and loan holding company that is registered, as of the date of purchase, with the Director in accordance with the provisions of subsection (b)(1) of this section.

[(D) Subject to paragraph (2), the Director approved the purchase of the shares of stock by the acquiring savings and loan holding company.

[(E) The entire consideration for the stock issued is paid in cash by the acquiring savings and loan holding company.

[(F) At the time of the stock issuance, each savings association subsidiary of the acquiring savings and loan holding company (other than an association acquired in a transaction pursuant to subsection (c) or (k) of section 13 of the Federal Deposit Insurance Act or section 408(m) of the National Housing Act) has capital (after deducting any subordinated debt, intangible assets, and deferred, unamortized gains or losses) of not less than 6½ percent of the total assets of such savings association.

[(G) Immediately after the stock issuance, the acquiring savings and loan holding company holds not more than 15 percent of the outstanding voting stock of the issuing undercapitalized savings association or savings and loan holding company.

[(H) Not more than one of the directors of the issuing association or company is an officer, director, employee, or other representative of the acquiring company or any of its affiliates.

[(I) Transactions between the savings association or savings and loan holding company that issues the shares pursuant to this section and the acquiring company and any of its affiliates shall be subject to the provisions of section 11.

[(2) APPROVAL OF ACQUISITIONS.—

[(A) ADDITIONAL CAPITAL COMMITMENTS NOT REQUIRED.—The Director shall not disapprove any application for the purchase of stock in connection with a qualified stock issuance on the grounds that the acquiring savings and loan holding company has failed to undertake to make subsequent additional capital contributions to maintain the capital of the undercapitalized savings association at or above the minimum level required by the Director or any other Federal agency having jurisdiction.

[(B) OTHER CONDITIONS.—Notwithstanding subsection (a)(4), the Director may impose such conditions on any approval of an application for the purchase of stock in connection with a qualified stock issuance as the Director determines to be appropriate, including—

[(i) a requirement that any savings association subsidiary of the acquiring savings and loan holding company limit dividends paid to such holding company for such period of time as the Director may require; and

[(ii) such other conditions as the Director deems necessary or appropriate to prevent evasions of this section.

[(C) APPLICATION DEEMED APPROVED IF NOT DISAPPROVED WITHIN 90 DAYS.—An application for approval of a purchase of stock in connection with a qualified stock issuance shall be deemed to have been approved by the Director if such application has not been disapproved by the Director before the end of the 90-day period beginning on the date such application has been deemed sufficient under regulations issued by the Director.

[(3) NO LIMITATION ON CLASS OF STOCK ISSUED.—The shares of stock issued in connection with a qualified stock issuance may be shares of any class.

[(4) UNDERCAPITALIZED SAVINGS ASSOCIATION DEFINED.—For purposes of this subsection, the term “undercapitalized savings association” means any savings association—

[(A) the assets of which exceed the liabilities of such association; and

[(B) which does not comply with one or more of the capital standards in effect under section 5(t).

[(r) PENALTY FOR FAILURE TO PROVIDE TIMELY AND ACCURATE REPORTS.—

[(1) FIRST TIER.—Any savings and loan holding company, and any subsidiary of such holding company, which—

[(A) maintains procedures reasonably adapted to avoid any inadvertent and unintentional error and, as a result of such an error—

[(i) fails to submit or publish any report or information required under this section or regulations prescribed by the Director, within the period of time specified by the Director; or

[(ii) submits or publishes any false or misleading report or information; or

[(B) inadvertently transmits or publishes any report which is minimally late, shall be subject to a penalty of not more than \$2,000 for each day during which such failure continues or such false or misleading information is not corrected. Such holding company or subsidiary shall have the burden of proving by a preponderance of the evidence that an error was inadvertent and unintentional and that a report was inadvertently transmitted or published late.

[(2) SECOND TIER.—Any savings and loan holding company, and any subsidiary of such holding company, which—

[(A) fails to submit or publish any report or information required under this section or under regulations prescribed by the Director, within the period of time specified by the Director; or

[(B) submits or publishes any false or misleading report or information,

in a manner not described in paragraph (1) shall be subject to a penalty of not more than \$20,000 for each day during which such failure continues or such false or misleading information is not corrected.

[(3) THIRD TIER.—If any savings and loan holding company or any subsidiary of such a holding company knowingly or with reckless disregard for the accuracy of any information or report described in paragraph (2) submits or publishes any false or misleading report or information, the Director may assess a penalty of not more than \$1,000,000 or 1 percent of total assets of such company or subsidiary, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

[(4) ASSESSMENT.—Any penalty imposed under paragraph (1), (2), or (3) shall be assessed and collected by the Director in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

[(5) HEARING.—Any savings and loan holding company or any subsidiary of such a holding company against which any penalty is assessed under this subsection shall be afforded a hearing if such savings and loan holding company or such subsidiary, as the case may be, submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this subsection.

[(s) MERGERS, CONSOLIDATIONS, AND OTHER ACQUISITIONS AUTHORIZED.—

[(1) IN GENERAL.—Subject to sections 5(d)(3) and 18(c) of the Federal Deposit Insurance Act and all other applicable laws, any Federal savings association may acquire or be acquired by any insured depository institution.

[(2) EXPEDITED APPROVAL OF ACQUISITIONS.—

[(A) IN GENERAL.—Any application by a savings association to acquire or be acquired by another insured depository institution which is required to be filed with the Director under any applicable law or regulation shall be approved or disapproved in writing by the Director before the end of the 60-day period beginning on the date such application is filed with the agency.

[(B) EXTENSION OF PERIOD.—The period for approval or disapproval referred to in subparagraph (A) may be extended for an additional 30-day period if the Director determines that—

[(i) an applicant has not furnished all of the information required to be submitted; or

[(ii) in the Director's judgment, any material information submitted is substantially inaccurate or incomplete.

[(3) ACQUIRE DEFINED.—For purposes of this subsection, the term “acquire” means to acquire, directly or indirectly, ownership or control through a merger or consolidation or an acquisition of assets or assumption of liabilities, provided that following such merger, consolidation, or acquisition, an acquiring insured depository institution may not own the shares of the acquired insured depository institution.

[(4) REGULATIONS.—

[(A) REQUIRED.—The Director shall prescribe such regulations as may be necessary to carry out paragraph (1).

[(B) EFFECTIVE DATE.—The regulations required under subparagraph (A) shall—

[(i) be prescribed in final form before the end of the 90-day period beginning on the date of the enactment of this subsection; and

[(ii) take effect before the end of the 120-day period beginning on such date.

[(5) LIMITATION.—No provision of this section shall be construed to authorize a national bank or any subsidiary thereof to engage in any activity not otherwise authorized under the National Bank Act or any other law governing the powers of a national bank.

[(t) EXEMPTION FOR BANK HOLDING COMPANIES.—This section shall not apply to a bank holding company that is subject to the Bank Holding Company Act of 1956, or any company controlled by such bank holding company.

[(SEC. 11. TRANSACTIONS WITH AFFILIATES; EXTENSIONS OF CREDIT TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS.

[(a) AFFILIATE TRANSACTIONS.—

[(1) IN GENERAL.—Sections 23A and 23B of the Federal Reserve Act shall apply to every savings association in the same manner and to the same extent as if the savings association were a member bank (as defined in such Act), except that—

[(A) no loan or other extension of credit may be made to any affiliate unless that affiliate is engaged only in activities described in section 10(c)(2)(F)(i); and

[(B) no savings association may enter into any transaction described in section 23A(b)(7)(B) of the Federal Reserve Act with any affiliate other than with respect to shares of a subsidiary.

[(2) SISTER BANK EXEMPTION MADE AVAILABLE TO SAVINGS ASSOCIATIONS.—

[(A) SAVINGS ASSOCIATIONS CONTROLLED BY BANK HOLDING COMPANIES.—Every savings association more than 80 percent of the voting stock of which is owned by a company described in section 10(c)(8) shall be treated as a bank for purposes of section 23A(d)(1) and section 23B of the Federal Reserve Act, if every savings association and bank controlled by such company complies with all applicable capital requirements on a fully phased-in basis and without reliance on goodwill.

[(B) SAVINGS ASSOCIATIONS GENERALLY.—Effective on and after January 1, 1995, every savings association shall be treated as a bank for purposes of section 23A(d)(1) and section 23B of the Federal Reserve Act.

[(3) AFFILIATES DESCRIBED.—Any company that would be an affiliate (as defined in sections 23A and 23B of the Federal Reserve Act) of any savings association if such savings association were a member bank (as such term is defined in such Act) shall be deemed to be an affiliate of such savings association for purposes of paragraph (1).

[(4) ADDITIONAL RESTRICTIONS AUTHORIZED.—The Director may impose such additional restrictions on any transaction between any savings association and any affiliate of such savings association as the Director determines to be necessary to protect the safety and soundness of the savings association.

[(b) EXTENSIONS OF CREDIT TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS.—

[(1) IN GENERAL.—Subsections (g) and (h) of section 22 of the Federal Reserve Act shall apply to every savings association in the same manner and to the same extent as if the savings association were a member bank (as defined in such Act).

[(2) ADDITIONAL RESTRICTIONS AUTHORIZED.—The Director may impose such additional restrictions on loans or extensions of credit to any director or executive officer of any savings association, or any person who directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a savings association, as the Director determines to be necessary to protect the safety and soundness of the savings association.

[(c) ADMINISTRATIVE ENFORCEMENT.—The Director may take enforcement action with respect to violations of this section pursuant to section 8 or 18(j) of the Federal Deposit Insurance Act, as appropriate.

[SEC. 12. ADVERTISING.

[No savings association shall carry on any sale, plan, or practices, or any advertising, in violation of regulations promulgated by the Director.

[SEC. 13. POWERS OF EXAMINERS.

[For the purposes of this Act, examiners appointed by the Director shall—

[(1) be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under the Federal Reserve Act and title LXII of the Revised Statutes; and

[(2) have, in the exercise of functions under this Act, the same powers and privileges as are vested in such examiners by law.

[SEC. 14. SEPARABILITY PROVISION.

[If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.]

ACT OF OCTOBER 28, 1974

AN ACT To increase deposit insurance from \$20,000 to \$40,000, to provide full insurance for public unit deposits of \$100,000 per account, to establish a National Commission on Electronic Fund Transfers, and for other purposes.

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

TITLE I—AMENDMENTS TO AND EXTENSIONS OF PROVISIONS OF LAW RELATING TO FEDERAL REGULATION OF DEPOSITORY INSTITUTIONS

* * * * *

INDEPENDENCE OF FINANCIAL REGULATORY AGENCIES

SEC. 111. No officer or agency of the United States shall have any authority to require the Securities and Exchange Commission,

the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the **【Federal Home Loan Bank Board】** *Federal Housing Finance Board*, or the National Credit Union Administration to submit legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress if such recommendations, testimony, or comments to the Congress include a statement indicating that the views expressed therein are those of the agency submitting them and do not necessarily represent the views of the President.

* * * * *

TITLE II—NATIONAL COMMISSION ON ELECTRONIC FUND TRANSFERS

* * * * *

MEMBERSHIP

SEC. 202. (a) The Commission shall be composed of twenty-six members as follows:

(1) * * *

* * * * *

(12) seven individuals, appointed by the President, who are officers or employees of, or who otherwise represent banking, **【thrift, or other business entities, including one representative each of commercial banks, mutual savings banks, savings and loan associations,】** *or other business entities, including 3 representatives from different types of insured depository institutions (as defined in section 3 of the Federal Deposit Insurance Act) and 1 representative each of credit unions, retailers, non-banking institutions offering credit card services, and organizations providing interchange services, for credit cards issued by banks;*

* * * * *

SECURITIES EXCHANGE ACT OF 1934

TITLE I—REGULATION OF SECURITIES EXCHANGES

* * * * *

DEFINITIONS AND APPLICATION OF TITLE

SEC. 3. (a) When used in this title, unless the context otherwise requires—

(1) * * *

* * * * *

【(4) The term “broker” means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank.

【(5) The term “dealer” means any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.】

(4) *BROKER.*—

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

(B) *EXCLUSION OF BANKS.*—The term “broker” does not include a bank unless such bank—

(i) publicly solicits the business of effecting securities transactions for the account of others; or

(ii) is compensated for such business by the payment of commissions or similar remuneration based on effecting transactions in securities (other than fees calculated as a percentage of assets under management) in excess of the bank’s incremental costs directly attributable to effecting such transactions (hereafter referred to as “incentive compensation”).

(C) *EXEMPTION FOR CERTAIN BANK ACTIVITIES.*—A bank shall not be considered to be a broker because the bank engages in any of the following activities under the conditions described:

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

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

(II) the broker or dealer performs brokerage services in an area that is clearly marked and, unless made impossible by space or personnel considerations, physically separate from the routine deposit-taking activities of the bank;

(III) any materials used by the bank to advertise or promote generally the availability of brokerage services under the contractual or other arrangement clearly indicate that the brokerage services are being provided by the broker or dealer and not by the bank;

(IV) any materials used by the bank to advertise or promote generally the availability of brokerage services under the contractual or other arrangement are in compliance with the Federal securities laws before distribution;

(V) bank employees perform only clerical or ministerial functions in connection with brokerage transactions, including scheduling appointments with the associated persons of a broker or dealer and, on behalf of a broker or dealer, transmitting orders or handling customers funds or securities,

except that bank employees who are not so qualified may describe in general terms investment vehicles under the contractual or other arrangement and accept customer orders on behalf of the broker or dealer if such employees have received training that is substantially equivalent to the training required for personnel qualified to sell securities pursuant to the requirements of a self-regulatory organization;

(VI) bank employees do not directly receive incentive compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the requirements of a self-regulatory organization (as so defined) except that the bank employees may receive nominal cash and noncash compensation for customer referrals if the cash compensation is a one-time fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction;

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

(VIII) the broker or dealer informs each customer that the brokerage services are provided by the broker or dealer and not by the bank and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not insured by the Federal Deposit Insurance Corporation.

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

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

(II) receives incentive compensation for such brokerage activities.

(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in exempted securities, commercial paper, bankers acceptances, commercial bills, qualified Canadian government obligations as defined in section 5136 of the Revised Statutes, obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Trans-

portation Act of 1969, obligations of the North American Development Bank, and obligations of any local public agency (as defined in section 110(h) of the Housing Act of 1949) or any public housing agency (as defined in the United States Housing Act of 1937) that are expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in.

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

(v) *SWEEP ACCOUNTS.*—The bank effects transactions as part of a program for the investment or reinvestment of bank deposit funds into any no-load, open-end management investment company registered under the Investment Company Act of 1940 that holds itself out as a money market fund.

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

(vii) *PRIVATE SECURITIES OFFERINGS.*—The bank—

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

(II) effects such sales exclusively to an accredited investor, as defined in section 2 of the Securities Act of 1933.

(viii) *DE MINIMUS EXEMPTION.*—If the bank does not have a subsidiary or affiliate registered as a broker or dealer under section 15, the bank effects, other than in transactions referred to in clauses (i) through (vii), not more than—

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

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

(ix) *SAFEKEEPING AND CUSTODY SERVICES.*—The bank, as part of customary banking activities—

(I) provides safekeeping or custody services with respect to securities, including the exercise of warrants or other rights on behalf of customers;

(II) clears or settles transactions in securities;

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

(IV) holds securities pledged by one customer to another customer or securities subject to resale agreements between customers or facilitates the pledging or transfer of such securities by book entry.

(x) *CONTRACTS OF INSURANCE.*—The bank effects transactions in contracts of insurance.

(xi) *BANKING PRODUCTS.*—The bank effects transactions in banking products, as defined in section 18 of the Federal Deposit Insurance Act.

(D) *EXEMPTION FOR ENTITIES SUBJECT TO SECTION 15(e).*—The term “broker” does not include a bank that—

(i) was, immediately prior to the enactment of the Financial Services Competition Act of 1997, subject to section 15(e); and

(ii) is subject to such restrictions and requirements as the Commission considers appropriate.

(5) *DEALER.*—

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

(B) *EXCEPTION FOR PERSON NOT ENGAGED IN THE BUSINESS OF DEALING.*—The term “dealer” does not include a person that buys or sells securities for such person’s own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

(C) *EXEMPTION FOR CERTAIN BANK ACTIVITIES.*—A bank shall not be considered to be a dealer because the bank engages in any of the following activities under the conditions described:

(i) The bank buys and sells commercial paper, bankers acceptances, exempted securities, qualified Canadian Government obligations as defined in section 5136 of the Revised Statutes, obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969, obligations of the North American Development Bank, and obligations of any local public agency (as defined in section 110(h) of the Housing Act of 1949) or any public housing agency (as defined in the United States Housing Act of 1937) that are expressly authorized by section 5136 of the Revised Statutes of the United States as permissible for a national bank to underwrite or deal in.

(ii) The bank buys and sells securities for investment purposes for the bank or for accounts for which the bank acts as a trustee or fiduciary.

(iii) The bank effects transactions in contracts of insurance.

(iv) The bank offers or sells, solely to any accredited investor (as defined in section 2 of the Securities Act of 1933) securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables,

other obligations, or pools of any such obligations originated or purchased by the bank or any affiliate of the bank.

(v) The bank buys and sells banking products, as defined in section 18 of the Federal Deposit Insurance Act.

* * * * *

(12)(A) The term “exempted security” or “exempted securities” includes—

(i) government securities, as defined in paragraph (42) of this subsection;

(ii) municipal securities, as defined in paragraph (29) of this subsection;

[(iii) any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian;]

(iii) any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term “investment company” under section 3(c)(3) of the Investment Company Act of 1940;

* * * * *

(34) The term “appropriate regulatory agency” means—

(A) * * *

* * * * *

(G) When used with respect to a government securities broker or government securities dealer, or person associated with a government securities broker or government securities dealer:

(i) * * *

* * * * *

(iii) the Federal Deposit Insurance Corporation, in the case of a bank (*as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)*) insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System [or a Federal savings bank]) or an insured State branch of a foreign bank (as such terms are used in the International Banking Act of 1978);

[(iv) the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act) the deposits of which are insured by the Federal Deposit Insurance Corporation;]

[(v)] *(iv) the Commission, in the case of all other government securities brokers and government securities dealers.*

As used in this paragraph, the terms “bank holding company” and “subsidiary of a bank holding company” have the meanings given them in section 2 of the Bank Holding Company Act of 1956[, and the term “District of Columbia savings and loan

association” means any association subject to examination and supervision by the Office of Thrift Supervision under section 8 of the Home Owners’ Loan Act of 1933].

* * * * *

(h) *EXEMPTION FROM DEFINITION OF BROKER OR DEALER.*—With respect to the employees of a bank that engages in the offer and sale of securities to the retail public, such employees shall be subject to the same rules and regulations of a self-regulatory organization applicable under authority of section 15A to employees of securities and other nonbank firms.

* * * * *

REGISTRATION AND REGULATION OF BROKERS AND DEALERS

SEC. 15. (a) * * *

* * * * *

(i) *APPLICATION OF THIS TITLE TO BANKS REGISTERED AS BROKERS OR DEALERS.*—

(1) *NONDISCRIMINATION.*—In administering and enforcing this title with respect to banks that are registered brokers or dealers, the Commission shall not treat banks more restrictively than any other entities that are registered as brokers or dealers pursuant to this section.

(2) *CAPITAL REQUIREMENTS.*—

(A) *WELL-CAPITALIZED BANKS.*—Capital requirements for brokers or dealers shall not apply to a bank that is well-capitalized (as defined in section 38 of the Federal Deposit Insurance Act) and determined by the appropriate Federal banking agency (as defined in section 3 of such Act), if the bank’s brokerage and dealer activities requiring registration do not represent the predominant portion of the gross revenues of the bank.

(B) *OTHER BANKS.*—The Commission, in consultation with the appropriate Federal regulatory agencies for banks, shall provide appropriate transitional relief to banks that are registered brokers or dealers, and that cease to be well-capitalized but are adequately capitalized (as defined in section 38 of the Federal Deposit Insurance Act). Such rules shall take account of the purposes of this section and the extent to which bank capital requirements further those purposes.

(3) *SCOPE OF APPLICATION.*—The regulation, under this Act, of any bank registered under this Act as a broker or dealer shall apply only with respect to activities of the bank for which the bank is required under this Act to be registered as a broker or dealer.

* * * * *

GOVERNMENT SECURITIES BROKERS AND DEALERS

SEC. 15C. (a) * * *

* * * * *

(g)(1) Nothing in this section except paragraph (2) of this subsection shall be construed to impair or limit the authority under any other provision of law of the Commission, the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, [the Director of the Office of Thrift Supervision,] the Federal Savings and Loan Insurance Corporation, the Secretary of Housing and Urban Development, and the Government National Mortgage Association.

* * * * *

SECTION 3 OF THE SECURITIES INVESTOR PROTECTION ACT OF 1970

SEC. 3. SECURITIES INVESTOR PROTECTION CORPORATION.

(a) CREATION AND MEMBERSHIP.—

(1) * * *

(2) MEMBERSHIP.—

(A) MEMBERS OF SIPC.—SIPC shall be a membership corporation the members of which shall be all persons registered as brokers or dealers under section 15(b) of the 1934 Act, other than—

(i) persons whose principal business, in the determination of SIPC, taking into account business of affiliated entities, is conducted outside the United States and its territories and possessions; [and]

(ii) persons whose business as a broker or dealer consists exclusively of (I) the distribution of shares of registered open end investment companies or unit investment trusts, (II) the sale of variable annuities, (III) the business of insurance, or (IV) the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts[.]; and

(iii) banks.

* * * * *

INVESTMENT COMPANY ACT OF 1940

* * * * *

TITLE I—INVESTMENT COMPANIES

* * * * *

GENERAL DEFINITIONS

SEC. 2. (a) When used in this title, unless the context otherwise requires—

(1) * * *

* * * * *

(5) “Bank” means [(A) a banking institution organized under the laws of the United States] (A) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or a branch or agency of a foreign bank (as such terms are defined in section 1(b) of the International Banking Act of 1978), (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clause (A), (B), or (C) of this paragraph.

[(6) “Broker” means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank or any person solely by reason of the fact that such person is an underwriter for one or more investment companies.]

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

* * * * *

[(11) “Dealer” means any person regularly engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, insurance company, or investment company, or any person insofar as he is engaged in investing, reinvesting, or trading in securities, or in owning or holding securities, for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.]

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

* * * * *

(19) “Interested person” of another person means—

(A) when used with respect to an investment company—

- (i) any affiliated person of such company,
- (ii) any member of the immediate family of any natural person who is an affiliated person of such company,
- (iii) any interested person of any investment adviser of or principal underwriter for such company,
- (iv) any person or partner or employee of any person who at any time since the beginning of the last two completed fiscal years of such company has acted as legal counsel for such company,

[(v) any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such a broker or dealer, and]

(v) any person (other than a registered investment company) that, at any time during the preceding 6 months, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

(I) the investment company,

(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services, or

(III) any account over which the investment company's investment adviser has brokerage placement discretion, or any affiliated person of such a person,

(vi) any person (other than a registered investment company) that, at any time during the preceding 6 months, has loaned money to—

(I) the investment company,

(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services, or

(III) any account for which the investment company's investment adviser has borrowing authority,

or any affiliated person of such a person, or

[(vi)] *(vii) any natural person whom the Commission by order shall have determined to be an interested person by reason of having had, at any time since the beginning of the last two completed fiscal years of such company, a material business or professional relationship with such company or with the principal executive officer of such company or with any other investment company having the same investment adviser or principal underwriter or with the principal executive officer of such other investment company:*

Provided, That no person shall be deemed to be an interested person of an investment company solely by reason of (aa) his being a member of its board of directors or advisory board or an owner of its securities, or (bb) his membership in the immediate family of any person specified in clause (aa) of this proviso; and

(B) when used with respect to an investment adviser of or principal underwriter for any investment company—

(i) any affiliated person of such investment adviser or principal underwriter,

(ii) any member of the immediate family of any natural person who is an affiliated person of such investment adviser or principal underwriter,

(iii) any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued either by such investment adviser or principal underwriter or by a controlling person of such investment adviser or principal underwriter,

(iv) any person or partner or employee of any person who at any time since the beginning of the last two completed fiscal years of such investment company has acted as legal counsel for such investment adviser or principal underwriter,

[(v) any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such a broker or dealer, and]

(v) any person (other than a registered investment company) that, at any time during the preceding 6 months, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

(I) any investment company for which the investment adviser or principal underwriter serves as such,

(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such, or

(III) any account over which the investment adviser has brokerage placement discretion, or any affiliated person of such a person,

(vi) any person (other than a registered investment company) that, at any time during the preceding 6 months, has loaned money to—

(I) any investment company for which the investment adviser or principal underwriter serves as such,

(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such, or

(III) any account for which the investment adviser has borrowing authority,

or any affiliated person of such a person, or

[(vi)] *(vii) any natural person whom the Commission by order shall have determined to be an interested person by reason of having had at any time since the beginning of the last two completed fiscal years of such investment company a material business or professional relationship with such investment adviser or principal underwriter or with the principal executive*

officer or any controlling person of such investment adviser or principal underwriter.

For the purposes of this paragraph (19), "member of the immediate family" means any parent, spouse of a parent, child, spouse of a child, spouse, brother, or sister, and includes step and adoptive relationships. The Commission may modify or revoke any order issued under clause (vi) of subparagraph (A) or (B) of this paragraph whenever it finds that such order is no longer consistent with the facts. No order issued pursuant to clause (vi) of subparagraph (A) or (B) of this paragraph shall become effective until at least sixty days after the entry thereof, and no such order shall affect the status of any person for the purposes of this title or for any other purpose for any period prior to the effective date of such order.

* * * * *

DEFINITION OF INVESTMENT COMPANY

SEC. 3. (a)(1) * * *

* * * * *

(c) Notwithstanding subsection (a), none of the following persons is an investment company within the meaning of this title:

(1) * * *

* * * * *

(3) Any bank or insurance company; any savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, or any receiver, conservator, liquidator, liquidating agent, or similar official or person thereof or therefor; or any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian, if—

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

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

(i) advertised; or

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

(C) fees and expenses charged by such fund are not in contravention of fiduciary principles established under applicable Federal or State law.

* * * * *

AFFILIATIONS OF DIRECTORS

SEC. 10. (a) * * *

* * * * *

(c) No registered investment company shall have a majority of its board of directors consisting of persons who are officers, directors,

or employees of any one [bank, except] bank (and its subsidiaries) or any single bank holding company (and the affiliates and subsidiaries of such holding company) (as such terms are defined in the Bank Holding Company Act of 1956), except that, if on March 15, 1940, any registered investment company had a majority of its directors consisting of persons who are directors, officers, or employees of any one bank, such company may continue to have the same percentage of its board of directors consisting of persons who are directors, officers, or employees of such bank.

* * * * *

INVESTMENT ADVISORY AND UNDERWRITING CONTRACTS

SEC. 15. (a) * * *

* * * * *

(g) CONTROLLING INTEREST IN INVESTMENT COMPANY PROHIBITED.—

(1) IN GENERAL.—If any investment adviser to a registered investment company, or an affiliated person of that investment adviser, holds a controlling interest in that registered investment company in a trustee or fiduciary capacity, such person shall—

(A) if it holds the shares in a trustee or fiduciary capacity with respect to any employee benefit plan subject to the Employee Retirement Income Security Act of 1974, transfer the power to vote the shares of the investment company through to another person acting in a fiduciary capacity with respect to the plan who is not an affiliated person of that investment adviser or any affiliated person thereof; or

(B) if it holds the shares in a trustee or fiduciary capacity with respect to any other person or entity other than an employee benefit plan subject to the Employee Retirement Income Security Act of 1974—

(i) transfer the power to vote the shares of the investment company through to—

(I) the beneficial owners of the shares;

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

(III) any person authorized to receive statements and information with respect to the trust who is not an affiliated person of that investment adviser or any affiliated person thereof;

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

(iii) vote the shares of the investment company as otherwise permitted under such rules, regulations, or orders as the Commission may prescribe for the protection of investors.

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

istered investment company consists solely of assets held in such capacities.

(3) *SAFE HARBOR.*—No investment adviser to a registered investment company or any affiliated person of such investment adviser shall be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law solely by reason of acting in accordance with clause (i), (ii), or (iii) of paragraph (1)(B).

(4) *CHURCH PLAN EXEMPTION.*—Paragraph (1) shall not apply to any investment adviser to a registered investment company, or an affiliated person of that investment adviser, holding shares in such a capacity, if such investment adviser or such affiliated person is an organization described in section 414(e)(3)(A) of the Internal Revenue Code of 1986.

* * * * *

TRANSACTIONS OF CERTAIN AFFILIATED PERSONS AND UNDERWRITERS

SEC. 17. (a) * * *

* * * * *

[(f) Every registered] (f) *CUSTODY OF SECURITIES.*—

(1) Every registered management company shall place and maintain its securities and similar investments in the custody of [(1)] (A) a bank or banks having the qualifications prescribed in paragraph (1) of section 26(a) of this title for the trustees of unit investment trusts; or [(2)] (B) a company which is a member of a national securities exchange as defined in the Securities Exchange Act of 1934, subject to such rules and regulations as the Commission may from time to time prescribe for the protection of investors; or [(3)] (C) such registered company, but only in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors.

(2) Subject to such rules, regulations, and orders as the Commission may adopt as necessary or appropriate for the protection of investors, a registered management company or any such custodian, with the consent of the registered management company for which it acts as custodian, may deposit all or any part of the securities owned by such registered management company in a system for the central handling of securities established by a national securities exchange or national securities association registered with the Commission under the Securities Exchange Act of 1934, or such other person as may be permitted by the Commission, pursuant to which system all securities of any particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of such securities.

(3) Rules, regulations, and orders of the Commission under this subsection, among other things, may make appropriate provision with respect to such matters as the earmarking, segregation, and hypothecation of such securities and investments, and may provide for or require periodic or other inspections by any or all of the following: Independent public ac-

countants, employees and agents of the Commission, and such other persons as the Commission may designate.

(4) No such member which trades in securities for its own account may act as custodian except in accordance with rules and regulations prescribed by the Commission for the protection of investors.

(5) If a registered company maintains its securities and similar investments in the custody of a qualified bank or banks, the cash proceeds from the sale of such securities and similar investments and other cash assets of the company shall likewise be kept in the custody of such a bank or banks, or in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors, except that such a registered company may maintain a checking account in a bank or banks having the qualifications prescribed in paragraph (1) of section 26(a) of this title for the trustees of unit investment trusts with the balance of such account or the aggregate balances of such accounts at no time in excess of the amount of the fidelity bond, maintained pursuant to section 17(g) of this title, covering the officers or employees authorized to draw on such account or accounts.

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

* * * * *

CAPITAL STRUCTURE

SEC. 18. (a) * * *

* * * * *

Notwithstanding any provision of this section, it shall be unlawful for any affiliated person of a registered investment company or any affiliated person of such a person to loan money to such investment company in contravention of such rules, regulations, or orders as the Commission may prescribe in the public interest and consistent with the protection of investors.

* * * * *

UNIT INVESTMENT TRUSTS

SEC. 26. (a) No principal underwriter for or depositor of a registered unit investment trust shall sell, except by surrender to the trustee for redemption, any security of which such trust is the issuer (other than short-term paper), unless the trust indenture, agreement of custodianship, or other instrument pursuant to which such security is issued—

(1) designates one or more trustees or custodians, each of which is a bank, and provides that each such trustee or custo-

dian shall have at all times an aggregate capital, surplus, and undivided profits of a specified minimum amount, which shall not be less than \$500,000 (but may also provide, if such trustee or custodian publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, that for the purposes of this paragraph the aggregate capital, surplus, and undivided profits of such trustee or custodian shall be deemed to be its aggregate capital, surplus, and undivided profits as set forth in its most recent report of condition so published), *except that, if the trustee or custodian described in this subsection is an affiliated person of such underwriter or depositor, the Commission may adopt rules and regulations or issue orders, consistent with the protection of investors, prescribing the conditions under which such trustee or custodian may serve, after consulting in writing with the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act);*

* * * * *

UNLAWFUL REPRESENTATIONS AND NAMES

SEC. 35. [(a) It shall be unlawful for any person, in issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company has been guaranteed, sponsored, recommended, or approved by the United States or any agency or officer thereof.]

(a) *MISREPRESENTATION OF GUARANTEES.*—

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

(A) *has been guaranteed, sponsored, recommended, or approved by the United States, or any agency, instrumentality or officer of the United States;*

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

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

(2) *DISCLOSURES.*—*Any person issuing or selling the securities of a registered investment company shall prominently disclose that the investment company or any security issued by the investment company—*

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

(B) *is not guaranteed by an affiliated insured depository institution; and*

(C) *is not otherwise an obligation of any bank or insured depository institution,*

in accordance with such rules, regulations, or orders as the Commission may prescribe as reasonably necessary or appropriate in the public interest for the protection of investors, after consulting in writing with the appropriate Federal banking agencies.

(3) *DEFINITIONS.*—The terms “insured depository institution” and “appropriate Federal banking agency” have the meaning given to such terms in section 3 of the Federal Deposit Insurance Act.

* * * * *

[(d) **DECEPTIVE OR MISLEADING NAMES.**—It shall be unlawful for any registered investment company to adopt as a part of the name or title of such company, or of any securities of which it is the issuer, any word or words that the Commission finds are materially deceptive or misleading. The Commission is authorized, by rule, regulation, or order, to define such names or titles as are materially deceptive or misleading.]

(d) It shall be unlawful for any registered investment company to adopt as part of the name or title of such company, or of any securities of which it is the issuer, any word or words that the Commission finds are materially deceptive or misleading. The Commission may adopt such rules or regulations or issue such orders as are necessary or appropriate to prevent the use of deceptive or misleading names or titles by investment companies.

BREACH OF FIDUCIARY DUTY

SEC. 36. (a) The Commission is authorized to bring an action in the proper district court of the United States, or in the United States court of any territory or other place subject to the jurisdiction of the United States, alleging that a person serving or acting in one or more of the following capacities has engaged within five years of the commencement of the action or is about to engage in any act or practice constituting a breach of fiduciary duty involving personal misconduct in respect of any registered investment company for which such person so serves or acts—

(1) as officer, director, member of any advisory board, investment adviser, or depositor; [or]

(2) as principal underwriter, if such registered company is an open-end company, unit investment trust, or face-amount certificate company[.]; or

(3) as custodian.

If such allegations are established, the court may enjoin such persons from acting in any or all such capacities either permanently or temporarily and award such injunctive or other relief against such person as may be reasonable and appropriate in the circumstances, having due regard to the protection of investors and to the effectuation of the policies declared in section 1(b) of this title.

* * * * *

INVESTMENT ADVISERS ACT OF 1940

* * * * *

TITLE II—INVESTMENT ADVISERS

* * * * *

DEFINITIONS

SEC. 202. (a) When used in this title, unless the context otherwise requires, the following definitions shall apply:

(1) * * *

* * * * *

[(3) "Broker" means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank.]

(3) The term "broker" has the same meaning as in the Securities Exchange Act of 1934.

* * * * *

[(7) "Dealer" means any person regularly engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, insurance company, or investment company, or any person insofar as he is engaged in investing, reinvesting or trading in securities, or in owning or holding securities, for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.]

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

* * * * *

(11) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities; but does not include (A) a bank, or any bank holding company as defined in the Bank Holding Company Act of 1956, which is not an [investment company] *investment company, except that the term 'investment adviser' includes any bank or bank holding company to the extent that such bank or bank holding company acts as an investment adviser to a registered investment company, or if, in the case of a bank, such services are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser;* (B) any lawyer, accountant, engineer, or teacher whose performance of such services is solely incidental to the practice of his profession; (C) any broker or dealer whose performance of such services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor; (D) the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation; (E) any person whose advice, analyses, or reports relate to no securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall have been designated

by the Secretary of the Treasury, pursuant to section 3(a)(12) of the Securities Exchange Act of 1934, as exempted securities for the purposes of that Act; or (F) such other persons not within the intent of this paragraph, as the Commission may designate by rules and regulations or order.

* * * * *

(26) *The term “separately identifiable department or division” of a bank means a unit—*

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

(B) for which all of the records relating to its investment adviser activities are separately maintained in or extractable from such unit’s own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement of this Act or the Investment Company Act of 1940 and rules and regulations promulgated under this Act or the Investment Company Act of 1940.

* * * * *

SEC. 210A. CONSULTATION.

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

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

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

(b) **EFFECT ON OTHER AUTHORITY.—***Nothing herein shall limit in any respect the authority of the appropriate Federal banking agency with respect to such bank holding company, bank, or department or division under any provision of law.*

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

* * * * *



SECTION 3 OF THE SECURITIES ACT OF 1933

EXEMPTED SECURITIES

SEC. 3. (a) Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities:

(1) Reserved.

(2) Any security issued or guaranteed by the United States or any Territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or Territory, or by any public instrumentality of one or more States or Territories, or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing; or any security issued or guaranteed by any bank; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve bank; [or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian] *or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term "investment company" under section 3(c)(3) of the Investment Company Act of 1940*; or any security which is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103(c) of such Code (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security; or any interest or participation in a single trust fund, or in a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (B) an annuity plan which meets the requirements for the deduction of the employer's contributions under section 404(a)(2) of such Code, or (C) a governmental plan as defined in section 414(d) of such Code which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, other than any plan described in clause (A), (B), or (C) of this paragraph (i) the con-

tributions under which are held in a single trust fund or in a separate account maintained by an insurance company for a single employer and under which an amount in excess of the employer's contribution is allocated to the purchase of securities (other than interests or participations in the trust or separate account itself) issued by the employer or any company directly or indirectly controlling, controlled by, or under common control with the employer, (ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of such Code, or (iii) which is a plan funded by an annuity contract described in section 403(b) of such Code. The Commission, by rules and regulations or order, shall exempt from the provisions of section 5 of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of the Internal Revenue Code of 1954, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title. For purposes of this paragraph, a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; and the term "bank" means any national bank, or any banking institution organized under the laws of any State, territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official; except that in the case of a common trust fund or similar fund, or a collective trust fund, the term "bank" has the same meaning as in the Investment Company Act of 1940;

* * * * *

ACT OF MAY 1, 1886

CHAP. 73.—An Act to enable national banking associations to increase their capital stock and to change their names or locations.

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

* * * * *

SEC. 2. (a) * * *

* * * * *

(d) **RETENTION OF "FEDERAL" IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.**—

(1) *IN GENERAL.*—Notwithstanding subsection (a) or any other provision of law, any depository institution the charter of which is converted from that of a Federal savings association to a national bank or a State bank after the date of the enactment of the Financial Services Competition Act of 1997 may retain the term "Federal" in the name of such institution so long as such depository institution remains an insured depository institution.

(2) *DEFINITIONS.*—For purposes of this subsection, the terms “depository institution”, “insured depository institution”, “national bank”, and “State bank” have the same meanings given to such terms in section 3 of the Federal Deposit Insurance Act.

* * * * *

**THE ECONOMIC GROWTH AND REGULATORY
PAPERWORK REDUCTION ACT OF 1996**

**TITLE II—ECONOMIC GROWTH AND
REGULATORY PAPERWORK REDUCTION**

SEC. 2001. SHORT TITLE; TABLE OF CONTENTS; DEFINITIONS.

(a) **SHORT TITLE.**—This title may be cited as the “Economic Growth and Regulatory Paperwork Reduction Act of 1996”.

* * * * *

**Subtitle B—Streamlining Government
Regulation**

* * * * *

**CHAPTER 2—ELIMINATING UNNECESSARY
REGULATORY BURDENS**

* * * * *

SEC. 2227. CREDIT AVAILABILITY ASSESSMENT.

(a) **STUDY.**—

(1) **IN GENERAL.**—Not later than 12 months after the date of enactment of this Act, and once every 60 months thereafter, the Board, in consultation with [the Director of the Office of Thrift Supervision,] the Comptroller of the Currency, the Board of Directors of the Corporation, the Administrator of the National Credit Union Administration, the Administrator of the Small Business Administration, and the Secretary of Commerce, shall conduct a study and submit a report to the Congress detailing the extent of small business lending by all creditors.

* * * * *

Subtitle G—Deposit Insurance Funds

* * * * *

SEC. 2704. MERGER OF BIF AND SAIF.

(a) * * *

* * * * *

[(c) EFFECTIVE DATE.—This section and the amendments made by this section shall become effective on January 1, 1999, if no insured depository institution is a savings association on that date.]

(c) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the earlier of—

(1) January 1, 2000; or

(2) the end of the 2-year period beginning on the date of the enactment of the Thrift Charter Transition Act of 1997.

* * * * *

TITLE 11, UNITED STATES CODE

* * * * *

CHAPTER 1—GENERAL PROVISIONS

§ 101. Definitions

In this title—

(1) * * *

* * * * *

(21C) “Federal mutual bank holding company” has the same meaning as in section 5133B(h)(1) of the Revised Statutes of the United States.

* * * * *

CHAPTER 3—CASE ADMINISTRATION

* * * * *

SUBCHAPTER I—COMMENCEMENT OF A CASE

§ 303. Involuntary cases

(a) * * *

(b) An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title—

(1) * * *

* * * * *

(3) if such person is a partnership—

(A) by fewer than all of the general partners in such partnership; or

(B) if relief has been ordered under this title with respect to all of the general partners in such partnership, by a general partner in such partnership, the trustee of such a general partner, or a holder of a claim against such partnership; [or]

(4) by a foreign representative of the estate in a foreign proceeding concerning such person[.]; or

(5) in a proceeding concerning a Federal mutual bank holding company, the Comptroller of the Currency.

* * * * *

(e) After notice and a hearing, and for cause, the court may require the petitioners under this section, *other than a petitioner specified in subsection (b)(5)*, to file a bond to indemnify the debtor for such amounts as the court may later allow under subsection (i) of this section.

(f) Notwithstanding section 363 of this title, except to the extent that the court orders otherwise *or a petition was filed by a petitioner specified in subsection (b)(5)*, and until an order for relief in the case, any business of the debtor may continue to operate, and the debtor may continue to use, acquire, or dispose of property as if an involuntary case concerning the debtor had not been commenced.

(g) At any time after the commencement of an involuntary case under chapter 7 of this title but before an order for relief in the case, the court, on request of a party in interest, after notice to the debtor and a hearing, and if necessary to preserve the property of the estate or to prevent loss to the estate, may order the United States trustee to appoint an interim trustee under section 701 of this title to take possession of the property of the estate and to operate any business of the debtor. *Upon the filing of a petition by a petitioner specified in subsection (b)(5), and without requiring notice or hearing, the United States Trustee shall appoint an interim trustee from a list submitted by the Comptroller of the Currency of 5 disinterested persons that are qualified and willing to serve.* Before an order for relief, the debtor may regain possession of property in the possession of a trustee ordered appointed under this subsection if the debtor files such bond as the court requires, conditioned on the debtor's accounting for and delivering to the trustee, if there is an order for relief in the case, such property, or the value, as of the date the debtor regains possession, of such property.

* * * * *

TITLE 31, UNITED STATES CODE

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SUBTITLE I—GENERAL

* * * * *

CHAPTER 3—DEPARTMENT OF THE TREASURY

* * * * *

SUBCHAPTER II—ADMINISTRATIVE

§ 321. General authority of the Secretary

(a) * * *

* * * * *

[(e) CERTAIN REORGANIZATION PROHIBITED.—The Secretary of the Treasury may not merge or consolidate the Office of Thrift Su-

pervision, or any of the functions or responsibilities of the Office or the Director of such office, with the Office of the Comptroller of the Currency or the Comptroller of the Currency.】

* * * * *

CHAPTER 7—GENERAL ACCOUNTING OFFICE

* * * * *

SUBCHAPTER II—GENERAL DUTIES AND POWERS

* * * * *

§ 714. Audit of Financial Institutions Examination Council, Federal Reserve Board, Federal reserve banks, Federal Deposit Insurance Corporation, and Office of Comptroller of the Currency

(a) In this section, “agency” means the Financial Institutions Examination Council, the Federal Reserve Board, Federal reserve banks, the Federal Deposit Insurance Corporation, *and* the Office of the Comptroller of the Currency【, and the Office of Thrift Supervision】.

* * * * *

SECTION 804 OF THE ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982

ALTERNATIVE MORTGAGE AUTHORITY

SEC. 804. (a) In order to prevent discrimination against State-chartered depository institutions, and other nonfederally chartered housing creditors, with respect to making, purchasing, and enforcing alternative mortgage transactions, housing creditors may make, purchase, and enforce alternative mortgage transactions, except that this section shall apply—

(1) with respect to banks (*as such term is defined in section 3 of the Federal Deposit Insurance Act*) and all other housing creditors, only to transactions made in accordance with regulations governing alternative mortgage transactions as issued by the Comptroller of the Currency for national banks, to the extent that such regulations are authorized by rulemaking authority granted to the Comptroller of the Currency with regard to national banks under laws other than this section; *and*

(2) with respect to credit unions, only to transactions made in accordance with regulations governing alternative mortgage transactions as issued by the National Credit Union Administration Board for Federal credit unions, to the extent that such regulations are authorized by rulemaking authority granted to the National Credit Union Administration with regard to Federal credit unions under laws other than this section【; and】.

【(3) with respect to all other housing creditors, including without limitation, savings and loan associations, mutual savings banks, and savings banks, only to transactions made in

accordance with regulations governing alternative mortgage transactions as issued by the Director of the Office of Thrift Supervision for federally chartered savings and loan associations, to the extent that such regulations are authorized by rule-making authority granted to the Director of the Office of Thrift Supervision with regard to federally chartered savings and loan associations under laws other than this section.】

* * * * *

SECTION 2 OF THE BANK PROTECTION ACT OF 1968

SEC. 2. As used in this Act the term “Federal supervisory agency” means—

(1) The Comptroller of the Currency with respect to national banks and district banks,

(2) The Board of Governors of the Federal Reserve System with respect to Federal Reserve banks and State banks which are members of the Federal Reserve System, *and*

(3) The Federal Deposit Insurance Corporation with respect to State banks which are not members of the Federal Reserve System but the deposits of which are insured by the Federal Deposit Insurance Corporation and State savings associations【, and】.

【(4) The Director of the Office of Thrift Supervision with respect to Federal savings.】

SECTION 803 OF THE COMMUNITY REINVESTMENT ACT OF 1977

SEC. 803. For the purposes of this title—

(1) the term “appropriate Federal financial supervisory agency” means—

(A) the Comptroller of the Currency with respect to national banks;

(B) the Board of Governors of the Federal Reserve System with respect to State chartered banks which are members of the Federal Reserve System and bank holding companies; *and*

(C) the Federal Deposit Insurance Corporation with respect to State chartered banks and savings banks which are not members of the Federal Reserve System and the deposits of which are insured by the Corporation【; and】.

【(2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association (the deposits of which are insured by the Federal Deposit Insurance Corporation) and a savings and loan holding company;】

* * * * *

(3) the term “application for a deposit facility” means an application to the appropriate Federal financial supervisory agency otherwise required under Federal law or regulations thereunder for—

(A) a charter for a national bank [or Federal savings and loan association];

* * * * *

SECTION 208 OF THE DEPOSITORY INSTITUTIONS DEREGULATION AND MONETARY CONTROL ACT OF 1980

ENFORCEMENT

SEC. 208. (a) Compliance with the regulations issued by the De-regulation Committee under this title shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Board of Governors of the Federal Reserve System;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve Sys-tem), by the Board of Directors of the Federal Deposit In-surance Corporation[; and] .

[(2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation.]

(b) For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that sub-section, a violation of any regulation prescribed under this title shall be deemed to be a violation of a regulation prescribed under the Act involved. In addition to its powers under any provision of law specifically referred to in subsection (a), each of the agencies referred to in such subsection may exercise, for the purpose of en-forcing compliance with any regulation prescribed under this title, any other authority conferred on it by law.

DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT

* * * * *

SEC. 202. As used in this title—

(1) * * *

(2) the term “depository holding company” means a bank holding company as defined in section 2(a) of the Bank Holding Company Act of 1956, a company which would be *or* a bank holding company as defined in section 2(a) of the Bank Holding Company Act of 1956 but for the exemption contained in sec-tion 2(a)(5)(F) thereof[, or a savings and loan holding company as defined in section 408(a)(1)(I) of the National Housing Act];

* * * * *

SEC. 205. The prohibitions contained in sections 203 and 204 shall not apply in the case of any one or more of the following or subsidiary thereof:

(1) * * *

* * * * *

(8)(A) A **diversified savings and loan holding company** (as defined in section 408(a)(1)(F) of the National Housing Act) with respect to *company which is, or has filed an application to become, a depository institution holding company and which satisfies the consolidated net worth and consolidated net earnings requirements for a diversified savings and loan holding company (as set forth in section 10(1)(F) of the Home Owners' Loan Act, as such section is in effect and interpreted on such date, which shall be applicable for purposes of this paragraph without regard to the fact that a depository institution subsidiary of such holding company has ceased to be a savings association after January 1, 1997) with respect to the service of a director of such company who is also a director of any nonaffiliated depository institution or depository holding company (including a savings and loan holding company) if—*

(i) notice of the proposed dual service is given by such diversified savings and loan holding company to—

* * * * *

Any savings association (as defined in section 10(a)(1)(A) of the Home Owners' Loan Act or any savings and loan holding company (as defined in section 10(a)(1)(D) of such Act) which has issued stock in connection with a qualified stock issuance pursuant to section 10(q) of such Act, except that this paragraph shall apply only with respect to service as a single management official of such savings association or holding company, or any subsidiary of such savings association or holding company, by a single management official of the savings and loan holding company which purchased the stock issued in connection with such qualified stock issuance, and shall apply only when the Director of the Office of Thrift Supervision has determined that such service is consistent with the purposes of this Act and the Home Owners' Loan Act.]

* * * * *

SEC. 207. This title shall be administered and enforced by—

(1) * * *

* * * * *

(4) the Director of the Office of Thrift Supervision with respect to a savings association (the deposits of which are insured by the Federal Deposit Insurance Corporation) and savings and loan holding companies,]

(5)] (4) the National Credit Union Administration with respect to credit unions the accounts of which are insured by the National Credit Union Administration, and

(6)] (5) Upon referral by the agencies named in the foregoing paragraphs (1) through (5), the Attorney General shall have the authority to enforce compliance by any person with this title.

* * * * *

SEC. 209. Regulations to carry out this title, including regulations that permit service by a management official that would otherwise be prohibited by section 203 or section 204, if such service would not result in a monopoly or substantial lessening of competition, may be prescribed by—

(1) the Comptroller of the Currency with respect to national banks and banks located in the District of Columbia,

(2) the Board of Governors of the Federal Reserve System with respect to State banks which are members of the Federal Reserve System, and bank holding companies,

(3) the Board of Directors of the Federal Deposit Insurance Corporation with respect to State banks which are not members of the Federal Reserve System but the deposits of which are insured by the Federal Deposit Insurance Corporation, and

[(4) the Director of the Office of Thrift Supervision with respect to institutions the accounts of which are insured by the Federal Deposit Insurance Corporation, and savings and loan holding companies, and]

[(5)] (4) the National Credit Union Administration with respect to credit unions the accounts of which are insured by the National Credit Union Administration.

SECTION 305 OF THE EMERGENCY HOME FINANCE ACT OF 1970

MORTGAGE OPERATIONS

SEC. 305. (a) * * *

* * * * *

(b) Notwithstanding any other law, authority to enter into and to perform and carry out any transactions or matter referred to in this section is conferred on any Federal home loan bank, Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the National Credit Union Administration, [any Federal savings and loan association,] any Federal home loan bank member, and any other financial institution the deposits or accounts of which are insured by any agency of the United States to the extent that Congress has the power to confer such authority.

* * * * *

SECTION 610 OF THE EXPEDITED FUNDS AVAILABILITY ACT

SEC. 610. ADMINISTRATIVE ENFORCEMENT.

(a) ADMINISTRATIVE ENFORCEMENT.—Compliance with the requirements imposed under this title, including regulations prescribed by and orders issued by the Board of Governors of the Federal Reserve System under this title, shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), and offices, branches, and agencies of foreign banks located in the United States (other than Federal branches, Federal agencies, and insured State branches of foreign banks), by the Board of Governors of the Federal Reserve System; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; *and*

[(2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision in the case of savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation; and]

[(3)] (2) the Federal Credit Union Act, by the National Credit Union Administration Board with respect to any Federal credit union or insured credit union.

The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

* * * * *

FEDERAL CREDIT UNION ACT

TITLE I—FEDERAL CREDIT UNIONS

* * * * *

POWERS

SEC. 107. A Federal credit union shall have succession in its corporate name during its existence and shall have power—

(1) * * *

* * * * *

(7) to invest its funds (A) in loans exclusively to members; (B) in obligations of the United States of America, or securities fully guaranteed as to principal and interest thereby; (C) in accordance with rules and regulations prescribed by the Board, in loans to other credit unions in the total amount not exceeding 25 per centum of its paid-in and unimpaired capital and surplus; (D) in shares or accounts of savings and loan associations or mutual savings banks, the accounts of which are insured by [the Federal Savings and Loan Insurance Corporation or] the Federal Deposit Insurance Corporation; (E) in obligations issued by banks for cooperatives, Federal land banks, Federal intermediate credit banks, Federal home loan banks, the Federal Home Loan Bank Board, or any corporation des-

ignated in section 101 of the Government Corporation Control Act as a wholly owned Government corporation; or in obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Government National Mortgage Association; or in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act; or in obligations, participations, securities, or other instruments of, or issued by, or fully guaranteed as to principal and interest by any other agency of the United States and a Federal credit union may issue and sell securities which are guaranteed pursuant to section 306(g) of the National Housing Act; (F) in participation certificates evidencing beneficial interests in obligations, or in the right to receive interest and principal collections therefrom, which obligations have been subjected by one or more Government agencies to a trust or trusts for which any executive department, agency, or instrumentality of the United States (or the head thereof) has been named to act as trustee; (G) in shares or deposits of any central credit union in which such investments are specifically authorized by the board of directors of the Federal credit union making the investment; (H) in shares, share certificates, or share deposits of federally insured credit unions; (I) in the shares, stocks, or obligations of any other organization, providing services which are associated with the routine operations of credit unions, up to 1 per centum of the total paid in and unimpaired capital and surplus of the credit union with the approval of the Board: *Provided, however,* That such authority does not include the power to acquire control directly or indirectly, of another financial institution, nor invest in shares, stocks or obligations of an insurance company, trade association, liquidity facility or any other similar organization, corporation, or association, except as otherwise expressly provided by this Act; (J) in the capital stock of the National Credit Union Central Liquidity Facility (K) investments in obligations of, or issued by, any State or political subdivision thereof (including any agency, corporation, or instrumentality of a State or political subdivision), except that no credit union may invest more than 10 per centum of its unimpaired capital and surplus in the obligations of any one issuer (exclusive of general obligations of the issuer).

* * * * *

TITLE II—SHARE INSURANCE

* * * * *

TERMINATION OF INSURANCE; CEASE-AND-DESIST PROCEEDINGS; SUSPENSION AND/OR REMOVAL OF DIRECTORS, OFFICERS, AND COMMITTEE MEMBERS; TAKING POSSESSION OF COMMITTEE MEMBERS

SEC. 206. (a) * * *

* * * * *

(g) REMOVAL AND PROHIBITION AUTHORITY.—

(1) * * *

* * * * *

(7) INDUSTRYWIDE PROHIBITION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any person who, pursuant to an order issued under this subsection or subsection (i), has been removed or suspended from office in an insured credit union or prohibited from participating in the conduct of the affairs of an insured credit union may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of—

- (i) any insured depository institution;
- (ii) any institution treated as an insured bank under paragraph (3) or (4) of section 8(b) of the Federal Deposit Insurance Act, or as a savings association under section 8(b)(8) of such Act;

* * * * *

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978

TITLE X—FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

* * * * *

SEC. 1001. This title may be cited as the “Federal Financial Institutions Examination Council Act of 1978”.

* * * * *

DEFINITIONS

SEC. 1003. As used in this title—

(1) the term “Federal financial institutions regulatory agencies” means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration;

* * * * *

ESTABLISHMENT OF THE COUNCIL

SEC. 1004. (a) There is established the Financial Institutions Examination Council which shall consist of—

(1) * * *

* * * * *

- (3) a Governor of the Board of Governors of the Federal Reserve System designated by the Chairman of the Board, and
- [(4) the Director, Office of Thrift Supervision.]

[(5)] (4) the Chairman of the National Credit Union Administration Board.

* * * * *

FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989

* * * * *

TITLE XI—REAL ESTATE APPRAISAL REFORM AMENDMENTS

* * * * *

SEC. 1121. DEFINITIONS.

For purposes of this title:

(1) * * *

* * * * *

(6) **FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCIES.**—The term “Federal financial institutions regulatory agencies” means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, [the Office of Thrift Supervision,] and the National Credit Union Administration.

* * * * *

TITLE XII—MISCELLANEOUS PROVISIONS

* * * * *

SEC. 1206. COMPARABILITY IN COMPENSATION SCHEDULES.

The Federal Deposit Insurance Corporation, the Comptroller of the Currency, the National Credit Union Administration Board, the Federal Housing Finance Board, the Oversight Board of the Resolution Trust Corporation, and the Farm Credit Administration, [and the Office of Thrift Supervision,] in establishing and adjusting schedules of compensation and benefits which are to be determined solely by each agency under applicable provisions of law, shall inform the heads of the other agencies and the Congress of such compensation and benefits and shall seek to maintain comparability regarding compensation and benefits.

* * * * *

SEC. 1216. EQUAL OPPORTUNITY.

(a) **IN GENERAL.**—For purposes of this Act, Executive Order Numbered 11478, providing for equal employment opportunity in the Federal Government, shall apply to—

- (1) the Comptroller of the Currency;
- [(2) the Director of the Office of Thrift Supervision;]

- [(3)] (2) the Federal home loan banks;
- [(4)] (3) the Federal Deposit Insurance Corporation;
- [(5)] (4) the Oversight Board of the Resolution Trust Corporation; and
- [(6)] (5) the Resolution Trust Corporation.

* * * * *

(c) SOLICITATION OF CONTRACTS.—The Federal Deposit Insurance Corporation, the Comptroller of the Currency, [the Director of the Office of Thrift Supervision,] the Federal Housing Finance Board, the Oversight Board of the Resolution Trust Corporation, and the Resolution Trust Corporation shall each prescribe regulations to establish and oversee a minority outreach program within each such agency to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the agency with such persons or entities, public and private, in order to manage the institutions and their assets for which the agency is responsible or to perform such other functions authorized under any law applicable to such agency.

* * * * *

HOME MORTGAGE DISCLOSURE ACT OF 1975

TITLE III—HOME MORTGAGE DISCLOSURE

SHORT TITLE

SEC. 301. This title may be cited as the “Home Mortgage Disclosure Act of 1975”.

* * * * *

MAINTENANCE OF RECORDS AND PUBLIC DISCLOSURE

SEC. 304. (a) * * *

* * * * *

(h) SUBMISSION TO AGENCIES.—The data required to be disclosed under subsection (b)(4) shall be submitted to the appropriate agency for each institution reporting under this title. Notwithstanding the requirement of section 304(a)(2)(A) for disclosure by census tract, the Board, in cooperation with other appropriate regulators, including—

- (1) the Office of the Comptroller of the Currency for national banks and Federal branches and Federal agencies of foreign banks;
- [(2)] the Director of the Office of Thrift Supervision for savings associations;]
- [(3)] (2) the Federal Deposit Insurance Corporation for banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), mutual savings banks, insured State branches of foreign banks, and

any other depository institution described in section 303(2)(A) which is not otherwise referred to in this paragraph;

[(4)] (3) the National Credit Union Administration Board for credit unions; and

[(5)] (4) the Secretary of Housing and Urban Development for other lending institutions not regulated by the agencies referred to in paragraphs (1) through [(4)] (3),

shall develop regulations prescribing the format for such disclosures, the method for submission of the data to the appropriate regulatory agency, and the procedures for disclosing the information to the public. These regulations shall also require the collection of data required to be disclosed under subsection (b)(4) with respect to loans sold by each institution reporting under this title, and, in addition, shall require disclosure of the class of the purchaser of such loans. Any reporting institution may submit in writing to the appropriate agency such additional data or explanations as it deems relevant to the decision to originate or purchase mortgage loans.

* * * * *

ENFORCEMENT

SEC. 305. (a) * * *

(b) Compliance with the requirements imposed under this title shall be enforced under—

(1) * * *

[(2)] section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;]

[(3)] (2) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any credit union; and

[(4)] (3) other lending institutions, by the Secretary of Housing and Urban Development.

The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

* * * * *

RELATION TO STATE LAWS

SEC. 306. (a) * * *

(b) The Board may by regulation exempt from the requirements of this title any State chartered depository institution within any State or subdivision thereof if it determines that, under the law of such State or subdivision, that institution is subject to requirements substantially similar to those imposed under this title, and that such law contains adequate provisions for enforcement. Notwithstanding any other provision of this subsection, compliance with the requirements imposed under this subsection [shall be enforced under—

[(1) section 8 of the Federal Deposit Insurance Act in the case of national banks, by the Comptroller of the Currency; and

[(2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation] *under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the case of national banks, by the Comptroller of the Currency.*

* * * * *

HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992

* * * * *

TITLE XIII—GOVERNMENT SPONSORED ENTERPRISES

* * * * *

Subtitle A—Supervision and Regulation of Enterprises

PART 1—FINANCIAL SAFETY AND SOUNDNESS REGULATOR

* * * * *

SEC. 1315. PERSONNEL.

(a) * * *

(b) **COMPARABILITY OF COMPENSATION WITH FEDERAL BANKING AGENCIES.**—In fixing and directing compensation under subsection (a), the Director shall consult with, and maintain comparability with compensation of officers and employees of the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, *and* the Federal Deposit Insurance Corporation[, and the Office of Thrift Supervision].

* * * * *

SEC. 1317. EXAMINATIONS.

(a) * * *

* * * * *

(c) **EXAMINERS.**—The Director shall appoint examiners to conduct examinations under this section. The Director may contract with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, *or* the Federal Deposit Insurance Corporation[, or the Director of the Office of Thrift Supervision] for the services of examiners. The Director shall reimburse such

agencies for any costs of providing examiners from amounts available in the Federal Housing Enterprises Oversight Fund.

* * * * *

NATIONAL HOUSING ACT

* * * * *

TITLE II—MORTGAGE INSURANCE

* * * * *

SEC. 203. (a) * * *

* * * * *

(s) Whenever the Secretary has taken any discretionary action to suspend or revoke the approval of any mortgagee to participate in any mortgage insurance program under this title, the Secretary shall provide prompt notice of the action and a statement of the reasons for the action to—

(1) * * *

* * * * *

(6) if the mortgagee is a State bank that is a member of the Federal Reserve System or a subsidiary or affiliate of such a bank, or a bank holding company or a subsidiary or affiliate of such a company, the Board of Governors of the Federal Reserve System; *and*

(7) if the mortgagee is a State bank (*as defined in section 3 of the Federal Deposit Insurance Act*) that is not a member of the Federal Reserve System or is a subsidiary or affiliate of such a bank, the Board of Directors of the Federal Deposit Insurance Corporation; **and**].

[(8) if the mortgagee is a Federal or State savings association or a subsidiary or affiliate of a savings association, the Director of the Office of Thrift Supervision.]

* * * * *

TITLE V—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

* * * * *

SEC. 502. In carrying out their respective functions, powers, and duties—

(a) * * *

* * * * *

(c) The Secretary of Housing and Urban Development **[(and the Director of the Office of Thrift Supervision, respectively)],** may, in addition to and not in derogation of any powers and authorities conferred elsewhere in this Act—

(1) * * *

* * * * *

**SECTION 4 OF THE REAL ESTATE SETTLEMENT
PROCEDURES ACT OF 1974**

UNIFORM SETTLEMENT STATEMENT

SEC. 4. (a) The Secretary, in consultation with the Administrator of Veterans' Affairs~~[,] and the Federal Deposit Insurance Corporation[, and the Director of the Office of Thrift Supervision]~~, shall develop and prescribe a standard form for the statement of settlement costs which shall be used (with such variations as may be necessary to reflect differences in legal and administrative requirements or practices in different areas of the country) as the standard real estate settlement form in all transactions in the United States which involve federally related mortgage loans. Such form shall conspicuously and clearly itemize all charges imposed upon the borrower and all charges imposed upon the seller in connection with the settlement and shall indicate whether any title insurance premium included in such charges covers or insures the lender's interest in the property, the borrower's interest, or both. The Secretary may, by regulation, permit the deletion from the form prescribed under this section of items which are not, under local laws or customs, applicable in any locality, except that such regulation shall require that the numerical code prescribed by the Secretary be retained in forms to be used in all localities. Nothing in this section may be construed to require that that part of the standard form which relates to the borrower's transaction to be furnished to the seller, or to require that that part of the standard form which relates to the seller be furnished to the borrower.

* * * * *

**RIEGLE COMMUNITY DEVELOPMENT AND REGULATORY
IMPROVEMENT ACT OF 1994**

* * * * *

**TITLE I—COMMUNITY DEVELOPMENT
AND CONSUMER PROTECTION**

**Subtitle A—Community Development
Banking and Financial Institutions Act**

* * * * *

SEC. 117. STUDIES AND REPORTS; EXAMINATION AND AUDIT.

(a) * * *

* * * * *

(e) CONSULTATION.—In the conduct of the studies required under this section, the Fund shall consult, as appropriate, with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Board, the Farm Credit Administration, ~~the Director of the Office of Thrift Supervision,~~ the National Credit

Union Administration Board, Indian tribal governments, community reinvestment organizations, civil rights organizations, consumer organizations, financial organizations, and such representatives of agencies or other persons, at the discretion of the Fund.

* * * * *

TITLE III—PAPERWORK REDUCTION AND REGULATORY IMPROVEMENT

* * * * *

SEC. 307. CALL REPORT SIMPLIFICATION.

(a) MODERNIZATION OF CALL REPORT FILING AND DISCLOSURE SYSTEM.—In order to reduce the administrative requirements pertaining to bank reports of condition, [savings association financial reports,] and bank holding company consolidated and parent-only financial statements, and to improve the timeliness of such reports and statements, the Federal banking agencies shall—

(1) * * *

* * * * *

SECTION 270 OF THE TRUTH IN SAVINGS ACT

SEC. 270. ADMINISTRATIVE ENFORCEMENT.

(a) IN GENERAL.—Compliance with the requirements imposed under this Act shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act—

(A) by the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act) in the case of insured depository institutions (as defined in section 3(c)(2) of such Act); *and*

(B) by the Federal Deposit Insurance Corporation in the case of depository institutions described in clause (i), (ii), [or (iii)] *(iii) or (v)* of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act)[; and].

[(C) by the Director of the Office of Thrift Supervision in the case of depository institutions described in clause (v) and or (vi) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act); and]

* * * * *

BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985

* * * * *

TITLE II—DEFICIT REDUCTION PROCEDURES

* * * * *

PART C—EMERGENCY POWERS TO ELIMINATE DEFICITS IN EXCESS OF MAXIMUM DEFICIT AMOUNT

* * * * *

SEC. 250. TABLE OF CONTENTS; STATEMENT OF BUDGET ENFORCEMENT THROUGH SEQUESTRATION; DEFINITIONS.

(a) * * *

* * * * *

(c) DEFINITIONS.—

As used in this part:

(1) * * *

* * * * *

(19) The term “deposit insurance” refers to the expenses of the Federal Deposit Insurance Corporation and the funds it incorporates, the Resolution Trust Corporation, the National Credit Union Administration and the funds it incorporates, **the Office of Thrift Supervision,** the Comptroller of the Currency Assessment Fund, and the RTC Office of Inspector General.

* * * * *

SEC. 256. EXCEPTIONS, LIMITATIONS, AND SPECIAL RULES.

(a) * * *

* * * * *

(h) TREATMENT OF FEDERAL ADMINISTRATIVE EXPENSES.—

(1) * * *

* * * * *

(4) Notwithstanding any other provision of law, this subsection shall not apply with respect to the following:

- (A) Comptroller of the Currency.
- (B) Federal Deposit Insurance Corporation.
- [(C) Office of Thrift Supervision.]**
- [(D) Office of Thrift Supervision.]**
- [(E)]** (C) National Credit Union Administration.
- [(F)]** (D) National Credit Union Administration, central liquidity facility.
- [(G)]**(E) Federal Retirement Thrift Investment Board.
- [(H)]**(F) Resolution Funding Corporation.
- [(I)]** (G) Resolution Trust Corporation.

* * * * *

CONSUMER CREDIT PROTECTION ACT

* * * * *

TITLE I—CONSUMER CREDIT COST

* * * * *

CHAPTER 1—GENERAL PROVISIONS

§ 108. Administrative enforcement

(a) Compliance with the requirements imposed under this title shall be enforced under

(1) section 8 of the Federal Deposit Insurance Act, in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board; and

(C) banks (*as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)*) insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

[(2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation.]

[(3)] (2) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

[(4)] (3) the Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that Act.

[(5)] (4) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

[(6)] (5) the Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

* * * * *

TITLE VI—CONSUMER CREDIT REPORTING

* * * * *

§ 621. Administrative enforcement

(a) * * *

(b) Compliance with the requirements imposed under this title with respect to consumer reporting agencies and persons who use consumer reports from such agencies shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act, in the case of—

* * * * *

(C) banks (*as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)*) insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

[(2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;]

[(3) (2) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

[(4) (3) the Acts to regulate commerce, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

[(5) (4) the Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that Act; and

[(6)] (5) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

* * * * *

TITLE VII—EQUAL CREDIT OPPORTUNITY

* * * * *

§ 704. Administrative enforcement

(a) Compliance with the requirements imposed under this title shall be enforced under:

(1) section 8 of the Federal Deposit Insurance Act, in the case of—

* * * * *

(C) banks (*as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)*) insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

【(2) Section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation.】

【(3)】 (2) The Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal Credit Union.

【(4)】 (3) The Acts to regulate commerce, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board.

【(5)】 (4) The Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that Act.

【(6)】 (5) The Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

【(7)】 (6) The Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, and production credit association;

【(8)】 (7) The Securities Exchange Act of 1934, by the Securities and Exchange Commission with respect to brokers and dealers; and

【(9)】 (8) The Small Business Investment Act of 1958, by the Small Business Administration, with respect to small business investment companies.

The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

* * * * *

TITLE VIII—DEBT COLLECTION PRACTICES

* * * * *

§ 814. Administrative enforcement

(a) * * *

(b) Compliance with any requirements imposed under this title shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act, in the case of—

* * * * *

(C) banks (*as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)*) insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

【(2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a

savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;】

【(3)】 (2) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

【(4)】 (3) the Acts to regulate commerce, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

【(5)】 (4) the Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that Act; and

【(6)】 (5) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

* * * * *

TITLE IX—ELECTRONIC FUND TRANSFERS

* * * * *

§ 917. Administrative enforcement

(a) Compliance with the requirements imposed under this title shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act, in the case of—

* * * * *

(C) banks (*as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)*) insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

【(2)】 section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;】

【(3)】 (2) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

【(4)】 (3) the Federal Aviation Act of 1958, by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to that Act; and

【(5)】 (4) the Securities Exchange Act of 1934, by the Securities and Exchange Commission, with respect to any broker or dealer subject to that Act.

The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them

in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

* * * * *

THE FLOOD DISASTER PROTECTION ACT OF 1973

* * * * *

DEFINITIONS

SEC. 3. (a) As used in this Act, unless the context otherwise requires, the term—

(1) * * *

* * * * *

(5) “Federal entity for lending regulation” means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, [the Office of Thrift Supervision,] the National Credit Union Administration, and the Farm Credit Administration, and with respect to a particular regulated lending institution means the entity primarily responsible for the supervision of the institution;

* * * * *

TITLE XIII—NATIONAL FLOOD INSURANCE

* * * * *

PART C—PROVISIONS OF GENERAL APPLICABILITY

* * * * *

CHAPTER IV—APPROPRIATIONS AND MISCELLANEOUS PROVISIONS

DEFINITIONS

SEC. 1370. (a) As used in this title—

(1) * * *

(9) the term “Federal entity for lending regulation” means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, [the Office of Thrift Supervision,] the National Credit Union Administration, and the Farm Credit Administration, and with respect to a particular regulated lending institution means the entity primarily responsible for the supervision of the institution;

* * * * *

TITLE 5, UNITED STATES CODE

* * * * *

PART III—EMPLOYEES

* * * * *

Subpart B—Employment and Retention

* * * * *

CHAPTER 31—AUTHORITY FOR EMPLOYMENT

* * * * *

SUBCHAPTER II—THE SENIOR SERVICE EXECUTIVE

* * * * *

§ 3132. Definitions and exclusions

(a) For the purpose of this subchapter—

(1) “agency” means an Executive agency, except a Government corporation and the General Accounting Office, but does not include—

(A) * * *

* * * * *

(D) the Office of the Comptroller of the Currency, [the Office of Thrift Supervision,] the Federal Housing Finance Board, the Resolution Trust Corporation, the Farm Credit Administration, the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development, and the National Credit Union Administration;

* * * * *

CHAPTER 53—PAY RATES AND SYSTEMS

* * * * *

SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

* * * * *

§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Solicitor General of the United States.

Under Secretary of Commerce, Under Secretary of Commerce for Economic Affairs, Under Secretary of Commerce for Export Administration and Under Secretary of Commerce for Travel and Tourism.

Under Secretaries of State (5).

Under Secretaries of the Treasury (3).

Administrator of General Services.

* * * * *

Deputy Director for Supply Reduction, Office of National Drug Control Policy.

Director of the Office of Thrift Supervision.
 Chairperson of the Federal Housing Finance Board.
 Executive Secretary, National Space Council.
 Controller, Office of Federal Financial Management, Office of
 Management and Budget.

* * * * *

TITLE 18, UNITED STATES CODE

* * * * *

**CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF
 INTEREST**

* * * * *

§ 212. Offer of loan or gratuity to bank examiner

* * * * *

The provisions of this section and section 213 of this title shall apply to all public examiners and assistant examiners who examine member banks of the Federal Reserve System, insured financial institutions, branches or agencies of foreign banks (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), organizations operating under section 25 or section 25(a)¹ of the Federal Reserve Act, whether appointed by the Comptroller of the Currency, by the Board of Governors of the Federal Reserve System, by a Federal Reserve Agent, by a Federal Reserve bank, by the Federal Deposit Insurance Corporation, by the Office of Thrift Supervision, or by the Federal Housing Finance Board, or appointed or elected under the laws of any state; but shall not apply to private examiners or assistant examiners employed only by a clearinghouse association or by the directors of a bank.

* * * * *

CHAPTER 47—FRAUD AND FALSE STATEMENTS

* * * * *

§ 1006. Federal credit institution entries, reports and transactions

Whoever, being an officer, agent or employee of or connected in any capacity with the Federal Deposit Insurance Corporation, National Credit Union Administration, Office of Thrift Supervision, any Federal home loan bank, the Federal Housing Finance Board, the Resolution Trust Corporation, Farm Credit Administration, Department of Housing and Urban Development, Federal Crop Insurance Corporation, the Secretary of Agriculture acting through the Farmers Home Administration, the Rural Development Administration, or the Farm Credit System Insurance Corporation, a Farm Credit Bank, a bank for cooperatives or any lending, mortgage, insurance, credit or savings and loan corporation or association authorized or acting under the laws of the United States or any institution, other than an insured bank (as defined in section 656), the

accounts of which are insured by the Federal Deposit Insurance Corporation, or by the National Credit Union Administration Board or any small business investment company, with intent to defraud any such institution or any other company, body politic or corporate, or any individual, or to deceive any officer, auditor, examiner or agent of any such institution or of department or agency of the United States, makes any false entry in any book, report or statement of or to any such institution, or without being duly authorized, draws any order or bill of exchange, makes any acceptance, or issues, puts forth or assigns any note, debenture, bond or other obligation, or draft, bill of exchange, mortgage, judgment, or decree, or, with intent to defraud the United States or any agency thereof, or any corporation, institution, or association referred to in this section, participates or shares in or receives directly or indirectly any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of any such corporation, institution, or association, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

* * * * *

§ 1014. Loan and credit applications generally; renewals and discounts; crop insurance

Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of the Farm Credit Administration, Federal Crop Insurance Corporation or a company the Corporation reinsures, the Secretary of Agriculture acting through the Farmers Home Administration, the Rural Development Administration, any Farm Credit Bank, production credit association, agricultural credit association, bank for cooperatives, or any division, officer, or employee thereof, or of any regional agricultural credit corporation established pursuant to law, or a Federal land bank, a Federal land bank association, a Federal Reserve bank, a small business investment company, a Federal credit union, an insured State-chartered credit union, any institution the accounts of which are insured by the Federal Deposit Insurance Corporation[, the Office of Thrift Supervision], any Federal home loan bank, the Federal Housing Finance Board, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Farm Credit System Insurance Corporation, or the National Credit Union Administration Board, a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or an organization operating under section 25 or section 25(a) of the Federal Reserve Act, upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both. The term "State-chartered credit union" includes a credit union chartered under the laws of a State of the United

States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

* * * * *

§ 1032. Concealment of assets from conservator, receiver, or liquidating agent of financial institution

Whoever—

(1) knowingly conceals or endeavors to conceal an asset or property from the Federal Deposit Insurance Corporation, acting as conservator or receiver or in the Corporation's corporate capacity with respect to any asset acquired or liability assumed by the Corporation under section 11, 12, or 13, of the Federal Deposit Insurance Act, the Resolution Trust Corporation, any conservator appointed by the Comptroller of the Currency [or the Director of the Office of Thrift Supervision], or the National Credit Union Administration Board, acting as conservator or liquidating agent;

(2) corruptly impedes or endeavors to impede the functions of such Corporation, Board, or conservator; or

(3) corruptly places or endeavors to place an asset or property beyond the reach of such Corporation, Board, or conservator,

shall be fined under this title or imprisoned not more than 5 years, or both.

* * * * *

SECTION 406 OF THE CONGRESSIONAL BUDGET ACT OF 1974

OFF-BUDGET AGENCIES, PROGRAMS, AND ACTIVITIES

SEC. 406. (a) * * *

* * * * *

(c) Notwithstanding any other provision of law, the receipts and disbursements of the National Association of Registered Agents and Brokers shall not be included for the purposes of—

(1) the budget of the United States Government as submitted by the President;

(2) the congressional budget and the Congressional Budget and Impoundment Control Act of 1974; or

(3) the Balanced Budget and Emergency Deficit Control Act of 1985.

ADDITIONAL VIEWS OF CONGRESSMAN BRUCE F. VENTO

When the Banking Committee approved H.R. 10 as amended, we took the first step of moving to the reality of today's marketplace. As the bill continues down the long and deliberate path toward enactment, it is important to note that the measure reported it a bipartisan effort and that the initiative does not carry the cause of one sector, group or industry over another. This legislation in 1997 is critical to maintaining U.S. financial competitiveness and efficiency in moving forward with predictable service to the diverse U.S. and global economy within the context of safe and sound financial institutions. Our nation needs this professional industry-balanced rationalization of U.S. financial services laws for the 21st Century for today's and tomorrow's global marketplace. This proposal will protect the deposit insurance funds and will maintain the responsibilities accorded financial institutions which best serve our people and the dynamic U.S. economy.

Financial modernization and rationalization is necessary because the convergence of banking securities and some insurance activities has led to instruments and products in the marketplace that are nearly indistinguishable. Additionally, the record is replete with entities and activities that are notable exceptions to long-held prohibitions embodied in the historic Glass-Steagall law. Such exceptions abound: commerce and banking activities take place in the unitary thrifts, thrifts bank holding companies and thrifts, both federal and state chartered have the ability to involve themselves in activities such as real estate development that are taboo for banks. Commercial activities are allowed for non-bank banks, grandfathered banks, and foreign banks in the United States and U.S. banks abroad. Other laws provide exceptions for grandfathered banks and grandfathered activities as the Congress saw fit to accommodate over the past 60 years.

The commerce and banking roles are already so mixed in many ways and with so many exceptions that clarification in the form of a recognized allowable "basket" of commercial activities will facilitate the establishment of a rational federal law and a regulatory framework for all involved.

The inclusion of a bipartisan Roukema/Vento/Baker/LaFalce amendment providing a 15% of gross domestic revenues basket in H.R. 10 will set in place the opportunity for a uniform regulatory framework. This modest and incremental 15% basket will provide an avenue for qualified bank holding companies to maintain an affiliated status with firms with limited interest in commercial activities. The commerce basket will serve as a modest and necessary two-way street for all the financial services industries—banking, securities, and insurance—to participate in the new qualified bank holding company structure without either divestiture or dramatically changing their current business activities or niches. This key

basket amendment that was passed included prohibitions on transactions between commercial and financial affiliates in such a qualified bank holding company and in order to address concerns about giant mergers and conglomerates, a prohibition on affiliation with the top 1000 firms.

I have concerns and questions regarding the so-called “reverse” basket, the concept and construct of which was not adequately considered in the many hearings held by the subcommittees and the full committee. One of the more important concerns is the actual regulation of the (85%) commercial entity that will affiliate with the smaller bank (under \$500 million in assets). A qualified bank holding company, including firms qualifying under the 15% commercial basket, would be subject to a degree to Federal Reserve Board regulation. Whereas, it appears the 85% commercial affiliate would not be subject to Federal Reserve Board/umbrella regulator oversight at all under the adopted amendment. While I may have my own concerns regarding the role of the FRB as the umbrella regulator, it is certainly a competitive disadvantage, at the very least, for qualified bank holding companies if this reverse basket were to exist. The reverse basket also opens up questions of potential risk to safety and soundness because of its differential and arguably weaker regulation under the reverse basket structure. Hearings before further action on this subject should fully explore and clarify the ramifications of the reverse basket structure.

I am highly supportive of the creation of the Financial Services Council which will serve as the coordinating regulatory committee for the activities of qualified bank holding companies and other financial services industry entities. I remain concerned that the provisions of H.R. 10 represent less than functional regulation because of the overreaching role envisioned for the Federal Reserve Board as the umbrella regulator. No doubt, refinements will be made to better balance not only the FRB but all regulators and regulations that interface in the bill’s proposed regulatory structure. Some duplication or overlap is necessary in order that we not create inadvertent regulatory gap and instead assure ourselves and the American taxpayer that strong firewalls will function and be maintained. Further, important protections such as capital requirements at the bank holding company, independent outside audit provisions and anti-tying provisions need to be maintained.

H.R. 10 does make strides forward for consumers and communities with the satisfactory CRA and compliance with Fair Housing requirements for affiliation; added statutory consumer protections for sales of non-deposit insured products; application of the CRA to Wholesale Financial Institutions (WFIs) and the prohibition of deposit production activities; effective application of antitrust laws; and the addition of amendments modernizing the Federal Home Loan Bank system—especially the provisions which allow small business and agricultural loans to be used as collateral for advances from the FHLB system. Credit enhancement and assurances to facilitate the ideals of credit worthy loans and disseminated geographic services with proactive consumer provisions insure that the objections for modernization in serving families and businesses of all sizes is grounded in the marketplace role of the banking modernization policy.

The thrift charter merger provisions of H.R. 10 now provide a liberal, even generous, grandfathering for existing thrifts and savings and loan holding companies. This truly is a "do no harm" title for existing thrifts and for all entities that wish to apply for a thrift or for allowable activities in their thrift prior to date of enactment. Significantly, the successful inclusion of the McCollum/Roukema/Vento/Ehrlich Title III substitute amendment puts in place a cap on the number of thrifts and unitaries and an end to unlimited banking and commerce as an option for financial services entities. It is clear that opposition to grandfathering, coupled with merging charters by enlarging allowable bank affiliate activities, will continue in great part due to the open-ended nature of the unitary thrift holding company's activities and the relatively hands-off nature of current OTS regulation.

Closure to the issue of national thrift-bank charter merger will also assure that the deposit insurance funds will be merged, thereby eliminating the last vestiges of the thrift crisis and the inherent risk to the taxpayer represented by the smaller, less diversified SAIF. This policy action was fully contemplated base upon the recapitalization of the SAIF deposit insurance fund and the sharing by banks of the FICO obligation. The downward spiral of thrift deposits has been arrested but the geographically concentrated deposit base demands the merger of the deposit insurance funds and the development of a common national financial institutions charter for banks, thrifts, insurance and securities financial entities. The enhanced qualified financial holding company charter with options for retaining existing powers and the limited commerce, with full insurance, securities and banking activities, affords a full range of activities with a certain and predictable policy path to serve the American market place.

The Banking Committee has fully engaged the major issues related to Glass-Steagall repeal with the broad definition of financial activity, the limited integration of a commerce role, a sound regulatory structure, and the positive effect of extending credit, services and investment within the context of consumer rights and responsibility. As a supporter of this legislation I am confident that federal laws can be carefully crafted and successfully structured to set in place parameters that will allow reasonable and even-handed flexibility to financial services and other marketplace entities going forward into the 21st Century. This can be done, as the reported bill has shown, with an appropriate level of safety and soundness protections and with an eye to the needs of the consumer and responsibility to the communities in which financial entities exist.

BRUCE F. VENTO.

ADDITIONAL VIEWS OF CONGRESSWOMAN MAXINE WATERS

PREEMPTION OF STATE CONSUMER PROTECTIONS

During the markup of H.R. 10 I offered an amendment to the bill to ensure that the consumer protections provisions included in section 112 of the bill do not preempt stronger state consumer protection laws. This amendment makes it clear that the consumer protection provisions included in the bill are intended to act as a protective floor, and not a ceiling, on state consumer protection laws.

This important amendment was narrowly defeated by a vote of 25–24. The large number of votes in favor of the amendment should send a strong message that many members of the committee do not want to see the hard work done by states to protect consumers needlessly preempted.

This amendment was drafted in consultation with the Office of the Comptroller and the Department of Treasury. This amendment does not change the traditional federal preemption standard. If a state law is inconsistent with a clear requirement of federal law, it is preempted.

What this amendment would do is help to preserve a wide variety of state consumer banking laws that may be at risk of federal preemption. This amendment is especially important given the trend toward ignoring a wide variety of state consumer protection laws through federal preemption.

This amendment was offered in the spirit of supporting local control and in recognition of the important work done at the state level to fashion consumer protection laws appropriate to the needs of the resident of their states.

LIFELINE BANKING

As the author of the lifeline banking amendment that was adopted by the Committee for inclusion in section 103 of H.R. 10, I would like to offer a brief explanation of this amendment.

This amendment requires that subsidiary depository institutions of qualified bank holding companies have a demonstrable record of performance in the provision of low-cost lifeline bank accounts. According to the Office of the Comptroller of the Currency it is estimated that twelve million American households do not have deposit accounts with a financial institution.

With this amendment, banks would be required to make basic no-frills bank accounts available to low-income consumers at all offices where regular checking accounts are offered or available. Banks would not be required to offer this account to the consumer at a cost below the actual cost to the bank of providing such account. Banks may also limit the number of transactions that can be made by the consumer per month.

As a Congress we have already recognized the necessity of lifeline banking. The Bank Enterprise Act was enacted by Congress as part of the Federal Deposit Insurance Corporation Improvement Act of 1991 to provide federally insured banks with an incentive to offer lifeline accounts. My lifeline banking amendment builds upon the work of the Committee and uses the definition of lifeline banking set out in Section 232 of this Act.

We are faced with a number of new realities that make it imperative that we take additional steps to ensure that low-income persons have access to basic, no frills accounts—the passage of the welfare reform law and the Electronic Balance Transfer Act.

Under the welfare reform law, by 2002 all recipients will be required to receive their benefits via an electronic balance transfer system. The Electronic Funds Transfer Act that we passed in 1996, requires that by 1999 all recipients must receive their benefits electronically.

These new Congressionally imposed requirements make it essential that we take legislative action to do what is long overdue—ensure that all consumers have access to basic banking services.

MAXINE WATERS.

ADDITIONAL VIEWS OF CONGRESSWOMAN CYNTHIA A.
MCKINNEY

As the Committee considers financial modernization, we are presented with the dilemma that financial regulators and the Courts have done more to keep the United States financial system moving into the next century than Congress. I find this unacceptable. Clearly the bus is moving, and Congress has a responsibility to the American public to at least pull out a road map.

Speaking as an advocate for people who have been left behind or at least seated in the bank of the bus, financial modernization means more opportunity for more of America. Some of my colleagues whom I consider to be my allies in this struggle will look at this legislation with suspicion, particularly in a Republican Congress. They may even join with various forces to form a road block for this legislation, leaving modernization to die in one more Congress. To these friends, I say I want to see financial modernization deliver as much for the little people as we know it will for the big guys.

During the five years of the Clinton Administration, the American economy has been robust: unemployment low, inflation kept in check, and a Dow Jones breaking records with each new day. For individual Americans who have invested in the market, they will reap much more than the 4–6 percent earnings of the average savings account. Over the long term, this investment offers even greater benefit by protecting these savings from the erosion of inflation. Mutual funds have played an increasingly greater role in this continuing prosperity. A recent Federal Reserve bulletin reported that ownership of mutual funds has expanded, and the median value of holdings has increased. However, ownership rates moved up for non-Hispanic whites but remained unchanged for others. Moreover, ownership rates rose most strikingly at the top of the income distribution. Aside from the issues of education and privilege which afford these individuals the choice and benefit of such financial products, these disturbing trends are aggravated by the legal framework of financial services which compartmentalize banking, insurance and securities into distinct institutions. As banks are allowed to operate as full service firms, financial modernization will bring new products and new opportunities for more of America.

Through their branch networks and existing relationships with a large number of households, banks can reach out to a broader spectrum of consumers, making financial products accessible to more people. Currently banking institutions serve almost 87 million U.S. households. The inability of banks to offer a complete menu of financial services, including securities and insurance products, along with traditional banking products, has meant that consumers have been forced to obtain these services from different service providers at different locations. They have not benefited from the conven-

ience and potential cost savings of “one-stop shopping” at a single banking institution. When banks offer securities, insurance and other financial services directly and through affiliates, they will bring a new level of convenience and choice to customers in every economic bracket from Decatur, Georgia to Watts, Los Angeles.

While I support the increased ability of banks to offer financial service products, I am equally concerned that these new consumers have the benefit of traditional providers’ experience and their regulators. I applaud the Chairman in his efforts to find a fair solution to the certain future disputes of products being characterized as banking or insurance. The committee made a further contribution to the Chairman’s efforts by adopting the Castle amendment. On the other end I remain concerned about the availability and increased activities of securities within a bank. If a bank is going to sell securities, then it should provide customers with the same quality of broker-dealers that customers would receive outside the bank. As a self-regulatory body the NASD sets standards for securities market participants above and beyond those required by Congress and the SEC. The NASD requires tasting of securities sales persons and their supervisors. Its regulations governing sales practices, suitability of investments, fair dealing and market practices are essential to maintaining public confidence in the system. I am troubled by the Committee’s decision to expand the powers of the OCC to police securities sales within the bank. The Bentsen amendment would have made more sense to assure one standard for the industry among all provides.

Finally, like most things produced in this Congress, this is not a perfect bill, but it will reestablish Congress as an authority over laws governing the financial services. As we enter into what the Committee referred to as a “brave, new world,” it is important to reflect the changes in America’s political landscape. The Republicans control Congress, California voters supported Proposition 209, and the Rainbow Coalition has opened an office on Wall Street. Embracing these changes doesn’t mean welcoming them, but preparing for them. Similarly, I support financial modernization as an opportunity for all Americans to equally take advantage of this new frontier.

CYNTHIA A. MCKINNEY.

ADDITIONAL VIEWS OF CONGRESSMAN MICHAEL N.
CASTLE

I support the Banking Committee's approval of H.R. 10, the Financial Services Competitiveness Act of 1997. It is in the best interests of all Americans who utilize financial services for Congress to act to modernize our outdated laws governing banking and financial services. Permitting the integration of banking, insurance, securities and other financial services in a more uniform and rational manner will provide more choices for consumers and improved competition in the offering of these services. The Committee bill provides for this modernization with adequate safeguards to protect the safety, soundness and stability of the banking and financial services system. It is not a perfect piece of legislation, no bill with such a far-reaching impact could be, but it attempts to balance the interests of all the industries affected by the legislation with the best interests of all the American people. I think the bill accomplishes this.

I am particularly pleased that the Committee has approved a provision I authored to permit well-managed and well-capitalized limited-purpose banks to expand their activities and cross-market their products. The 1987 CEBA restrictions on these institutions are outdated and this legislation will allow these institutions to provide more services to consumers. Lifting the CEBA restrictions on limited-purpose banks is consistent with financial modernization and it will benefit consumers without disadvantaging any other provider of services.

In addition, I support the ability of financial companies to derive 15% of their gross revenues from nonfinancial business. This 15% basket is a reasonable and workable recognition of the complexity of the modern marketplace.

One issue that has been at the center of controversy in financial services modernization is how to best fairly regulate the sale and underwriting of insurance by banks. The committee has attempted to strike a balance on this issue. There is some legitimate concern among the banking community regarding the possibility of unfounded challenges to new forms of existing bank products. The Committee has attempted to address this concern by adopting an amendment I offered to provide for an expedited review by the Federal Reserve Board to determine if state challenges to new banking products are based on merit. This review process should deter unfounded challenges to legitimate new variations on banking products.

Finally, the issue of thrift charter conversion was one of the most difficult ones facing the committee. I have no desire to end the business of well-run thrifts. However, if we are to move toward a more uniform financial system, the gradual shift to a banking charter makes sense. I believe that the McCollum amendment adopted

by the Committee permits a very flexible grandfather provision for thrifts and a fair transition to a banking charter. It will allow thrifts to keep existing aspects of their business and continue to promote mortgage lending. It is not a perfect solution, but a fair and workable one.

In sum, this is sound legislation that deserves timely consideration by the full House. While some additional adjustments may be needed, the framework of this bill is sound and it should become law.

MICHAEL N. CASTLE.

ADDITIONAL VIEWS OF CONGRESSMAN RICHARD A. BAKER

I have long been an advocate for the broadest possible reform of the financial services industry. In my view, any reform should aim to expand consumers' choice of financial services, reduce costs of providing those services, and limit risk to our monetary and financial system.

To that aim, I have sponsored the Depository Institution Affiliations Act for several years now. My legislation provides for the broadest affiliation among financial and non-financial companies—a model appropriate for a free-market economy.

From my perspective as Chairman of the Subcommittee on Capital Markets, Securities and Government Sponsored Enterprises, it is clear that many banks no longer look or behave like traditional banks. Technology has emboldened banks to harness the capital markets as a critical tool for credit intermediation. In the last fifteen years, many businesses and consumers have rushed to the capital markets to serve their credit needs. The rise of commercial paper and the mutual fund industry are two examples.

Moreover, the risk profiles and activities of banks have changed. For many banks, the explosion of the derivatives markets has enhanced banks' ability to manage risk and generate income. In addition, banks' securities trading and underwriting activities have pushed banks outside of the traditional banking model (taking deposits and making loans) as banks pursue other market opportunities. I believe that Congress should not inhibit, but rather encourage these changes.

Recently, the House Banking and Financial Services Committee has reported out a bill to modernize our financial services industry. In my opinion, this bill goes a long way to that goal of broad affiliation. Fortunately, the legislation is not drafted to simply describe current market realities; the legislation prescribes an economic model which will guide the evolution of a more rational delivery system of financial services.

The legislation reflects the following two critical policy objectives: (1) it allows financial institutions to adapt to contemporary market conditions in order to anticipate consumer demand; and (2) maintains adequate supervision and regulations to safeguard the taxpayer and the nation's monetary and financial systems.

First, with this legislation, Congress has decided to allow financial institutions to serve contemporary consumer demand in a broader manner. The bill allows for affiliation among financial service providers as a first premise. Second, the bill allows for limited affiliations with financial services providers and non-financial interests. Lastly, the bill promotes parity as non-financial services companies can affiliate with banks.

The Banking Committee opened its markup with a vote to allow bank holding companies to own a "basket" of interests in non-finan-

cial, commercial firms. Sponsored by a coalition of senior members—Reps. McCollum, Roukema, LaFalce, Vento and myself—the amendment passed with a strong 35–19 vote. While I do not believe the amendment goes far enough to allow the broadest affiliation, as my previous legislation advocates, I accept it as a first step.

The following day, the committee voted to extend the same powers to non-financial entities. The “reverse basket”—supported by Reps. McCollum, LaFalce, and myself—would allow a non-financial firm to acquire in a holding company one bank with assets of less than \$500 million. In addition, several restrictions apply to the affiliated entities. The revenues from the bank cannot be greater than 15 percent of the firm’s U.S. gross revenues. All financial activities would have to be conducted in a qualified bank holding company. Qualified bank holding companies would have to be well managed and well capitalized. Further, firewalls, including Sections 23A and 23B of the Federal Reserve Act, would prevent the commercial firm from inappropriate activity with the bank.

To be sure, much of the criticism of these two amendments centered on two arguments. The amendments would encourage a biased allocation of credit between an affiliate and the bank and promote a concentration of economic power. I reject both arguments outright. We have provided for appropriate firewalls between the bank and its affiliates and have excluded affiliations with the largest institutions in the country. In fact, these provisions will allow smaller institutions to have more opportunities, resulting in stronger, more diversified home-town banks.

Late in the markup, I offered a provision to limit the deposit insurance of qualified bank holding companies to \$100,000 per depositor social security number. I firmly believe that as we expand affiliations and activities for these new qualified bank holding companies, we should reduce taxpayer exposure to the banks who choose to expand their powers. In sum, the provisions the FDIC to calculate insurance coverage for depositors by summing all accounts at a bank that is part of a qualified bank holding company with the same social security number (taxpayer identification number). Moreover, the amendment included a provision which would shift depositor preference to an insured depositor preference in resolutions of failed banks.

Both deposit insurance reform amendments would increase the safety and soundness of our banking system because it would reduce moral hazard and instill greater market discipline. In addition, it would reduce the number of banks whose failure would result in a loss to the FDIC and taxpayers.

Unfortunately, the amendment was not understood correctly, and opposition was expressed. I withdrew the amendment with the assurance that the Subcommittee on Financial Institutions would hold hearings on this proposal. However, I firmly believe that as we expand market opportunities for banks, we should curtail taxpayer exposure to new and unforeseen risk.

The last critical component of this bill centers on the credit needs of rural areas, inner-cities, and small communities throughout our country. In most small towns, a community bank is the chief repository of the community’s wealth and the chief source of credit. Through hearings in my Subcommittee on Capital Markets, I have

learned that frequently community banks have a difficult time accessing capital markets and adequately funding intermediate- and long-term assets held by the bank. This is particularly acute for community banks located in rural areas where nonfarm businesses tend to rely heavily on community banks as their primary lender.

Since community banks in rural areas, like savings associations in the 1930s, tend to draw most of their funds from local deposits, credit for borrowers in rural areas may be difficult to obtain. In other words, the economy of rural America could benefit from increased competition if community banks in rural areas were provided with enhanced access to capital markets.

I have long advocated that access to liquidity through Federal home loan banks greatly benefits well-managed, adequately capitalized community banks because term advances reduce interest rate risk and the ability of a community bank to obtain advances to offset deposit decreases or to temporarily fund portfolios during an increase in loan demands reduces the bank's overall cost of operation and allows the community bank to better its community and market. I have sponsored legislation to modernize the Federal Home Loan Bank System for many years.

In sum, I believe the FHLBank System is an integral tool to assist well-capitalized community banks, especially community banks in rural areas and underserved neighborhoods, to obtain a more stable funding source for intermediate- and long-term assets. My amendment, which reflects my previous efforts to modernize the System, does just that. As new affiliations develop among financial services firms and between commercial affiliates, the support provided by the Home Loan Bank System will greatly benefit small banks and their communities.

This legislation, taken as a whole, is good. It articulates a legislative framework that frees financial institutions to serve America's financial appetite—from businesses to governments to consumers—while closely monitoring business risk. The bill ensures that the consumer will be the winner, with the development of new products in a more price competitive economy. After the dust settles, Congress will have created a free market where consumers have greater access to more products at cheaper prices and the financial system is more secure.

RICHARD A. BAKER.

SUPPLEMENTAL VIEW IN STRONG SUPPORT OF FINANCIAL MODERNIZATION LEGISLATION

I voted in support of this financial modernization legislation because I believe there is a real need to reform our banking laws. The Glass-Steagall Act was written more than 60 years ago. Today's financial marketplace is very different. Consumers can now purchase financial products from many companies, including banks, securities firms, and insurance companies. The current regulatory scheme is too cumbersome, resulting in a convoluted financial system.

In addition, through regulatory and judicial actions, our banking laws are being rewritten without Congressional approval and input. For example, the Office of the Comptroller of the Currency recently published an operating subsidiary regulation that allows banks to underwrite and sell securities products in an operating subsidiary in direct contradiction to the intent of the Glass-Steagall Act and the Bank Holding Company Act. One pending application by Zion Bank would allow the sale of municipal revenue bonds in an operating subsidiary of the Bank as opposed to a Section 20 Affiliate of the holding company. While I support the operating subsidiary structure, I believe Congress and not the Comptroller should establish its existence for the sale of securities and other non-bank financial products, as this bill provides. Additionally, the Federal Reserve recently increased the limit from 10 to 25 percent for non-financial activities permitted within a Section 20 securities affiliate. This ad hoc regulating is the result of market forces taking precedent because of Congressional inaction. The Congress should be making these decisions. I believe that this comprehensive financial modernization legislation will provide clarity and set the framework for our banking system as we enter the 21st Century.

I offered an amendment that would prohibit the sale of municipal revenue bonds within a bank. I fundamentally believe that the sale of municipal revenue bonds carries more risk than general obligation bonds and should not be conducted in a bank. In addition, this new authority is contradictory to current law. Municipal revenue bonds can be either secured or unsecured. An unsecured municipal revenue bond does not guarantee that it will be repaid. I am concerned that banks also operate under different capital and regulatory rules than broker-dealers do. Furthermore, the bill expands securities powers to banks and therefore should not expand the list of bank-eligible or exempt securities. Regrettably, this amendment failed, but I will work to ensure that we drop this provision as the bill moves forward.

I supported the 15 percent basket amendment for commercial affiliation by a bank because I believe it is necessary to ensure a true two-way street between banks and other financial companies. However, I opposed the McCollum Amendment providing for a reverse

basket because I believe this amendment far expands the two-way street and allows access to the federal payment system by non-financial entities. This section should be dropped.

I also supported the inclusion of an operating subsidiary structure in this legislation. After careful review, I have concluded that there is no safety and soundness reason that we should not allow for this type of structure. At a recent hearing with the bank regulators, I asked Federal Reserve Chairman Alan Greenspan about whether there is any safety and soundness concern about this type of structure. His response clearly indicated that safety and soundness is not a concern, assuming appropriate firewalls are in place, as provided in the bill. Rather, Chairman Greenspan argued that a subsidy is provided to the operating subsidiary through its parent bank. However, Chairman Greenspan further acknowledged that such a subsidy exists through the holding company—affiliate model as well. I believe that our capital markets are very efficient and transparent and will discount such subsidies. In addition, this legislation imposed strict firewalls and a requirement for the bank to be well-capitalized before it can opt to set up an operating subsidiary. Banks will benefit from this added flexibility by choosing whichever structure is better for their individual company. Finally, I would argue that the operating subsidiary structure will ensure that all assets of banks, including its operating subsidiary, are subject to CRA regulations.

I would like to highlight two amendments I offered that were included in this comprehensive reform legislation. The first amendment would change the composition of the National Council on Financial Services. The second amendment, which was initially approved by a vote of 18 to 14 and subsequently amended by voice vote, would subject all securities and personnel within banks to the rules and regulations of the self-regulatory organization, the National Association of Securities Dealers (NASD).

The first amendment eliminates the Secretary of Commerce from the National Council on Financial Services and adds a state securities regulator to the Council. This State Securities Regulator would be nominated by the President and approved by the Senate to serve a three-year term. I strongly believe that a state securities regulator who has current or prior experience in securities regulation should be included in the Council because they are the primary regulators of securities brokers who sell directly to the public. My amendment was supported by the National Association of Securities Administrators. In addition, my amendment would provide for a better balance on the Council by adding another securities representative in comparison to the insurance and banking representatives.

The second amendment would ensure that sales of securities should be subject to the self-regulatory organization regulatory scheme. Currently, approximately 15 percent of securities sales are conducted by salespeople who are not subject to these regulations, and I strongly believe that this does not provide proper protections for consumers. Nor is it appropriate for some securities salespeople to be under the NASD and others not. My amendment would require these salespeople to become registered representatives and complete the appropriate tests and be subject to fraud and enforce-

ment actions by the NASD. I firmly believe that these requirements are reasonable and fair and would ensure that all securities sales are subject to the same rules and regulations. The current system is difficult for consumers to understand and does not provide parity. In addition, the current system is anti-competitive. For some firms, the rules are easier to comply with, while others must live with stricter enforcement and disciplinary actions. This is simply a matter of fairness and will improve our consumer protection laws.

After the adoption of the Bentsen Amendment, I worked cooperatively with Committee members to address some of the concerns raised by Chairman Leach and other Committee members following the adoption of the Bentsen Amendment. I drafted a compromise amendment that would have limited the types of securities sales that would have been subject to NASD regulation. When I offered this compromise amendment, Rep. Lazio offered a substitute amendment which would have eliminated registration of salespeople and enforcement. Subsequently, Rep. Watt offered a substitute amendment to the Lazio Amendment. The Watt Amendment was adopted by voice vote and became the underlying text on Section 203 of Title II. I supported the Watt Amendment because I believe it would ensure that the same rules and regulations are applicable to both bank and securities personnel. In addition, I believe the Watt Amendment has the added benefit of subjecting bank personnel to both NASD and Securities and Exchange Commission regulations.

I also offered an amendment to eliminate a provision in Section 152 of Title I of the bill that would permit the Federal Reserve to determine what is a banking product, in consultation with the Securities and Exchange Commission (SEC). I believe that this provision is not balanced and should be rewritten. Under current law, banking and securities regulators have equal standing in determining what is a banking and what is a securities product. If there is any disagreement between regulators, their decisions are subject to judicial review. In many cases, these disagreements have been decided in the courts. The legislation would give preference to views of the Federal Reserve and would add an extra layer of determination prior to judicial review. While I ultimately withdrew this amendment, I believe this provision will have to be addressed prior to final passage of this comprehensive legislation. Regrettably my effort to address this issue was not successful, but I am convinced that we must provide parity between banking and securities products in order to secure passage of this bill.

Overall, I believe this is a good start on a bill which should be enacted to ensure that our banking system and financial marketplace remain competitive and world leaders.

KEN BENTSEN.

SUPPLEMENTAL VIEWS ON THE HOME LOAN BANK PROVISIONS

The Financial Services Competition Act of 1997 makes a number of substantial changes to the Federal Home Loan Bank System (“the System”). As the Chairman and Ranking member of the subcommittee with primary jurisdiction over the System, and as the original sponsors of the amendment that broadened the Act’s changes to the System, our intent in offering Subtitle H focuses on the reasons Congress established the Federal Home Loan Bank System. The System began in 1932 primarily for the purpose of providing a source of intermediate- and long-term credit for state savings institutions to finance long-term residential mortgages, and to provide a source of liquidity for such institutions. Neither was available at the time. In 1989, Congress expanded on these basic elements to allow the System’s membership to include other depository institutions, as well as credit unions.

For many depository institutions, residential mortgage lending has now been incorporated into a product mix of community banking that typically provides a range of mortgage, consumer, and commercial loans in their communities. Smaller community banks tend to have a more difficult time accessing intermediate- and long-term funding. They, like savings associations in the 1930s, typically draw most of their funding from local deposits.

It is our view that if smaller community banks are granted enhanced access to longer-term funding with a broader base of collateral for advances, they will be able to increase the level of financial competition in rural and inner-city markets. We believe that if the System is used prudently it can be a valuable resource to assist properly regulated, well-capitalized banks (especially smaller community banks in rural areas and underserved neighborhoods), to provide a more stable funding source for customers who require intermediate- and longer-term funding.

Subtitle H creates a System where all members will belong on a voluntary basis, and all will be treated equally. The capital required to support membership will be equalized for large and small members. Larger banks, which could not belong under the old System because of their asset size and the related capital requirements, will now find reduced barriers to membership, and increased incentives to join.

The Act will, for example, reward the development of permanent capital. Members acquiring “Class B” stock (which carries a five year redemption), for instance, may receive dividend premiums over those paid for “Class A” stock, and may have preferential voting rights. Moreover, a member’s capital structure plan may allow for lower stock purchase requirements with respect to shareholders that elect to purchase Class B stock.

Subtitle H makes a number of fundamental changes to the advance program that are clear on their face. As a matter of practice, the Banks routinely require that advances be overcollateralized. It is our intent that, regarding the expanded collateral options that the Act presents, the Banks will continue to follow their normal procedures to assure that the System remains as risk averse as possible.

The Act also transfers certain powers from the Federal Housing Finance Board to the Boards of the Federal Home Loan Banks themselves. The Banks will be empowered, for example, to make a number of supervisory decisions that were formerly within the discretion of the Finance Board. Likewise, the Act will clarify the role of the Office of Finance, as well as granting it more power regarding the consolidated debts of the System.

With the REFCORP section, our intent was to equalize the proportion of each FHLBank's net income that is assessed to meet the REFCORP obligation. The assessment will be changed to a fixed, predictable percentage which complies with the requirements of the Budget Act.

Regarding the investments section, we consider the primary function of the Federal Home Loan Bank System to be the provision of intermediate- and long-term funding for direct lending institutions, not substantial investment in the debt of other issuers.

RICHARD A. BAKER.
PAUL E. KANJORSKI.

SUPPLEMENTAL VIEW ON THE “REVERSE BASKET”

I strongly oppose the reverse basket that was adopted by a vote of 25–23 during the Banking Committee’s markup of H.R. 10. The reverse basket would allow commercial firms to acquire a small, insured depository institution, and greatly expand the commercial control over small banks.

It is imperative that financial modernization legislation recognize the need for creating a two-way street for those within the financial services industry. Current law prohibits insurance and securities firms from owning a bank despite the fact that their business is predominantly financial. However, recent actions taken by the federal banking agencies have opened the door for banks to enter the businesses of both the insurance and securities industries. As a result, we are now witnessing serious inequities among these competing industries.

My modest, incremental basket was designed to create a level playing field for banking, securities and insurance firms to better compete in the global, financial markets. It achieves this by permitting a bank holding company to derive no more than 15% of its domestic gross revenues from non-financial activities. Since insurance and securities firms are currently allowed to affiliate with commercial firms, we developed the 15% basket approach to allow banking and commercial organizations to affiliate within the holding company structure created by this legislation.

The reverse basket does not constitute the “incremental approach” to banking and commerce. It goes too far, too fast. While there may come a time when such a basket is appropriate, in my judgement, now is not the time. This legislation makes wholesale changes to our financial services industry. We must take a reasoned and incremental approach. There are simply too many questions yet unanswered relating to the reverse basket.

It has been said that the reverse basket is the mirror image of the small, incremental 15% basket envisioned in my proposal. However, it is unclear under what regulatory structure the commercial firm would operate. Although the bank would be subject to supervision, the commercial firm would not come under the Federal Reserve’s umbrella oversight.

Under my basket approach, banks could affiliate with commercial firms only in a bank holding company structure. Under the reverse basket, it is my understanding that the commercial firm would not have to operate under the Bank Holding Company Act. Under those circumstances, it is unclear what kind of enforcement, examination, supervision and capital standards would apply to the commercial firm. For example, how will we insure that risks and weaknesses at the commercial company are not passed onto the bank?

Under our proposal, no more than 15% of the holding company's gross domestic revenues could be invested in a commercial company; consequently, the predominant activities of the Bank Holding Company would be financial in nature. Under the reverse basket, the bank could only constitute 15% of a commercial companies gross domestic revenues, meaning that the investments of the company owning a bank would be predominantly commercial. Therefore, will commercial ownership of banks lead to concentrations of credit or limited access to credit by competing commercial firms. If so, how do we prevent that?

This proposal raises too many unanswered questions. Moreover, this is a key step that is likely to be unalterable. My 15% basket allows experimentation with banking and commerce and the opportunity to learn how to address any potential risks that may arise from the affiliation of banks with commercial firms on a limited scale. For these reasons, the most responsible course of action is to only permit those companies that are predominantly financial to have a modest commercial component.

This legislation represents a giant step forward toward modernizing our financial system. However, given the implications of such a wholesale reform, we need to take it one step at a time. The 15% basket is the first and only step we should take at this time.

MARGE ROUKEMA.

SUPPLEMENTAL VIEWS ON THE TWO-WAY BASKET

The House Committee on Banking and Financial Services reported out legislation that will ensure that the American financial system is in a position to compete in the year 2000 and beyond.

The two so-called "basket" amendments adopted by the Committee are vital components of the effort to provide a legal playing field for all financial services providers. The first basket is designed to permit a qualifying bank holding company to invest 15% of its assets (based on gross domestic revenues) in a non-financial firm with assets that do not exceed \$750 million. This allows bank holding companies to take an equity position in a commercial firm and permits banks that affiliate with securities or insurance firms to continue with, or to establish, commercial affiliations.

This basket approach does not address the situation of commercial firms which may have an interest in affiliating with an insured depository institution. Recognizing that commercially-owned, market funded lenders, and commercially-owned, limited or special purpose banks are important providers of credit that deserve to participate in a modern financial services industry, the Committee adopted a second basket, the so-called "two-way" basket. This basket permits a commercial firm to own a qualifying bank holding company with one subsidiary bank whose assets may not exceed 15 percent of the consolidated gross domestic revenues of the non-financial activities of the parent. The qualifying bank holding company is limited to ownership of one bank which it may acquire either by converting an existing charter or by making a one-time acquisition of a bank that has under \$500 million in assets and has been in existence for at least five years. Acquisitions of additional banks, with intent of merging them into the existing subsidiary bank are not permitted.

The two-way basket provision adopted by the Committee permits companies which would otherwise be excluded from the bill to participate in a modernized financial system. True financial modernization must permit consumers and markets to determine what financial services products are offered, by whom, and in what manner. By giving all of the current participants in the financial services industry the ability to compete on at least a limited basis, the two-way basket takes another step towards rationalizing the financial services industry and improving market function.

It must be stated that the United States has a long, successful tradition of mixing banking and commerce. The American experience has demonstrated that these affiliations can occur in a manner that is consistent with safety and soundness. In fact, those entities that have mixed banking and commerce have an unparalleled record of safety and soundness, have served their customers well, and have done so in a way that protects depositors, the FDIC, and ultimately the taxpayer. For example, diversified banks in the

Great Depression survived at a greater rate than their counterparts, and Unitary Thrift Holding Companies were a source of strength during the thrift crisis. In fact, despite the controversy over the amendment, there is much greater experience in this country with commercial ownership of insured institutions than there is with insured institutions owning commercial firms, yet that arrangement received the larger vote.

Today, many commercial companies own or otherwise affiliate with financial companies, whether they are market funded finance companies, insurance companies, securities companies, credit card banks, limited purpose banks or savings associations. These companies do not create consumer needs, they simply respond to them. Commercially-owned financial companies, like banks, spend a lot of capital to acquire customers and want to be able to provide the services that their customers demand. The cost of delivering additional products to the consumer once a relationship is established is minimal.

Additionally, the two-way basket permits non-financial companies to keep pace with technological progress. Technology is dramatically altering the way financial services are delivered, by whom, and even the nature of the product itself. It is likely that in order to participate in this exciting future financial services marketplace, a company will either have to be a bank or affiliate with a bank. In other words, many commercial companies that currently participate in the financial services arena will be effectively barred from offering many new products, such as smart cards. The effect of limited competition keeps prices at artificially high levels.

Opposition has centered around arguments that commercial affiliations could lead to conglomeration which could cause bias in certain decisions relating to the extension of credit. Concerns were also raised about the Japanese and German experiences with banking and commerce. Other criticism centered on issues of risks to the depositors, the FDIC, and ultimately to the taxpayer. For the most part, these arguments represent the most extreme possibilities that might conceivably happen if there were no antitrust laws, no holding company requirements, a complete failure of regulation by the markets, rating agencies and government regulators combined with social, economic and regulatory traditions that feature the worst of Japan and Germany. To the extent there are real issues, they are addressed by current law, the Committee reported bill and the economic, social, and cultural realities of the United States. There are fundamental differences between Japan, Germany and the U.S. financial systems. The U.S. system of holding company regulation is unique—separately capitalized, functionally regulated affiliates combined with antitrust law and criminal provisions as well as fundamental cultural traditions render comparisons of little more than superficial value. Japan, in particular, does not offer even a semblance of U.S. style antitrust or shareholder protections and features “cross-shareholding” and other cultural/economic arrangements which not only would never be tolerated in the United States but would in many cases be criminally actionable. Banking and commerce does not determine the economic, cultural, and social systems of a particular country, but is at most a reflection of them.

The two-way basket was crafted with the concerns—both real and fallacious—about the mixing of banking and commerce in mind. Although we believe that these fears are unfounded, it was politically necessary to address them. The “Depositor Protection Ratio”, established by the two-way basket provisions, offers highly redundant protection for depositors, taxpayers and the financial system overall. Under this amendment, the insured depository institution could only account for up to 15% of the commercial parent’s gross domestic revenue in any year. The effect of this limitation ensures that plenty of assets will always be available to keep the depository institution from becoming undercapitalized. Experience with commercially-owned, market funded institutions has shown that this type of feature alone is an outstanding safety and soundness device. Since the advent of the modern commercial paper market in the 1970s, there have been two arguable “failures” of market funded lenders. In the case of the one that was commercially-owned, the losses were borne by the parent and its shareholders with no systemic or other impact. Commercially-owned insured institutions have a similar record. Contrast this experience with the performance of noncommercially-owned insured depositories over the same period.

The bill approved by the Committee also contains other enhancements to current regulatory protections. First, in order to become a subsidiary of the qualifying financial services holding owned by a commercial enterprise, the insured bank must be well capitalized. Second, the bank must be well managed. Third, the bank must comply with all consumer protections, including the Community Reinvestment Act (CRA). Finally, the bill contains strong divestiture provisions which would require that the bank be sold if it was determined that any of the bank’s affiliates posed any risk to the insured institution. In addition, nothing in the amendment would impair the authority of the Federal Reserve to prevent the acquisition of an insured institution by a qualifying bank holding company where there are demonstrable safety and soundness concerns over the suitability of the acquiring holding company, or to prevent the highly speculative possibility that the qualifying bank holding company is somehow a “shell”, although we have received no clear explanation of how that circumstance would occur in reality.

More specifically, before a commercial company can even affiliate with a bank under this provision, the commercial parent must apply and receive approval from the Federal Reserve Board. Once a bank affiliates with a commercial company as a subsidiary of a qualifying bank holding company, that bank will be subject to all of the same laws, firewalls, and safeguards applicable to any other full service insured bank. These safeguards include Federal Reserve Act (FRA) affiliate transaction restrictions, Prompt Corrective Action regulatory authority, capital requirements, and the strong divestiture provisions included in the bill approved by the Committee, to name a few.

In terms of the alleged dangers arising from the speculative possibility of biased credit, the depositor protection ratio discussed above also ensures that the bank indirectly owned by a commercial enterprise will not result in an undue concentration of banking assets or resources. Due to the inherent size limitations based on the

percentage of gross domestic revenue, a bank owned by a commercial firm could never attain the size level necessary to concentrate enough resources so that credit would no longer be widely available from other sources. Even today, if a bank would not lend to a qualified borrower based on some bias, there are many other lenders that are willing to make credit available. The reality is that a lender unwilling to make loans to qualified borrowers is not only missing a business opportunity, but providing its competitors with an advantage.

In regard to the concerns raised by the possibility that a commercially-owned bank will lend preferentially to its parent, existing law and provisions in the bill passed by the Committee adequately address this scenario. Under Sections 23A and 23B of the FRA, banks are limited to a total of no more than 20% of its net worth to all of its affiliates and no more than 10% of its net worth to any one affiliate. Furthermore, a bank is required to make any transactions with its affiliates at arms length. In other words, a bank cannot give an affiliate better terms and conditions than it gives any of its other customers in a similar transaction. A bank's management faces enormous personal liability if they violate the law or regulations concerning transactions with affiliates. Civil fines can be as high \$1 million per day per violation. As stated earlier, these are not fines paid by the bank or commercial parent, but the individual involved in those transactions.

Another criticism raised is that a bank's resources will be used to bail out its commercial parent. This argument also seems unsound. As mentioned above, any transactions with affiliates are closely regulated by the FRA. Even if such a transaction was not illegal, this scenario is unlikely. The reason this is unlikely to occur is because if the affiliated bank makes a loan at below market rates to a non-bank affiliate nothing is gained. The parent's profit is the bank's loss, and the net result to the bottom line is no gain. At the same time the company had a non-performing asset, the company could have made a profit by using that capital more effectively by lending elsewhere.

In addition to its other benefits, the depositor protection ratio effectively guards against fears that foreign commercial companies would be allowed to buy up American banks. Since the 15% test is based on gross domestic revenues, the foreign company would have to have substantially large U.S. operations in order to participate. It is also worth noting that nothing in H.R. 10 would prohibit a foreign bank, insurance company, or securities company from purchasing American banks. Today, foreign companies can purchase any American insurance company or securities company.

For these reasons and many others, the Committee made the correct policy decision in permitting these highly constrained affiliations between commercial firms and insured institutions. As with interstate branching and many other modernization issues, nothing is as good or bad as the debate would lead the casual observer to believe, but these progressive steps are always worth taking.

RICHARD A. BAKER.
JOHN J. LAFALCE.
BILL MCCOLLUM.

SUPPLEMENTAL VIEWS ON THE 15 PERCENT COMMERCIAL BASKET

The House Committee on Banking and Financial Services reported out landmark legislation that will take meaningful steps toward rationalizing and modernizing the U.S. financial services system. This legislation is a challenge to changes in both the financial marketplace and regulatory structure; especially for agencies that have been given the chore of interpreting 60-year-old laws that are grossly impractical. In the absence of congressional action, the federal banking agencies and the industry have been forced to interpret outdated laws in a way that is responsive to today's market realities. Unfortunately, this has resulted in piecemeal regulatory reform that may not be in the best interest of the U.S. financial system as a whole. That is why we need to exercise our authority and get this legislation enacted into law.

One of the most important provisions that was adopted by the Committee would permit a limited affiliation of banking and commerce. Under the provision, a bank holding company could derive 15% of its income based on domestic gross revenues in a non-financial firm with assets no greater than \$750 million. Opposition to the basket was based on arguments that any such affiliation could lead to conglomeration that would hurt consumers and put small banks at a competitive disadvantage. These assertions are incorrect.

This modest commercial "basket" would provide new sources of capital. Small and midsized companies—which create the majority of jobs and are the lifeblood in developing new products and services—often have difficulty accessing the capital markets or receiving credit from traditional lenders. Allowing financial services holding companies to make modest equity investments would provide these new, innovative, growing, or financially-troubled companies with a vital source of capital. Community reinvestment could also be enhanced because urban areas across America have a need for such capital investments.

In addition, small banks would be given a greater opportunity to compete in this area. Recent data show that the majority of small banking organizations maintain an enormous amount of capital at the holding company level, yet current law prohibits them from investing in non-financial business. With a 15% basket approach, these financial holding companies could make equity investments in their own community's businesses, thus contributing to a vibrant, healthy local economy and providing customers with a greater variety of services to choose from.

Despite all this, the question was repeatedly raised during debate as to why we even need at 15% commercial basket for purposes of this legislation. The reason is simple. The stated purpose of the legislation is to "eliminate the legal barriers to affiliation be-

tween depository institutions, securities firms, insurance companies” and to “enhance competition in the financial services industry.” Insurance, securities and other diversified firms have never been prohibited from affiliating with commercial enterprises. So as a matter of equity, for any financial services modernization legislation to accommodate the competitive needs of all financial services providers, it must recognize the status quo and permit some modest level of commercial affiliation.

A 15% commercial basket provides a cushion to accommodate both normal growth of income from a non-financial enterprise as well as the potential decrease of revenues from the financial activities within the holding company structure. For example, securities firms’ revenues are subject to normal business cycle fluctuations. In a market downturn, the revenues a holding company receives from its financial business may decrease, causing a shift in the relative mixture of a holding company’s gross revenues. Therefore, the basket must be large enough to account for these normal fluctuations in the holding company’s financial business.

Furthermore, today’s financial services marketplace simply changes too rapidly to legislate every time a new product is developed, a new service is offered, or a better delivery system is implemented. Therefore, this legislation must be flexible enough to ensure that financial services providers can continue to innovate and evolve without facing statutory and regulatory barriers.

It must be emphasized that the commercial affiliation basket was crafted with safety and soundness in mind. Banking organizations already are, and would remain, subject to significant safeguards. They would remain subject to strict supervision and examination by the appropriate federal and state regulators. They would be subject to the Federal Reserve’s affiliate transaction restrictions, which require institutions to over-collateralize loans to affiliates, and to enter into transactions with affiliates only on an arms-lengths basis. In addition, bank holding companies would be subject to the Federal Reserve’s anti-tying provisions, which prevent banks and their affiliates from tying the pricing or availability of certain products or services to the granting of credit. Non-compliance with these regulations mandates stiff penalties.

If institutions fall below their required capital levels or become financially troubled, they will be subject to prompt corrective action procedures that authorize the federal banking regulators to issue cease and desist orders or even close a bank.

To further insure safety and soundness, banking organizations would be subject to even tougher safeguards under the Act. Affiliations with commercial firms are only permitted within a regulated bank holding company structure. This ensures that banks and commercial firms retain separate corporate identities, and demonstrates that a bank would neither own nor be owned by a commercial firm. In order for such affiliation to occur, each of the banks owned by the bank holding company would be required to be well-capitalized, to be well-managed, and have received an overall minimum “satisfactory” rating as a result of its most recent safety and soundness examination. Furthermore, the amendment includes an additional safeguard that would prohibit transactions with non-financial affiliates covered under section 23A of the Fed-

eral Reserve Act, such as loan transactions and asset purchases. Finally, if the Federal Reserve determines that there are financial or managerial problems impeding the safe and sound operation of the organization, the agency has the authority to take enforcement action and even force the holding company to divest itself of its banks.

Finally, the strict regulatory complement to the commercial basket is even further strengthened, because both the Federal Reserve and the National Council on Financial Services are given the authority to impose additional firewalls on these new banking organizations if they determine it is necessary.

The 15% commercial basket is a modest, incremental step which creates a truly level playing field for banking organizations, securities firms, and insurance companies that falls squarely within the purposes of H.R. 10. It accomplishes this under the authority of a strict supervisory and regulatory structure that not only protects the consumers' interests, guards against conflicts of interest and economic concentrations of power, but also preserves the safety and soundness of our financial system as a whole.

MARGE ROUKEMA.
SPENCER BACHUS.
VINCE SNOWBARGER.
CYNTHIA MCKINNEY.
KEN BENTSEN.
CAROLYN KILPATRICK.
FLOYD H. FLAKE.
PETER KING.
RICHARD H. BAKER.
RICK HILL.
STEVEN C. LATOURETTE.
BRUCE F. VENTO.
MIKE CASTLE.
JOHN J. LAFALCE.
BILL MCCOLLUM.
PETE SESSIONS.

SUPPLEMENTAL VIEWS

We support H.R. 10, the Financial Services Competition Act of 1997, as reported by the Committee. While the focus of the public debate of this legislation has been the opening of the financial services marketplace to new competition and the impact on the various sectors of the financial services industry, equally important to us is the impact of this legislation on our constituents, the consumer in this new financial landscape.

The purposes of this legislation, crafted in large part by Congressman Watt, state that this bill is designed to “enhance the availability of financial services to citizens of all economic circumstances and in all geographic areas” and “enhance the ability of depository institutions to meet the capital and credit needs of all citizens and communities, including underserved communities and populations.” The final version of this bill includes crucial provisions to make these important goals a reality.

We commend Chairman Leach, working on a bipartisan basis, for the inclusion of important consumer and community protection provisions in the Chairman’s mark-up substitute. These provisions laid a solid framework upon which the Committee was able to build.

The requirement that all of the holding company’s subsidiary depository institutions have at least a “satisfactory” Community Reinvestment Act (CRA) rating in order to be a “qualifying bank holding company” appropriately recognizes that the benefits of this legislation require a solid commitment to meeting local credit needs.

The extension of the CRA to the new Wholesale Financial Institutions (WFIs) is appropriate. While deposits to a WFI will not be insured, these new institutions will be members of the Federal Reserve System with the same rights and privileges as a State member insured bank. This extension of rights and privileges must be accompanied by the same responsibilities including meeting community credit needs.

As Congress moves forward with this broad financial services modernization legislation, safeguards must be in place to insure that consumers are not confused about new products and their status regarding deposit insurance coverage or the lack thereof, the improper disclosure of confidential consumer information and potential conflicts of interest.

These provisions, included in the Chairman’s mark, are important safeguards. However, the Committee properly added additional consumer and community protections. These new provisions are a key component of any financial modernization legislation, insuring an adequate level of consumer protections and credit availability.

Specifically we support.

Kennedy amendment—The Kennedy amendment would reinforce federal laws designed to combat insurance redlining. A benefit of this legislation is increased competition and the expanded availability of products and services. Further safeguards against redlining will ensure that neighborhoods are not denied the availability of insurance. As a condition of the affiliation authority and powers in H.R. 10, the Kennedy amendment would require a bank holding company affiliate engaging in insurance sales or underwriting to comply with the terms of a Fair Housing Act court order or settlement.

LaFalce amendments—The LaFalce amendment substantially expands upon the consumer safeguards originally included in the legislation. As a financial modernization law is implemented, banks will increasingly offer a myriad of products and services. Some products will carry FDIC insurance, others will be uninsured. It is crucial that the consumer be fully informed about the nature of the product and be aware of any potential risks associated with it. The LaFalce amendment establishes clear disclosure requirements and other consumer protections. This amendment requires banks to disclose the fact that a product is not insured; imposes physical segregation requirements on deposit-taking activities and non-deposit product sales activities; establishes suitability standards to ensure products are suitable for the consumer; creates a consumer grievance mechanism; and requires a study on privacy issues related to financial modernization.

Vento amendments—The Vento amendments on meeting community credit needs and branch closings incorporate existing provisions of the Riegle Neal Interstate Banking and Branching Law into this legislation. The Vento amendment puts in place protections to assure that banks acquired under this bill would not drain deposits out of a state. The amendment requires that an out-of-state controlled bank continues to make loans in the host state, with strong sanctions available to the regulator for enforcement. In cases of branch closings, the amendment requires federal regulators to work with local communities to obtain adequate alternative services for the affected community.

H.R. 10 will result in a consolidation of the financial services industry. The Vento amendment requiring the appropriate banking regulators to maintain market related data and the annual report on concentration of financial resources will provide Congress with the needed information to ensure that community credit needs are being met.

Waters amendment—The Waters amendment adds an important protection to ensure that the benefits of financial modernization are available to consumers of all economic means. The Waters amendment conditions the ability of bank holding companies to affiliate and engage in the new powers under this bill on the record of the bank providing low-cost, lifeline services. These lifeline accounts are crucial if H.R. 10 is to meet its stated goal of insuring the availability of financial services to all citizens. Certainly, these types of lifeline accounts interface well with the existing mandates in federal law regarding the electronic payment of benefits and retirement compensation programs.

H.R. 10 was approved on a bi-partisan basis—all ten Democratic votes were needed to favorably report this legislation. Further action on financial modernization will be successful only if that bipartisan spirit of cooperation remains. We remain committed to achieving comprehensive financial modernization legislation. Our financial services network must modernize and rationalize to compete in the global marketplace. However, as this legislation moves our financial industries forward into the 21st Century, Congress cannot push the interests of consumers and local communities back into the 19th Century. It is our strong view that consumer and community lending protections must remain an integral component of any modernization legislation considered by the full House.

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CHARLES E. SCHUMER.
FLOYD H. FLAKE.
CYNTHIA MCKINNEY.
DARLENE HOOLEY.
JOHN J. LAFALCE.
JOSEPH KENNEDY.
MELVIN L. WATT.
JIM MALONEY.
KEN BENTSEN.

VIEWS OF HENRY B. GONZALEZ

This Financial Services Competition Act of 1997, H.R. 10, as reported by the Committee, is a seriously flawed bill which will endanger the safety and soundness of our financial system and expose the taxpayer-guaranteed deposit insurance funds to excessive risks. This bill will encourage large scale conglomeration in the financial and nonfinancial industries, resulting in no benefit and considerable harm to consumers and working families. It creates risks that regulators fear, do not fully understand, and may be unable to control.

I have previously stated that any responsible approach to financial services modernization legislation must include the following elements: Deposit insurance reform to protect taxpayers from another bailout; regulatory restructuring to ensure that supervisory capabilities are adequate; consumer protections to prevent fraud and abuse; community reinvestment enhancements to ensure that local communities are not neglected by the huge conglomerates; and strong affiliation safeguards like enhanced firewalls, to guard against conflicts of interest and protect insured deposits. The Committee's product either ignores or falls short on all points.

In addition, the bill will allow commercial enterprises to own and control banks. In particular, the Committee adopted a so-called "reverse basket" amendment which exempts certain unitary bank holding companies from the Bank Holding Company Act. This is a very risky and dangerous step to take. Even unitary thrift holding companies, while able to have commercial affiliations, have always been subject to the Home Owners Loan Act and full regulation by the Office of Thrift Supervision. Under this bill, an exempted unitary bank holding company could own and control an insured depository institution without *any* regulatory supervision. This is a catastrophe waiting to happen, and it is the taxpayers who will be forced to pay for the clean-up.

In sum, the bill is wholly an attempt to serve all the competing private interests, and in so doing, it does great harm to the public interest. The Garn-St Germain Act of 1982 also took that approach—with disastrous and expensive results. Like that and other special interest legislation, H.R. 10 is likely to destabilize our only recently rehabilitated financial system and put deposit insurance at grave risk. Modest and carefully thought out reforms are needed, but this bill is radical and reckless.

HENRY GONZALEZ.

OTHER DISSENTING VIEW

While I support financial modernization and many of the features of this bill, there remain certain fundamental flaws with this approach. In order to allow for the markets to function properly—and to internalize properly the risk that businesses choose to take—governmental regulations should be relaxed not increased. Federal banking regulations and other restrictions stifle the dynamic growth of new financial products and services that are fundamental to enhance the success of the U.S. financial services sector.

Genuine financial modernizations would allow and encourage the introduction and development of new financial service products and structures not restrict financial providers' current activities and eliminate present structures. As new hybrid financial service products are developed in response to market demand, government should not thwart the consumer's ability to enjoy these new products.

However, the proposed new National Council on Financial Services adds a new layer not only of regulations but of regulators. Instead of relying more on private market regulation and deferring to state regulation of insurance, this bill would enhance the power of Federal regulators over the market. By mixing banking and commerce and increasing the scope of Federal banking regulators, including the Federal Reserve, commercial enterprises will come under Fed supervision. The overreach of the government into the lives and activities of individuals and businesses will grow as surely as the power and scope of the new Council will grow. The result will serve to stifle the innovation that is the intended purpose of this bill.

While the bill does allow for greater flexibility of some structures and activities, it does so in an arbitrary fashion. Companies should not have to worry about limiting their growth and service offerings based on an ad hoc determination using a so-called "basket" approach. The reforms that this bill makes do not sufficiently address the safety and soundness of deposit insurance and the payments system and, ultimately, taxpayer liability.

RON PAUL.

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