

1 **TITLE II—FUNCTIONAL**
2 **REGULATION**
3 **Subtitle A—Brokers and Dealers**

4 **SEC. 201. DEFINITION OF BROKER.**

5 Section 3(a)(4) of the Securities Exchange Act of
6 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

7 “(4) BROKER.—

8 “(A) IN GENERAL.—The term ‘broker’
9 means any person engaged in the business of
10 effecting transactions in securities for the ac-
11 count of others.

12 “(B) EXCEPTION FOR CERTAIN BANK AC-
13 TIVITIES.—A bank shall not be considered to be
14 a broker because the bank engages in any one
15 or more of the following activities under the
16 conditions described:

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

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

4 “(II) the broker or dealer per-
5 forms brokerage services in an area
6 that is clearly marked and, to the ex-
7 tent practicable, physically separate
8 from the routine deposit-taking activi-
9 ties of the bank;

10 “(III) any materials used by the
11 bank to advertise or promote generally
12 the availability of brokerage services
13 under the arrangement clearly indi-
14 cate that the brokerage services are
15 being provided by the broker or dealer
16 and not by the bank;

17 “(IV) any materials used by the
18 bank to advertise or promote generally
19 the availability of brokerage services
20 under the arrangement are in compli-
21 ance with the Federal securities laws
22 before distribution;

23 “(V) bank employees (other than
24 associated persons of a broker or deal-
25 er who are qualified pursuant to the

1 rules of a self-regulatory organization)
2 perform only clerical or ministerial
3 functions in connection with broker-
4 age transactions including scheduling
5 appointments with the associated per-
6 sons of a broker or dealer, except that
7 bank employees may forward cus-
8 tomer funds or securities and may de-
9 scribe in general terms the types of
10 investment vehicles available from the
11 bank and the broker or dealer under
12 the arrangement;

13 “(VI) bank employees do not re-
14 ceive incentive compensation for any
15 brokerage transaction unless such em-
16 ployees are associated persons of a
17 broker or dealer and are qualified
18 pursuant to the rules of a self-regu-
19 latory organization, except that the
20 bank employees may receive com-
21 pensation for the referral of any cus-
22 tomer if the compensation is a nomi-
23 nal one-time cash fee of a fixed dollar
24 amount and the payment of the fee is

1 not contingent on whether the referral
2 results in a transaction;

3 “(VII) such services are provided
4 by the broker or dealer on a basis in
5 which all customers that receive any
6 services are fully disclosed to the
7 broker or dealer;

8 “(VIII) the bank does not carry
9 a securities account of the customer
10 except as permitted under clause (ii)
11 or (viii) of this subparagraph; and

12 “(IX) the bank, broker, or dealer
13 informs each customer that the bro-
14 kerage services are provided by the
15 broker or dealer and not by the bank
16 and that the securities are not depos-
17 its or other obligations of the bank,
18 are not guaranteed by the bank, and
19 are not insured by the Federal De-
20 posit Insurance Corporation.

21 “(ii) TRUST ACTIVITIES.—The bank
22 effects transactions in a trustee capacity,
23 or effects transactions in a fiduciary capac-
24 ity in its trust department or other depart-
25 ment that is regularly examined by bank

1 examiners for compliance with fiduciary
2 principles and standards, and—

3 “(I) is chiefly compensated for
4 such transactions, consistent with fi-
5 duciary principles and standards, on
6 the basis of an administration or an-
7 nual fee (payable on a monthly, quar-
8 terly, or other basis), a percentage of
9 assets under management, or a flat or
10 capped per order processing fee equal
11 to not more than the cost incurred by
12 the bank in connection with executing
13 securities transactions for trustee and
14 fiduciary customers, or any combina-
15 tion of such fees; and

16 “(II) does not publicly solicit bro-
17 kerage business, other than by adver-
18 tising that it effects transactions in
19 securities in conjunction with adver-
20 tising its other trust activities.

21 “(iii) PERMISSIBLE SECURITIES
22 TRANSACTIONS.—The bank effects trans-
23 actions in—

24 “(I) commercial paper, bankers
25 acceptances, or commercial bills;

1 “(II) exempted securities;

2 “(III) qualified Canadian govern-
3 ment obligations as defined in section
4 5136 of the Revised Statutes, in con-
5 formity with section 15C of this title
6 and the rules and regulations there-
7 under, or obligations of the North
8 American Development Bank; or

9 “(IV) any standardized, credit
10 enhanced debt security issued by a
11 foreign government pursuant to the
12 March 1989 plan of then Secretary of
13 the Treasury Brady, used by such for-
14 eign government to retire outstanding
15 commercial bank loans.

16 “(iv) CERTAIN STOCK PURCHASE
17 PLANS.—

18 “(I) EMPLOYEE BENEFIT
19 PLANS.—The bank effects trans-
20 actions, as part of its transfer agency
21 activities, in the securities of an issuer
22 as part of any pension, retirement,
23 profit-sharing, bonus, thrift, savings,
24 incentive, or other similar benefit plan
25 for the employees of that issuer or its

1 affiliates (as defined in section 2 of
2 the Bank Holding Company Act of
3 1956), if the bank does not solicit
4 transactions or provide investment ad-
5 vice with respect to the purchase or
6 sale of securities in connection with
7 the plan.

8 “(II) DIVIDEND REINVESTMENT
9 PLANS.—The bank effects trans-
10 actions, as part of its transfer agency
11 activities, in the securities of an issuer
12 as part of that issuer’s dividend rein-
13 vestment plan, if—

14 “(aa) the bank does not so-
15 licit transactions or provide in-
16 vestment advice with respect to
17 the purchase or sale of securities
18 in connection with the plan; and

19 “(bb) the bank does not net
20 shareholders’ buy and sell orders,
21 other than for programs for odd-
22 lot holders or plans registered
23 with the Commission.

24 “(III) ISSUER PLANS.—The bank
25 effects transactions, as part of its

1 transfer agency activities, in the secu-
2 rities of an issuer as part of a plan or
3 program for the purchase or sale of
4 that issuer's shares, if—

5 “(aa) the bank does not so-
6 licit transactions or provide in-
7 vestment advice with respect to
8 the purchase or sale of securities
9 in connection with the plan or
10 program; and

11 “(bb) the bank does not net
12 shareholders' buy and sell orders,
13 other than for programs for odd-
14 lot holders or plans registered
15 with the Commission.

16 “(IV) PERMISSIBLE DELIVERY
17 OF MATERIALS.—The exception to
18 being considered a broker for a bank
19 engaged in activities described in sub-
20 clauses (I), (II), and (III) will not be
21 affected by delivery of written or elec-
22 tronic plan materials by a bank to em-
23 ployees of the issuer, shareholders of
24 the issuer, or members of affinity

1 groups of the issuer, so long as such
2 materials are—

3 “(aa) comparable in scope or
4 nature to that permitted by the
5 Commission as of the date of the
6 enactment of the Gramm-Leach-
7 Bliley Act; or

8 “(bb) otherwise permitted by
9 the Commission.

10 “(v) SWEEP ACCOUNTS.—The bank
11 effects transactions as part of a program
12 for the investment or reinvestment of de-
13 posit funds into any no-load, open-end
14 management investment company reg-
15 istered under the Investment Company Act
16 of 1940 that holds itself out as a money
17 market fund.

18 “(vi) AFFILIATE TRANSACTIONS.—
19 The bank effects transactions for the ac-
20 count of any affiliate of the bank (as de-
21 fined in section 2 of the Bank Holding
22 Company Act of 1956) other than—

23 “(I) a registered broker or deal-
24 er; or

1 “(II) an affiliate that is engaged
2 in merchant banking, as described in
3 section 4(k)(4)(H) of the Bank Hold-
4 ing Company Act of 1956.

5 “(vii) PRIVATE SECURITIES OFFER-
6 INGS.—The bank—

7 “(I) effects sales as part of a pri-
8 mary offering of securities not involv-
9 ing a public offering, pursuant to sec-
10 tion 3(b), 4(2), or 4(6) of the Securi-
11 ties Act of 1933 or the rules and reg-
12 ulations issued thereunder;

13 “(II) at any time after the date
14 that is 1 year after the date of the en-
15 actment of the Gramm-Leach-Bliley
16 Act, is not affiliated with a broker or
17 dealer that has been registered for
18 more than 1 year in accordance with
19 this Act, and engages in dealing, mar-
20 ket making, or underwriting activities,
21 other than with respect to exempted
22 securities; and

23 “(III) if the bank is not affiliated
24 with a broker or dealer, does not ef-
25 fect any primary offering described in

1 subclause (I) the aggregate amount of
2 which exceeds 25 percent of the cap-
3 ital of the bank, except that the limi-
4 tation of this subclause shall not
5 apply with respect to any sale of gov-
6 ernment securities or municipal secu-
7 rities.

8 “(viii) SAFEKEEPING AND CUSTODY
9 ACTIVITIES.—

10 “(I) IN GENERAL.—The bank, as
11 part of customary banking activities—

12 “(aa) provides safekeeping
13 or custody services with respect
14 to securities, including the exer-
15 cise of warrants and other rights
16 on behalf of customers;

17 “(bb) facilitates the transfer
18 of funds or securities, as a custo-
19 dian or a clearing agency, in con-
20 nection with the clearance and
21 settlement of its customers’
22 transactions in securities;

23 “(cc) effects securities lend-
24 ing or borrowing transactions
25 with or on behalf of customers as

1 part of services provided to cus-
2 tomers pursuant to division (aa)
3 or (bb) or invests cash collateral
4 pledged in connection with such
5 transactions;

6 “(dd) holds securities
7 pledged by a customer to another
8 person or securities subject to
9 purchase or resale agreements in-
10 volving a customer, or facilitates
11 the pledging or transfer of such
12 securities by book entry or as
13 otherwise provided under applica-
14 ble law, if the bank maintains
15 records separately identifying the
16 securities and the customer; or

17 “(ee) serves as a custodian
18 or provider of other related ad-
19 ministrative services to any indi-
20 vidual retirement account, pen-
21 sion, retirement, profit sharing,
22 bonus, thrift savings, incentive,
23 or other similar benefit plan.

24 “(II) EXCEPTION FOR CARRYING
25 BROKER ACTIVITIES.—The exception

1 to being considered a broker for a
2 bank engaged in activities described in
3 subclause (I) shall not apply if the
4 bank, in connection with such activi-
5 ties, acts in the United States as a
6 carrying broker (as such term, and
7 different formulations thereof, are
8 used in section 15(e)(3) of this title
9 and the rules and regulations there-
10 under) for any broker or dealer, un-
11 less such carrying broker activities are
12 engaged in with respect to government
13 securities (as defined in paragraph
14 (42) of this subsection).

15 “(ix) IDENTIFIED BANKING PROD-
16 UCTS.—The bank effects transactions in
17 identified banking products as defined in
18 section 206 of the Gramm-Leach-Bliley
19 Act.

20 “(x) MUNICIPAL SECURITIES.—The
21 bank effects transactions in municipal se-
22 curities.

23 “(xi) DE MINIMIS EXCEPTION.—The
24 bank effects, other than in transactions re-
25 ferred to in clauses (i) through (x), not

1 more than 500 transactions in securities in
2 any calendar year, and such transactions
3 are not effected by an employee of the
4 bank who is also an employee of a broker
5 or dealer.

6 “(C) EXECUTION BY BROKER OR DEAL-
7 ER.—The exception to being considered a
8 broker for a bank engaged in activities de-
9 scribed in clauses (ii), (iv), and (viii) of sub-
10 paragraph (B) shall not apply if the activities
11 described in such provisions result in the trade
12 in the United States of any security that is a
13 publicly traded security in the United States,
14 unless—

15 “(i) the bank directs such trade to a
16 registered broker or dealer for execution;

17 “(ii) the trade is a cross trade or
18 other substantially similar trade of a secu-
19 rity that—

20 “(I) is made by the bank or be-
21 tween the bank and an affiliated fidu-
22 ciary; and

23 “(II) is not in contravention of
24 fiduciary principles established under
25 applicable Federal or State law; or

1 “(iii) the trade is conducted in some
2 other manner permitted under rules, regu-
3 lations, or orders as the Commission may
4 prescribe or issue.

5 “(D) FIDUCIARY CAPACITY.—For purposes
6 of subparagraph (B)(ii), the term ‘fiduciary ca-
7 pacity’ means—

8 “(i) in the capacity as trustee, execu-
9 tor, administrator, registrar of stocks and
10 bonds, transfer agent, guardian, assignee,
11 receiver, or custodian under a uniform gift
12 to minor act, or as an investment adviser
13 if the bank receives a fee for its investment
14 advice;

15 “(ii) in any capacity in which the
16 bank possesses investment discretion on
17 behalf of another; or

18 “(iii) in any other similar capacity.

19 “(E) EXCEPTION FOR ENTITIES SUBJECT
20 TO SECTION 15(e).—The term ‘broker’ does not
21 include a bank that—

22 “(i) was, on the day before the date of
23 enactment of the Gramm-Leach-Bliley Act,
24 subject to section 15(e); and

1 “(ii) is subject to such restrictions
2 and requirements as the Commission con-
3 siders appropriate.”.

4 **SEC. 202. DEFINITION OF DEALER.**

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

7 “(5) DEALER.—

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

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

18 “(C) EXCEPTION FOR CERTAIN BANK AC-
19 TIVITIES.—A bank shall not be considered to be
20 a dealer because the bank engages in any of the
21 following activities under the conditions de-
22 scribed:

23 “(i) PERMISSIBLE SECURITIES TRANS-
24 ACTIONS.—The bank buys or sells—

1 “(I) commercial paper, bankers
2 acceptances, or commercial bills;

3 “(II) exempted securities;

4 “(III) qualified Canadian govern-
5 ment obligations as defined in section
6 5136 of the Revised Statutes of the
7 United States, in conformity with sec-
8 tion 15C of this title and the rules
9 and regulations thereunder, or obliga-
10 tions of the North American Develop-
11 ment Bank; or

12 “(IV) any standardized, credit
13 enhanced debt security issued by a
14 foreign government pursuant to the
15 March 1989 plan of then Secretary of
16 the Treasury Brady, used by such for-
17 eign government to retire outstanding
18 commercial bank loans.

19 “(ii) INVESTMENT, TRUSTEE, AND FI-
20 DUCIARY TRANSACTIONS.—The bank buys
21 or sells securities for investment
22 purposes—

23 “(I) for the bank; or

24 “(II) for accounts for which the
25 bank acts as a trustee or fiduciary.

1 “(iii) ASSET-BACKED TRANS-
2 ACTIONS.—The bank engages in the
3 issuance or sale to qualified investors,
4 through a grantor trust or other separate
5 entity, of securities backed by or rep-
6 resenting an interest in notes, drafts, ac-
7 ceptances, loans, leases, receivables, other
8 obligations (other than securities of which
9 the bank is not the issuer), or pools of any
10 such obligations predominantly originated
11 by—

12 “(I) the bank;

13 “(II) an affiliate of any such
14 bank other than a broker or dealer; or

15 “(III) a syndicate of banks of
16 which the bank is a member, if the
17 obligations or pool of obligations con-
18 sists of mortgage obligations or con-
19 sumer-related receivables.

20 “(iv) IDENTIFIED BANKING PROD-
21 UCTS.—The bank buys or sells identified
22 banking products, as defined in section
23 206 of the Gramm-Leach-Bliley Act.”.

1 **SEC. 203. REGISTRATION FOR SALES OF PRIVATE SECURI-**
2 **TIES OFFERINGS.**

3 Section 15A of the Securities Exchange Act of 1934
4 (15 U.S.C. 78o-3) is amended by inserting after sub-
5 section (i) the following new subsection:

6 “(j) REGISTRATION FOR SALES OF PRIVATE SECURI-
7 TIES OFFERINGS.—A registered securities association
8 shall create a limited qualification category for any associ-
9 ated person of a member who effects sales as part of a
10 primary offering of securities not involving a public offer-
11 ing, pursuant to section 3(b), 4(2), or 4(6) of the Securi-
12 ties Act of 1933 and the rules and regulations thereunder,
13 and shall deem qualified in such limited qualification cat-
14 egory, without testing, any bank employee who, in the six
15 month period preceding the date of the enactment of the
16 Gramm-Leach-Bliley Act, engaged in effecting such
17 sales.”.

18 **SEC. 204. INFORMATION SHARING.**

19 Section 18 of the Federal Deposit Insurance Act is
20 amended by adding at the end the following new sub-
21 section:

22 “(t) RECORDKEEPING REQUIREMENTS.—

23 “(1) REQUIREMENTS.—Each appropriate Fed-
24 eral banking agency, after consultation with and
25 consideration of the views of the Commission, shall
26 establish recordkeeping requirements for banks rely-

1 ing on exceptions contained in paragraphs (4) and
2 (5) of section 3(a) of the Securities Exchange Act of
3 1934. Such recordkeeping requirements shall be suf-
4 ficient to demonstrate compliance with the terms of
5 such exceptions and be designed to facilitate compli-
6 ance with such exceptions.

7 “(2) AVAILABILITY TO COMMISSION; CONFIDEN-
8 TIALITY.—Each appropriate Federal banking agency
9 shall make any information required under para-
10 graph (1) available to the Commission upon request.
11 Notwithstanding any other provision of law, the
12 Commission shall not be compelled to disclose any
13 such information. Nothing in this paragraph shall
14 authorize the Commission to withhold information
15 from Congress, or prevent the Commission from
16 complying with a request for information from any
17 other Federal department or agency or any self-reg-
18 ulatory organization requesting the information for
19 purposes within the scope of its jurisdiction, or com-
20 plying with an order of a court of the United States
21 in an action brought by the United States or the
22 Commission. For purposes of section 552 of title 5,
23 United States Code, this paragraph shall be consid-
24 ered a statute described in subsection (b)(3)(B) of
25 such section 552.

1 “(3) DEFINITIONS.—As used in this subsection
2 the term ‘Commission’ means the Securities and Ex-
3 change Commission.”.

4 **SEC. 205. TREATMENT OF NEW HYBRID PRODUCTS.**

5 Section 15 of the Securities Exchange Act of 1934
6 (15 U.S.C. 78o) is amended by adding at the end the fol-
7 lowing new subsection:

8 “(i) RULEMAKING TO EXTEND REQUIREMENTS TO
9 NEW HYBRID PRODUCTS.—

10 “(1) CONSULTATION.—Prior to commencing a
11 rulemaking under this subsection, the Commission
12 shall consult with and seek the concurrence of the
13 Board concerning the imposition of broker or dealer
14 registration requirements with respect any new hy-
15 brid product. In developing and promulgating rules
16 under this subsection, the Commission shall consider
17 the views of the Board, including views with respect
18 to the nature of the new hybrid product; the history,
19 purpose, extent, and appropriateness of the regula-
20 tion of the new product under the Federal banking
21 laws; and the impact of the proposed rule on the
22 banking industry.

23 “(2) LIMITATION.—The Commission shall
24 not—

1 “(A) require a bank to register as a broker
2 or dealer under this section because the bank
3 engages in any transaction in, or buys or sells,
4 a new hybrid product; or

5 “(B) bring an action against a bank for a
6 failure to comply with a requirement described
7 in subparagraph (A),
8 unless the Commission has imposed such require-
9 ment by rule or regulation issued in accordance with
10 this section.

11 “(3) CRITERIA FOR RULEMAKING.—The Com-
12 mission shall not impose a requirement under para-
13 graph (2) of this subsection with respect to any new
14 hybrid product unless the Commission determines
15 that—

16 “(A) the new hybrid product is a security;
17 and

18 “(B) imposing such requirement is nec-
19 essary and appropriate in the public interest
20 and for the protection of investors.

21 “(4) CONSIDERATIONS.—In making a deter-
22 mination under paragraph (3), the Commission shall
23 consider—

24 “(A) the nature of the new hybrid product;
25 and

1 “(B) the history, purpose, extent, and ap-
2 propriateness of the regulation of the new hy-
3 brid product under the Federal securities laws
4 and under the Federal banking laws.

5 “(5) OBJECTION TO COMMISSION REGULA-
6 TION.—

7 “(A) FILING OF PETITION FOR REVIEW.—
8 The Board may obtain review of any final regu-
9 lation described in paragraph (2) in the United
10 States Court of Appeals for the District of Co-
11 lumbia Circuit by filing in such court, not later
12 than 60 days after the date of publication of
13 the final regulation, a written petition request-
14 ing that the regulation be set aside. Any pro-
15 ceeding to challenge any such rule shall be ex-
16 pedited by the Court of Appeals.

17 “(B) TRANSMITTAL OF PETITION AND
18 RECORD.—A copy of a petition described in
19 subparagraph (A) shall be transmitted as soon
20 as possible by the Clerk of the Court to an offi-
21 cer or employee of the Commission designated
22 for that purpose. Upon receipt of the petition,
23 the Commission shall file with the court the
24 regulation under review and any documents re-

1 ferred to therein, and any other relevant mate-
2 rials prescribed by the court.

3 “(C) EXCLUSIVE JURISDICTION.—On the
4 date of the filing of the petition under subpara-
5 graph (A), the court has jurisdiction, which be-
6 comes exclusive on the filing of the materials
7 set forth in subparagraph (B), to affirm and
8 enforce or to set aside the regulation at issue.

9 “(D) STANDARD OF REVIEW.—The court
10 shall determine to affirm and enforce or set
11 aside a regulation of the Commission under this
12 subsection, based on the determination of the
13 court as to whether—

14 “(i) the subject product is a new hy-
15 brid product, as defined in this subsection;

16 “(ii) the subject product is a security;
17 and

18 “(iii) imposing a requirement to reg-
19 ister as a broker or dealer for banks en-
20 gaging in transactions in such product is
21 appropriate in light of the history, purpose,
22 and extent of regulation under the Federal
23 securities laws and under the Federal
24 banking laws, giving deference neither to

1 the views of the Commission nor the
2 Board.

3 “(E) JUDICIAL STAY.—The filing of a peti-
4 tion by the Board pursuant to subparagraph
5 (A) shall operate as a judicial stay, until the
6 date on which the determination of the court is
7 final (including any appeal of such determina-
8 tion).

9 “(F) OTHER AUTHORITY TO CHAL-
10 LENGE.—Any aggrieved party may seek judicial
11 review of the Commission’s rulemaking under
12 this subsection pursuant to section 25 of this
13 title.

14 “(6) DEFINITIONS.—For purposes of this sub-
15 section:

16 “(A) NEW HYBRID PRODUCT.—The term
17 ‘new hybrid product’ means a product that—

18 “(i) was not subjected to regulation
19 by the Commission as a security prior to
20 the date of the enactment of the Gramm-
21 Leach-Bliley Act;

22 “(ii) is not an identified banking
23 product as such term is defined in section
24 206 of such Act; and

1 “(iii) is not an equity swap within the
2 meaning of section 206(a)(6) of such Act.

3 “(B) BOARD.—The term ‘Board’ means
4 the Board of Governors of the Federal Reserve
5 System.”.

6 **SEC. 206. DEFINITION OF IDENTIFIED BANKING PRODUCT.**

7 (a) DEFINITION OF IDENTIFIED BANKING PROD-
8 UCT.—For purposes of paragraphs (4) and (5) of section
9 3(a) of the Securities Exchange Act of 1934 (15 U.S.C.
10 78c(a) (4), (5)), the term “identified banking product”
11 means—

12 (1) a deposit account, savings account, certifi-
13 cate of deposit, or other deposit instrument issued
14 by a bank;

15 (2) a banker’s acceptance;

16 (3) a letter of credit issued or loan made by a
17 bank;

18 (4) a debit account at a bank arising from a
19 credit card or similar arrangement;

20 (5) a participation in a loan which the bank or
21 an affiliate of the bank (other than a broker or deal-
22 er) funds, participates in, or owns that is sold—

23 (A) to qualified investors; or

24 (B) to other persons that—

1 (i) have the opportunity to review and
2 assess any material information, including
3 information regarding the borrower's cred-
4 itworthiness; and

5 (ii) based on such factors as financial
6 sophistication, net worth, and knowledge
7 and experience in financial matters, have
8 the capability to evaluate the information
9 available, as determined under generally
10 applicable banking standards or guidelines;
11 or

12 (6) any swap agreement, including credit and
13 equity swaps, except that an equity swap that is sold
14 directly to any person other than a qualified investor
15 (as defined in section 3(a)(54) of the Securities Act
16 of 1934) shall not be treated as an identified bank-
17 ing product.

18 (b) DEFINITION OF SWAP AGREEMENT.—For pur-
19 poses of subsection (a)(6), the term “swap agreement”
20 means any individually negotiated contract, agreement,
21 warrant, note, or option that is based, in whole or in part,
22 on the value of, any interest in, or any quantitative meas-
23 ure or the occurrence of any event relating to, one or more
24 commodities, securities, currencies, interest or other rates,
25 indices, or other assets, but does not include any other

1 identified banking product, as defined in paragraphs (1)
2 through (5) of subsection (a).

3 (c) CLASSIFICATION LIMITED.—Classification of a
4 particular product as an identified banking product pursu-
5 ant to this section shall not be construed as finding or
6 implying that such product is or is not a security for any
7 purpose under the securities laws, or is or is not an ac-
8 count, agreement, contract, or transaction for any purpose
9 under the Commodity Exchange Act.

10 (d) INCORPORATED DEFINITIONS.—For purposes of
11 this section, the terms “bank” and “qualified investor”
12 have the same meanings as given in section 3(a) of the
13 Securities Exchange Act of 1934, as amended by this Act.

14 **SEC. 207. ADDITIONAL DEFINITIONS.**

15 Section 3(a) of the Securities Exchange Act of 1934
16 is amended by adding at the end the following new para-
17 graph:

18 “(54) QUALIFIED INVESTOR.—

19 “(A) DEFINITION.—Except as provided in
20 subparagraph (B), for purposes of this title, the
21 term ‘qualified investor’ means—

22 “(i) any investment company reg-
23 istered with the Commission under section
24 8 of the Investment Company Act of 1940;

1 “(ii) any issuer eligible for an exclu-
2 sion from the definition of investment com-
3 pany pursuant to section 3(c)(7) of the In-
4 vestment Company Act of 1940;

5 “(iii) any bank (as defined in para-
6 graph (6) of this subsection), savings asso-
7 ciation (as defined in section 3(b) of the
8 Federal Deposit Insurance Act), broker,
9 dealer, insurance company (as defined in
10 section 2(a)(13) of the Securities Act of
11 1933), or business development company
12 (as defined in section 2(a)(48) of the In-
13 vestment Company Act of 1940);

14 “(iv) any small business investment
15 company licensed by the United States
16 Small Business Administration under sec-
17 tion 301 (c) or (d) of the Small Business
18 Investment Act of 1958;

19 “(v) any State sponsored employee
20 benefit plan, or any other employee benefit
21 plan, within the meaning of the Employee
22 Retirement Income Security Act of 1974,
23 other than an individual retirement ac-
24 count, if the investment decisions are made
25 by a plan fiduciary, as defined in section

1 3(21) of that Act, which is either a bank,
2 savings and loan association, insurance
3 company, or registered investment adviser;

4 “(vi) any trust whose purchases of se-
5 curities are directed by a person described
6 in clauses (i) through (v) of this subpara-
7 graph;

8 “(vii) any market intermediary ex-
9 empt under section 3(c)(2) of the Invest-
10 ment Company Act of 1940;

11 “(viii) any associated person of a
12 broker or dealer other than a natural per-
13 son;

14 “(ix) any foreign bank (as defined in
15 section 1(b)(7) of the International Bank-
16 ing Act of 1978);

17 “(x) the government of any foreign
18 country;

19 “(xi) any corporation, company, or
20 partnership that owns and invests on a dis-
21 cretionary basis, not less than \$25,000,000
22 in investments;

23 “(xii) any natural person who owns
24 and invests on a discretionary basis, not
25 less than \$25,000,000 in investments;

1 “(xiii) any government or political
2 subdivision, agency, or instrumentality of a
3 government who owns and invests on a dis-
4 cretionary basis not less than \$50,000,000
5 in investments; or

6 “(xiv) any multinational or supra-
7 national entity or any agency or instru-
8 mentality thereof.

9 “(B) ALTERED THRESHOLDS FOR ASSET-
10 BACK SECURITIES AND LOAN PARTICIPA-
11 TIONS.—For purposes sections 3(a)(5)(C)(iii) of
12 this title and section 206(a)(5) of the Gramm-
13 Leach-Bliley Act, the term ‘qualified investor’
14 has the meaning given such term by subpara-
15 graph (A) of this paragraph except that clauses
16 (xi) and (xii) shall be applied by substituting
17 ‘\$10,000,000’ for ‘\$25,000,000’.

18 “(C) ADDITIONAL AUTHORITY.—The Com-
19 mission may, by rule or order, define a ‘quali-
20 fied investor’ as any other person, taking into
21 consideration such factors as the financial so-
22 phistication of the person, net worth, and
23 knowledge and experience in financial mat-
24 ters.”.

1 **SEC. 208. GOVERNMENT SECURITIES DEFINED.**

2 Section 3(a)(42) of the Securities Exchange Act of
3 1934 (15 U.S.C. 78c(a)(42)) is amended—

4 (1) by striking “or” at the end of subparagraph
5 (C);

6 (2) by striking the period at the end of sub-
7 paragraph (D) and inserting “; or”; and

8 (3) by adding at the end the following new sub-
9 paragraph:

10 “(E) for purposes of sections 15, 15C, and
11 17A as applied to a bank, a qualified Canadian
12 government obligation as defined in section
13 5136 of the Revised Statutes of the United
14 States.”.

15 **SEC. 209. EFFECTIVE DATE.**

16 This subtitle shall take effect at the end of the 18-
17 month period beginning on the date of the enactment of
18 this Act.

19 **SEC. 210. RULE OF CONSTRUCTION.**

20 Nothing in this Act shall supersede, affect, or other-
21 wise limit the scope and applicability of the Commodity
22 Exchange Act (7 U.S.C. 1 et seq.).

1 **Subtitle B—Bank Investment**
2 **Company Activities**

3 **SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY**
4 **AFFILIATED BANK.**

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

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

10 (2) by striking “(f) Every registered” and in-
11 serting the following:

12 “(f) CUSTODY OF SECURITIES.—

13 “(1) Every registered”;

14 (3) by redesignating the second, third, fourth,
15 and fifth sentences of such subsection as paragraphs
16 (2) through (5), respectively, and indenting the left
17 margin of such paragraphs appropriately; and

18 (4) by adding at the end the following new
19 paragraph:

20 “(6) The Commission may, after consultation
21 with and taking into consideration the views of the
22 Federal banking agencies (as defined in section 3 of
23 the Federal Deposit Insurance Act), adopt rules and
24 regulations, and issue orders, consistent with the
25 protection of investors, prescribing the conditions

1 under which a bank, or an affiliated person of a
2 bank, either of which is an affiliated person, pro-
3 moter, organizer, or sponsor of, or principal under-
4 writer for, a registered management company may
5 serve as custodian of that registered management
6 company.”.

7 (b) UNIT INVESTMENT TRUSTS.—Section 26 of the
8 Investment Company Act of 1940 (15 U.S.C. 80a–26) is
9 amended—

10 (1) by redesignating subsections (b) through (e)
11 as subsections (c) through (f), respectively; and

12 (2) by inserting after subsection (a) the fol-
13 lowing new subsection:

14 “(b) The Commission may, after consultation with
15 and taking into consideration the views of the Federal
16 banking agencies (as defined in section 3 of the Federal
17 Deposit Insurance Act), adopt rules and regulations, and
18 issue orders, consistent with the protection of investors,
19 prescribing the conditions under which a bank, or an affili-
20 ated person of a bank, either of which is an affiliated per-
21 son of a principal underwriter for, or depositor of, a reg-
22 istered unit investment trust, may serve as trustee or cus-
23 todian under subsection (a)(1).”.

1 **SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COM-**
2 **PANY.**

3 Section 17(a) of the Investment Company Act of
4 1940 (15 U.S.C. 80a-17(a)) is amended—

5 (1) by striking “or” at the end of paragraph
6 (2);

7 (2) by striking the period at the end of para-
8 graph (3) and inserting “; or”; and

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

11 “(4) to loan money or other property to such
12 registered company, or to any company controlled by
13 such registered company, in contravention of such
14 rules, regulations, or orders as the Commission may,
15 after consultation with and taking into consideration
16 the views of the Federal banking agencies (as de-
17 fined in section 3 of the Federal Deposit Insurance
18 Act), prescribe or issue consistent with the protec-
19 tion of investors.”.

20 **SEC. 213. INDEPENDENT DIRECTORS.**

21 (a) IN GENERAL.—Section 2(a)(19)(A) of the Invest-
22 ment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)(A))
23 is amended—

24 (1) by striking clause (v) and inserting the fol-
25 lowing new clause:

1 “(v) any person or any affiliated per-
2 son of a person (other than a registered in-
3 vestment company) that, at any time dur-
4 ing the 6-month period preceding the date
5 of the determination of whether that per-
6 son or affiliated person is an interested
7 person, has executed any portfolio trans-
8 actions for, engaged in any principal trans-
9 actions with, or distributed shares for—

10 “(I) the investment company;

11 “(II) any other investment com-
12 pany having the same investment ad-
13 viser as such investment company or
14 holding itself out to investors as a re-
15 lated company for purposes of invest-
16 ment or investor services; or

17 “(III) any account over which the
18 investment company’s investment ad-
19 viser has brokerage placement discre-
20 tion,”;

21 (2) by redesignating clause (vi) as clause (vii);

22 and

23 (3) by inserting after clause (v) the following
24 new clause:

1 “(vi) any person or any affiliated per-
2 son of a person (other than a registered in-
3 vestment company) that, at any time dur-
4 ing the 6-month period preceding the date
5 of the determination of whether that per-
6 son or affiliated person is an interested
7 person, has loaned money or other prop-
8 erty to—

9 “(I) the investment company;

10 “(II) any other investment com-
11 pany having the same investment ad-
12 viser as such investment company or
13 holding itself out to investors as a re-
14 lated company for purposes of invest-
15 ment or investor services; or

16 “(III) any account for which the
17 investment company’s investment ad-
18 viser has borrowing authority,”.

19 (b) CONFORMING AMENDMENT.—Section
20 2(a)(19)(B) of the Investment Company Act of 1940 (15
21 U.S.C. 80a-2(a)(19)(B)) is amended—

22 (1) by striking clause (v) and inserting the fol-
23 lowing new clause:

24 “(v) any person or any affiliated per-
25 son of a person (other than a registered in-

1 investment company) that, at any time dur-
2 ing the 6-month period preceding the date
3 of the determination of whether that per-
4 son or affiliated person is an interested
5 person, has executed any portfolio trans-
6 actions for, engaged in any principal trans-
7 actions with, or distributed shares for—

8 “(I) any investment company for
9 which the investment adviser or prin-
10 cipal underwriter serves as such;

11 “(II) any investment company
12 holding itself out to investors, for pur-
13 poses of investment or investor serv-
14 ices, as a company related to any in-
15 vestment company for which the in-
16 vestment adviser or principal under-
17 writer serves as such; or

18 “(III) any account over which the
19 investment adviser has brokerage
20 placement discretion,”;

21 (2) by redesignating clause (vi) as clause (vii);

22 and

23 (3) by inserting after clause (v) the following
24 new clause:

1 “(vi) any person or any affiliated per-
2 son of a person (other than a registered in-
3 vestment company) that, at any time dur-
4 ing the 6-month period preceding the date
5 of the determination of whether that per-
6 son or affiliated person is an interested
7 person, has loaned money or other prop-
8 erty to—

9 “(I) any investment company for
10 which the investment adviser or prin-
11 cipal underwriter serves as such;

12 “(II) any investment company
13 holding itself out to investors, for pur-
14 poses of investment or investor serv-
15 ices, as a company related to any in-
16 vestment company for which the in-
17 vestment adviser or principal under-
18 writer serves as such; or

19 “(III) any account for which the
20 investment adviser has borrowing au-
21 thority,”.

22 (c) AFFILIATION OF DIRECTORS.—Section 10(c) of
23 the Investment Company Act of 1940 (15 U.S.C. 80a-
24 10(c)) is amended by striking “bank, except” and insert-
25 ing “bank (together with its affiliates and subsidiaries) or

1 any one bank holding company (together with its affiliates
2 and subsidiaries) (as such terms are defined in section 2
3 of the Bank Holding Company Act of 1956), except”.

4 **SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

5 Section 35(a) of the Investment Company Act of
6 1940 (15 U.S.C. 80a-34(a)) is amended to read as fol-
7 lows:

8 “(a) MISREPRESENTATION OF GUARANTEES.—

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

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

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

20 “(C) is guaranteed by or is otherwise an
21 obligation of any bank or insured depository in-
22 stitution.

23 “(2) DISCLOSURES.—Any person issuing or
24 selling the securities of a registered investment com-
25 pany that is advised by, or sold through, a bank

1 shall prominently disclose that an investment in the
2 company is not insured by the Federal Deposit In-
3 surance Corporation or any other government agen-
4 cy. The Commission may, after consultation with
5 and taking into consideration the views of the Fed-
6 eral banking agencies (as defined in section 3 of the
7 Federal Deposit Insurance Act), adopt rules and
8 regulations, and issue orders, consistent with the
9 protection of investors, prescribing the manner in
10 which the disclosure under this paragraph shall be
11 provided.

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

16 **SEC. 215. DEFINITION OF BROKER UNDER THE INVEST-**
17 **MENT COMPANY ACT OF 1940.**

18 Section 2(a)(6) of the Investment Company Act of
19 1940 (15 U.S.C. 80a-2(a)(6)) is amended to read as fol-
20 lows:

21 “(6) The term ‘broker’ has the same meaning
22 as given in section 3 of the Securities Exchange Act
23 of 1934, except that such term does not include any
24 person solely by reason of the fact that such person

1 is an underwriter for one or more investment compa-
2 nies.”.

3 **SEC. 216. DEFINITION OF DEALER UNDER THE INVEST-**
4 **MENT COMPANY ACT OF 1940.**

5 Section 2(a)(11) of the Investment Company Act of
6 1940 (15 U.S.C. 80a-2(a)(11)) is amended to read as fol-
7 lows:

8 “(11) The term ‘dealer’ has the same meaning
9 as given in the Securities Exchange Act of 1934, but
10 does not include an insurance company or invest-
11 ment company.”.

12 **SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINI-**
13 **TION OF INVESTMENT ADVISER FOR BANKS**
14 **THAT ADVISE INVESTMENT COMPANIES.**

15 (a) INVESTMENT ADVISER.—Section 202(a)(11)(A)
16 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-
17 2(a)(11)(A)) is amended by striking “investment com-
18 pany” and inserting “investment company, except that the
19 term ‘investment adviser’ includes any bank or bank hold-
20 ing company to the extent that such bank or bank holding
21 company serves or acts as an investment adviser to a reg-
22 istered investment company, but if, in the case of a bank,
23 such services or actions are performed through a sepa-
24 rately identifiable department or division, the department

1 or division, and not the bank itself, shall be deemed to
2 be the investment adviser”.

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

7 “(26) The term ‘separately identifiable depart-
8 ment or division’ of a bank means a unit—

9 “(A) that is under the direct supervision of
10 an officer or officers designated by the board of
11 directors of the bank as responsible for the day-
12 to-day conduct of the bank’s investment adviser
13 activities for one or more investment companies,
14 including the supervision of all bank employees
15 engaged in the performance of such activities;
16 and

17 “(B) for which all of the records relating
18 to its investment adviser activities are sepa-
19 rately maintained in or extractable from such
20 unit’s own facilities or the facilities of the bank,
21 and such records are so maintained or other-
22 wise accessible as to permit independent exam-
23 ination and enforcement by the Commission of
24 this Act or the Investment Company Act of
25 1940 and rules and regulations promulgated

1 under this Act or the Investment Company Act
2 of 1940.”.

3 **SEC. 218. DEFINITION OF BROKER UNDER THE INVEST-**
4 **MENT ADVISERS ACT OF 1940.**

5 Section 202(a)(3) of the Investment Advisers Act of
6 1940 (15 U.S.C. 80b-2(a)(3)) is amended to read as fol-
7 lows:

8 “(3) The term ‘broker’ has the same meaning
9 as given in section 3 of the Securities Exchange Act
10 of 1934.”.

11 **SEC. 219. DEFINITION OF DEALER UNDER THE INVEST-**
12 **MENT ADVISERS ACT OF 1940.**

13 Section 202(a)(7) of the Investment Advisers Act of
14 1940 (15 U.S.C. 80b-2(a)(7)) is amended to read as fol-
15 lows:

16 “(7) The term ‘dealer’ has the same meaning as
17 given in section 3 of the Securities Exchange Act of
18 1934, but does not include an insurance company or
19 investment company.”.

20 **SEC. 220. INTERAGENCY CONSULTATION.**

21 The Investment Advisers Act of 1940 (15 U.S.C.
22 80b-1 et seq.) is amended by inserting after section 210
23 the following new section:

1 **“SEC. 210A. CONSULTATION.**

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

4 “(1) The appropriate Federal banking agency
5 shall provide the Commission upon request the re-
6 sults of any examination, reports, records, or other
7 information to which such agency may have access—

8 “(A) with respect to the investment advi-
9 sory activities of any—

10 “(i) bank holding company;

11 “(ii) bank; or

12 “(iii) separately identifiable depart-
13 ment or division of a bank,

14 that is registered under section 203 of this title;
15 and

16 “(B) in the case of a bank holding com-
17 pany or bank that has a subsidiary or a sepa-
18 rately identifiable department or division reg-
19 istered under that section, with respect to the
20 investment advisory activities of such bank or
21 bank holding company.

22 “(2) The Commission shall provide to the ap-
23 propriate Federal banking agency upon request the
24 results of any examination, reports, records, or other
25 information with respect to the investment advisory
26 activities of any bank holding company, bank, or

1 separately identifiable department or division of a
2 bank, which is registered under section 203 of this
3 title.

4 “(3) Notwithstanding any other provision of
5 law, the Commission and the appropriate Federal
6 banking agencies shall not be compelled to disclose
7 any information provided under paragraph (1) or
8 (2). Nothing in this paragraph shall authorize the
9 Commission or such agencies to withhold informa-
10 tion from Congress, or prevent the Commission or
11 such agencies from complying with a request for in-
12 formation from any other Federal department or
13 agency or any self-regulatory organization requesting
14 the information for purposes within the scope of its
15 jurisdiction, or complying with an order of a court
16 of the United States in an action brought by the
17 United States, the Commission, or such agencies.
18 For purposes of section 552 of title 5, United States
19 Code, this paragraph shall be considered a statute
20 described in subsection (b)(3)(B) of such section
21 552.

22 “(b) EFFECT ON OTHER AUTHORITY.—Nothing in
23 this section shall limit in any respect the authority of the
24 appropriate Federal banking agency with respect to such
25 bank holding company (or affiliates or subsidiaries there-

1 of), bank, or subsidiary, department, or division or a bank
2 under any other provision of law.

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

7 **SEC. 221. TREATMENT OF BANK COMMON TRUST FUNDS.**

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

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

23 “(iii) any interest or participation in any
24 common trust fund or similar fund that is ex-
25 cluded from the definition of the term ‘invest-

1 ment company' under section 3(c)(3) of the In-
2 vestment Company Act of 1940;”.

3 (c) INVESTMENT COMPANY ACT OF 1940.—Section
4 3(c)(3) of the Investment Company Act of 1940 (15
5 U.S.C. 80a-3(c)(3)) is amended by inserting before the
6 period the following: “, if—

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

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

14 “(i) advertised; or

15 “(ii) offered for sale to the general
16 public; and

17 “(C) fees and expenses charged by such
18 fund are not in contravention of fiduciary prin-
19 ciples established under applicable Federal or
20 State law”.

21 **SEC. 222. STATUTORY DISQUALIFICATION FOR BANK**
22 **WRONGDOING.**

23 Section 9(a) of the Investment Company Act of 1940
24 (15 U.S.C. 80a-9(a)) is amended in paragraphs (1) and

1 (2) by striking “securities dealer, transfer agent,” and in-
2 serting “securities dealer, bank, transfer agent,”.

3 **SEC. 223. CONFORMING CHANGE IN DEFINITION.**

4 Section 2(a)(5) of the Investment Company Act of
5 1940 (15 U.S.C. 80a-2(a)(5)) is amended by striking
6 “(A) a banking institution organized under the laws of the
7 United States” and inserting “(A) a depository institution
8 (as defined in section 3 of the Federal Deposit Insurance
9 Act) or a branch or agency of a foreign bank (as such
10 terms are defined in section 1(b) of the International
11 Banking Act of 1978)”.

12 **SEC. 224. CONFORMING AMENDMENT.**

13 Section 202 of the Investment Advisers Act of 1940
14 (15 U.S.C. 80b-2) is amended by adding at the end the
15 following new subsection:

16 “(c) CONSIDERATION OF PROMOTION OF EFFI-
17 CIENCY, COMPETITION, AND CAPITAL FORMATION.—
18 Whenever pursuant to this title the Commission is en-
19 gaged in rulemaking and is required to consider or deter-
20 mine whether an action is necessary or appropriate in the
21 public interest, the Commission shall also consider, in ad-
22 dition to the protection of investors, whether the action
23 will promote efficiency, competition, and capital forma-
24 tion.”.

1 **SEC. 225. EFFECTIVE DATE.**

2 This subtitle shall take effect 18 months after the
3 date of the enactment of this Act.

4 **Subtitle C—Securities and Ex-**
5 **change Commission Supervision**
6 **of Investment Bank Holding**
7 **Companies**

8 **SEC. 231. SUPERVISION OF INVESTMENT BANK HOLDING**
9 **COMPANIES BY THE SECURITIES AND EX-**
10 **CHANGE COMMISSION.**

11 (a) AMENDMENT.—Section 17 of the Securities Ex-
12 change Act of 1934 (15 U.S.C. 78q) is amended—

13 (1) by redesignating subsection (i) as subsection
14 (k); and

15 (2) by inserting after subsection (h) the fol-
16 lowing new subsections:

17 “(i) INVESTMENT BANK HOLDING COMPANIES.—

18 “(1) ELECTIVE SUPERVISION OF AN INVEST-
19 MENT BANK HOLDING COMPANY NOT HAVING A
20 BANK OR SAVINGS ASSOCIATION AFFILIATE.—

21 “(A) IN GENERAL.—An investment bank
22 holding company that is not—

23 “(i) an affiliate of an insured bank
24 (other than an institution described in sub-
25 paragraph (D), (F), or (G) of section
26 2(c)(2), or held under section 4(f), of the

1 Bank Holding Company Act of 1956), or
2 a savings association;

3 “(ii) a foreign bank, foreign company,
4 or company that is described in section
5 8(a) of the International Banking Act of
6 1978; or

7 “(iii) a foreign bank that controls, di-
8 rectly or indirectly, a corporation chartered
9 under section 25A of the Federal Reserve
10 Act,

11 may elect to become supervised by filing with
12 the Commission a notice of intention to become
13 supervised, pursuant to subparagraph (B) of
14 this paragraph. Any investment bank holding
15 company filing such a notice shall be supervised
16 in accordance with this section and comply with
17 the rules promulgated by the Commission appli-
18 cable to supervised investment bank holding
19 companies.

20 “(B) NOTIFICATION OF STATUS AS A SU-
21 PERVISED INVESTMENT BANK HOLDING COM-
22 PANY.—An investment bank holding company
23 that elects under subparagraph (A) to become
24 supervised by the Commission shall file with the
25 Commission a written notice of intention to be-

1 come supervised by the Commission in such
2 form and containing such information and doc-
3 uments concerning such investment bank hold-
4 ing company as the Commission, by rule, may
5 prescribe as necessary or appropriate in fur-
6 therance of the purposes of this section. Unless
7 the Commission finds that such supervision is
8 not necessary or appropriate in furtherance of
9 the purposes of this section, such supervision
10 shall become effective 45 days after the date of
11 receipt of such written notice by the Commis-
12 sion or within such shorter time period as the
13 Commission, by rule or order, may determine.

14 “(2) ELECTION NOT TO BE SUPERVISED BY
15 THE COMMISSION AS AN INVESTMENT BANK HOLD-
16 ING COMPANY.—

17 “(A) VOLUNTARY WITHDRAWAL.—A su-
18 pervised investment bank holding company that
19 is supervised pursuant to paragraph (1) may,
20 upon such terms and conditions as the Commis-
21 sion deems necessary or appropriate, elect not
22 to be supervised by the Commission by filing a
23 written notice of withdrawal from Commission
24 supervision. Such notice shall not become effec-
25 tive until 1 year after receipt by the Commis-

1 sion, or such shorter or longer period as the
2 Commission deems necessary or appropriate to
3 ensure effective supervision of the material
4 risks to the supervised investment bank holding
5 company and to the affiliated broker or dealer,
6 or to prevent evasion of the purposes of this
7 section.

8 “(B) DISCONTINUATION OF COMMISSION
9 SUPERVISION.—If the Commission finds that
10 any supervised investment bank holding com-
11 pany that is supervised pursuant to paragraph
12 (1) is no longer in existence or has ceased to be
13 an investment bank holding company, or if the
14 Commission finds that continued supervision of
15 such a supervised investment bank holding com-
16 pany is not consistent with the purposes of this
17 section, the Commission may discontinue the
18 supervision pursuant to a rule or order, if any,
19 promulgated by the Commission under this sec-
20 tion.

21 “(3) SUPERVISION OF INVESTMENT BANK
22 HOLDING COMPANIES.—

23 “(A) RECORDKEEPING AND REPORTING.—

24 “(i) IN GENERAL.—Every supervised
25 investment bank holding company and

1 each affiliate thereof shall make and keep
2 for prescribed periods such records, furnish
3 copies thereof, and make such reports, as
4 the Commission may require by rule, in
5 order to keep the Commission informed as
6 to—

7 “(I) the company’s or affiliate’s
8 activities, financial condition, policies,
9 systems for monitoring and control-
10 ling financial and operational risks,
11 and transactions and relationships be-
12 tween any broker or dealer affiliate of
13 the supervised investment bank hold-
14 ing company; and

15 “(II) the extent to which the
16 company or affiliate has complied with
17 the provisions of this Act and regula-
18 tions prescribed and orders issued
19 under this Act.

20 “(ii) FORM AND CONTENTS.—Such
21 records and reports shall be prepared in
22 such form and according to such specifica-
23 tions (including certification by an inde-
24 pendent public accountant), as the Com-
25 mission may require and shall be provided

1 promptly at any time upon request by the
2 Commission. Such records and reports may
3 include—

4 “(I) a balance sheet and income
5 statement;

6 “(II) an assessment of the con-
7 solidated capital of the supervised in-
8 vestment bank holding company;

9 “(III) an independent auditor’s
10 report attesting to the supervised in-
11 vestment bank holding company’s
12 compliance with its internal risk man-
13 agement and internal control objec-
14 tives; and

15 “(IV) reports concerning the ex-
16 tent to which the company or affiliate
17 has complied with the provisions of
18 this title and any regulations pre-
19 scribed and orders issued under this
20 title.

21 “(B) USE OF EXISTING REPORTS.—

22 “(i) IN GENERAL.—The Commission
23 shall, to the fullest extent possible, accept
24 reports in fulfillment of the requirements
25 under this paragraph that the supervised

1 investment bank holding company or its af-
2 filiates have been required to provide to
3 another appropriate regulatory agency or
4 self-regulatory organization.

5 “(ii) AVAILABILITY.—A supervised in-
6 vestment bank holding company or an af-
7 filiate of such company shall provide to the
8 Commission, at the request of the Commis-
9 sion, any report referred to in clause (i).

10 “(C) EXAMINATION AUTHORITY.—

11 “(i) FOCUS OF EXAMINATION AU-
12 THORITY.—The Commission may make ex-
13 aminations of any supervised investment
14 bank holding company and any affiliate of
15 such company in order to—

16 “(I) inform the Commission
17 regarding—

18 “(aa) the nature of the oper-
19 ations and financial condition of
20 the supervised investment bank
21 holding company and its affili-
22 ates;

23 “(bb) the financial and oper-
24 ational risks within the super-
25 vised investment bank holding

1 company that may affect any
2 broker or dealer controlled by
3 such supervised investment bank
4 holding company; and

5 “(cc) the systems of the su-
6 pervised investment bank holding
7 company and its affiliates for
8 monitoring and controlling those
9 risks; and

10 “(II) monitor compliance with
11 the provisions of this subsection, pro-
12 visions governing transactions and re-
13 lationships between any broker or
14 dealer affiliated with the supervised
15 investment bank holding company and
16 any of the company’s other affiliates,
17 and applicable provisions of sub-
18 chapter II of chapter 53, title 31,
19 United States Code (commonly re-
20 ferred to as the ‘Bank Secrecy Act’)
21 and regulations thereunder.

22 “(ii) RESTRICTED FOCUS OF EXAMI-
23 NATIONS.—The Commission shall limit the
24 focus and scope of any examination of a

1 supervised investment bank holding com-
2 pany to—

3 “(I) the company; and

4 “(II) any affiliate of the company
5 that, because of its size, condition, or
6 activities, the nature or size of the
7 transactions between such affiliate
8 and any affiliated broker or dealer, or
9 the centralization of functions within
10 the holding company system, could, in
11 the discretion of the Commission,
12 have a materially adverse effect on the
13 operational or financial condition of
14 the broker or dealer.

15 “(iii) DEFERENCE TO OTHER EXAMI-
16 NATIONS.—For purposes of this subpara-
17 graph, the Commission shall, to the fullest
18 extent possible, use the reports of examina-
19 tion of an institution described in subpara-
20 graph (D), (F), or (G) of section 2(c)(2),
21 or held under section 4(f), of the Bank
22 Holding Company Act of 1956 made by
23 the appropriate regulatory agency, or of a
24 licensed insurance company made by the
25 appropriate State insurance regulator.

1 “(4) FUNCTIONAL REGULATION OF BANKING
2 AND INSURANCE ACTIVITIES OF SUPERVISED IN-
3 VESTMENT BANK HOLDING COMPANIES.—The Com-
4 mission shall defer to—

5 “(A) the appropriate regulatory agency
6 with regard to all interpretations of, and the
7 enforcement of, applicable banking laws relating
8 to the activities, conduct, ownership, and oper-
9 ations of banks, and institutions described in
10 subparagraph (D), (F), and (G) of section
11 2(e)(2), or held under section 4(f), of the Bank
12 Holding Company Act of 1956; and

13 “(B) the appropriate State insurance regu-
14 lators with regard to all interpretations of, and
15 the enforcement of, applicable State insurance
16 laws relating to the activities, conduct, and op-
17 erations of insurance companies and insurance
18 agents.

19 “(5) DEFINITIONS.—For purposes of this sub-
20 section:

21 “(A) The term ‘investment bank holding
22 company’ means—

23 “(i) any person other than a natural
24 person that owns or controls one or more
25 brokers or dealers; and

1 “(ii) the associated persons of the in-
2 vestment bank holding company.

3 “(B) The term ‘supervised investment
4 bank holding company’ means any investment
5 bank holding company that is supervised by the
6 Commission pursuant to this subsection.

7 “(C) The terms ‘affiliate’, ‘bank’, ‘bank
8 holding company’, ‘company’, ‘control’, and
9 ‘savings association’ have the same meanings as
10 given in section 2 of the Bank Holding Com-
11 pany Act of 1956 (12 U.S.C. 1841).

12 “(D) The term ‘insured bank’ has the
13 same meaning as given in section 3 of the Fed-
14 eral Deposit Insurance Act.

15 “(E) The term ‘foreign bank’ has the same
16 meaning as given in section 1(b)(7) of the
17 International Banking Act of 1978.

18 “(F) The terms ‘person associated with an
19 investment bank holding company’ and ‘associ-
20 ated person of an investment bank holding com-
21 pany’ mean any person directly or indirectly
22 controlling, controlled by, or under common
23 control with, an investment bank holding com-
24 pany.

1 “(j) AUTHORITY TO LIMIT DISCLOSURE OF INFOR-
2 MATION.—Notwithstanding any other provision of law, the
3 Commission shall not be compelled to disclose any infor-
4 mation required to be reported under subsection (h) or
5 (i) or any information supplied to the Commission by any
6 domestic or foreign regulatory agency that relates to the
7 financial or operational condition of any associated person
8 of a broker or dealer, investment bank holding company,
9 or any affiliate of an investment bank holding company.
10 Nothing in this subsection shall authorize the Commission
11 to withhold information from Congress, or prevent the
12 Commission from complying with a request for informa-
13 tion from any other Federal department or agency or any
14 self-regulatory organization requesting the information for
15 purposes within the scope of its jurisdiction, or complying
16 with an order of a court of the United States in an action
17 brought by the United States or the Commission. For pur-
18 poses of section 552 of title 5, United States Code, this
19 subsection shall be considered a statute described in sub-
20 section (b)(3)(B) of such section 552. In prescribing regu-
21 lations to carry out the requirements of this subsection,
22 the Commission shall designate information described in
23 or obtained pursuant to subparagraphs (A), (B), and (C)
24 of subsection (i)(5) as confidential information for pur-
25 poses of section 24(b)(2) of this title.”.

1 (b) CONFORMING AMENDMENTS.—

2 (1) Section 3(a)(34) of the Securities Exchange
3 Act of 1934 (15 U.S.C. 78c(a)(34)) is amended by
4 adding at the end the following new subparagraph:

5 “(H) When used with respect to an institu-
6 tion described in subparagraph (D), (F), or (G)
7 of section 2(c)(2), or held under section 4(f), of
8 the Bank Holding Company Act of 1956—

9 “(i) the Comptroller of the Currency,
10 in the case of a national bank or a bank
11 in the District of Columbia examined by
12 the Comptroller of the Currency;

13 “(ii) the Board of Governors of the
14 Federal Reserve System, in the case of a
15 State member bank of the Federal Reserve
16 System or any corporation chartered under
17 section 25A of the Federal Reserve Act;

18 “(iii) the Federal Deposit Insurance
19 Corporation, in the case of any other bank
20 the deposits of which are insured in ac-
21 cordance with the Federal Deposit Insur-
22 ance Act; or

23 “(iv) the Commission in the case of all
24 other such institutions.”.

1 (2) Section 1112(e) of the Right to Financial
2 Privacy Act of 1978 (12 U.S.C. 3412(e)) is
3 amended—

4 (A) by striking “this title” and inserting
5 “law”; and

6 (B) by inserting “, examination reports”
7 after “financial records”.

8 **Subtitle D—Banks and Bank**
9 **Holding Companies**

10 **SEC. 241. CONSULTATION.**

11 (a) IN GENERAL.—The Securities and Exchange
12 Commission shall consult and coordinate comments with
13 the appropriate Federal banking agency before taking any
14 action or rendering any opinion with respect to the man-
15 ner in which any insured depository institution or depository
16 institution holding company reports loan loss reserves
17 in its financial statement, including the amount of any
18 such loan loss reserve.

19 (b) DEFINITIONS.—For purposes of subsection (a),
20 the terms “insured depository institution”, “depository in-
21 stitution holding company”, and “appropriate Federal
22 banking agency” have the same meaning as given in sec-
23 tion 3 of the Federal Deposit Insurance Act.